

1941

*Present : Howard C.J. and Soertsz J.*SOBITHA THERA *v.* WIMALABUDDHI THERA *et al.*176—*D. C. Kurunegala, 18,640.**Buddhist Temporalities—Charitable Trust—Prescription—Trusts Ordinance, s. 111 (c), Cap. 72.*

Section 111 (1) (c) of the Trusts Ordinance which provides that any claim in the interests of any charitable trust for the recovery of any property comprised in the trust or for the assertion of title to such property shall not be held to be barred or prejudiced by any provision of the Prescription Ordinance, applies to Buddhist Temporalities.

APPEAL from a judgment of the District Judge of Kurunegala.

H. V. Perera, K.C. (with him *N. E. Weerasooria, K.C.*, and *J. R. Jayawardana*), for the plaintiff, appellant.

E. B. Wikremanayake, for the defendants, respondents.

Cur. adv. vult.

June 4, 1941. HOWARD C.J.—

This is an appeal from a decision of the learned District Judge of Kurunegala dismissing the plaintiff's action with costs. The plaintiff in his plaint asked for a declaration that the land and buildings described in the schedule thereto belonged to the Weragala Vihare and that he should be placed in quiet possession thereof and for damages. In dismissing the plaintiff's claim the District Judge found as follows:—(1) the lands in question were the property of the Weragala Vihare; (2) the defendants had acquired title thereto by prescription; (3) the plaintiff was the viharadipathi of the Weragala Vihare, was entitled to maintain the action, but could not ask for an order of ejectment against the defendants. With regard to (2) the District Judge came to the conclusion that the defendants had been in possession adversely to the plaintiff since 1910. It was, however, contended by Counsel for the plaintiff in the Court below and in this Court by Mr. Perera that, even if the defendants had been in possession adversely to the plaintiff since 1910, they could not acquire title by prescription by reason of the provisions of section 111 (1) (c) of the Trusts Ordinance (Cap. 72, Legislative Enactments of Ceylon). This contention, however, was not accepted by the District Judge who held that section 111 had no application to the present case.

I propose first of all to consider the applicability to the present case of section 111 of the Trusts Ordinance.

This section is worded as follows—

“ 111. (1) In the following cases, that is to say—

(a)

(b)

(c) in the case of any claim in the interests of any charitable trust, for the recovery of any property comprised in the trust, or for the assertion of title to such property,

the claim shall not be held to be barred or prejudiced by any provision of the Prescription Ordinance.”

Section 99 contained in Part X. of the Ordinance, has as a marginal note the words “Special definitions”. Sub-section (1) is worded as follows :—

“99. (1) The expression ‘charitable trust’ includes any trust for the benefit of the public or any section of the public within or without the Island of any of the following categories :—

- (a)
- (b)
- (c) for the advancement of religion or the maintenance of religious rites and practices ; or
- (d)”

Section 109, also included in Chapter X., is worded as follows :—

“109. This Chapter shall not apply—

- (a) to religious trusts regulated by the Buddhist Temporalities Ordinance ;
- (b)”

Holding that section 111 had no application to the present case the learned District Judge cited the concluding words of the judgment of Akbar J. in *Ratwatte v. Public Trustee*¹ which were as follows :—

“All these points confirm me in my opinion that in spite of section 109 of the Trusts Ordinance referring only to Chapter X., the whole Ordinance, No. 9 of 1917, has no application to temples and Dewales for which special provision was made in Ordinance No. 19 of 1931.”

As the question of the applicability of the Trusts Ordinance to Buddhist Temporalities did not arise in this case Akbar J.’s dictum must be regarded merely as obiter. Even if this was not so, I should not be prepared to follow it. The mere fact that section 109 expressly excludes religious trusts regulated by the Buddhist Temporalities Ordinance from the application of Chapter X. is a fact that in itself compels me to hold that the remainder of the Ordinance does so apply. It has, however, been further argued that inasmuch as Chapter X. is excluded, section 99—“Special definitions”—is also excluded. I am unable to accept this argument. The remaining sections of Chapter X. bring into operation certain provisions for the regulation of charitable trusts and it is from the operation of these provisions that Buddhist Temporalities are excluded by section 109. Even if it was held that section 109 was not a definition that could be applied to “charitable trust” as used in section 111 (1) (c), I am of opinion that without such a definition it must be read as including a Buddhist Temporality. In view of my interpretation of the foregoing provisions of the Trusts Ordinance I hold that the learned Judge was wrong in finding that section 111 (1) (c) had no application to Buddhist Temporalities. He has found as a fact that the defendants have been in

¹ 12 C. L. R. 208.

adverse possession since 1910. Since the Trusts Ordinance came into operation on April 16, 1918, on this finding of fact sufficient time had not elapsed for the acquisition of title by prescription.

Mr. Wikremanayake on behalf of the defendants has, however, raised a further contention. He maintains that, even if it is held that section 111 (1) (c) of the Trusts Ordinance applies to a Buddhist Temporality, it has no application in the present case inasmuch as the adverse possession of the defendants commenced in 1902 and hence a prescriptive title was acquired by 1912, that is to say, before the Trusts Ordinance came into force. He contends that the occupation of the land became adverse when the Medagala Temple was built on lot 1 by Saranankara, the plaintiff's fellow pupil, and pupil of Piyadassi in the year 1902. Saranankara died in 1915, but it would appear that the defendants had come to the Medagala Temple by 1910 and have been there ever since. Apparently the first defendant had been invited there by the signatories to D 3 owing to the neglect of the temple by the incumbent. I am unable to accept the contention that the prescriptive title acquired by the defendants commenced to run from the building of the Medagala Temple by Saranankara. It is claimed that the defendants were in occupation as representatives of the Medagala Temple and hence they were the successors in title of Saranankara who it is said was also a representative of the same temple. No doubt it is true that a temple or its duly authorised representative may acquire title to land by prescription, *vide Silva v. Fonseka*¹; and *Wimalasuriya v. Wickramaratne*². A title by prescription can, however, only be established by proof of the undisturbed and uninterrupted possession by a defendant in any action or by those under whom he claims, *vide* section 3 of the Prescription Ordinance (Cap. 55, Legislative Enactments of Ceylon). In *Terunnanse v. Menike*³, it was held that the "possession" contemplated in this section is that of a party to a suit, or of his predecessor in title, but not that of a third party. Saranankara can only be claimed as the predecessor in title of the defendants if they were all possessing the land as representatives of the Medagala Temple. It is, however, in evidence that Medagala Vihare was appurtenant to the Weragala Vihare of which the plaintiff is the Viharadipathi. Saranankara built the Medagala Temple on land belonging to the Weragala Vihare whilst he was a pupil of Piyadassi, who with the plaintiff was at the Weragala Vihare. The possession of the Medagala Temple cannot be separated from the possession of the land on which it was built. There is no evidence that Saranankara's occupation of this land was adverse to the ownership of the Weragala Vihare. He came into occupation of such land because he was the representative of the Weragala Vihare. In such circumstances whatever title he possessed was as trustee on behalf of the Weragala Vihare. In this connection *Ranasinghe v. Dhammananda*⁴ is in point. The possession by the defendants who belong to a different sect is admittedly claimed on behalf of the Medagala Vihare as a separate entity distinct from the Weragala Vihare. In these circumstances the defendants cannot claim Saranankara as their predecessor in title. There has been no pupillary or other

¹ 15 N. L. R. 239.

² 20 N. L. R. 140.

³ 1 N. L. R. 200.

⁴ 37 N. L. R. 19.

succession so as to constitute uninterrupted possession under section 3 of the Prescription Ordinance and the claim to prescriptive title based on such possession from 1902 fails.

For the reasons given in this judgment the appeal is allowed. The judgment and decree of the Court below is set aside and judgment with costs in this Court and the Court below entered for the plaintiff as claimed except in regard to the claim for damages. With regard to such claim the case will be remitted to the District Judge for their assessment in the Court below.

SOERTSZ J.—I agree.

Appeal allowed.

