Sept. 4, 1911

Present : Lascelles C.J. and Middleton J.

WEERAKOON, *v.* APPUHAMY.

262—*D. C. Badulla*, 2,507.

Buddhist Temporalities Ordinance—Term of office of trustee terminating by effluxion of time—Appointment of provisional trustee by Committee—Irregular—Lease by such trustee void.

On the expiration of the term of office of a trustee under the Buddhist Temporalities Ordinance by effluxion of time, the District Committee appointed a trustee to act provisionally.

Held, that the appointment was irregular.

A lease granted by a provisional trustee appointed under such circumstances is void.

A provisional appointment can only be made under the circumstances mentioned in section 34 of the Ordinance.

THE facts appear from the judgment of Lascelles C.J.

Elliott, for appellant.

H. A. Jayewardene (with him *J. W. de Silva*), for respondent.

September 4, 1911. LASCELLES C.J.—

This is an appeal from the judgment of the District Judge of Badulla, in which he decided that the appointment of the fourth

defendant as provisional trustee of a certain vihare was irregular, and declared that the lease granted by him of some of the property of the temple was void. Several grounds for holding that the lease was invalid were raised during the trial of the action, but it is really necessary to consider only one of the grounds, for if the appointment of the provisional trustee was bad, it follows that the lease granted by him was also invalid. Now, the term of office of the former trustee expired on February 2 or on January 31, it is immaterial which. On January 15 the Committee appointed the fourth defendant to act provisionally as the trustee from the expiration of the term of the old trustee. It is contended, and it is held by the learned District Judge, that this appointment was irregular. In my opinion there can be no doubt as to the correctness of this ruling. The appointment was not only irregular, but it involved an irregularity of a very serious character. The general scheme of the Buddhist Temporalities Ordinance of 1905 is that the management of the property of the temples shall be entrusted to the trustees, who are elected by the laymen who are qualified to vote at such election. Any irregularity which deprives the Buddhist laymen of the right of electing the trustees who have the management of the property of their temples is obviously an irregularity of a serious character, which runs counter to the general scheme of the Ordinance. It was attempted to justify the appointment of the fourth defendant as a provisional trustee under section 34 of the Ordinance. But it is obvious that the section has no application to the facts of the present case. It does not enable a trustee in all cases to be appointed to act provisionally on the expiration of the term of office of his predecessor. It only enacts that in certain particular cases, namely, refusal to accept office, death, incapacity, disqualification, resignation, suspension, dismissal, bankruptcy, insolvency, or departure from the Island, the District Committee may make provisional arrangements for the performance of the duties of the office pending the election of a successor. This is altogether a different thing from appointing an acting trustee at the end of the term of the former trustee. The effect of such an appointment is to substitute a nominated trustee for an elected trustee. If, then, the appointment of the fourth defendant as a provisional trustee is void, it follows that the lease granted by him in that capacity is also void, whether it was or was not granted for adequate consideration.

With regard to the point as to misjoinder, I cannot see that there is any misjoinder of parties in the case. I think that the fifth defendant, the grantee under the lease which is impugned, was a necessary party to the action, and that if he had not been originally joined as a party, it would have been the duty of the Court to cause him to be added.

In my opinion the judgment of the District Judge is correct, and the appeal should be dismissed with costs.

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Weerakoon v. Appuhamy

MIDDLETON J.—

I agree. The only doubt I had in the course of the argument was from the wording of section 34, where the words " or shall cease to be qualified as required by this Ordinance " are used. I at first thought that these words might possibly be intended to convey the case of a trustee whose office had expired by effluxion of time after three years. I think, however, that these words clearly are governed by the terms of section 8 of the Ordinance, in which the qualifications of candidates for election are set out. Even, however, if that section could have been construed as I was at first inclined to construe it, the provisional appointment of the fourth defendant here would certainly not be in accordance with its terms, for the words following on the words I have spoken of show clearly that a new trustee in such a case must be elected by the voters under section 17 of the Ordinance.

I entirely agree that there was no misjoinder in making the fifth defendant a party to this action, and echo the opinion of my Lord that if he had not been joined, it would have been the duty of the Court, under section 18 of the Civil Procedure Code, to add him as a party.

Appeal dismissed.