

1955

Present: Basnayake, A.C.J., and Pulle, J.

M. NANDARAMA, Appellant, and A. RATHANAPALA, Respondent

*S. C. 85—D. C. Matara, 21,128**Buddhist Ecclesiastical Law—Viharadhipati—Renunciation of office.*

A bhikkhu who is Viharadhipati of a temple is entitled to renounce his office of Viharadhipati.

Not only may a pupil who succeeds to the office of Viharadhipati by virtue of being the senior pupil of his tutor renounce his office, but also a junior pupil nominated by his tutor as his successor is free to renounce his right.

APPPEAL from a judgment of the District Court, Matara.

H. W. Jayewardene, Q.C., with *P. Ranasinghe*, for the Plaintiff-Appellant.

N. E. Weerasooria, Q.C., with *A. F. Wijemanne*, for the Defendant-Respondent.

July 12, 1955. BASNAYAKE, A.C.J.—

This is an action by Malimboda Nandarama (hereinafter referred to as the appellant), the senior pupil of the late Godagama Jinaratana, against Akurugoda Rathanapala (hereinafter referred to as the respondent), the

senior pupil of the late Murungasyaye Sumana, praying that he be declared the Viharadhipati of the temple known as Ogaspe Vihare (hereinafter referred to as Ogaspe) and that he be placed in possession thereof. The appellant claims that one Talgahagoda Dhammadara was the original Viharadhipati of Ogaspe, and Indurukawa Vihare (hereinafter referred to as Indurukawa). The former was the larger of the two and better endowed than the latter. Dhammadara had two pupils, Godagama Jinaratana, also known as Ehadugoda Jinaratana, and Murungasyaye Sumana. Of these two Sumana was the senior, having been ordained on the same day but before Jinaratana. Dhammadara died on 28th October, 1914, at Ogaspe. Shortly before his death he executed a deed No. 2432 of 2nd April, 1914, which for the purposes of this action is marked P1. In that instrument Dhammadara after reciting how he succeeded to the office of Viharadhiwasi of Ogaspe and Indurukawa and expressing his desire to nominate Jinaratana as his successor states—

“ I, the aforesaid Talgahagoda Dhammadara Therunnanse, do hereby appoint my own pupil Godagama Jinaratana Unnanse to be the Adikari after my demise of Ogaspe Vihare (here follows a description of the vihare and its grounds) and also of Indurukawa Vihare (here follows a description of the vihare and its grounds). Further that the aforesaid Godagama Jinaratana Therunnanse shall enjoy the income of the aforesaid premises in accordance with the rules and regulations laid down in the Vinaya and shall spend for the repairs, upkeep and improvements of the aforesaid Vihares; should assist who is presently my pupil Murungasyaye Sumana Unnanse to prosecute his studies financially; and also permit him to reside at Ogaspe Temple ”.

Dhammadara died on 28th October, 1914. Immediately after his death disputes arose between Jinaratana and Sumana. Parties interested in the welfare of the temple appear to have brought about a settlement of those disputes. That settlement is recorded in the document D11 which is set out below :

“ The writing attaches to the list bearing the date 11th November, 1914 ”.

“ On the 23rd January, 1915, at Ogaspe Vihare, the trustees of the said Vihare and D. C. Wiratunga Ralabamy, President of the District Committee, having met the dispute that existed between Murungasyaye Sumana Therunnanse and Ehadugoda Jinaratana Therunnanse was settled there :

Murungasyaye Sumana Therunnanse shall reside and be in charge of Ogaspe Vihare.

Ehadugoda Therunnanse shall reside and be in charge of Indurukawa Vihare.

That the priests resident thereon shall have the right to make use of the produce and income of the said two Vihares in a reasonable manner.

That Murungasyaye Sumana Therunnanse as chief shall in the knowing of the trustee in charge of the vihare protect the goods etc. mentioned in this list ”.

In derogation of the settlement of 23rd January, 1915, and without making even a reference to it, Jinaratana by a deed dated 6th November, 1915, appointed Munamalpe Pemananda another pupil of Dhammadara to manage Indurukawa claiming that he did so because it was difficult to manage both Ogaspe and Indurukawa. After reciting the particulars in P1 and expressing Jinaratana's desire to appoint Pemananda as Viharadhiwasi of Indurukawa, the instrument proceeds as follows :

“ I, the aforesaid Godagama Jinaratana Therunnanse because of the right devolved on me by the aforesaid deed No. 2432 and on behalf of the person who assigned that right and on behalf of myself who exercise it do hereby appoint the aforesaid Munamalpe Pemananda Therunnanse to carry on the management and administration subject to and in accordance with the conditions and in the manner laid down in the aforesaid document of the premises called and known as Indurukawa Viharastana and all fruit trees, image house, residing premises etc. appertaining thereto and to be the chief incumbent of the aforesaid Indurukawa Vihare (here follows a statement of the boundaries) ”.

Thereafter, Jinaratana continued to live at Indurukawa and Sumana at Ogaspe. Sumana died in 1927 aged 59 and the respondent, his pupils succeeded to the management of Ogaspe. Some time after Sumana's death, Jinaratana who was living at Indurukawa came to reside at Ogaspe and continued to live there without any objection from the respondent till his death on 9th November, 1949, at the age of 71. It is alleged that Jinaratana left Indurukawa after the death of Sumana in order to escape ill-treatment by Pemananda, to whom he had in 1915, by the deed above referred to transferred the management of that temple.

The learned District Judge, after examining the evidence both oral and documentary, dismissed the appellant's action holding that from the time of the death of Dhammadara, Sumana had acted as Viharadhipati of Ogaspe and that Jinaratana, when he entered into the agreement D11, waived and abandoned whatever rights he got on P1 to Ogaspe and that since the death of Sumana the respondent has acted as the Viharadhipati of that Vihare.

The present appeal is from that decision. Learned Counsel for the appellant has argued with force that under our law according to the rule of *sissyanu sissya paramparawa* the senior pupil succeeds the tutor unless the tutor nominates another pupil to succeed him and that where there is a nomination by the tutor the co-pupils have no power to vary that nomination, even with the consent of the nominated pupil. While conceding that a pupil who succeeds to the office of Viharadhipati by virtue of being the senior pupil of his tutor may renounce his office, learned Counsel contended that a pupil nominated by his tutor as his successor was not free to renounce his right.

Learned Counsel also further contended that D11 is of no effect in law even though Jinaratana had consented to it and did not operate as a variation of the nomination made by Dhammadara.

None of the authorities cited by Counsel support the proposition he was seeking to establish. There is nothing in the Vinaya or the decisions of this Court which forbids a bhikkhu from renouncing his right to the management of a vihare.

To hold that a bhikkhu is not free to renounce the office of Viharadhipati under any circumstances and that he is bound to hold that office whether he likes it or not would be going counter to the fundamental concepts of the Vinaya.

It would be appropriate in this connexion to refer to the words of Bertram C.J. in the case of *Saranankara Unnanse v. Indajoti Unnanse*¹ "But when we are dealing with ecclesiastical property, a region in which we are enforcing simply the ecclesiastical law based upon the original authoritative texts developed by religious customs, we ought not to recognize claims and transactions which are in their terms or in their nature inconsistent with the fundamental principles of those texts and those customs". Under our law a person is free to renounce a right².

Upon Jinaratana's renunciation of his right to Ogaspe even if the document D11 did not mention Sumana as the Viharadhipati of that temple he would, by virtue of his being Dhammadara's senior pupil, have become the Viharadhipati as Jinaratana had no pupils at that time.

Jinaratana's renunciation of whatever rights he had to Ogaspe by virtue of P1 is valid not only according to ecclesiastical law but also according to the common law.

The view we have taken is in accord with the decision of this Court in the case of *Punnananda v. Welivitiye Soratha*³.

We therefore hold that Jinaratana's surrender of whatever rights he obtained under the deed executed by his tutor Dhammadara was valid and effectual and that as Jinaratana had no pupil at the time, Sumana as the senior pupil of Dhammadara rightfully became Viharadhipati of Ogaspe and that the respondent as the pupil of Sumana was entitled to be Viharadhipati of that Vihare.

There were two other matters which were raised at the trial. They are—

- (a) whether the decree in C. R. Matara No. 13,998, an action by Sumana against Don Thedias Wimalagunasekera, trustee of Ogaspe, and Jinaratana claiming the produce of certain lands and for maintenance, operated as *res judicata* between the appellant and the respondent, and,
- (b) whether the appellant was barred by the Prescription Ordinance from maintaining this action.

In the matter referred to at (a) above, Wimalagunasekera filed answer that Jinaratana was the chief incumbent of the temple and was in possession of the property. The case was settled by consent. The material part of the decree reads—

"It is ordered and decreed of consent that the plaintiff be and he is hereby declared the chief incumbent of Ogaspe Vihare at Malimboda".

¹ 20 N. L. R. 385 at 391.

² *See* Bl. 1, Tit 4, s. 22.

³ 51 N. L. R. 372.

The learned District Judge held that the decree operated as "*res judicata*" between the appellant and the respondent.

On the question of prescription the learned District Judge held that the appellant's action was barred by prescription in view of the decision of this Court in the case of *Premaratne v. Indasara*¹. As we have held that Sumana was the rightful Viharadhipati of Ogaspe the questions of *res judicata* and prescription need not be discussed for the purposes of this Judgment.

The appeal is dismissed with costs.

PULLE, J.—I agree.

Appeal dismissed.
