1932 *Present :* **Dalton and Drieberg JJ.**

TERUNNANSE *v.* DON ARON *et al.*

168—D. C. Kalutara, 15,374.

Buddhist Temporalities—Action for recovery of temple—Right of Incumbent—Ordinance No. 8 of 1905, s. 20.

The incumbent of a Buddhist temple has no right to maintain an action to recover possession of property, which is vested in the trustees, under section 20 of the Buddhist Temporalities Ordinance.

APPEAL from a judgment of the District Judge of Kalutara.

N. E. Weerasooria, for plaintiff-appellant.

H. V. Perera (with him *Ameresekere*), for defendant-respondents.

June 28, 1932. DRIEBERG J.—

The first appellant who claims to be the chief incumbent of the Suvisuddaramaya temple said that he planted rubber on the Pansalawatta, the land on which the temple stands ; thereafter, he took up his residence at another temple and appointed the sixth respondent Dhammananda Unnanse, his pupil, to act as his agent and look after the land during his absence. In October, 1928, he determined the authority of the sixth respondent and leased six hundred rubber trees on a 5-acre portion of Pansalawatta to the second and third appellants. The lease P 8 of the October 29, 1928, was for a term of three years. He asked the sixth respondent to give over possession of this portion, but he refused to do so and placed the first to the fifth respondents in possession of it ; he said he was in possession of the rest of Pansalawatta. He asked to be restored to possession of this portion of the land and for damages at the rate of Rs. 180 a year until restoration of possession.

The sixth respondent said that he was the rightful incumbent of this temple by pupillary succession. He was young and had not completed his studies when he succeeded to the incumbency. He was given over to the first appellant to be taught and was later sent to the Maligakanda College. He completed his studies in 1921, and then lived with the first appellant at another temple of which the first appellant was incumbent. In 1923 he went to the Suvisuddaramaya temple. He claimed to have planted some rubber in 1927. The coupons for the rubber from the earlier plantations had been obtained in the name of the first appellant. He did not admit that the plantation was made by the first appellant, but said that, when he was with the sixth respondent, the latter was entrusted with the collection of the income of the rubber land. The first to the fifth respondents said they were dayakayas of the temple and denied having in any way interfered with the possession of the land by anyone.

The trial proceeded on the following issues:—

(1) Did the first plaintiff make the rubber plantation in question on land belonging to the Suvisuddaramaya temple ?

(2) Did the first plaintiff entrust the sixth defendant with the care and control of the said rubber plantation and if so, can he now question the first plaintiff's title thereto?

(3) Has the plaintiff acquired title to the rubber plantation made by him by right of prescriptive possession ?

(4) Did the defendants or any one or more of them prevent the plaintiffs or their agents from possessing the said rubber plantation and, if so, to what damages are they entitled ?

(5) Is the first plaintiff the incumbent of the temple in question ?

(6) Can the first plaintiff maintain this action in view of the provisions in section 20 of the Ordinance No. 8 of 1905 ?

(7) Does the deed of lease 719 of October 29, 1928, by the first plaintiff to the second and third plaintiffs convey any title and, if not, can the second and third plaintiffs maintain this action ?

(8) Are the first to fifth defendants in possession of the rubber plantation in dispute ?

A great deal of evidence was led on the question of who was the chief incumbent of the temple and it appears that the real object of this action was to obtain a decision on this point ; the learned District Judge held, however, that it was not necessary to decide this question as the lease P 8 was void. This temple is in an area which was brought under the operation of the Buddhist Temporalities Ordinance and trustees were appointed until 1916 or 1917. No trustee was appointed thereafter ; a meeting was held in 1928 for the election of a trustee but it ended in disorder and this was not done. The land admittedly belongs to the temple which stands on it. Where no trustee has been appointed the incumbent can under the provisions of section 27 of the Ordinance lease temple lands for a period not exceeding ten years but he should obtain the sanction of the District Committee for the purpose.

Mr. Weerasooria referred us to the case of *Pietersz v. Bastian Fernando.*[1] In that case the incumbent, the fourth defendant, leased temple lands to the plaintiffs who were ejected by the first, second, and third defendants. The temple was one governed by the Ordinance, but no trustee had been appointed. No question was raised in the lower Court regarding the validity of the lease but it was raised at the argument before the Appeal Court. The judgment in favour of the plaintiff was affirmed, but on the ground that the right of the incumbent to lease was not raised at the trial and that in the absence of evidence to the contrary the Court was entitled to assume that he had done so properly under the power conferred by section 27. This is no authority for the proposition that a lease without such sanction can be recognized, and in this case the respondents expressly questioned the legality of the lease. The appellants do not say that the first appellant obtained the sanction of the District Committee to the lease.

It has been held in *Seyedu v. Lokunda*[2] that the proviso to section 27 under which the temple lands may be demised with the sanction of the District Committee applies only to cases where no trustee has been appointed at any time under the Ordinance, and this provision cannot apply to the lease in question.

But in any case, can the plaintiff maintain this action ? An issue was framed on this point. It is an action by the plaintiff, claiming to be the chief incumbent, to recover possession of temple land, and it must be taken, for the temple. Under section 20 of the Ordinance this land with its rents and profits vested in the trustees, and it is only the trustees who can bring an action for the recovery of possession of property vested in them—see section 30. In the case of refusal to accept office, death, incapacity, disqualification, resignation, suspension, dismissal, bankruptcy, insolvency, or departure from the Island of any trustee, the District Committee is empowered by section 34 to make provisional

[1] *(1926) 28 N. L. R. 88.*

[2] *(1927) 29 N. L. R. 216.*

arrangements for the performance of the duties of the office pending the election of a successor, and a person so appointed provisionally to act as trustee has all the power and is liable to all the duties of a trustee elected under the Ordinance. Mr. Weerasooria contended that the Court could recognize the right of the first appellant to maintain such an action as this on the ground that he was a *de facto* trustee. It is not easy to see how, when by statute certain property is vested in trustees with adequate provision for succession and for provisional trustees during such intervals as there are no elected trustees, the right of any others to act as trustees impossibly be recognized.

In Sidhartha Unnanse v. Udayara[1] the incumbent of a temple and a man who cultivated under him a field belonging to the temple were allowed to maintain a possessory action against trespassers. The priest's right to do so was recognized on the ground that for over twenty years he had charge of the field, given it out to be cultivated and taken the customary share of the landowner. Sampayo J. held that in these circumstances he could be regarded as a *de facto* trustee. We were informed by Mr. Perera that no trustee had been appointed and that this fact was before the Appeal Court though not referred to in the judgment. On examining the record of the case C. R. Anuradhapura No. 9,343, I find that this is so. The Commissioner desired information on this point and it appears that the district in which the temple is situated was proclaimed in January, 1907, but there was no evidence that a trustee was ever appointed; the action was brought in April, 1918. That case is therefore distinguishable from this, for here trustees had been appointed and the temple property, together with the right to bring actions for the recovery of possession of it, rested in them and in their successors as provided by the Ordinance.

The first appellant therefore cannot maintain this action for the recovery of possession of this land and its rents and profits. The rights of the other appellants are derived from the first appellant and their position is no better than this.

In his evidence the first appellant advances a claim of an unusual nature. He said he regarded the rubber as his private property and took the income from it. He admits that the land belongs to the temple, but he assumes the position of a planter who has planted and improved land. He says he had done this with his *pudgalika* money and claims for this reason to be entitled to the plantation. It was even suggested, see issue No. 3, that he had acquired title to the plantation by prescriptive possession. I do not see how such a claim can succeed, for he cannot say that he had the land planted in a personal capacity and not as the incumbent of the temple. It is sufficient, however, to note that the action was not brought on that basis but on an alleged right as incumbent.

The appeal is dismissed with costs.

DALTON J.—I agree.

Appeal dismissed.

[1] *(1919) 6 C. W. R. 29.*