

Nov. 23, 1910

Present : Middleton J. and Wood Renton J.

DAMMARATNA UNNANSE v. SUMANGALA UNNANSE *et al.*

210—D. C. Kandy, 18,982.

*Buddhist ecclesiastical law—Expert evidence on various matters—Pupillary succession—Right of presentation where pupillary succession fails—“ Sanghika.”*

A right of pupillary succession is forfeited if the pupil deserts his tutor and the temple the incumbency of which he claims.

The fact that a tutor disrobes himself for immorality or other reason does not affect the pupil's status as regards the right of pupillary succession.

If succession to a vihare in “ sisyanusisya paramparawa ” fails, the Chapter of the college to which it belongs have the right to appoint, although in the case of small viharas the Maha Nayaka may act alone in the faith of future support from the Chapter, and even in districts the local Nayaka Unnanses have been known to appoint.

If the body or person having the right of presentation to the incumbency makes such presentation, the right of pupillary succession does not revive to the incumbent so appointed. “ Pupillary succession is not revived upon a ‘ sanghika ’ appointment unless the terms of the grant do so, but the right of presentation reverts to the Chapter again.”

**T**HE facts are set out in the judgments.

*Bawa*, for plaintiff, appellant.

*Van Langenberg*, Acting S.-G., for respondent.

*Cur. adv. vult.*

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This was an action praying that plaintiff be declared incumbent of the Diwille Vihare and entitled to the possession of the pansalas, and to officiate in the said vihare by right of the tenure known as “ sisyanusisya paramparawa,” or pupillary succession.

The plaint averred that the incumbency of the vihare was by this tenure, and that Sonuttara Unnanse was incumbent by succession from his tutor, and that on his death in 1893 the plaintiff, as the pupil of Tissa Unnanse, the only pupil of Sonuttara Unnanse, succeeded to the said incumbency, Tissa Unnanse having predeceased Sonuttara Unnanse ; that the plaintiff placed the first

defendant in charge in May, 1907, and that he wrongfully prevents the plaintiff from exercising the functions of incumbent, and that the second defendant is the trustee of the said vihare.

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The answer of the first defendant denied that the tenure of the incumbency of Diwille Vihare is by pupillary succession, but admitted that Tissa Unnanse was at one time the pupil of Sonuttara Unnanse, but that Tissa Unnanse disrobed himself during the lifetime of Sonuttara Unnanse and afterwards became the pupil of one Batugoda Unnanse ; denied that the plaintiff is the pupil of Tissa Unnanse, or that he succeeded to the incumbency or ever exercised the rights and duties thereof ; denied that defendant was placed in charge of the temple, or that the plaintiff suffered any loss ; averred that for a time beyond living memory the temple has been held as one belonging to the community of priests of the Asgiriya Vihare, and that since the death of Sonuttara Unnanse in 1893 the defendant has been in charge as incumbent, with the sanction and approval of the Maha Nayaka Unnanse and of the villagers of Diwille and Murutawatta.

The answer of the second defendant admitted all the allegations in the first paragraphs of the plaint, including the allegation that the incumbency of the Diwille Vihare was held by pupillary succession, but denied the plaintiff's right of action against him, and claimed a dismissal of the action as against him with costs.

The following issues were agreed to :—

- (1) Whether the Diwille Vihare is held by the tenure of "sisyanusisya paramparawa" ?
- (2) Whether Tissa Unnanse disrobed himself during the lifetime of Sonuttara and afterwards became the pupil of Batugoda Unnanse ?
- (3) If the tenure was that of pupillary succession, whether Tissa Unnanse's disrobement broke the tenure ?
- (4) Whether plaintiff was the pupil of Tissa Unnanse, and if so, whether plaintiff succeeded to the incumbency ?
- (5) Whether the plaintiff exercised the rights and performed the duties of incumbent ?
- (6) Whether first defendant was placed in charge of the temple by the plaintiff ?
- (7) What damages, if any, is plaintiff entitled to recover ?
- (8) Whether from time immemorial the temple was held as belonging to the community of priests of the Asgiriya Vihare ?
- (9) Whether since the death of Sonuttara Unnanse in 1893 the temple has been in the charge of the first defendant as incumbent and officiating priest, with the sanction of the Maha Nayaka Unnanse of the Asgiriya Vihare and of the villagers of Diwille and Murutawatta ?

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After hearing the evidence adduced on both sides the District Judge dismissed the plaintiff's action, and he appealed.

The first thing necessary in this and most cases is to ascertain what are the findings of fact which are not disputed.

In the first place, it is admitted that Sonuttara Unnanse was incumbent of the vihare, and there is the evidence of Kiri Banda, Registrar, and Saranankara, Priest, and uncle of plaintiff, that he was the pupil of his predecessor Gammulla. The District Judge finds it proved that Tissa was a pupil of Sonuttara, and that plaintiff was a pupil of Tissa, and he is of opinion that if the tenure of pupillary succession applies to the vihare the plaintiff is entitled to succeed. The District Judge does not, however, find that if Tissa was subsequently disrobed, what would be the effect of such disrobing on his or his pupil's right of pupillary succession.

The plaintiff also admits that after being robed at Diwille by Tissa he stayed four or five months in Diwille, and then went to Tissa at Batugoda, where he was with him till his death, but that at Sonuttara's death he was at Deberrellawa, of which Sobita was the incumbent, and that he had become a pupil of Sobita, who taught him "bana," and that he was ten or fifteen years at Deberrellawa, during which time the defendant acted for him.

The District Judge also finds that the defendant has been *de facto* incumbent of Diwille since Sonuttara's death in 1893; that defendant was not put in charge of Diwille by the plaintiff, and that the defendant at Sonuttara's death took charge of the temple, with the sanction of the Maha Nayaka of Asgiriya and with the approval of the villagers, and has held the temple uninterruptedly for sixteen years, which the learned District Judge looks upon as prescriptive proof that it is "sanghika," and not subject to the rule of pupillary succession. I saw no reason to doubt the correctness of any of these findings of fact, but on consultation with my brother Wood Renton we deemed it necessary to have further evidence from witnesses learned in Buddhist ecclesiastical law, and a set of nine questions were drawn up to be answered by seven witnesses, three of whom were to belong to the Malwatta College and three to the Asgiriya College, while the seventh was to be the highest sacerdotal Buddhist authority in Colombo.

The evidence of seven gentlemen answering to this description has been taken in the District Court, and their answers to the questions, which were abstract, should form a very valuable source of information for future reference on the points inquired about. Those questions were as follows :—

- (1) How is the right of pupillary succession obtained ?
- (2) Can a pupil obtain the right of pupillary succession to his tutor if he is not robed by him ?

- (3) Does every pupil obtain the right of pupillary succession to his tutor ; if so, in what order ; if not, which pupil obtains the right ?
- (4) If a person who has been pupil of one tutor becomes the pupil of another tutor, does he lose the right of pupillary succession to his former tutor from that fact ?
- (5) If the pupil of a tutor dies before his tutor, does his pupil lose the right of succession to his tutor's tutor ?
- (6) If a tutor disrobes himself for immorality, what is the effect of his doing so on his own and his pupil's status as regards the right of pupillary succession ?
- (7) If a tutor has two or more pupils, in what order do they succeed to their tutor, *i.e.*, A has two pupils, B and C, and A dies. Who succeeds ? B or C ? *E.g.*, A has two pupils, B and C, and B dies before A, does C succeed ? A has two pupils, B and C. B has pupil E, and C has F. B dies before A. Who succeeds to A ?
- (8) If pupillary succession fails to a vihare dedicated in "sisyanusisya paramparawa," who has the right of presentation to the incumbency ?
- (9) If the body or person having the right of presentation to the incumbency makes such presentation, does the right of pupillary succession revive to the incumbent so appointed, or even if he has a pupil on his death, again revert to that body or person ?

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The practically unanimous answer to the 6th question disposes of a doubt I had with regard to the plaintiff's right of succession of Sonuttara if Tissa disrobed himself for immorality or other reason. The plaintiff's right of succession to Sonuttara would not apparently be lost. The question is whether, when Sonuttara was appointed some forty or fifty years ago, the incumbency was "sanghika." In the old action, No. 19,169, referred to by the District Judge, the administrator of the estate of the former incumbent, Hapugoda Unnanse, was sued by one Lenadora, grantee by deed of the incumbency of Diwille Vihare in 1843 for the priests of the Asgiriya Vihare (vide *Lawrie's "Gazetteer," vol. I., p. 164*). The deed recites that the vihare had been "sanghika," and the right to manage it was vested in the Maha Nayaka of Asgiriya Vihare. The judgment of the Court does not help greatly, but the ground of the defendant's demurrer and the plaintiff's deed establish that both parties must have held the view that the vihare at the time was "sanghika" property, and I think we are entitled to hold that the vihare was "sanghika" in 1843 and 1844. Lenadora lost his action, and some years afterwards apparently Sonuttara was appointed.

According to the answers to the 8th question, if pupillary succession to a vihare in "sisyanusisya paramparawa" fails, the Chapter of priests of the college to which it belongs have the right to appoint,

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although in the case of small vihares the Maha Nayaka may act alone in the faith of future support from the Chapter, and even in districts the local Nayaka Unnanses have been known to appoint.

The preponderance of opinion in answer to question 9 is that pupillary succession is not revived upon a "sanghika" appointment unless the terms of the grant do so, but the right of presentation reverts to the Chapter again.

In this case the only evidence that pupillary succession was constituted is that Sonuttara was the pupil of his predecessor Gammulla. As the District Judge says, this fact is not inconsistent with a "sanghika" appointment, as the Maha Nayaka and Chapter might have selected Sonuttara as the fittest person.

I agree, therefore, with the Judge that on the facts before him and the further evidence we have obtained, this vihare was "sanghika," and the evidence is not sufficient to show that it has reverted to the tenure of pupillary succession.

I agree also with my brother Wood Renton, whose judgment I have had the advantage of reading since writing the above, that upon the expert evidence given in answer to question 5, and the cross-examination of Sri Dharmarama, the High Priest of Colombo and Chilaw, and the evidence taken before the District Judge originally, that there is good reason for holding that the plaintiff by his action forfeited his rights of pupillary succession. I think, therefore, that the judgment of the District Judge was right, and the appeal must be dismissed with costs.

**WOOD RENTON J.—**

This case was fully argued before my brother Middleton and myself on March 7 and 8 last, and judgment was reserved on the latter date. By decree dated March 23 we sent it back to the District Court in order that expert evidence might be taken on certain points of Buddhist law, which had been raised before us in the argument of the appeal, and which seemed to us to be of material importance. That evidence has now been recorded, and the case was put down before us on November 15 for any argument on the additional evidence that either side might desire to address to the Court. At the adjourned hearing of the appeal, however, counsel for the appellant and the respondent agreed to leave the decision of the case, without further argument, in our hands. The plaintiff-appellant claims the incumbency of Diwille Vihare in Matale South by pupillary succession from Sonuttara, the former incumbent. He alleges that Sonuttara had an only pupil named Tissa, whose pupil he himself was. Tissa died in 1888, in Sonuttara's lifetime. The appellant then, by Buddhist ecclesiastical law, became Sonuttara's pupil, and on Sonuttara's death in 1893 succeeded to the incumbency by right of pupillary succession. The appellant says that thereupon he put the first defendant-respondent in charge of

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the temple ; that he continued to visit the temple as incumbent from time to time ; and that in May, 1907, the respondent, repudiating his subordinate character, himself set up a claim to the incumbency and forcibly prevented the appellant from exercising his rights. He claims accordingly a declaration of his title to the incumbency and to the possession of the temple, and damages.

The respondent denies that the incumbency of Diwille Vihare was held by the tenure of pupillary succession ; that the appellant was the pupil of Tissa ; and that he had ever been placed by the appellant in charge of the temple. He alleges that from time immemorial the temple was held as belonging to the community of priests of Asgiriya Vihare, and that since 1893 it had been in his charge as incumbent, with the sanction and approval of the Maha Nayaka of Asgiriya and of the villagers. The District Judge dismissed the appellant's action, holding that while if the rule of pupillary succession applied, the appellant would be the *de jure* incumbent, the incumbency is not subject to that rule, but is " sanghika " property, lawfully in the charge of the respondent, with the sanction of the Maha Nayaka of Asgiriya and the approval of the villagers.

Both the evidence originally recorded and the additional expert evidence now before us justify the conclusions of the District Judge : (i.) that Tissa was Sonuttara's pupil, and died in his master's lifetime ; (ii.) that the appellant was the pupil of Tissa ; (iii.) that on Tissa's death he became the pupil of Sonuttara and would be entitled as such to succeed Sonuttara in the incumbency if it were in fact held by the tenure of pupillary succession ; (iv.) that the appellant's rights would not be forfeited after his ordination even if Tissa disrobed himself for any cause whatever ; and (v.) that his position would be equally unaffected by the mere fact that after Sonuttara's death he became the pupil of the incumbent of another temple. There is some divergence of opinion among the expert witnesses on this last point. Even if the appellant had deserted Sonuttara in his lifetime, he would still be Sonuttara's successor, according to Heramitigala Dhirananda of Malwatta Vihare, Ratnajoti Nayaka Ummase of Mayihangana in Bintenna, and Saranankara, High Priest of Topawewa. On the other hand, according to Sri Dharmarama, High Priest of the Colombo and Chilaw Districts, if the pupil of one tutor became the pupil of another he will have the right to succeed his first tutor only in case he joined the second with the consent and approval of the first ; and if a pupil were to quarrel with the first tutor and leave him altogether and join another tutor and never return to the first, he will forfeit his rights to the latter. Sri Dharmarama was further questioned on this point in cross-examination :—

Q.—If Sonuttara had a pupil Tissa, who disrobed himself during Sonuttara's lifetime, and left plaintiff as his

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pupil, and plaintiff deserted Sonuttara and the vihare and never went back, would the plaintiff have the right to succeed Sonuttara ?

A.—That will depend on many circumstances. If he remained in obedience to Sonuttara and adopted no other tutor, and Sonuttara expressed no contrary intention, the plaintiff would have the right to succeed even if he resided elsewhere, but with Sonuttara's approval. When Tissa disrobed himself, the plaintiff would stand in his shoes, and he ought to have remained under Sonuttara, just as Tissa should have remained. If he did not remain under such allegiance, he would forfeit all rights.

Later on he says :—

“ There must be robing plus obedience to entitle a pupil to succeed his tutor. The books do not state it in so many words, but they state that a pupil must be obedient to his tutor. Hence, if he is disobedient, it is inconsistent with his being a pupil in the Buddhist sense. If, in the case put, Sonuttara or Tissa had no other pupil, it may be proper that the plaintiff should succeed if he comes back to the vihare.”

The question above stated was put also to Sri Gnanissara, Vice-Principal of the Vidyodaya Oriental College, Colombo, and in effect to Wataraka Ratanajoti, Anu Nayaka of the Malwatta Vihare. The former replied :—

“ If the plaintiff continued to be a priest and was in robes when he went away, his leaving without Sonuttara's consent cannot deprive him of his rights, nor is it necessary that Sonuttara should proclaim his recognition of the plaintiff as his successor. I do not agree with Dharmarama on this point.”

The latter said :—

“ If a tutor has a pupil who disrobes himself in his tutor's lifetime, but leaves a pupil of his own, that pupil will succeed the original tutor, but only if he continue in the vihare, owing allegiance to him. If he deserts the vihare, and the original tutor leaves no other pupil, the vihare will become ' sanghika.’

“ If a pupil does not remain in a vihare and assist his deceased tutor's tutor, he cannot succeed him. It is not right that he should.

“ If the vihare was deserted and that pupil came back and got in, he cannot be turned out. That is because the vihare had become ‘ sanghika ’, and he as a priest can remain there. But he cannot become the incumbent of it if he has no appointment.

“ If a pupil leaves a vihare without any intention of returning to it he would lose his rights altogether, even though he be the sole pupil of his tutor.

“ It is an elementary rule that a pupil must remain permanently with his tutor if he is to obtain pupillary rights.”

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The weight of the expert testimony decidedly supports the view that a right of pupillary succession will be forfeited if the pupil deserts his tutor and the temple the incumbency of which he claims. There is ample evidence in the present case justifying the conclusion that such a forfeiture has been incurred by the appellant. But the case may also be decided on the ground that the incumbency is not held by pupillary succession at all. There is some evidence that Sonuttara was himself the pupil of one Gammulla. The witnesses who speak to this are Kiri Banda, Registrar of Urulewatta, and Saranankara, Priest of Hunupahura Pansala, Matale. At the date of this alleged succession, however, the Registrar was only a boy. Saranankara was also a boy, and in addition to that he is the appellant's uncle. The District Judge points out that even if it were the case that Sonuttara was the pupil of Gammulla, the fact would not be necessarily inconsistent with the respondent's contention that the Diwille Vihare is “ sanghika ” property. And there is evidence establishing that contention, which the District Judge has accepted. We start with the indisputable fact of the possession of the incumbency of the temple by the respondent from 1893 onwards. The Dayaka Kiriya says that the respondent applied for this position to, and obtained it from, the Maha Nayaka, and that the appointment was approved by the villagers. The expert evidence shows conclusively the existence in practice of such a mode of appointment (and see *Dharmapala Unnanse v. Medagama Sumana Unnanse*<sup>1</sup>). Muttuwa, another Dayaka, gives evidence to the same effect as Kiriya. Muttuwa says that the inventory D 1 of the property of the temple was prepared by the Dayakas at the time of the respondents, and that the appellant had nothing to do with it. H. Kiriya and B. Kiriya, the Vel-Vidane, corroborate the evidence of the Dayakas as to the circumstances under which the respondent took charge of the temple. In the last place, there is the case D. C. Matale, 4,289, instituted as far back as February, 1844, showing that the temple here in question was “ sanghika ” property.

I would dismiss the appeal with costs.

*Appeal dismissed.*

<sup>1</sup> (1909) 2 Cur. L. R. 83.