1950 *Present :* **Windham J. and Gunasekara J.**

PUNNANANDA, Appellant, *and* WELIWITIYE SORATHA, Respondent

S. C. 396—D. C. Galle, 786

Buddhist ecclesiastical law—Abandonment by priest of his rights to an incumbency—Question of fact—Such abandonment deprives pupils of their pupillary rights of succession—Pupillage by adoption not recognized in Ceylon—Right of incumbent to appoint a particular pupil as his successor.

The abandonment by a priest of his rights to the incumbency of a Buddhist temple does not require any notarial deed or other prescribed formality, but is a question of fact, and the intention to abandon may be inferred from the circumstances. The abandonment of an incumbency by a priest operates to deprive his pupils of their rights of pupillary succession.

Under the ecclesiastical law observed by Buddhists in Ceylon there are only two forms of pupillage which will confer rights of pupillary succession, namely, pupillage by robing and pupillage by ordination. There is no form of pupillage recognized as pupillage by adoption.

In accordance with the *sisiyanu sisiya paramparawa* rule of descent the incumbent of a temple is entitled to appoint by deed a particular pupil as his successor in preference to the senior pupil.

APPEAL from a judgment of the District Court, Galle.

F. A. Hayley, K.C., with *H. W. Jayewardene* and *J. W. Subasinghe*, for defendant appellant.

H. V. Perera, K.C., with *N. E. Weerasooria, K.C.*, and *W. D. Gunasekera*, for plaintiff respondent.

Cur. adv. vult.

March 22, 1950. WINDHAM J.—

The plaintiff-respondent brought an action for a declaration that he was entitled to the incumbency of a Buddhist temple, namely the Sri Nagaramaya temple situated in the village of Nalagasdeniya in the Galle District, and for the ejection of the defendant-appellant from the temple.

It is common ground that the original incumbent was one Arugamuwa Rewata, and that he died in 1894 leaving four pupils, Hikkaduwe Sri Sumangala, Habarakade Sonuttara, Mabotuwana Siddhartha, and Majuwane Ananda. Sumangala, the senior pupil, had two pupils Jinaratna (his senior pupil, who is still alive) and Gnaniswara. Jinaratna has a pupil Wachiswara. While the plaintiff claimed to be a pupil of Gnaniswara, his claim to the incumbency was based not on that pupilship, but on the contention, upon which the learned trial judge found in his favour, that Sumangala surrendered and abandoned his rights to the incumbency, thereby depriving his own pupils of such rights as they could otherwise

have claimed through him, coupled with the contention that he the plaintiff was (*a*) the sole pupil of one Pemaratna, who was the sole pupil of Sonuttara, and (*b*) a pupil of one Pemananda who was the senior pupil of Ananda.

The learned trial judge found in the plaintiff's favour on the ground that Sumangala had forfeited all claims for himself and his pupils, and that the plaintiff was the "adopted" pupil of Pemananda, who had in fact been the incumbent until his death in 1942.

Now I will consider presently the finding that Sumangala had abandoned for himself and his pupils all rights to the incumbency. But the *de facto* position, which the learned judge found upon sufficient evidence, was that Sumangala never functioned as incumbent, but that according to the wishes of Rewata the original incumbent, Sonuttara became incumbent of another temple, while Siddhartha and Ananda became joint incumbents of the Sri Nagaramaya temple until Siddhartha's death in 1906, when Ananda continued to function as sole incumbent until he died in 1922 leaving as sole pupil Pemananda.

The defendant-appellant was admittedly not a member of Rewata's *paramparawa*, but he had for many years been officiating in the temple, having gone there upon the invitation of the dayakayas at a time when there was in fact nobody residing in the temple. Upon the conclusion of the evidence, however, his counsel was forced, in the face of strong evidence against him, to abandon his original position that Pemananda had never been the incumbent after Ananda's death in 1922, and to admit that Pemananda had been the incumbent from that time until his death in 1942, and that the defendant had been functioning at the temple with Pemananda's permission.

That being so, and subject to the question whether Sumangala can be held to have abandoned his rights for himself and his pupils, the plaintiff's claim to be declared the lawful incumbent of the temple must succeed if it can be shown that the plaintiff was the senior or the preferred pupil of Pemananda: *Gunananda Unnanse v. Dewarakkita Unnanse*[1]. Now admittedly he was not the senior pupil, for one Wachiswara (already mentioned as being also a pupil of Sumangala's senior pupil Jinaratna) was Pemananda's senior pupil. The plaintiff, however, produced a deed P 17 of 17th February, 1942, whereby Pemananda appointed the plaintiff as his successor in preference to Wachiswara. This he was clearly entitled to do in accordance with the *sisiyanu sisiya paramparawa* rule of descent, (and see *Dhammajoti v. Sobita*[2], *Terunanse v. Terunanse*[3]) provided that the plaintiff himself was a pupil of Pemananda and had become his pupil either by robing or by ordination. For after the exhaustive statement of the position as expounded in *Saranankara Unnanse v. Indajoti Unnanse*[4], followed in *Somaratna v. Jinaratna*[5], it must now be taken as settled law upon which this court will act, that under the ecclesiastical law observed by Buddhists in Ceylon there are only two forms of pupillage which will confer rights of pupillary succession, namely pupillage by robing and pupillage by ordination.

[1] *(1924) 26 N. L. R. 257.*
[2] *(1913) 16 N. L. R. 208.*
[3] *(1929) 31 N. L. R. 161.*
[4] *(1918) 20 N. L. R. 385.*
[5] *(1941) 42 N. L. R. 361.*

Now in the present case it was not claimed by the plaintiff that Pemananda was his robing tutor. But it was his contention that Pemananda was one of his three ordaining tutors, the other two being Pemaratne (who was also his robing tutor) and Gnaniswara. The learned District Judge, however, found on the evidence that the plaintiff had failed to prove that Pemananda was one of his ordaining tutors. But he found that the plaintiff was "adopted" by Pemananda as his pupil after his ordination by those other two priests, and that this subsequent adoption constituted a recognized form of pupillage upon which the deed P 17 could operate so as to entitle him to the incumbency upon Pemananda's death in 1942. In holding that there was any such recognized form of pupillage as pupillage by adoption, conferring rights of succession, the learned judge had no legal authority to support him, and in view of the position set out in the authorities to which I have referred I consider that he was wrong. But it has been strenuously contended for the plaintiff that, while the learned judge may have been wrong in his conclusion that the plaintiff was Pemananda's pupil by adoption, and as to the legal effect if he was, his ultimate conclusion that the plaintiff was entitled to the incumbency was correct, because his finding that the plaintiff was not a pupil of Pemananda by ordination was an unreasonable one on all the evidence and ought to be reversed.

Upon careful consideration I have reached the conclusion that this finding was against the weight of evidence, and that in particular it was rooted in a failure by the learned judge to appreciate the evidentiary value of an original ola entry which was made in the *lekammitiya* kept at Malwatte where the ordination took place in 1917. This ola was produced not by the plaintiff but by the defendant, as D 11, and in my view its effect was convincingly to corroborate the oral evidence of the plaintiff and other witnesses that Pemananda, as well as Pemaratne and Gnaniswara, had been one of his ordaining tutors.

The evidence of the plaintiff on this point, briefly, was that all three priests had ordained him in 1917. With regard to the entry of Pemananda's name on the ola leaf as one of his ordaining tutors, his evidence was that at the ordination Pemananda's name was so entered, along with those of his other two ordaining tutors Pemaratne and Gnaniswara, but that thereafter Pemaratne and Pemananda had a quarrel as a result of which Pemaratne caused the name of Pemananda to be deleted from the entry, and that upon Pemaratne's death in 1931 Pemananda had his own name inserted again.

Now the learned trial judge held that this story of the plaintiff was not borne out by an examination of the ola leaf itself, wherein, he observed, the name and description of Pemananda,—"Hikkaduwe Pemananda Istavira the incumbent of Nalagasdeniya Sri Nagaramaya at Hikkaduwa" appear as an interpolation, while there was nothing (he thought) to show that what was earlier deleted from the ola was the name of Pemananda, but merely an indication that some unidentifiable word or name had been scraped out with a penknife. But a careful scrutiny of the original ola leaf shows that, while the learned judge was quite right in holding that the above-quoted long description of Pemananda was an interpolation, in the sense of something inserted later, he entirely failed

) observe that, next to the unidentifiable word which had been scraped ut to make room for the first word of the interpolation, there appears learly visible the name " Pemananda " in the original part of the ola ntry between the descriptions of the other two ordaining priests Pema- atne and Gnaniswara, and that this name, which could not have been interpolated, has been crossed out by criss-cross lines. This cuts the ground from under the learned judge's finding that it is " most unlikely " that the Chapter would have permitted the deletion of Pemananda's name. For the name was in fact patently deleted. And if further real evidence were needed in corroboration of there having been three and not two ordaining priests, there appear in the ola entry, after the description of the priest Gnaniswara, the words—" the *three* (" tunnama ") priests being the tutors of Weliwitiye Samanera priest " (i.e., the plaintiff).

The learned judge, in rejecting the plaintiff's evidence on this point, was clearly misled by his erroneous reading of the ola leaf P 11. Nor did the plaintiff lack other corroboration. One Dheerananda, Secretary of the Malwatte Chapter, who had been present at the ordination, testified that Pemananda had been one of the ordaining priests. So also did another witness, Abraham Goonewardene. The learned judge rejected the evidence of the latter for no stated reason, and that of the former on the ground that he was unable to rely on the witness's memory and that he was " prejudiced against the defendant ". But it is again clear that his rejection of their evidence on the point sprang from his inability to reconcile it with what he mistakenly took to be the effect of the ola entry P 11. Lastly, no witness testified that Pemananda was not one of the plaintiff's ordaining tutors.

For these reasons I hold that the learned judge's finding that the plaintiff had failed to prove that he was a pupil of Pemananda by ordination was unreasonable and against the weight of evidence, and must be reversed. I hold that the plaintiff has established that he was Pemananda's ordained pupil.

This fact, coupled with the deed P 17 whereby Pemananda, shortly before his death, appointed the plaintiff as his successor in preference to his senior pupil Wachiswara, is sufficient to establish the plaintiff's claim to the incumbency, unless it can be shown that the learned trial judge was wrong in holding that Sumangala, the senior pupil of the original incumbent Rewata, had abandoned his claims to the incumbency and that this abandonment operated to deprive his pupils of any similar claims.

Now it is undisputed that Sumangala in fact never exercised the rights of an incumbent over the Sri Nagaramaya temple. That alone would not necessarily constitute an abandonment of such rights. But Sumangala, from the death of his tutor Rewata in 1894 until his own death many years later, officiated as incumbent neither personally nor through a deputy, for as I have observed earlier, his co-pupils Siddhartha and Ananda functioned as joint incumbents upon Rewata's death until 1906, when Siddhartha died and Ananda functioned as sole incumbent until his death in 1922. Furthermore, in a letter P 9, written to one Goonewardene as early as July, 1893, the year before Rewata's death, Sumangala

wrote, with regard to what the defendant's advocate admitted to be the Sri Nagaramaya temple among others—" I do not want those temples now, nor did I want them in the past either. Further, I do not want them at all at present ". This expression of his desire not to be burdened with the temple, coupled with his failure at any time to exercise any rights or functions of an incumbent in respect of it, either personally or through any deputy, may in my view rightly be taken as having constituted an abandonment of those rights. Abandonment of such rights does not require any notarial deed or other prescribed formality, but is a question of fact, and the intention to abandon may be inferred from the circumstances, as it was in my view rightly inferred by the learned District Judge in the present case.

With regard to the question whether such an abandonment by Sumangala operated to deprive his pupils of such rights to the incumbency as they might otherwise have claimed, I think the learned District Judge was right in holding that it did so operate. The question appears not to be covered by authority. It has been held in *Dammaratna Unnanse v. Sumangala Unnanse* [1] that when a tutor disrobes himself for immorality, this does not deprive his pupils of their rights of pupillary succession. But I think the case is different where the tutor abandons his rights to an incumbency. Disrobing, with the intention of giving up the priesthood, is the equivalent, ecclesiastically, of personal demise, and it does not entail, any more than death entails, an abandonment of rights, but merely a personal incapacity to exercise them. These rights can accordingly descend to a pupillary successor. The abandonment of an incumbency by a priest, on the other hand, constitutes the forfeiture of that to which his pupils' rights of succession are attached, namely the incumbency itself. The priest remains a priest, but abandons his rights to the incumbency, upon which the pupillary rights of succession are dependent. There accordingly remain no rights for the pupil to inherit.

I am accordingly of the opinion that, upon the evidence led in the present case, the plaintiff has shown that he, rather than Sumangala's senior pupil Jinaratna or anyone else, is the person entitled to the incumbency in dispute, and that his action for a declaration that he is entitled to the incumbency must succeed. No doubt, since Jinaratna is not a party to this action, this finding would not bind him, in the event of his bringing an action against the plaintiff for a declaration that he, Jinaratna, was the lawful incumbent. But so far as concerns the present action the plaintiff has successfully established, not merely that he has a better right to the incumbency than the defendant has—for that is not the declaration he asks for in his prayer—but that he is the lawful controlling incumbent of the temple.

For these reasons the appeal is dismissed with costs.

GUNASEKARA J.—I agree.

Appeal dismissed.

[1] *(1910) 14 N. L. R. 400.*