Present: Ennis A.C.J. and De Sampayo J. 1921

UNNANSE *et al. v.* UNNANSE.

202—D. C. Kandy, 2,678.

Buddhist ecclesiastical law—Rules of succession—Claim that certain families had the right to appoint the incumbents.

"There are only two rules of succession known to the Buddhist law, namely, *sisyanusisya paramparawa* or pupillary succession and *siwuru paramparawa*, which is also a form of pupillary succession, but with the special characteristic that the pupil is a blood relation of the original priestly incumbent. In the absence of any evidence to the contrary, the presumption is that the incumbency is subject to the *sisyanusisya parampanawa* rule of succession."

The right of certain families to appoint an incumbent when a vacancy occurs considered.

THE facts appear from the judgment.

H. J. C. Pereira, K.C. (with him *J. S. Jayawardene* and *Cooray*), for appellant.

E. W. Jayawarden, for respondents.

Cur. adv. vult.

March 22, 1921. ENNIS A.C.J.—

This was an action for a declaration of title to the incumbency of the Dantura Vihare. The incumbency was held by one Indajoti Unnanse, and on his death about nine years ago his pupil Piyaratane succeeded to the incumbency. Piyaratane subsequently disrobed himself, and died about four years ago.

The plaintiffs claim the incumbency as pupils of Indajoti. The defendant sets up a title to it by virtue of an appointment by members of the Dehigama and Giragama families, by whom he asserted the patronage of the vihare was held.

The learned District Judge held that succession to the incumbency was governed by the *sisyanusisya*, and he gave judgment for the plaintiffs.

On appeal I see no reason to interfere with the learned Judge's finding of fact that the plaintiffs were the pupils of Indajoti, as proved by the production of the *lekam mitiya* and the evidence of Sri Deerananda Unnanse.

The main question in the case and on appeal was whether the succession to the incumbency in the case of the Dantura Vihare was governed by the *sisyanusisya*.

In the case of *Ratnapala Unnanse v. Kewitigala Unnanse*,[1] the rule was enunciated that with all vihares there is a presumption

[1] *(1879) 2 S. C. C. 26.*

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that *sisyanusisya paramparawa* applies. In *Sangaharatne Unnanse v. Weeresekera*[1] it was held that the terms of the original dedication governed the method of succession as to its incumbency.

It was urged on appeal that the learned Judge had not dealt with the evidence adduced by the defendant (appellant). The principal piece of evidence adduced by the defendant was the document D 4, which is a copy of the proceedings in a case before the Judicial Commissioner at Kandy in 1823 sitting with two assessors. In that case a member of the Dehigama family successfully claimed the incumbency of the Dantura Vihare. The assessors stated that there were certain temple estates in the country possessed by hereditary right, and that the proprietors of such estates were bound to keep the temple in repair and "to have the sacred duties duly performed." They went on to say: ". . . . . Generally a member of the proprietary family is ordained priest with the view of officiating, but if there be no members eligible to the priesthood, some other priest is selected to officiate. However, if the viharagama is divided amongst several branches of a family, and they will not concur in the appointment of an incumbent, the sacred duty devolved upon, and is performed by, the several partners in the estate according to their respective interests therein. This practice, however, was disapproved of by the deposed king, who authorized certain superior priests to take cognizance of the affairs of such vihares, and when the proprietary families neglected to have priests to officiate and laymen assumed the sacred function to appoint priests to do the duties, the 'paraweni' proprietors of the viharagam being subject to furnish everything requisite for the maintenance of such officiating priests. Since the accession of this Government, however, some of these families have resumed the practice of having the offices performed by laymen.

"Under all the circumstances of the case, they are unanimously of opinion that plaintiff has proved a hereditary right on the part of his family to the viharagam in question, subject to the rule laid down by the deposed king, in the event of their family failing to have a member of it in orders eligible to officiate at the temple or proving the duties to be performed by some other priests."

What this means it is not clear; it is, however, a finding in 1823 that the Dehigama family had a hereditary right in the Dantura Vihare subject to the observance of certain rules. In my opinion, it is evidence that the Dehigama family founded the vihare, but it does not afford clear evidence as to the rule of succession which applied. It seems to indicate that among the priests "eligible to officiate" members of the Dehigama family had preference. There is nothing to show that the Dehigama family had a general right to nominate to the succession.

[1] (*1903*) *6 N. L. R. 313.*

The evidence in the present case shows that the vihare fell into disuse and ruin. One Dehigama Loku Banda has given evidence that his father-in-law (not a member of the Dehigama family), Giragama, repaired the temple and placed Indajoti in charge. On Indajoti's death his pupil Piyaratane succeeded, and it transpires that the defendant took the document P 1 from Piyaratane conveying the vihare to him. The fact that such a document was taken seems to refute the contention that the Dehigama family had the patronage. Further, the evidence of the defendant's witness, Attipola, who arranged for the execution of the deed P 1, is that they could not remove pupils who were robed by the incumbent.

In the circumstances, I am of opinion that it has not been proved that succession to the incumbency is governed by any rule other than the *sisyanusisya paramparawa*, and that the learned Judge is right in holding that that rule applies. I would accordingly dismiss the appeal, with costs.

DE SAMPAYO J.—

This is a contest for the incumbency of the historic Buddhist temple known as the Dantura Vihare, situated in Medapalata of Yatinuwara. The plaintiffs claim to be the pupils of Madadombe Indajoti Unnanse, and to be entitled to succeed to the incumbency in that capacity. Indajoti Unnanse died many years ago, and was succeeded by his pupil Piyaratane Unnanse. The last named disrobed himself and died a few years before this action without leaving any pupils of his own. The defendant denied both that the incumbency was governed by the *sisyanusisya paramparawa* and that the plaintiffs were pupils of Indajoti Unnanse. There are only two rules of succession known to the Buddhist law, namely, *sisyanusisya paramparawa* or pupillary succession and *siwuru paramparawa*, which is also a form of pupillary succession, but with the special characteristic that the pupil is a blood relation of the original priestly incumbent. In the absence of any evidence to the contrary, the presumption is that the incumbency is subject to the *sisyanusisya paramparawa* rule of succession.

Consequently, in the circumstances of this case, the plaintiffs had only to prove that they were pupils of Indajoti Unnanse and co-pupils of the last incumbent, Pujaratna Unnanse. They were minors at the date of Indajoti Unnanse's death, but there is good evidence that they resided with him during his life, and were entrusted at his death to Galpiriyawa Budharahita Unnanse, who was the Maha-nayaka of Malwatta Vihare. Galpiriyawa is now dead, but in 1911, in a certain case between him and Piyaratane Unnanse, he swore an affidavit, which has been put in and accepted in evidence in this case without any objection, and in which he stated that two young priests, whom he named, and who have been sufficiently identified as the plaintiffs in this case, were pupils of Indajoti Unnanse, and were given to his custody at Indajoti's death. There is no doubt

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that these young novices remained under the care of Galpiriyawa at Malwatta Vihare. In 1914 the first plaintiff received *upasampada* ordination at the Malwatta Vihare, and was presented on that occasion by Galpiriyawa, and in the *lekam mitiya* or the register of Malwatta the first plaintiff's tutors are stated to be Galpiriyawa himself and the deceased Indajoti Unnanse. The second plaintiff received *upasampada* ordination in 1917, and in his case the presentor appears to be one Embopama Piyaratane, and the tutors are stated to be the deceased Indajoti and this Piyaratane. It is well known that, when a priest other than the tutor presents a novice for ordination, the register often refers to both as tutors, more especially where the presentor has had some share in the education of the novice. The entries produced in this case show further that when the tutor is dead, the custom is to enter his name along with that of the priest who actually presents the novice for ordination. In this connection it should be remembered that the robing of a person with the intention of making him a pupil is sufficient to create the relation of tutor and pupil, though there may be other ways also. All the circumstances in this case indicate that the plaintiffs were robed by the deceased Indajoti Unnanse and became his pupils and remained so until his death. There is in addition the evidence of Sri Dhirananda Unnanse, the Assistant Secretary of the Sangha Sabhawa of Malwatta, who had personal knowledge of the facts, and he stated that the plaintiffs were in fact pupils of Indajoti Unnanse. In my opinion the District Judge rightly decided the issue as to pupillage in favour of the plaintiffs.

The defence, however, was that the incumbency of Dantura Vihare was not governed by either of the rules of succession above mentioned, but that it was in the gift of the Dehigama and Giragama families, who were entitled to appoint a priest to the vihare on any vacancy, and that the defendant was so appointed on the death of Piyaratane Unnanse by Dehigama Basnayaka Nilame and Ettipola Korala of the Dehigama and Giragama families respectively. There are no instances to be found in the books of this kind of patronage exercised by private persons, but it is stated in the judgment of the Board of Commissioners who tried the case of *Erimisme Unnanse* (see *Vander. Rep., Appendix D, at p. xlv*) that the exceptions to the two rules of succession above mentioned are those temples " which are in the gift of Government or of private individuals." There is no further exposition of the subject. In this case, however, it is unnecessary to discover the true Buddhist law on this subject, as the District Judge's finding is that there is no foundation for the defendant's allegation as to the right of appointment by the Dehigama and Giragama families. The defendant mainly relies on the proceedings of an old case relating to the Dantura Vihare of the year 1828. See the copy of proceedings marked D 4 put in by the defendant. That was a case brought by Dantura Unnanse against the Government

of Ceylon to establish his right to the Dantura Vihare as against Malwattegama Nayaka Unnanse who obtained a deed of gift from the previous incumbent. The case was tried by the Judicial Commissioner with three assessors, and in the course of their judgment the assessors made the following observations: " In regard to the discussions which have taken place respecting the tenure of viharagama, there are numerous temple estates in the country possessed by hereditary right, such as Aludeniya, Durumpola, and Handessa in the province of Udunuwara, Suriyagoda in Yatinuwara, Dodanpastenne, Kalugamanna, and Medagoda in Harispattu. It is incumbent on the proprietors of such estates to keep in repair the temples erected thereon and to have the sacred duties duly performed. Generally a member of the proprietary family is ordained priest with the view of officiating, but if there be no member eligible to the priesthood, some other priest is selected." The assessors add that if the viharagama is divided amongst several branches of a family, and they will not concur in the appointment of an incumbent, " the duty devolves upon, and is performed by, the several partners in the estate according to their respective interests therein," but that the deposed king (Sri Wickrama Rajasingha) disapproved of this practice, and ordered that " certain superior priests " should make an appointment in such a case, " the paraweni proprietors of the viharagama being subject to furnish everything for the maintenance *of such officiating priest.*" *The " superior priests "* referred to in that judgment are no doubt the high priests of Malwatta and Asgiriya. The plaintiff in that case was a member of the Dehigama family, and his claim on that footing was upheld by the Court. The Dehigama family would appear to have been (to use the language of the assessors) the " paraweni proprietors " of the Dantura Vihare. How the Giragama family acquired any right is difficult to understand. All that is said on the subject is that Giragama Diva Nilame married a lady of the Dehigama family, and that in or about 1854 he rebuilt the temple, which had fallen into disrepair, and made a gift of lands to his nephew Godagama Loku Banda, stipulating that the donee keep the Dantura Vihare in good repair. It is said that it was this Giragama that inducted Indajoti to the incumbency, but the evidence on that point is not credited by the District Judge, and certainly the right of patronage, so far as the Giragama family is concerned, has not been well established. As regards the Dehigama family, which is said now to be extinct, except for the witness Dehigama Loku Banda, Basnayake Nilame of Weeriya Dewale and son-in-law of Giragama Diva Nilame. Even if they at any time had any rights in respect of the Dantura Vihare, it is difficult to say that in the present circumstances any such rights still survive. The said witness Dehigama Loku Banda, who is the last representative of the Dehigama family, says that " when the Dehigama family became extinct, Giragama assumed their privileges." It should be noted

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in this connection that the old case decided was, not that the Dehigama family had the right of appointment to the incumbency of the vihare, but that the plaintiff, who was a member of that family, had the right to succeed in preference to the donee of the previous incumbent. The District Judge has on the evidence held that it is not at all proved that the vihare was founded by the Dehigama family, or that the members of that family ever exercised the right of appointment, or that Indajoti Unnanse was inducted by any members of either family as alleged. Assuming, however, that the Dehigama family had or has the right of appointment, the question remains how far and when that right can be exercised? In the absence of any direct proof of the actual conditions, any opinion on this point must rest on what has taken place in the past. I think the past history indicates at all events that when an appointment is once made the rule of pupillary succession begins to operate. Dunuwila Gajanayaka Nilame was a witness in the old case. He said that at the time of King Kirtisiri one Dantura Loku Unnanse was the incumbent, but could not say how he became incumbent. He went on to say that on the death of Dantura Loku Unnanse the vihare devolved upon his brother's son, and that after the latter's death three more of the same family successively held the living. This evidence suggests that the case was one of devolution and succession, and not of special appointment on each vacancy. In the present case, Dehigama Loku Banda, who with Ettipola Korala of the Giragama family is said to have appointed the defendant, gave evidence as follows: "After Indajoti's death one of his pupils continued there as incumbent . . . . if Indajoti left pupils and they lived proper lives, we would have no authority to force them out." When he was further pressed on this point, he gave evasive and contradictory answers. But the most important piece of evidence against the claim of these two families to appoint an incumbent is furnished by a gift which Piyaratane Unnanse, pupil and successor of Indajoti, made in favour of the defendant in 1911 before he disrobed himself. It was Ettipola Korala himself who was instrumental in procuring the deed of gift and was a witness to its execution. In this deed Piyaratane Unnanse expressly recited that he "inherited and possessed through my deceased tutor Dedadombe Indajoti Unnanse." This admission, to which Ettipola Korala was in effect a party, is entirely inconsistent with Ettipola Korala's present assertion that the incumbency goes by appointment by the members of his own and of the Dehigama family.

In view of these circumstances, I think the finding of the District Judge that the succession to the incumbency was according to the rule of pupillary succession, and not by particular appointment by these families on each occasion of a vacancy, is reasonable. I accordingly agree that this appeal should be dismissed, with costs.

Appeal dismissed.