

1941

Present : Howard C.J. and Soertsz J.

## SOMARATNA v. JINARATNA.

204—D. C. Galle, 37,738.

*Buddhist ecclesiastical law—Pupilage constituted by robing—Seniority determined by robing and not ordination—Disrobing on account of illness—No forfeiture of rights—krutiya Adikari.*

Under the Buddhist ecclesiastical law pupilage is conferred by robing or by ordination and a robed pupil is entitled to succeed to the incumbency of his tutor, whether he has been ordained or not.

Robing precedes ordination and the pupil who is the first to be robed is the senior pupil who is entitled to succeed unless there are other directions given by the tutor, or forfeiture or surrender. Temporary disrobing in the emergency of a grave illness does not involve forfeiture of rights.

**T**HIS is a dispute between two Buddhist priests regarding the incumbency of the temple called Raja Maha Vihare situated in the Galle District. The plaintiff and defendant are both pupils of the last incumbent, Kalahe Sri Ratnajoti. It was admitted that the rule of succession for this temple was Sisyanusisya Paramparawa.

The learned District Judge held :—

- (a) that the plaintiff was not robed by Ratnajoti or presented for robing as his pupil ;
- (b) that both robing and ordination being forms of pupilage accepted for purposes of pupillary succession the defendant having been robed by the deceased incumbent Ratnajoti prior to the plaintiff's ordination by the said Ratnajoti the defendant's right is superior ;
- (c) that the defendant did not forfeit his seniority by disrobing in view of the fact that he gave up the robes temporarily on the advice of his tutor and physician in order to obtain proper treatment for his serious illness.

*M. T. de S. Amerasekere, K.C.* (with him *R. N. Ilangakoon*) for plaintiff, appellant.—The appellant was actually robed at the Maliduwa temple by Dhammapala at the instance of Ratnajoti Guneratana as the former was an older and more respected priest than the latter. Moreover it is customary for a priest to be robed in the temple attached to his native village and the Maliduwa temple serves the appellant's village. Robing by delegation is sufficient. See *Saranankara Unnanse v. Indajoti Unnanse*<sup>1</sup>. The appellant's robing being earlier he is entitled to succeed.

The appellant was ordained by Ratnajoti prior to the respondent's ordination and ordination being a more important ceremony than robing his rights are superior. See Woodhouse on *Sishyanusishya Paramparawa* at page 32 and *Ceylon Antiquary*, Vol. 3, Part 4, p. 285, *Siriniwise v. Sarananda*<sup>2</sup>, *Hayley's Sinhalese Laws and Customs*—p. 557.

<sup>1</sup> 20 N. L. R. 385.

<sup>2</sup> 22 N. L. R. 318 at 320

Even if the respondent is senior he has lost his seniority by reason of disrobing. Once a priest disrobes he ceases to be a priest, and if he re-robes he starts anew and he is not entitled to take into account for purposes of seniority the period of his priesthood before disrobing. His act of disrobing was a voluntary act and this is not a case where a priest has been compulsorily deprived of his robes. The case *Premaratne v. Indasara*<sup>1</sup> can be distinguished. There the priest concerned had removed his robes for an immoral purpose. It does not follow that he did so with the intention of disrobing himself. The circumstances in this case are different. His act of disrobing was voluntary and it amounted to a renunciation of his rights. The voluntary disrobement even for illness makes a priest a layman however short may be the period during which he had divested himself of his robes. If the respondent could have relied on his earlier robing there was no necessity for a second re-robing.

The fact that at the meeting the respondent was appointed "*krutiya Adikari*" is significant. The term "*krutiya*" shows that his duties were restricted to the management of the temporalities of the temple while the plaintiff was incumbent proper.

*H. V. Perera, K.C. (N. E. Weerasooria, K.C., and S. R. Wijayatilake with him)* for defendant, respondent.—The evidence in support of the contention that the appellant was robed at the instance of Ratanajoti is very meagre. In fact there is a volume of evidence to the contrary. There is no such custom that one should be robed in one's native village. Ratnajoti himself was a distinguished priest and there was no point in requesting another priest to perform a function which he was quite qualified to carry out himself.

There is no authority for the proposition that ordination is a more important ceremony than robing for purposes of pupillary succession. It is well settled law that either robing or presentation for ordination is sufficient to constitute the priest who is robed or ordained the pupil of the priest who so robes or presents. Therefore the fact that the appellant was ordained prior to the respondent cannot be availed of to show that the appellant's rights are superior.

The respondent's disrobing under the circumstances does not amount to a renunciation of priesthood as he was compelled to do so on account of his serious illness. It was not a voluntary act on his part and he resumed the robes when he was well enough to do so. In *Gooneratne Terunanse v. Ratnapala Terunanse*<sup>2</sup>, a priest although he was compulsorily deprived of his robes while in prison when he came out of prison he went about for sometime in layman's dress before he re-robed. It was held that the conduct of the priest did not amount to such a deliberate voluntary act as that the intention of renunciation could be inferred therefrom. In *Premaratne v. Indasara* (*supra*) the priest divested himself of the priestly robes for an immoral purpose but it was held that he did not cease to be a member of the Order as he intended to resume the robes. It is the mental element that is of primary importance.

The terms "*krutiya Adikari*" cannot be differentiated from the term "*Adikari*". The functions of a "*krutiya Adikari*" are both temporal

<sup>1</sup> 40 N. L. R. 235 at 238.

<sup>2</sup> 1 Matara Cases 227.

and spiritual, and are in no way different from those of an "adikari". The appellant was appointed "adviser" in view of his age and his being the eldest pupil of Ratnajoti.

*Cur. adv. vult.*

June 24, 1941. SOERTSZ J.—

This is one more of those perennial dissensions with which we are unfortunately so familiar among Buddhist Monks in regard to the right of succession to an Incumbency, and to the Temporalities connected with it. One would have thought that in these days of delegated Tribunals, it would have been considered desirable, at least, in the interests of proper discipline, to constitute Ecclesiastical Tribunals to deal with such matters, particularly in view of the undoubted fact that there are, among the Buddhist clergy, many learned Priests competent, in every way, to decide these disputes. But in the present state of things, it falls to the over-burdened Civil Courts of this Island, unversed though they be in Buddhist ecclesiastical law, to pronounce on the questions involved in these contests.

Some of the questions that arise in this case are not free from difficulty. Plaintiff's counsel presented a very impressive argument in support of his appeal, but, after careful consideration, we are of opinion that the learned trial Judge came to a correct conclusion. There is a great volume of evidence to support the view he took that the plaintiff was robed not by Ratanajoti Gunaratana, the deceased Incumbent, nor at his instance, but by Somarathna Thero of the Maliduwa Temple, and that Ratanajoti only presented the plaintiff for ordination. The defendant was, admittedly, both robed and presented for ordination by Ratanajoti.

It was, however, contended that despite the finding by the District Judge, the plaintiff's claim to the Incumbency was superior for the reason that Ratanajoti presented him for ordination at a date long anterior to his presentation of the defendant. But the defendant was robed before the plaintiff was ordained, and in my opinion, that fact is decisive of the question. It must now be regarded as settled law that pupilage is conferred either by robing or by ordination, and that a robed pupil is competent to succeed to an Incumbency whether he has been ordained or not. Now, robing in the very nature of things precedes ordination and it follows logically, in the absence of a rule to the contrary, that the pupil who is the first to be robed is the senior pupil, and is entitled to succeed to the Incumbency unless there is other direction, given by the tutor, or forfeiture or surrender. In that view of the matter, it is clear that the defendant occupies a superior position.

But again the point is taken by Counsel for the appellant that the defendant lost his seniority when he disrobed some time in the year 1917, in order to obtain medical treatment and nursing attention in a serious illness. It is conceded that on recovering from his illness, the defendant resumed his robes, but it is urged that this resumption had no retrospective force and must be postponed to the plaintiff's ordination. I cannot accept that submission. Not only does it seem wrong, but it is also contrary to the view taken by Bonser C.J. and Withers J. in the case of *Gooneratne Terunanse v. Ratnapala Terunanse*<sup>1</sup>. In that case

<sup>1</sup> *1 Matara Cases 227.*

it was held that for disrobing to produce such a result as is here claimed, it must be voluntary *and* with a clear intention to renounce the priesthood. It follows that a temporary, and obviously *pro forma* departure from the priesthood in the emergency of a grave illness cannot produce such a result. See also *Premaratne v. Indasara*<sup>1</sup>.

Lastly, Counsel for the appellant submitted that the plaintiff was entitled to succeed to the Incumbency by right of election by competent members of the clergy and laity interested in the affairs of this temple. This matter was not put in issue at the trial, but quite apart from that, it is, by no means clear that there was an election of the plaintiff as Incumbent at the meetings referred to. The evidence discloses that the connection of the defendant with this temple was continuous and intimate from the time of Ratanajoti himself, whereas the plaintiff had only an intermittent contact with it, and such as was to be expected of one ordained by the priest of the temple. Although the documents before us to attest the decisions taken at these meetings are not free from ambiguity, it appears to me that the correct inference from them is that the clergy and laity present acknowledged and affirmed the defendant's right to the Incumbency when they described him as the *Kruthia Adikari*, but that in recognition of the age and eminence of the plaintiff who had been himself presented for ordination by the deceased Incumbent, they deemed it fit and proper to accord to him a place of honour, to confer on him an honorary rank. It was, if I may say so, a highly diplomatic move to prevent a contest which, they must have felt, the plaintiff was inclined to raise.

For these reasons, I am of opinion that this appeal fails and that it must be dismissed with costs.

HOWARD C.J.—I agree.

*Appeal dismissed.*

