

Present: Lyall Grant J. and Maartensz A.J.

DEWANDRA UNNANSE *v.* SUMANGALA TERUNNANSE

471—D. C. Kurunegala, 10,989.

Buddhist vihara—Co-incumbent—Alternate years.

The incumbency of a Buddhist temple may be held by two priests, officiating in alternate years.

A PPEAL from a judgment of the District Judge of Kurunegala.

N. E. Weerasooria (with *Rajapakse* and *Sri Nissanka*), for plaintiff, appellant.

H. V. Perera (with *Batuwantudawa*), for defendant, respondent.

October 3, 1927. LYALL GRANT J.—

The plaintiff in this case, who is a Buddhist priest, sued the defendant, who is also a Buddhist priest, and asked to be declared sole incumbent of Makulana Vihare.

The defendant did not deny the plaintiff's claim to a half of the incumbency, and the learned District Judge has held that the defendant has proved his right by prescription to be a co-sharer in the incumbency with the plaintiff.

The District Judge has accordingly allowed to the defendant a half share in the produce of the temple property and the right to officiate in alternate years.

Against that part of the judgment which concerns the right to officiate as incumbent this appeal is taken. It is not very clear whether an appeal is also taken against that part of the judgment which refers to a half share of the profits.

In support of the appeal it is argued that the incumbency of a Buddhist temple is not capable of division, and that the arrangement alleged by the defendant in this case is contrary to the practice of the Buddhist religion.

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So far as the evidence in the present case goes, there is nothing to show that such a practice is unknown to Buddhism. The defendant alleges that for a considerable number of years he has held the keys and acted as incumbent every alternate year. This statement is supported by the Korala of Aranpola, who says he knows this vihare well and that for the last thirty-five years it has been possessed alternately by each priest every year, but that the temple lands have been held in common.

He refers by name to two other temples which to his knowledge are possessed in a similar manner.

The plaintiff has led no evidence but refers to the case of *Saranankara Unnanse v. Indajoti Unnanse*.¹

In that case Bertram C.J. expressed the opinion that the office of an incumbent is a single office and cannot be held jointly and that consequently a claim to a share of an incumbency cannot be sustained. Apparently this view was the personal opinion of the learned Chief Justice and was gathered from his study of the Buddhist writings.

As was remarked by de Sampayo J. in that case, the question of the law governing a religious body is to a Civil Court a question of fact to be gathered from evidence, and if I may say so, I agree with him that the most valuable evidence in cases of this sort is that which learned priests may be able to give from their experience and knowledge with regard to the actual custom in force.

I cannot find that in the case of *Saranankara Unnanse v. Indajoti Unnanse* (*supra*) any evidence was led on the question of whether it was possible for the incumbency of a temple to be held by two priests in alternate years.

Reference was made to evidence which had been taken in a previous case, *Dammaratna Unnanse v. Sumangala Unnanse*,² where the evidence of a number of leading Buddhist priests was taken in regard to certain points of practice.

The point now in question was not however one of those so referred.

It is clear from the evidence in the present case, and also from some of the evidence referred to by the Chief Justice in the case of *Saranankara Unnanse v. Indajoti Unnanse* (*supra*), that the practice of vihares being held in common is by no means unknown, and in the absence of conclusive evidence that this practice is inconsistent with the principles of the Buddhist religion, I see no reason to differ from the conclusion arrived at by the learned District Judge.

The appeal is dismissed, with costs.

MAARTSZ A.J.—I agree.

Appeal dismissed.