

1955

*Present: Basnayake, A.C.J., and Pille, J.*

JINARATANA THERO, Appellant, and DHAMMARATANA  
THERO, Respondent

*S. C. 350—D. C. Kegalle, 7,158**Buddhist Ecclesiastical Law—Viharadhipati—Renunciation of status—Proof.*

An intention of a bhikkhu to renounce his status as Viharadhipati of a Vihāro will not be inferred unless that intention is clearly expressed by facts and circumstances. A Viharadhipati does not forfeit his right to the office when he leaves the templo of which he is Viharadhipati and takes up residence in another of which he is also Viharadhipati.

The residence of a pupil in his tutor's Sanghika Vihāro for whatever length of time cannot confer on him the right to be Viharadhipati of that vihāro as against the senior pupil

<sup>1</sup> (1954) 2 A. E. R. 56<sup>2</sup> (1892) 67 L.T. 251.

**A**PPEAL from a judgment of the District Court, Kegalle.

*C. V. Ranawake*, with *U. B. Weerasekera*, for Plaintiff-Appellant.

*H. F. Perera, Q.C.*, with *H. W. Jayewardene, Q.C.*, and *D. R. P. Goonetilleke*, for Defendant-Respondent.

*Cur. adv. vult.*

September 9, 1955. BASNAYAKE, A.C.J.—

This is an action between two bhikkhus in respect of their right to be Viharadhipati of Hungampola Vihare (hereinafter referred to as Hungampola). Degalathiriya Jinaratana, the plaintiff-appellant (hereinafter referred to as the appellant), and Kehelwatte Dhammaratana, the defendant-respondent (hereinafter referred to as the respondent), are the rival claimants.

The only question that arises for decision in this appeal is whether the respondent's tutor forfeited his right to be Viharadhipati of Hungampola.

It would appear that Hettimulle Sumana was the incumbent of the Hungampola. He died in July, 1855, leaving two pupils, Hapuwita Ratanapala (hereinafter referred to as Ratanapala) and Ambamalle Gunaratana (hereinafter referred to as Gunaratana), of whom Ratanapala was the senior. Shortly after the death of his tutor, Ratanapala was invited to reside in a vihare in his own village of Hatgampola and having accepted that invitation he continued to reside there visiting Hungampola, only on formal occasions. Gunaratana remained at Hungampola and conducted a *pirivena* and a school there. He acquired a reputation for Pali scholarship and attracted a large number of pupils, including the respondent, to his *pirivena*. Gunaratana himself had other temples; but he resided at Hungampola on account of his educational work. Since 1916, the date of his higher ordination, the appellant resided in one of them known as Gurullawala Salawewatte. Ratanapala died in October, 1924, at Hatgampola, leaving as his pupil the respondent. Gunaratana died in August, 1942, at Hungampola. He had several pupils of whom the appellant was the most senior and Somaratana was the most junior. Prior to his death Gunaratana executed a deed of gift in favour of Somaratana. This led to litigation between Somaratana and the other pupils, including the appellant, after Gunaratana's death.

In December, 1948, Somaratana executed a deed assigning to the respondent all movable and immovable property belonging to Hungampola and the office of Viharadhipati of that Vihare. In 1950, Somaratana left the order. This event led to the present action. The appellant claims the vihare as the senior pupil of Gunaratana while the respondent claims it as the senior pupil of Ratanapala and also on the deed executed by Somaratana. It is clear that Somaratana had no right to dispose of the vihare and its adhipatiship in the way he did. His deed is of no effect or avail in law. If the respondent's claim had rested on that deed alone he would not be entitled to succeed.

His claim based on his succession to Ratanapala is one that the appellant has to meet. That the respondent is Ratanapala's successor

is not denied; but the appellant maintains that Ratanapala abandoned his rights to Hungampola when he took up permanent residence at Hatgampola and that upon such abandonment Gunaratana became Viharādhīpati of Hungampola.

It has been held by this Court that a bhikkhu can renounce his right to be Viharadhīpati of a Vihare and that the renunciation of the right need not be expressly made; but may be inferred from facts and circumstances<sup>1</sup>. But an intention to renounce will not be inferred unless that intention clearly appears therefrom upon a strict interpretation of the facts and circumstances of the case. If the facts and circumstances leave the matter in doubt then the inference to be drawn is that there is no renunciation<sup>2</sup>.

There being no presumption in favour of the renunciation of a right, the onus is on the appellant to prove facts and circumstances from which it can be clearly inferred that Ratanapala renounced his right to the office of Viharadhīpati of Hungampola.

Learned Counsel for the appellant has not cited any authority in support of his contention that a Viharadhīpati forfeits his right to the office when he leaves the temple of which he is Viharadhīpati and takes up residence in another of which he is also Viharadhīpati. The office of Viharadhīpati is not one that can be abandoned by mere residence in another place. There is nothing in the Vinaya or the decisions of this Court which requires a Viharadhīpati to reside in the temple of which he is Viharadhīpati. A bhikkhu who is Viharadhīpati of more than one temple must of necessity reside in one place at a time and the mere fact that he makes one of the temples his permanent residence does not operate as a renunciation of his right to the others.

The appellant has not gone beyond proving that Ratanapala took up permanent residence at Hatgampola and that Gunaratana remained at Hungampola and conducted a *pirivena* and a school and generally acted as if he were in charge of the vihare to the extent of even nominating his successor to it. But that is not sufficient. It is not denied that Hungampola is a vihare granted to the Sangha and that Gunaratana was entitled to reside there and carry on his educational work. The residence of a pupil in his tutor's Sanghika Vihare for whatever length of time can confer no right on him to be Viharadhīpati of that vihare as against the senior pupil because every pupil is entitled to residence in the vihare so long as he conducts himself properly as a member of the Sangha. Scholarship, renown or the rendering of service in the field of education does not confer on a bhikkhu entitled to residence in a vihare any special right or claim as against the rightful Viharadhīpati.

To succeed, the appellant must prove facts and circumstances from which a clear inference of a renunciation by Ratanapala can be drawn. This he has failed to do. His appeal must therefore fail and is dismissed with costs.

PULLE, J.—I agree.

*Appeal dismissed.*

<sup>1</sup> *Pannananda v. Welivitiye Soratha*, 51 N. L. R. 372.

<sup>2</sup> *Oct. Bl. 1 Tit. 4 s. 22.*