1927.

Present: Garvin and Dalton JJ.

TERUNNANSE *v.* TERUNNANSE *et al.*

353—D. C. Galle, 22,849.

Prescription—Right to incumbency of Buddhist temple in three years—Ordinance No. 22 of 1871, s. 11.

An action for the declaration of a right to the incumbency of a Buddhist temple is barred in three years from the time when the cause of action arose.

Rewata Unnanse v. Ratnajoti Unnanse [1] followed.

APPEAL from a judgment of the District Judge of Galle.

J. S. Jayawardene, for plaintiff, appellant.

F. de Zoysa, for second defendant, respondent.

H. V. Perera, for third defendant, respondent.

April 14, 1927. GARVIN J.—

This action was brought by a Buddhist priest to obtain a declaration that he was the rightful incumbent of Kusumarama Vihare and that he was entitled as such to be placed in possession thereof.

The first defendant is a rival claimant to the incumbency, who has been proved to have been officiating as incumbent since the death of Sangha Nanda, who was admittedly the lawful incumbent of this vihare. Sangha Nanda died in 1914. It has been most clearly established that for at least five years prior to the bringing of this action the first defendant was in occupation of the incumbency, and has been recognized by the congregation as the incumbent.

The learned District Judge has held that the plaintiff's appointment was the more regular, and would have entitled him to the relief he claims but for the circumstance that his right of action is barred by limitation.

The plaintiff appeals, and it was urged in support of his appeal that an action to be declared the rightful incumbent of a vihare is not barred in three years, as the District Judge has held, but is available until ten years have expired from the date on which the rightt accrued.

The point is covered by authority. In the case of *Rewata Unnanse v. Ratnajoti Unnanse* (*supra*) Shaw A. C. J. and Schneider J. in separate judgments held that an action for a declaration of right to

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the incumbency of a Buddhist vihare was barred in three years from the time when the cause of action arose by section 11 of Ordinance No. 22 of 1871.

It was urged that this is not a binding authority, inasmuch as the opinion expressed on this point was not necessary to the decision of the case, and that in any event it should be reconsidered.

Section 11 of Ordinance No. 22 of 1871 enacts that no action shall be maintainable in respect of any cause of action not expressly provided for or exempted from the operation of that Ordinance unless commencing within three years of the accrual of the cause of action.

Such actions as the one under consideration are not expressly exempted from the operation of the Ordinance. If the Ordinance does not provide for such a case then section 11 applies and the action is barred.

Counsel for the appellant suggests that provision is made for the case by section 3 of the Ordinance. That section relates to actions " for the purpose of being quieted in his possession of land or other immovable property or to prevent encroachment or usurpation thereof or to establish a claim in any other manner to such land or other property " and declares that proof of undisturbed and uninterrupted possession for a period of ten years previous to the bringing of the action shall entitle the person adducing such proof to a decree in his favour. This is clearly not an action for the recovery of immovable property based on a right acquired by ten years' adverse and uninterrupted possession thereof. Nor is it a case in which such an action based on title is being resisted on the ground of such adverse and uninterrupted possession. By the Buddhist Temporalities Ordinance the property of the vihare both immovable and movable is vested in the trustee, who in this case is the second defendant. An incumbent clearly has no title to the immovable property of the temple nor a right to the possession thereof. Apart from his ecclesiastical duties, an incumbent of a vihare has certain rights of administration and control of the vihare itself, but these are not such rights as are contemplated by section 3. They spring from and appertain to the office of incumbent, and cannot exist apart from it.

The right of the plaintiff to the enjoyment and exercise of those rights is dependent upon his right to the incumbency. It is manifest that in form and in substance this is an action for a declaration of the plaintiff's right to the incumbency. In the absence of special provision in Ordinance No. 22 of 1871, section 11 of the Ordinance applies to the case, and the action is barred by limitation in three years.

This appeal must, therefore, be dismissed, with costs.

DALTON J.—I agree.

Appeal dismissed.