

1968

*Present : Sansoni, J., and Herat, J.*

WARAKAPITIYA SANGANANDA TERUNNANSE, Appellant, *and*  
MEERUPPE SUMANATISSA TERUNNANSE, Respondent

*S. C. 639/1960—D. C. Matara, 289/L*

*Buddhist ecclesiastical law—Viharadhipathi—Abandonment of his rights—Proof.*

Although a renunciation by a Viharadhipathi of his right to be Viharadhipathi may be inferred from facts and circumstances, such an inference will not be drawn if the matter is left in a state of doubt.

Where a Viharadhipathi of several temples, which were situated some distance away from one another, resided in one temple and appointed by deed a former co-pupil, who normally resided in another of those temples, to look after the latter temple and its temporalities—

*Held*, that the appointment could not enable the appointee to call himself, or to be declared, controlling Viharadhipathi of the temple in question, as against the senior pupil of the appointor.

**A**PPEAL from a judgment of the District Court, Matara.

*A. F. Wijemanne*, for the defendant-appellant.

*H. Wanigatunga*, with *H. L. K. Karawita*, for the plaintiff-respondent.

*Cur. adv. vult.*

May 15, 1963. SANSONI, J.—

The plaintiff, who claims to be the lawful Viharadhipathi of Sudassanarama Temple in Welihinda, has sued the defendant, who is also a Buddhist monk, for a declaration of title in respect of a certain land and for ejectment and damages. The defendant denied that the plaintiff was the lawful Viharadhipathi of Sudassanarama Temple: he claimed that he was himself entitled to that position, although he made no claim in reconvention in that respect. The learned District Judge has held in favour of the plaintiff and given him judgment as prayed for in his plaint. The defendant has appealed.

It is not in dispute that at one time Akurugoda Sudassi was the Viharadhipathi of that temple and three other temples known as the Lalpe Sudarmaramaya, Akurugoda Nagarukkaramaya and Warakapitiya Tribhumikaramaya. His senior pupil was Meeruppe Gunananda. The plaintiff was also a pupil of his, and he had other pupils as well, but all of them were junior to Gunananda. In 1928 Sudassi executed a deed in favour of Gunananda granting him "full authority to manage, administer and hold the office of Adikari" of the four temples subject to certain conditions.

Meeruppe Gunananda in due course became the Viharadhipathi of the four temples, and he executed in the plaintiff's favour deed P13 of 1930 containing the very same terms to be found in deed P12. The deed, however, was only in respect of the Welihinda Temple. It contains the same conditions as those appearing in P12.

One question that arises on this appeal is the effect that deed P13 has on the rights of the plaintiff and the defendant respectively. The first point to be stressed is that the plaintiff is only a co-pupil of Gunananda while the defendant, it is common ground, is the senior pupil of Gunananda. It is quite clear on the authorities that, if deed P13 is to be regarded as an appointment of his successor as Viharadhipathi, Gunananda had no right to divert the succession from his own pupils and appoint the plaintiff to succeed him.

The plaintiff's counsel and the learned District Judge have regarded deed P13 as an act by which Gunananda abandoned his rights as Viharadhipathi of the Welihinda Temple, but I am unable to share this view. There are no words in P13 which convey the idea of such abandonment. On the contrary, Gunananda has made provision in it for his pupils

to exercise their rights in the temple and that is inconsistent with an abandonment of his rights. Further, it is not the plaintiff's case that deed P12, which is exactly in the same terms as deed P13, was an act of abandonment by Sudassi. For if that had been his case, Gunananda would have lost his claim to succeed Sudassi as Viharadhipathi. I think the more reasonable view to take of the deed P13 is that it was an appointment of the plaintiff by Gunananda to act for him as de facto Viharadhipathi of Welihinda Temple because Gunananda was residing in another temple. The defendant, at the time when deed P13 was executed, would have been only 19 years old and it was therefore only natural that Gunananda should ask an older priest to manage this temple on his behalf.

But the plaintiff's counsel urged us also to consider the evidence given by Gunananda in an earlier case brought by the present plaintiff against a third party in respect of this temple. That evidence was given in 1935. Gunananda there said that he gave this deed to the plaintiff as he was living 30 miles away. He added "I was giving the deed not temporarily. After two years I found it was difficult to manage Welihinda." This evidence may well mean that Gunananda found it more convenient to appoint a deputy to look after the affairs of this Temple because he could not look after them from 30 miles away.

The law is clear that although a renunciation by a monk of his right to be Viharadhipathi may be inferred from facts and circumstances, such an inference will not be drawn if the matter is left in a state of doubt. It is quite usual for a monk who is the Viharadhipathi of several temples to give charge of one or more of those temples to other monks, who would normally reside in and look after those temples and their temporalities. It is not always convenient for a Viharadhipathi to look after temples which are situated some distance away from the temple in which he resides, and he may appoint managers or deputies for this reason. Any acts of possession or management by such appointees are referable to that appointment; they would all be on behalf of the lawful Viharadhipathi and would not give the appointee any claim to that title.

In this case, it would seem that the plaintiff has managed the affairs of the Welihinda Temple for many years, and that the defendant recognised him as de facto Viharadhipathi. But that would not enable the plaintiff to call himself or to be declared controlling Viharadhipathi, because he is not a pupil of Gunananda. His action must fail because he cannot establish the title upon which he claimed to bring this action.

I would therefore set aside the judgment under appeal and dismiss the plaintiff's action with costs in both courts.

HERAT, J.—I agree.

*Appeal allowed.*