1964 *Present :* **T. S. Fernando, J., and Sri Skanda Rajah, J.**

BADDEGAMA SRI RATNASARA THERA, Appellant,
and M. H. M. BASHEER and 10 others, Respondents

S. C. 87 of 1962 (Inty.) —D. C. Matara, 1032/P

Buddhist ecclesiastical law—Viharadhipathi—" Assignment " by him of management of temple property to a pupil—Right of appointee to represent temple after the death of the viharadhipathi.

The viharadhipathi of a temple executed a deed about one and a half months before his death. The deed was styled an assignment of management and purported to appoint the 10th defendant, who was one of the junior pupils, to manage the property of the temple during the lifetime of the viharadhipathi and, thereafter, to succeed as *adhikari*.

Held, that the 10th defendant had a legal right, on the death of the viharadhipathi, to represent the temple in an assertion of title to *sanghika* property.

APPEAL from an order of the District Court, Matara.

A. F. Wijemanne, for the 10th defendant-appellant.

W. D. Gunasekera, for the 1st defendant-respondent.

No appearance for the other parties.

Cur. adv. vult.

June 1, 1964. T. S. FERNANDO, J.—

The 10th defendant-appellant who described himself as the Chief Incumbent and Controlling Viharadhipathi of Kovilakanda Purana Viharaya claimed that he was entitled as Viharadhipathi of the said temple to an undivided half-share of the land sought to be partitioned in this action. One of the points of dispute (point No. 8) was whether a ½ share of the land belongs to the Kovilakanda Rajamaha Viharaya. This point of dispute was decided by the learned District Judge adversely to the temple, and the substantial question that arises for decision on the present appeal is whether the learned judge was correct in his decision. The claim to an additional ½ share on the basis of prescriptive possession by the temple was not pressed.

The ½ share claimed by the 10th defendant on behalf of the temple has been allotted to the 3rd defendant who claimed to have purchased an undivided ½ share as recently as September 19, 1955 on transfer 3D1 for a consideration of Rs. 100, of which sum a part (Rs. 50) was stated in the deed to have been paid prior to execution thereof.

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This partition action itself was filed on November 1, 1955, a few weeks after the execution of 3D1. There is no earlier deed executed by any of the predecessors in title of the vendors on 3D1.

The claim of the temple to a ¼ share is made on the strength of very old documents. By 10D2 Banagala Sudassi Thera purchased in 1856 from one Andris 8 kurunies paddy sowing extent of the field called Kajjugaha kumbura situate in Padilikokmaduwa village. Andris had himself purchased this extent from one Lokuhettige Siman Appu by transfer 10D3 of the year 1840. The learned trial judge states that these two old documents do not recite the boundaries of Kajjugaha kumbura, but the extent mentioned, viz., 8 kurunies paddy sowing extent is exactly one-fourth of 32 kurunies paddy sowing extent which is the extent of the land to be partitioned according to both the plaintiff and the 3rd defendant.

A Grain Tax Commutation Register of 1890 (10D4) which the 10th defendant attempted to produce in evidence was shut out on objections raised on behalf of the plaintiff. The reason or reasons which moved the Court to reject this document are not stated on record; but if it was rejected on the ground that it had not been listed, we think that on account of the importance of the document the Court should, in the face of the pedigree in this case, have permitted its production even on terms. We have examined the document as it is to be found among the papers in the record. It appears to be an original document, and shows that in the year 1890 Apparakkege Appu, Banagala Sudassi Terunnanse and others were considered the owners and registered as such. As all parties are agreed that Apparekkege Appu was entitled to a half-share of this field, this document helps (1) to prove the title of Appu and (2) to identify the field referred to therein with the field specified in documents 10D2 and 10D3. In the purchase by Sudassi Thera (10D2) there is a recital that the money paid therefor was *sanghika* money and that the vendee was to hold and possess for the use and benefit of the Maha Sangha and the Viharaya. As I have stated already, 10D4 should not have been rejected at the trial; if it had been admitted and considered along with 10D2, the Court would have seen that the claim put forward by the 10th defendant in an assertion of the title of the temple is one that could not have been barred by prescription—vide section 34 of the Buddhist Temporalities Ordinance. The Temple's claim gains further support from a reference to the terms of transfer deed P1 executed in 1901 by Apparekkege Appu wherein he conveyed "all that remaining portion save and except the 8 kurunies of paddy sowing extent granted for charity of Kajjugaha kumbura alias Gamage kumbura".

The 3rd defendant immediately prior to the institution of this partition action probably made a speculative purchase; even if it was not such a purchase, it is not entitled to prevail over the title of the temple which cannot be defeated by prescription.

The other question that needs examination on this appeal is the claim of the 10th defendant to represent the temple in this action. It is not doubted that he is in the *paramparawa* of the previous viharadhipathi, and he claims that by deed 10D1 of June 1948 the management of the temple during the lifetime of the then viharadhipathi and all the rights of the viharadhipathi on the demise of the latter become vested in him. It is necessary to refer to this deed in some detail. The executant was Baddegama Dhammaratana Thera, the Chief Sanganayaka Thera of the Matara and the Hambantota districts who was the viharadhipathi of another temple as well, viz. Agrabodhi Viharaya. The executant recites that he has inherited from his teacher Banagala Sudassi Maha Thera and is carrying on the management of Kovilakanda Purana Viharasthanaya, and that as he finds it difficult now due to old age to carry on such management he is desirous of assigning the said management to his obedient pupil Baddegama Ratanasara Thera (the 10th defendant) who resides therein. The deed is styled an assignment of management and it purports to appoint the 10th defendant the *adhikari* of the said temple with the power of management of the lands and fields belonging thereto and of the relics, images and everything belonging to the Sangha. The deed orders the 10th defendant, inter alia, not to assign or hand over the viharaya to any one " who does not belong to our succession ".

The executant of 10D1 is said to have died about a month or a month and a half after its execution. The 10th defendant claimed that he has been viharadhipathi of the Kovilakanda Purana Viharaya ever since the death of the executant. It was not suggested to him that his claim to be the Viharadhipathi has been disputed by others although there are other pupils of Baddegama Dhammaratana Thera who are senior to him (the 10th defendant). It is the claim of the temple that he seeks to safeguard and conserve in this action.

The learned District Judge reached the conclusion that deed 10D1 did not have the effect of constituting the 10th defendant the viharadhipathi on the death of the executant thereof. He appears to have thought that this deed had the effect of making an acting appointment in the office of viharadhipathi limited to the lifetime of the executant. In so thinking, the learned judge appears to have misunderstood the real meaning of an answer given by the 10th defendant to a question put to him. The relevant question and answer are reproduced below :—

Q : Can a chief priest during his period of illness appoint any priest to look after the temple as the Viharadhipathi ?

A : Yes. But that will be only in an acting capacity. But the actual priest to succeed to the viharadhipathiship will be governed according to the rule of succession applicable to the said temple. I say that by this deed 10D1 my tutor priest appointed me to succeed him as the Viharadhipathi of this temple after his death.

I think the above answer was intended to convey no more than that (1) a monk can be appointed by a viharadhipathi to manage a temple while the viharadhipathiship continues to be held by the appointor. and (2) that an appointment of such a manager can be combined in one instrument with the appointment of a person to succeed as viharadhipathi on the death of the appointor. Looking at the deed 10D1 as a whole, the most reasonable construction to be placed on it is that it purports to appoint the 10th defendant to manage the property etc. during the lifetime of Dhammaratana Thera and to succeed as adhikari on the latter's death.

Bertram C.J. in *Sarananlkara Unnanse v. Indajoti Unnanse*[1], in the course of discussing at great length the different kinds of pupillage, adverts also to the expression "adhikari" thus:—"The officer who in Ceylon decisions and ordinances is referred to as the 'incumbent' is an officer of a different nature. The term by which he is described is 'adhikari' ('a person in authority')— a word derived from the Sanskrit word 'adhikara', meaning authority." I am not unmindful that Basnayake C.J. in *Jananlanda Therunnanse v. Ratanapala Therunnanse*[2] has observed that "it is well established that the offices of viharadhipathi and viharadhikari are not the same". I do not, however, think it is necessary in the present case to go into the question of the difference, if any, between these two expressions as it will often remain a question of interpretation whether a particular deed of appointment constitutes the appointee the viharadhipathi or merely a manager. We have here not a question of competing claims for the viharadhipathiship, but merely a claim of a legal right to represent the temple in an assertion to *sanghika* property. When the executant of 10D1 thereby ordered the 10th defendant that he shall not assign or hand over the Viharaya to anyone "who does not belong to our succession", such an injunction had no place in a deed of appointment of a mere manager. It was more appropriate in a deed appointing a person to perform all the functions customarily performed by the monk who is now commonly referred to as viharadhipathi. For the limited purposes of the present case, points of dispute Nos. 4, 5, 9 and 10 should, in my opinion, have been answered in favour of the 10th defendant, while point of dispute No. 8 should have been answered in favour of the temple.

For the reasons given below, I direct that the interlocutory decree entered in this case be amended by deleting the 20/80 share allotted therein to the 3rd defendant and allotting it instead to the 10th defendant as *adhikari* of the Kovilakanda Purana Viharaya. The order for costs made against the 10th defendant is set aside, and in its place I substitute an order that the 3rd defendant do pay a sum of Rs. 105 as costs of the contest to the 10th defendant. The 3rd defendant is ordered to pay the 10th defendant also his costs of this appeal.

SRI SKANDA RAJAH, J.—I agree.

Appeal allowed.

[1] *(1918) 20 N. L. R. at 397.*

[2] *(1959) 61 N. L. R. at 275.*