1958 *Present :* H. N. G. Fernando, J., and T. S. Fernando, J.

MORONTUDUWE SRI NANESWARA DHAMMANANDA NAYAKA THERO, Appellant, *and* BADDEGAMA PIYARATANA NAYAKA THERO *et al.*, Respondents

S. C. 26, with S. C. 73 (Inty.) and S. C. 192 (Inty.)—D. C. Colombo 2882/L

Buddhist ecclesiastical law—Maligakande—Pirivena established for religious education—Not a " temple "—Buddhist Temporalities Ordinance, s. 2—Dedication of immovable property for establishing a pirivena or a temple—Gift described as " sanghika "—Succession to incumbency—Regulation thereof according to the terms of the dedication—Charitable trust—Trusts Ordinance, s. 113 (1)—Expulsion of a monk from a vihare—Principles applicable thereto.

(i) Premises dedicated by a person or an unincorporated body of persons for the establishment of a pirivena to impart knowledge of Buddhism to Bhikkhus as well as laymen do not constitute a " temple " within the meaning of section 2 of the Buddhist Temporalities Ordinance even if, subsequent to the establishment of the pirivena and in the course of the years, a dagoba, an image-house and a bo-tree appear on the premises and the monks residing in the pirivena permit lay devotees to come there on certain days for worship.

(ii) Where immovable property is dedicated by notarial deed in favour of a Buddhist priest to establish a pirivena or even a temple and is described in the instrument of dedication as by way of a *sanghika* gift, the title to the property would not pass, on the death of the grantee, to the grantee's pupils according to the rule of *sisyanu sisya paramparawa* if express provision is made to the contrary in the dedication. The succession to the incumbency is regulated by the terms of the dedication, and the dedicators are entitled to reserve to themselves the power to regulate the succession.

Held further, that such an instrument is not governed by the Buddhist Temporalities Ordinance but creates a valid charitable trust under the Trusts Ordinance and that the office of trustee devolves on the person appointed from time to time in terms of the instrument.

(iii) A monk residing in a Vihare is liable to be ejected therefrom if he is guilty of *parajika* or contumacious conduct.

APPEAL from a judgment of the District Court, Colombo.

H. W. Jayewardene, Q.C., with *P. Ranasinghe* and *N. R. M. Daluwatte*, for the 1st defendant-appellant.

K. Herat, with *Stanley Perera*, for the plaintiff-respondent.

E. B. Wikramanayake, Q.C., with *H. A. Koattegoda*, for the 3rd 5th, 7th to 10th, 12th, 13th, 17th, 18th, 20th to 22nd defendants-respondents.

Cur. adv. vult.

February 13, 1958. T. S. FERNANDO, J.—

These appeals arise out of a distressing dispute which began in the courts in 1943 between two Buddhist monks, both holding high rank in the Buddhist hierarchy in the Island, over the control of a religious institution established in Colombo and referred to in this case sometimes as Vidyodaya Pirivena, and at other times as Vidyodaya Pirivena Vihare or Maligakande Temple.

On 26th July 1943 the plaintiff instituted this action alleging that he is the duly appointed principal of a Buddhist teaching institution known as the Vidyodaya Pirivena established on premises described in the Schedules marked "A" and "B" attached to his plaint and seeking (i) a declaration that he holds the premises so described in trust for and as trustee of the members of an unincorporated body of persons called the Vidyadhara Sabha (hereinafter referred to as the Sabha) and (ii) the ejectment of the 1st defendant (the appellant on all three appeals and hereinafter referred to as the appellant). The members of the Sabha referred to above were added as defendants in the case although, of course, no relief was claimed against them. These members who were the original 2nd to 14th defendants filed answer supporting the position taken up by the plaintiff in his plaint. The appellant in his answer, while conceding the fact of a bare appointment by the Sabha of the plaintiff as

principal of the Vidyodaya Pirivena, alleged that the appointment of the plaintiff by the persons who claimed to be members of the Sabha was unlawful, and asserted that the land described in the plaint and the buildings thereon form a " temple " within the meaning of the Buddhist Temporalities Ordinance. He claimed to be the lawful incumbent or viharadhipati of that temple, having been appointed by an instrument dated 22nd June 1941 by one Jinaratne Nayaka Thero who was alleged to have become the lawful viharadhipati under the rule of succession known to the Buddhist ecclesiastical law as *sisyanu sisya paramparawa* on the death of the monk to whom the premises had been transferred at the time they were dedicated to the Sangha, viz. Hikkaduwe Sri Sumangala Nayaka Thero.

The case came up for trial for the first time on 6th November 1944 and, on that occasion, after a large number of issues had been framed by counsel and accepted by the Court, the learned District Judge before whom the trial commenced decided to try three of the issues, being issues of law, as preliminary matters " on the assumption but without conceding the truth of the allegations in the plaint ". The judge by his order made on 20th November 1944 decided the preliminary issues against the plaintiff and dismissed the action on the ground that the plaintiff had no status to maintain it as trustee of the pirivena inasmuch as he had not been duly appointed in the manner set out in Section 113 (2) and (3) of the Trusts Ordinance (Cap. 72). On an appeal preferred by the plaintiff, to the Supreme Court, this Court by *its judgment*[1] delivered on 25th October 1946 set aside the order dismissing the action and sent the case back to the District Court for the determination of the other issues in the case.

Before the trial could be resumed in the District Court the plaintiff on 2nd April 1947 amended his plaint alleging that he, as principal of the Pirivena, is a trustee of a charitable trust for establishing and maintaining in the premises described in the schedule to the plaint a privena for the purpose of teaching Buddhism. The trial was eventually resumed only on 15th May 1950 and, after very lengthy proceedings in the course of which a number of witnesses were examined for both sides, the District Judge by his judgment delivered on 17th October 1950 held with the plaintiff on most of the material issues and entered judgment for him as prayed for in the amended plaint and ordered the ejectment of the appellant from the premises. Decree was entered accordingly. The main appeal of the appellant (Appeal No. 26-Final-of 1952) is against this judgment and decree.

Before the appeal could come up for argument certain of the defendants who had been added as parties as being members of the Sabha—viz., the 2nd, the 6th and 11th defendants—died and the plaintiff sought to substitute in their places the 18th, the 21st and the 19th defendants respectively. The 19th defendant himself died and in his place the plaintiff then sought to substitute the 20th defendant. In spite of objections raised by the appellant to these substitutions on the ground that the

[1] *(1946) 47 N. L. R. 537.*

defendants sought to be substituted had not been duly elected as members of the Sabha, the District Judge on 1st September 1955 held that the elections were valid and that the substitutions were proper. Interlocutory appeal No. 73 of 1956 is against this order of the District Judge.

Thereafter, again before Appeal No. 26 could be set down for argument another defendant, the 16th defendant, died and the plaintiff sought to substitute the 22nd defendant in his place. The appellant again objected, and the District Judge before whom the matter was argued held on 9th August 1956 that the election of the 22nd defendant as a member of the Sabha was valid and that he had been correctly substituted. Interlocutory Appeal No. 192 of 1956 is against this last mentioned order.

At the hearing before us, counsel for the appellant argued that the substitutions had not been properly made and urged the same reasons that had been urged on behalf of the appellant in the District Court. It soon became apparent, however, that any success of the appellant in the two interlocutory appeals would necessarily involve a bar to the hearing by us of the main appeal (No. 26), and we were informed by counsel that the parties had reached an agreement that *for the purposes of Appeal No. 26 (Final) of 1952* the substitution of the 18th to the 22nd defendants be accepted as duly made and that the two interlocutory appeals be dismissed without costs and that neither party be entitled to the costs of the inquiries in the District Court relating to the substitutions. In terms of that agreement I would therefore direct that the two interlocutory appeals be dismissed without costs and that neither party is entitled to the costs of the inquiries in the court below relating to the substitutions.

I can now turn to Appeal No. 26. To appreciate the questions that arise thereon, it is necessary to examine the cases for the plaintiff and the appellant in some detail. At the time of the institution of the action there were on the land of about 2½ acres in extent described in Schedules "A" and "B" or in Schedule "C" to the plaint a large number of buildings which are depicted in plan No. 786 dated 10th July 1943—marked P 8—made by licensed surveyor Indatissa. They are described in the plan as a dagoba, a vihare, Sri Sumangala dharmasalawa, the principal's quarters (with bathroom, garage and driver's room attached), four separate sets of rooms, two separate sets of living quarters, kitchen and dining hall, library, and Sri Sumangala Memorial building. There is also a bo-tree on the premises. No attempt has been made to find out definitely which of the buildings stand on the land described in Schedule "A" and which on the land described in Schedule "B". The point is not of any importance in the present dispute as both the plaintiff and the appellant claim both lands; the plaintiff asserting that together they form the grounds of the Pirivena of which he is the Principal, while the appellant claims that they are lands belonging to the Vidyodaya Pirivena Vihare or Maligakande temple of which he is the Viharadhipati.

The plaintiff's claim is based on a notarial deed—No. 1259 of 9th March 1876—P 2, but to understand the circumstances in which this deed came to be executed one has to go back nearly two and a half years

to 6th December 1873 when a notarial agreement—No. 925 of that date—P 1 was entered into by thirteen persons in which these persons declared, inter alia, (*a*) their determination to collect and be responsible for collecting a sum of Rs. 6,000 for purchasing a land and for other work in order to establish a pirivena for imparting a knowledge of Buddhism to bhikkus as well as laymen, (*b*) that a Sabha or Society capable of receiving and safeguarding that sum of money is necessary, and (*c*) that the thirteen persons are appointed as the Sabha with the name of Vidyadhara Sabha given to it by the people assembled at Maligakandewatte belonging at the time of this agreement P 1 to L. Andris Perera, one of the thirteen persons who constituted the Sabha. By P 1 the thirteen persons referred to entered into sixteen covenants designed to further the establishment and maintenance of a pirivena on a land to be purchased by the Sabha.

Three parties took part in the execution of the deed P 2 referred to above, the three parties being L. Andris Perera as the party of the first part, sixteen persons (among whom L. Andris Perera himself was one) forming members of the Sabha in 1876 as the party of the second part, and Hikkaduwe Sri Sumangala (described as the Nayaka Thero of Sri Padasthanaya and Principal of Vidyodaya Pirivena, Colombo) as the party of the third part. This deed recites that the Sabha has established for the purpose of teaching Buddhism and imparting knowledge both to bhikkus and laymen an educational institution called Vidyodaya Pirivena in the halls built on the land called Maligakande, valued at Rs. 6,000, belonging to L. Andris Perera, and that the Sabha has been able to collect only Rs. 2,070 out of the sum of Rs. 6,000 expected to be collected. Other recitals show that Andris Perera (the owner of the land) in consideration (i) of the payment to him of the sum of Rs. 2,070 and (ii) of his devotion to Buddhism and other reasons has, with the approval of the Sabha, agreed to dedicate the land with the buildings standing thereon to Sri Sumangala Nayaka Thero, Principal of the Vidyodaya Pirivena and, on his demise, to the Sangha including the monks who succeed to the office of Principal of the said Pirivena as *sangika* property, so long as they live in accordance with Buddhist doctrine, for the maintenance of a pirivena to impart knowledge not only to Buddhist monks and laymen but also to all "religionists" of all countries with no difference in treatment so long as they conduct themselves in good manner, *subject always to the protection and orders of the said Vidyadhara Sabha* constituted upon agreement P 1, viz. the gentlemen forming the parties of the second part, and on their death those joining the said Sabha. After a further recital that Sri Sumangala Nayaka Thero as Principal of the said pirivena and on behalf of the Principals *who may be appointed on his demise by the said parties of the second part and on their death by those succeeding them* has agreed to accept this as a deed of trust *subject to all the aforesaid directions, stipulations and conditions*, the habendum clause of the deed gives and assigns to Sri Sumangala Nayaka Thero and, on his demise, to the Principals who may be appointed to the pirivena from time to time *by the Sabha* the premises described in Schedule "A" to the plaint *as and by way of a dedication absolute and irrevocable and as sangika property.*

The deed also contains two clauses, one providing for the framing of rules and regulations by the Sabha and conferring authority on the Sabha with the approval of a Sangha Sabha to remove Principals who transgress such rules and regulations, and the other declaring that the Sabha shall have no right to give directions or frame rules regarding the *internal affairs* of the pirivena and that the monks who from time to time hold the office of Principal shall have the right to attend to internal affairs without interference or obstruction from the Sabha.

Eight years after the execution of P 2 there was executed transfer No. 2134 of 4th April 1884—P 3—by which certain premises called "Palm House" adjoining the land dealt with by P 2 was transferred by one Dharmagoonewardene to Mabotuwane Siddhartha Thero. This is the land described in Schedule "B" to the plaint, and it is not disputed that buildings of the present Vidyodaya Pirivena or Maligakande Temple, whichever name one gives to the institution, stand on the premises transferred by P 3. It was the plaintiff's case that Siddhartha Thero held this property in trust for the charitable trust created by deed P 2. Siddhartha Thero, it may here be stated was a pupil of Sri Sumangala Nayaka Thero, but predeceased his tutor. The appellant did not deny that the land described in Schedule "B" was not the pudgalika or private property of Siddhartha Thero. His contention was that the premises were being treated as sangika property of the Maligakanda Temple, and that the legal title thereto vested on Siddhartha's death in the Viharadhipati, Sri Sumangala Nayaka Thero, and on the latter's death passed according to the rule of *sisyanu sisya paramparawa*.

There is no dispute in this case that Sri Sumangala Nayaka Thero performed the duties of Principal of the Vidyodaya Pirivena from about 1876 to the time of his death in 1911. The plaintiff claimed that in 1911 the Sabha appointed Nanissara Nayaka Thero to succeed Sri Sumangala Nayaka Thero as Principal and that the former held this office until his own death in 1922 whereupon the Sabha appointed Ratanasara Nayaka Thero as Principal. It is not without some significance in the dispute arising in this case that Ratanasara Nayaka Thero was not a monk belonging to the line of succession or *paramparawa* of the first Principal, Sri Sumangala, whom the appellant claims was not only principal but also the Viharadhipati at Maligakande. Ratanasara Nayaka Thero held office as Principal until 1936 when he himself died, and the Sabha thereupon by letter P 19 of 7th March 1936 invited the plaintiff, who was at this time Vice-Principal of the Pirivena, to act as Principal in addition to his duties as Vice-Principal. By the letter P 20 of the same date the Sabha invited the views of the tutors of the pirivena on the question of a suitable successor to the deceased Ratanasara. It should be mentioned at this stage that the appellant had been a tutor at this pirivena for sometime prior to 1934. He appears to have fallen ill in 1934 and spent some months in hospital. He does not appear to have been assigned any teaching work on his return from hospital, and the plaintiff's evidence indicates that this was due to the fact that the appellant had incurred the displeasure of Ratanasara. However that may be, the appellant addressed the Sabha letter P 13

of 28th March 1936 which is an application for the post of Principal. The Sabha at a meeting held on 6th April 1936 unanimously decided to appoint the plaintiff to the permanent office of Principal and informed him accordingly by letter P 26 of 7th April 1936. In this letter the Sabha informed the plaintiff that they thought "it would be good if the appellant who had been a tutor at the pirivena could again be appointed as a tutor". Notwithstanding this suggestion of the Sabha, the plaintiff did not appoint the appellant as a tutor, and the appellant who was residing in the premises of the pirivena or vihare addressed the Sabha no less than four letters (P 14 to P 17) between 22nd May 1936 and 13th May 1941. In one of these letters P 16 of 7th May 1940, the appellant wrote :— "Even now I am maintained as a teacher of the pirivena by the Vidyadhara Sabha which supplies all my needs. In the circumstances I most kindly request you to consider whether it is fair or just not to get a Bhikku of my standing to render the service that should be given through this pirivena to the religion". By the next letter P 17 of 13th May 1941, the appellant sought an interview with the Sabha with a view to his reappointment as a tutor. It has to be noted that the appellant addressed not only the Sabha on this matter but within a period of one month wrote repeated letters, viz. P 27 to P. 30 of 28th June to 28th July 1940, to the plaintiff himself to the same end. These requests were ignored by the plaintiff and it may not be irrelevant to notice that the appellant had incurred the displeasure, as mentioned earlier, of Ratanasara Nayaka Thero and also of the Sabha by reason of a fast he had undertaken at the pirivena premises in protest against the levy by the Sabha of certain fees from pupil monks on account of electricity and municipal rates. The letters P 14 to P 17 and P 27 to P 30 are eloquent evidence of the feeling of frustration from which the appellant, himself a monk of learning and the incumbent of the very important temple of Sri Padasthanaya, suffered at this time by reason of what he appears to have considered a deliberate affront to his dignity.

While in this state of frustration the appellant received what purported to be an appointment—P 7 of 22nd June 1941—as Viharadhipati of the Vidyodaya Pirivena Vihare at Maligakande. The appointor was Jinaratana Nayaka Thero who claimed in the document to be the lawful Viharadhipati. The plaintiff and the witnesses called on his behalf were emphatic that Jinaratana Nayaka Thero who was the aged incumbent of a temple at Hunupitiya in Colombo had nothing to do with the Vidyodaya Pirivena or Maligakande Temple, whichever name is preferred, and that any visits he paid to Maligakande were few and far between and were limited to conversations with one Pemananda Thero who held the office of *Kurthiadhikari* or Manager of the Pirivena, an office to which he had been appointed by Sri Sumangala Nayaka Thero. Armed with the deed P 7 the appellant began to conduct himself in such a way as to make it at first difficult and later impossible for the pirivena to function as a teaching institution in the way the plaintiff wanted or believed he had a right to conduct it. The result was the institution of this action in July 1943.

The answer of the appellant to the plaintiff's claim may be summarised shortly as follows :— There is in these premises a " temple " within the meaning of the Buddhist Temporalities Ordinance (Cap. 222) known as Vidyodaya Pirivena Vihare or as Maligakande Temple with a Viharadhipati controlling it, and also a pirivena or teaching institution known as Vidyodaya Pirivena with a Principal or Parivenadhipati at its head who is appointed with the approval of the Viharadhipati. He claimed to be the Viharadhipati while conceding to the plaintiff the appointment as Parivenadhipati and contended that the pirivena is carried on as a part of the temple. The premises, he contended, were dedicated to Sri Sumangala Nayaka Thero by way of a *sangika* gift with the result that the dedicator and every member of the laity ceased immediately to have any control over the premises, and that P 2 constituted a dedication in general *sangika* or, in other words, to the entire body of the Buddhist clergy. Being *sangika* property, so the argument proceeded, the property attracted to itself the rules of succession known to Buddhist ecclesiastical law as the *sisyanu sisya paramparawa* and that the office of viharadhipati devolved in 1911 on the death of the first viharadhipati, Sri Sumangala, on his senior pupil, Jinaratana, and then in 1941 by appointment from the latter—vide P 7—on him the appellant.

Admittedly, there were at the time of the institution of this action and there are now in the premises the subject of this action all the buildings and equipment associated with a large Buddhist pirivena as well as with the average Buddhist temple found in this country. The plaintiff contends that the pirivena was established first and, as it apparently began as a residential teaching institution, the erection of buildings and the growth of other things helpful in assisting the pupils and tutors to engage themselves in worship which is a necessary part of the life of Buddhist monks was only natural, and that the institution did not thereby become converted into a temple even as a Christian residential college does not lose its principal characteristics of a teaching institution merely because a chapel is erected to enable the students to attend divine worship. The appellant, on the other hand, contended that an *aramaya* or dwelling-place of Buddhist monks existed on the land with sufficient characteristics of a temple before a pirivena came to be established by Sri Sumangala Nayaka Thero with the assistance of the Vidyadhara Sabha, and that the pirivena was merely an adjunct of the temple.

The trial judge has found that the pirivena came up first or, at any rate, the *aramaya* came up with it, but in either case the *aramaya* was an adjunct of the pirivena ; he has also found that the pirivena was established by the Sabha and not by Sri Sumangala Nayaka Thero. These findings have been criticised by appellant's counsel. There was no witness available at the time of the trial who was living about the year 1876 and able to give evidence on the question of what came first—a pirivena or an *aramaya*—, but a close examination of the old deeds, P 1, P 2 and P 3 shows that these findings of the trial judge are correct. It is significant that in P 1, the earliest of the three deeds, there is no mention whatsoever of an *aramaya* or, indeed, even of Sri Sumangala

Nayaka Thero. If this learned monk was resident in an aramaya on this land in 1873 or had decided to erect a pirivena thereon with the help of the Sabha, mention of the fact in the deed was almost inevitable. On the contrary, P 1 indicates that the Sabha which had met on this very land was then on the look out not only for a suitable land for establishing the pirivena, but also for a suitable monk of learning to be installed as principal. There is no doubt raised that, of the monks living at the time, Sri Sumangala Nayaka Thero enjoyed unquestioned pre-eminence as a scholar and was the obvious choice for the office of principal, if he was willing. If an *aramaya* had existed on this land in 1873, and Sri Sumangala had any connection with it, it would have been highly probable that his name would have appeared prominently in this deed. Two and a half years later, when this very land on which the members of the Sabha met in 1873 was dedicated to Sri Sumangala, there is a reference to the fact that an *aramaya* had come into existence. Since P 2 constituted the dedication, whatever the implications or the extent of the dedication may be, it is self-evident that at the time of its execution, viz. 9th March 1876, it was private property and not *sangika*. According to the evidence, whatever meaning the word *aramaya* bore originally, it began to attract to itself the special meaning of a residence of monks. Therefore, even if the *aramaya* that existed in 1876 was a residence of monks, it was such a residence on private premises which had hitherto not been the subject of a gift to monks in any form. When the adjoining premises, "Palm House", were gifted to Siddhartha Thero in 1884 by deed P 3, the northern and eastern boundaries of "Palm House" are referred to as land belonging to the temple. The reasonable conclusion from these facts is that between 1873 and 1876 the land earmarked for dedication for the purpose the Sabha formed in 1873 contemplated had been utilised for the erection of certain buildings as residences for the monks who would be pupils and teachers at the pirivena.

Before I consider the soundness of the plaintiff's claim that P 2 created a charitable trust for religious education, it would be useful to examine the contentions advanced by or on behalf of the appellant. One of them is the claim that there exists on these premises a "temple" within the meaning of the Buddhist Temporalities Ordinance. Section 2 of that Ordinance defines a "temple" as meaning a vihare, dagoba, dewale, kovila, avasa or *any place of Buddhist worship*, and including the Dalada Maligawa, the Sripadasthanaya and the Atamasthana of Anuradhapura. The importance to the appellant of this claim is that, if it is a "temple", then, not being a temple exempted from the operation of the Ordinance by proclamation as indicated in Section 3, the property belonging to the "temple" and the Management thereof is by sections 4 (2) and 20 of the Ordinance vested in the Viharadhipati which office he claims he holds by virtue of P 7.

It is correct to say that the definition of "temple" in the Ordinance is very wide and, as has been observed in *Romanis Fernando v. Wimalasiri Thero*[1], "no particular type of building or buildings is necessary to constitute a temple". At the same time, the essential character of a

[1] *(1951) 53 N. L. R. 215.*

" temple " is that it is a place dedicated primarily for Buddhist worship. The evidence shows that the pirivena on these premises has grown from very modest beginnings until it had on its rolls, at the time of the present suit, about 800 pupils from all parts of the Island, and even from foreign countries. A place where such a large number of monks foregather must sooner or later, especially if it is at least partly residential, make facilities available for worship which one understands to be an important part of the Buddhist religion. The evidence suggests that quite early such facilities were made available, and in the course of the years a dagoba, an image-house and a bo-tree appeared on these premises. The place also attracted lay Buddhists from the neighbourhood who it may be assumed came there, particularly on full moon days, only for worship. The evidence places the number of lay devotees coming there on full moon days at over a thousand. They attend at the dagoba, image-house or bo-tree for worship. It has been suggested to one witness that some of these devotees go even to the *avasa* or living quarters of the monks for the purpose of worship, but it seems to me that the witness was here treating mere obeisance as synonymous with worship. However that may be, the fact that the monk or monks in charge of the pirivena permitted or acquiesced in lay Buddhists attending the premises on certain days for worship at the spots or places originally intended for monks does not in my opinion have the effect of converting the pirivena the object of which was religious education into a temple which is a place established for worship. The question whether it was for the furtherance of religious education or for worship by Buddhist monks that the premises were dedicated must, in my opinion, as the trial judge has rightly apprehended, be determined by an interpretation of the terms of the deed P 2 itself. P 2 is specific on the point that the dedication by the owner of the property and by the Sabha was for the establishment and continuance of a pirivena to impart knowledge to Buddhist monks and laymen and even to people of other religions. It does not even refer to worship as one of the purposes of the dedication, although no one can deny that worship will not be opposed to the avowed purpose of the dedication. I am therefore of opinion that the institution that was carried on in the premises at the time of the filing of the action was not a " temple " within the meaning of the Buddhist Temporalities Ordinance.

It was next contended that the dedication, whatever its purpose may have been, was by way of a *sangika* gift and, therefore, according to the Buddhist ecclesiastical law as accepted by our courts over a fairly long period, the title to the property conveyed by P 2 passed to the grantee who would hold it for the benefit of the entire *sangha*, and that on the grantee's death the title passed to the grantee's pupils according to the customary rule of succession. The plaintiff does not dispute that the *sisyanu sisya paramparawa* rules will apply in regard to succession if (*a*) the premises had been dedicated to establish a place of worship and (*b*) such dedication was unqualified. I have already expressed the opinion that there was no " temple " in existence at the time of dedication

It will therefore be convenient now to consider whether the dedication was what might be called, for want of a better expression, a pure *sangika* dedication.

In an old case of 1879, *Rathanapala Unnanse v. Kewitiagala Unnanse*[1], Phear C.J. (with Stewart J. and Clarence J. agreeing) stated the following principles after an examination of certain authorities :—

(1) That the general rule of succession to temple property has two branches, viz. the *sisya paramparawa* and the *siwuru paramparawa*, and that it is the first branch of the rule which is to be presumed to apply to a given case in the absence of evidence that it is the other ;

(2) That there are exceptional cases in which the succession to temple property is in the appointment of the Government or even of private individuals ;

(3) That it is the terms of the original dedication that primarily impose the rule which is to govern the case ;

(4) That in the absence of direct evidence of those terms, usage may be looked to and accepted as evidence thereof.

These principles have been consistently followed by our courts and I might with advantage here refer to the following observations of Fernando A.J. in the case of *Sumanatissa v. Gunaratne*[2] in regard to them :—

"If I may venture to formulate the position as governed by these principles as applying to the present case, the law is that the rule of succession is governed by the terms of the original dedication, or by one of the two rules of succession, and if the terms of the original dedication cannot be proved either by direct evidence or by the evidence of usage, then it must be presumed that the *sisyanu sisya paramparawa* rule of succession applies unless it can be established that the succession is governed by the *siwuru paramparawa* ".

I might also refer to the observations of Pereira A.J. in *Dharmapala Unnanse v. Medegama Sumana Unnanse*[3] that "it is undoubtedly open to a person who at his own expense founds and endows a vihare to make provision by deed or otherwise regulating the succession to the institution, but when it is not shown that a particular vihare has been so founded or endowed, or that the succession to the incumbency has been so provided for, it has been laid down by this Court in unmistakable terms that the succession should be presumed to be in accordance with the rule of descent known as *sisyanu sisya paramparawa* ". Again, Jayawardeno A.J., in the course of his judgment in *Gunananda Unnanse v. Dewarakkita Unnanse*[4] in summarising the rules regulating the succession to temples as laid down in the authorities stated, inter alia, that succession to an incumbency is regulated by the terms of the original dedication,

[1] *(1879) 2 S. C. C. 26.*
[2] *(1937) 39 N. L. R. 253.*
[3] *(1910) 2 Curr. L. R. 82.*
[4] *(1924) 26 N. L. R. 274.*

and that, if the original dedication is silent as to the mode of succession, then the succession is presumed to be in accordance with the rule of *sisyanu sisya paramparawa*. Even on the assumption that there is a "temple" constituted in the premises, the terms of P 2 show that the dedication, although expressed to be absolute and irrevocable and as *sangika* property, is nevertheless subject to the directions, stipulations and conditions laid down therein. One of these conditions is that the appointment of a principal of the pirivena is reserved to the Sabha and the removal of a principal is also similarly reserved, except that in the latter case there is a requirement that the approval of a Sangha Sabha should be obtained. *Sangika* property means property belonging to the entire priesthood, that is to say, to the temple as distinguished from the private property of the priestly incumbent,—per Sampayo J. in *Charles v. Appu*[1]; but it must be remembered that these observations were made by that learned judge in reference to an institution which was indisputably and admittedly a temple. Mr. Jayewardene referred us also to the case of *Dhammajoty Unnanse v. Saranunda Unnanse*[2] where Dias J. stated that "when a *pansala* or other property is dedicated in *sangika*, the dedicators or grantors cease to have any right or control over it, and the right to the property so granted is regulated by a well-known tenure called *sisyanu sisya paramparawa*". This is also a case in which the instrument of dedication contained no conditions or restrictions governing succession to the title and, therefore, is distinguishable from the present case. No authority has been quoted for the proposition of law that there cannot be a *sangika* gift where the succession to the title has been specifically provided for, nor has any rule of the *Vinaya* been advanced in support of such a proposition. On the contrary, the authorities, some of which I have referred to above contain specific references to the rule that succession is regulated by the terms of the original dedication. Mr. Jayewardene argued that a donation to the *Sangha* in the sense of general *sangika* cannot be accepted subject to a condition that the dedicator retains the right to regulate the succession. The oral and presumably "expert" evidence bearing on this argument varied according as the witness was one called for the plaintiff or one called for the appellant. The best answer to the argument is, in my opinion, found in the circumstance that Sri Sumangala Nayaka Thero accepted the donation subject to the condition. As the appellant's own witness, Sri Deelananda Nayaka Thero, who was incidentally one of the expert witnesses examined in the case of *Dhammaratana Unnanse v. Sumangala Unnanse*[3], himself stated under cross-examination in the present case, "Sri Sumangala was a very great scholar. In fact, he was a world-famous scholar. He was a "shining light", particularly in regard to Vinaya rules. Apart from his eminence in learning he was also a very pious priest. It is not at all likely that he would have done anything during his lifetime against the Vinaya rules". This same witness, when questioned by the trial judge towards the conclusion of his evidence, stated that, "if a land is to be dedicated to the Sangha and

[1] *(1914) 19 N. L. R. 242.* [2] *(1881) 5 S. C. C. 8.*
[3] *(1910) 14 N. L. R. 400.*

the right to appoint a Viharadhipati to succeed the original Viharadhipati is reserved to the dedicator, such a dedication is not accepted. If such a dedication is accepted by a monk, the property is not sangika ". If this be a true assessment of the legal position in Buddhist ecclesiastical law, the appellant's case to be Viharadhipati of a temple in these premises, as the trial judge has observed, ceases to have any foundation. I am unable to agree with Mr. Jayewardene's argument that the condition regarding the appointment by the Sabha of a successor to Sri Sumangala Nayaka Thero has to be ignored because the gift has been declared to be by way of *sangika*. The Sabha had the right, in my opinion, to appoint the plaintiff as principal in 1936 in the same way as it had appointed Nanissara Nayaka Thero in 1911 and Ratanasara Nayaka Thero in 1922. Looked at in another way, the existence of this very condition is indicative of the absence of an intention by the dedicator to establish a temple or other place of worship. A letter 1D 67 written by Sri Sumangala Nayaka Thero a short time before the latter's death in 1909 to Siddhartha Thero in whom was vested the title to the property known as " Palm House " and described in Schedule B to the plaint serves to throw some light on the opinion held by Sri Sumangala himself in regard to the nature of the gift made by P 2. There had apparently been a suggestion that Siddhartha should convey the premises to Sri Sumangala in such a way that title would descend according to pupillary succession. Sri Sumangala in 1D 67 cautioned his pupil against transferring the property to the Sabha and indicated that that should be done only after the pirivena is included within the temple. For what it may be worth here was an opinion by a person who should have been in a good position to understand the nature of the dedication in P 2 that the *sisyanu sisya paramparawa* rules did not apply at that time to the property and that the pirivena was something quite distinct from the temple.

Another argument advanced for the appellant was that, even if the plaintiff is the principal of a pirivena established by the Sabha, he (the appellant) was the Viharadhipati of a temple established in the same premises. It was pointed out that Sri Sumangala in a letter written to a monk in Siam had described himself as the Viharadhipati of the Pirivena Vihare and that there are other references to Sri Sumangala as Viharadhipati of Maligakande Temple. I do not think that such references in letters and laudatory addresses and the like can carry any serious weight in determining whether there was in law an office of Viharadhipati in the institution established in the premises in question in the year 1876. It is not without point that nearly a quarter of a century later, Sri Sumangala Nayaka Thero, giving evidence in the case of *Ratanapala Unnanse v. Appuhamy*[1] described himself as the " Chief High Priest of the Adam's Peak Temple (Sripadasthanaya) and Nayaka of the Colombo District and Principal of the Vidyodaya College ". Referring in that case to the premises in question, he said " the bulk of the property of this College is sangika. The deeds for the land are in my name as manager ". Sri Sumangala died in 1911. It is claimed

[1] *(1900) 11 N. L. R. 167.*

that Jinaratana Nayaka Thero succeeded him as Viharadhipati of the Maligakande Temple. There is no reliable evidence that Jinaratana did anything at all to evidence his right of control. While the appellant's case is that principals have to be approved by the Viharadhipati before their appointment, there is nothing to show that Jinaratana's approval was sought at the time Nanissara and Ratanasara were appointed in 1911 and 1922 respectively. The minutes of the Sabha between 1911 and 1922 are not available. It has been stated that during the riots in 1915, when Buddhist leaders were imprisoned and when Martial Law was in force, all the papers belonging to the Sabha were removed by military officials and were never traceable thereafter. Certainly in 1936—the minutes of the Sabha of this year are available—no approval was sought from Jinaratana before the plaintiff was appointed as principal. It is surprising that, if the appellant's argument on this point is correct, the appellant who is a learned monk and who was a candidate for the office of principal himself raised no doubts as to the legality of the plaintiff's appointment. Far from questioning the plaintiff's status, the evidence shows that he accepted the validity of the appointment and repeatedly requested the plaintiff to assign him work as a teacher at the pirivena. He did not see fit to offer a challenge to plaintiff's authority until after June 1941 when P 7 was obtained by him from Jinaratana. At the time of execution of P 7 Jinaratana was 86 years old. He is still alive, but has not been called as witness at the trial. The appellant himself was not a witness in this case. The inference is somewhat strong that the execution of P 7 was a step in an attempt to create some sort of title for the appellant at a time when he was desperate to find himself, if I may so term it, a place with honour at the pirivena. It is, no doubt, true that the Malwatte Chapter at Kandy has in certain documents referred to Jinaratana Thero as the Viharadhipati of the Maligakande Temple. There is no evidence that the Sabha ever accepted the tenuous claim of the Malwatte Chapter to exercise some measure of control over the Vidyodaya Pirivena. A summons, or an invitation (if that word be considered more polite) to the Sabha to attend a meeting of the Executive Committee of the Malwatte Chapter at Kandy to discuss the situation created in 1933 by the first of some four fasts undertaken by the appellant was ignored by the Sabha. As counsel for the plaintiff appears to have submitted at the trial, an appearance at Kandy before the Malwatte Chapter by or on behalf of the Sabha in response to this invitation would have gone some way in placing the Malwatte Chapter in a position of authority over the Sabha.

Support for the appellant's case was also sought to be based on the fact that one Pemananda Thero had functioned in the office of *kurthiadhikari* or manager at Vidyodaya Pirivena. It is not disputed that this monk had been appointed *kurthiadhikari* by Sri Sumangala Nayaka Thero. The evidence is that a *kurthiadhikari* is an agent for the principal who appoints him. It was argued that an appointment like that of a *kurthiadhikari* is appropriate only to a Vihare. There was no evidence justifying the inference that a like appointment in respect of a pirivena is inappropriate and no good reason appears or has been urged why a

right to appoint a manager should be denied to a parivenadhipati or principal. Pemananda Thero was *kurthiadhikari* not only under Sri Sumangala Nayaka Thero; he functioned in that capacity during the principalship of Nanissara and Ratnasara Nayaka Theros and continued to perform the same function even after the appointment of the plaintiff. It was urged for the appellant that the continuation of Pemananda in this office was made possible by reason of his appointment as *kurthiadhikari* by Jinaratna in 1911. There is no documentary evidence of such an appointment; Jinaratna, as I have said already, was not called as a witness in this case; and Pemananda himself had died by the time the case came to be tried. That Pemananda himself did not acquiesce in Jinaratana's claim, if any, to the Viharadhipatiship is evidenced by deed 1D 12 whereby, on 16th. January 1940, Pemananda claiming to be Viharadhipati of Vidyodaya Pirivena Vihare nominated one Sorata Thero as his successor in that office. The appellant sought to make out at the trial that this deed 1D 12 came to be executed as a result of a conspiracy on the part of Sorata, Pemananda and the plaintiff himself. The trial judge had found that the plaintiff was no party to any such conspiracy. There is no reason to disturb this finding, and one possible inference is that Sorata Thero who is now a Vice-Principal of Vidyodaya Pirivena is preparing the ground for a claim the exact nature of which he may himself find it difficult to formulate at the moment.

It was also contended that even if the right to appoint a principal or parivenadhipati is in the laity, such a right cannot be interpreted as giving to the laity a right to appoint a viharadhipati as well. The true answer to this contention appears to me to be that there was no office of viharadhipati contemplated for the institution established on the premises in question.

I have examined above the appellant's contentions in support of his claim to be viharadhipati of the institution established in the premises in suit and indicated my reasons for rejecting that claim. I have now to consider the validity of the plaintiff's claim to be the trustee of a charitable trust created by P 2. Counsel for the plaintiff contended that (*a*) what has been created is not a religious trust regulated by the Buddhist Temporalities Ordinance and (*b*) even if it was such a trust, and there was a *sangika* gift in the narrow sense of the word, there was no bar, according to the Buddhist ecclesiastical law as administered by our Courts, to the dedicator (Andris Perera) laying down the mode of devolution of title to the property. He argued also that there was no reason why a Buddhist should be precluded from making a valid charitable trust for a religious purpose without recourse to a gift in the strict *sangika* tradition, and submitted that the fallacy of the argument on behalf of the appellant was that it assumed that if there is a *sangika* gift there must perforce be a viharadhipati. Other contentions advanced for the plaintiff were (1) that it was quite open to the dedicator to create a parivenadhipati line of succession to the property inasmuch as he could lay down the mode of devolution and (2) that, if the premises were *sangika* property, the title

thereto would have become vested in the parivenadhipati on the execution of P2 in 1876 and it was not competent to the parivenadhipati to divest himself of title in favour of lay heirs which appears to have been one of the purposes of deed 5193 of 8th May 1907 (P 25A).

At the time P2 was executed the Trusts Ordinance (Cap. 72) had not been enacted and the law of trusts in force was the English law. According to that law Andris Perera or the Sabha or both could have created a charitable trust. I can find no good reason for concluding that a Buddhist was excluded from exercising the right to create such a trust. P2 in my opinion created a valid charitable trust for the advancement of religion or religious education. The devolution of the office of trustee of this trust being regulated by section 113(1) of the Trusts Ordinance, the person appointed by the Sabha as Principal in place of Sri Sumangala Nayaka Thero succeeded to the office of trustee on Sri Sumangala's death. I am in agreement with the main contention advanced by Mr. Herat for the plaintiff and hold that the trial judge reached a correct finding that P2 created a valid charitable trust and that the office of trustee devolves on the person appointed from time to time by the Sabha. In view of the opinion I have formed on this main contention it is hardly necessary to deal with the alternative argument of Mr. Herat that, if there was no charitable trust created, there was a valid *sangika* gift although not one in respect of which the Buddhist Temporalities Ordinance had any application inasmuch as that Ordinance applied only to temples and temple property strictly so called. I have earlier in this judgment adverted to the fact that religious education was the primary purpose for which the institution established on the premises in question came into existence, and that worship was merely incidental to such purpose. I may add however that, in my opinion, this alternative argument is also sound.

It may perhaps be convenient at this stage to consider the legal position that arises in regard to the title to the premises described in Schedule B to the plaint, i.e. to " Palm House". The title to these premises passed absolutely to Siddhartha Thero in 1884, and all the evidence goes to show that the premises were used from that date onwards up to the time of the present suit for no purpose other than that of the Vidyodaya Pirivena. The trial judge has stated that the reasonable conclusion is that the Sabha supplied the money for the purpose in 1884. However that may be, the trustee on P2 has possessed " Palm House " as a part of the Pirivena property since 1884, i.e. for a period of nearly 60 years. In these circumstances the trustee has clearly obtained a prescriptive title to the premises. I may in this connection refer to the case of *Ranasinghe v. Dhammananda*[1] (affirmed by the Privy Council—see 39. N.L.R. 569) where it was held that even a *de facto* trustee for a vihare can acquire title by prescription for the benefit of a vihare. The plaintiff has therefore legal title as trustee to the premises described in both Schedules " A " and " B ".

The plaintiff's claim to maintain this action against the appellant was finally attacked on the ground that the Sabha that appointed him at a

[1] *(1935) 37 N. L. R. 19.*

meeting held on 6th April 1936 was not validly constituted, and this point formed one of the issues at the trial. The learned trial judge in his consideration of the issue which he has answered against the appellant has pointed out that the validity of the constitution of the Sabha in 1936 was not attacked by anyone, not even by the appellant until he did so in this very case. He thought that if there had been anything wrong in the election of members there would have been protest meetings and demonstrations held, particularly as there was such a meeting over a shortage of funds collected in connection with the funeral of one of the principals of the privena. As only 9 persons were present at the meeting of 6th April 1936, it has been argued that the appointment of the plaintiff was bad for want of a quorum for a meeting of the Sabha. Mr. Jayewardene for the appellant contends that the quorum necessary was 13 members, while Mr. Herat claims that a quorum of 7 was sufficient. Mr. Jayewardene has contended that, even of the nine present at the meeting in question, 4 persons have not been themselves validly elected as members, thereby reducing the number of members present to 5. Deed P2 makes no mention of the manner in which the Sabha should set about the appointment of a principal, and even if the earlier deed P1 be regarded as indicating that manner, it seems to me that a quorum of 7 is sufficient. Mr. Jayewardene relies on clause 5 of P1 which recites that the Sabha should always consist of a full complement of 13 persons, and that a Sabha consisting of any number less than that shall not be regarded as perfect, and that such imperfect Sabha shall not do or cause to do at the Sabha's expense any important work other than that of supplying " the four needs " of monks. It seems to me however that clause 12 is the clause more relevant to the point in issue, viz., the clause which embodies the agreement that if out of the 13 members of the Sabha 7 or more attend a meeting, those present shall exercise the power of the whole Sabha. I am therefore of opinion that a quorum of 7 was sufficient to constitute a valid meeting. It has however been pointed out that on 12th December 1887 a further agreement—1D 16—was entered into by the Sabha whereby the quorum for a meeting purports to be fixed by clause 9 thereof at 13. This document has been executed not only by 13 persons referred to as members of the Sabha but also by some 32 others referred to as ' advisers'. It is not easy to apprehend the role of these advisers and clause 9 (assuming that 1D 16 was a valid agreement) may well mean that a quorum of less than 7 members of the Sabha was sufficient if there were present office bearers and ' advisers ' making altogether a total of 13 persons. In these circumstances I am unable to hold that a quorum of more than 7 members was necessary for a valid decision on the question of the appointment of a principal. In regard to the argument that, out of the 9 persons present at the meeting in question, 4 were persons not validly elected, it is right to add that a good deal of evidence in the form of minutes of meetings etc. was led at the trial. The trial judge upon a consideration of this evidence has found that the meeting was validly constituted and I do not consider that the evidence on the point and the agruments placed before us are of sufficient weight as to justify us, sitting in appeal, in disturbing this finding of fact.

There remains for consideration the last matter that arises on this appeal, viz., the claim of the plaintiff that the appellant was liable to be ejected from the premises of the Pirivena. This matter has received my very anxious consideration, particularly because of the appellant's position among the Buddhist monks in the Island today and of his long association with this very institution. Counsel for him has referred us to the legal principles governing the expulsion or ejectment of a monk from a vihare. Jayawardene A.J. in *Gunananda Unnanse v. Dewarakkita Unnanse*[1] (supra)—vide page 275—in summarising the rules regulating the succession to temples and vihares as laid down in the authorities states :—" (1) all priests who are pupils of a previous incumbent and pupils of such priests are entitled to reside in the vihare and to be maintained from the income ". This right is, however, lost if the pupil has been guilty of *parajika* or contumacious conduct ; see *Dhammajoty Unnanse v. Parenthale*[2] ; *Saranankara Unnanse v. Indajoti Unnanse*[3] ; *Siriniwase v. Sarananda*[4].

In the case before us there is a body of unimpeachable evidence, to a large extent unchallenged, that the appellant has made a portion of the teaching halls of the pirivena living quarters for himself, has wrongly obtained the keys of the teaching hall and the library from a monk who was a temporary substitute for the *kurthiadhikari* who had fallen ill, has withheld these keys from the principal who requested that they be delivered back to him, has prevented the use of the dining hall by pupils and tutors, has diverted to himself letters (including a packet of certificates of pupils forwarded by the Department of Education) addressed to the plaintiff as principal, has locked up the library preventing its use by others, removed the collection tills or boxes and generally disrupted the work of the teaching institution to such an extent that teaching has become impossible for the principal and his staff. To complete his " victory " over the plaintiff he appears now to be conducting classes at these premises himself, including classes in English ! The appellant's record of conduct has been such that, even if this institution had been a vihare proper and the plaintiff had been the incumbent, a case had been made out for his ejectment on the ground of *Parajika* conduct. It is apparent, however, that it is quite unnecessary to consider the Buddhist ecclesiastical law in regard to expulsion from a temple of monks who are guilty of *Parajika* conduct where the finding reached by the Court is that the plaintiff is the legal title holder of premises subject to a charitable trust, not being a religious trust governed by the Buddhist Temporalities Ordinance. It has been amply demonstrated that the trustee is unable to perform his duties and exercise his powers by reason of the acts of usurpation of office—the conduct of the appellant amounts to no less than that—, and the duty of the Court to order the ejectment of the appellant in this case is therefore clear.

For the reasons which I have endeavoured to set out above and which are substantially the same reasons as those that found favour with the learned trial judge, I would dismiss the appeal with costs.

[1] *(1924) 26 N. L. R. 271.*
[2] *(1881) 4 S. C. C. 121.*
[3] *(1915) 20 N. L. R. 398.*
[4] *(1921) 22 N. L. R. 320.*

In the result Final Appeal No. 26 of 1952 is dismissed with costs, and the Interlocutory Appeals Nos. 73 and 192 of 1956 are dismissed without costs. Neither party will be entitled to the costs of the inquiries in the court below relating to the substitution of parties.

H. N. G. FERNANDO, J.—

I am in full agreement with the conclusions reached by my brother, and cannot add anything useful to the reasons he has given. I wish only to state that the delay in the preparation of the judgment in this appeal was due to a misunderstanding for which I was responsible.

Appeals dismissed.