1931

Present : **Dalton and Drieberg JJ.**

PIYARATNE UNNANSE *v.* MEDANKARA TERUNNANSE.

99—*D. C. Galle*, 25,590.

Buddhist ecclesiastical law—Incumbency of vihare—Succession by several pupils—Exercise of rights in rotation—Claim by pupillary succession—Evidence—New foundation.

Where several pupils of an *Adhikari* Bhikku succeed to the incumbency, they must exercise their rights singly and in rotation and not all together.

Where the incumbency of a vihare is claimed by right of pupillary succession from the pupils of an original founder, it must be established that the priests in the alleged line of succession exercised some rights.

A person who alleges a new foundation in an existing vihare must prove that the persons, from whom he claims, had the right to establish it.

APPEAL from a judgment of the District Judge of Galle.

De Zoysa, K.C. (with him *Dissanayake*), for plaintiff, appellant.

N. E. Weerasooria (with him *Rajapakse*), for substituted defendant, respondent.

Cooray, for third and fourth defendants, respondents.

January 30, 1931. DALTON J.—

The plaintiff, a Buddhist priest, brought this action for a declaration that he be declared entitled to officiate as incumbent of the Rathpath vihare in Telwatta near Hikkaduwa for a period of two years out of every six years in rotation under the following circumstances. The original founder and incumbent, it is admitted, was Pallatara Punniyasara Terunnanse some time in the 18th century. He died leaving six pupils, Indrajoti, Indrasara, Dhammarakkita, Saranankara, Seelarakkita, and Indraratana. Dhammarakkita, Saranankara, and Indraratana are said to have left the temple and gone elsewhere,

leaving the other three residing there. When any one of these six died is not stated, but it must have been very many years ago. It is conceded by plaintiff that the rights of Indrajoti have come down by pupillary succession to the first defendant and it is conceded by defendants that the rights of Seelarakkita have come down to plaintiff. Assuming therefore that the original six pupils' rights, if any, went down by pupillary succession, first defendant and plaintiff would each be entitled to the rights of incumbent by rotation for a period of one year. Plaintiff however concedes further that the rights of Dhammarakkita, who in fact left the temple for some other place, have also come down to first defendant, and claims for himself that the rights of Indraratana have come down to him, whereby he says he is entitled to the rights of incumbent in rotation for two years. As between plaintiff and first defendant the dispute is as to the rights of Indraratana, plaintiff claiming them by pupillary succession and first defendant by some vague and shadowy transfer. For the purpose of deciding this dispute the trial Judge framed an issue as follows :—

1. Was plaintiff or first defendant successor of Weligama Indraratana, priest ?

Throughout the proceedings in the lower Court there has been a vagueness of pleading, and looseness of phraseology, in the issues and evidence that is far from helpful in deciding the disputes between the parties. Events also which from the circumstances, if they happened at all, happened generations ago, are spoken of as if they happened yesterday and as if witnesses are speaking from personal knowledge. Incidentally, the trial Judge finds, amongst other things, that the District Court had no jurisdiction, but that the matter should have been tried in the Court of Requests. We have heard no argument that goes to support that latter finding and it is clearly wrong, and probably a mistake.

In the course of the very brief judgment the trial Judge appears to have doubted the possibility of plaintiff having two different gurunanses and succeeding both in the line of pupillary succession. That this is quite possible and recognized by Buddhist ecclesiastical law is so held in *Dhammajoti v. Sobita*[1]. A vihare cannot however be apportioned out in shares, as seems to have been assumed by the trial Judge, whether divided or undivided, it having been held that the office of incumbent being a single office that cannot be held jointly (*Saranankara Unanse v. Indajoti Unanse*[2]. It would appear that if two pupils of an adikari succeed him they must do so singly and in rotation, as is claimed in this case, and not both together (*Gunananda Unanse v. Dewarakita Unanse*[3].

With regard to the first issue set out above the trial Judge has found in favour of first defendant. In my opinion that finding is only correct if it means that plaintiff has not proved that he is the successor of Indraratana in the Rathpath vihare. He has failed in his claim in that respect and therefore his action was rightly dismissed as against the first defendant, whose claim to Indraratana's interests is not disputed by the remaining defendants. The nature of first defendant's claim to those interests does not seem to me to have been made clear, but it was the claim of the plaintiff that was the principal matter before the Court.

Indraratana, there is evidence to show, was one of the pupils of the original incumbent founder. When he died we do not know, but it was probably over 100 years ago. There is definite evidence to show that he left Rathpath vihare for his native place Weligama and never returned. There is no evidence to show that he ever exercised any rights as incumbent of Rathpath vihare. Indraratana's pupil is stated to have been Piyadasi, but Piyadasi was at Bogahagodella vihare in Galle town. There is

[1] 16 *N. L. R.* 408 [2] 20 *N. L. R.* 385.
[3] 26 *N. L. R. at p.* 263.

no evidence to show he ever exercised any rights at Rathpath vihare or ever went there. Piyadasi was succeeded by Dhammadasi, Dhammadasi by Silawansa, plaintiff claiming to be Silawansa's pupil. Through this line of pupillary succession he claims the alleged rights of Indraratana in the Rathpath vihare. There is not a vestige of evidence however to show that any one person in plaintiff's line of pupillary succession ever claimed or exercised any such rights, during a period of what must be more than 100 years. There are vague references to settlements as to the performance of duties at the disputed temple. The words "representative" and "successor" are most loosely used without any explanation to show what the person using them means. The evidence of plaintiff himself as to the exercise of any rights by him mentions that he was incumbent from 1921 to 1923. First defendant states he entered by force on this occasion; that it resulted in disputes between the parties is admitted on both sides. These disputes seem to have culminated in this action. Prior to 1921 there is no evidence to show that either he or anyone in his alleged line of succession exercised any rights in this vihare. When his alleged tuitor Silawansa died we do not know, but he left other pupils besides plaintiff who are still alive and who make no claim to any interest in Rathpath vihare. A document however (1 D 1) signed by Silawansa and other pupils coming under the line of Indraratana in 1902 addressed to the first defendant puts it beyond any doubt, if there was any evidence to the contrary, which there is not, that neither he (Silawansa) nor the other signatories had ever exercised any rights there. They purport in this document to set up that Indraratana's rights had been handed over to Sumana, first defendant's tutor, under some form of trust and now asked that the rights be handed back. What happened as a result of that letter does not appear, but no action seems to have been taken by Silawansa or plaintiff to support the allegations in 1 D 1 until this action was started in 1928. There is, in any, case on the record before us no proof that Sumana or first defendant exercised any rights that are now claimed by plaintiff by permission. Whether or not plaintiff had two tutors does not, so far as I can see, help to answer this issue. Upon the evidence produced he has failed to show he is entitled to any rights in this vihare that Indraratana may have had. The answer to the first issue being adverse to the plaintiff, he fails in his claim to be entitled to the incumbency in rotation for two years out of every six years. His claim to the incumbency for one year out of the six is not denied, and that is all that he is entitled to. It was conceded by him that the existing interests come down from six incumbents acting as such in rotation.

There is a further dispute as between the plaintiff and the third and fourth defendants, who claim to be descended in the line of pupillary succession from Indrasara and Saranankara, and to be entitled to their rights as incumbents, as to whether plaintiff had any interest as incumbent of the Rathpath vihare in what is called the New Vihare or Alut Vihare. An issue was framed on this matter and the trial Judge has answered it in favour of the defendants.

The evidence on the matter raised in this issue is even more vague than the evidence on the first issue with which I have dealt. It is to be gathered however from what is on the record that some time, probably early in the 19th century, a new building or new buildings were erected upon the premises of the Rathpath vihare by or with the sanction of two of the incumbents of the latter vihare. The third defendant states it was built by Indrasara and Galle Sumana who was a pupil of Indrajoti. That does not appear to be borne out by the document 3 D 1. What the new erection was there is no evidence to show. Plaintiff describes it as "a new square temple", but what it

consists of we do not know. Whatever it was, it appears to have been called however the "new" vihare. The old buildings still appear to exist together with the new under the name of the old Totagama vihare as shown by document P 1. They may well have been nothing more than names used to distinguish between the different parts of the same temple. In any event, it is clear the new building or buildings were on the premises of Rathpath vihare and put up by or with the approval of the incumbent or incumbents for the time being of the latter. What authority these two or anyone else had to make a "separate foundation" here without the consent of all having rights there is not stated. There is no evidence led which in any way justifies the conclusion that it was a separate foundation. The inscription on the new building is referred to by the trial Judge but no copy of it was put in evidence. The witnesses are not agreed as to what it states. The document 3 D 1 is, in my opinion, in the absence of further evidence, just as consistent with plaintiff's case as defendants'. There is some suggestion that plaintiff himself possessed exclusive rights in one of the devalas on the premises, but he states that no other incumbent has made any claim to it. He concedes he has no exclusive claim to it, and on the evidence it must, I think, be held to be appurtenant to the Rathpath vihare and going with it. The onus on this issue under the circumstances is upon the defendants and they have failed to discharge it. The issue must therefore be answered in favour of the plaintiff. As incumbent for one year in rotation there he will be entitled to all the rights an incumbent can have in this building or buildings called the new vihare as well as all other appurtenances to or upon the premises of the Rathpath vihare. Subject to this finding, the plaintiff's action claiming the incumbency for two years was properly dismissed. The decree however must be set aside and a fresh decree entered in terms of this judgment. Plaintiff has succeeded in establishing his right to officiate as incumbent in the new vihare as against third and fourth defendants. I think that first defendant is entitled to his costs in the lower Court and in this Court as against plaintiff, but as between plaintiff and third and fourth defendants, both parties being partly successful, I would make no order in respect of the costs in either Court. Each will therefore pay their own costs.

DRIEBERG J.—I agree.

Decree varied.