

1940 Present : Moseley S.P.J. and Wijeyewardene J.

PETER SINGHO *et al.* v. APPUHAMY.

221—D. C. Chilaw, 11,294.

Devale—Exempted from operation—Buddhist Temporalities—Outside scope of Ordinance—Buddhist Temporalities Ordinance, s. 4 (1) and (2) (Cap. 222).

A devale, which has not been brought under the operation of section 4 (1) of the Buddhist Temporalities Ordinance, falls outside the provisions of the Ordinance.

A PPEAL from a judgment of the District Judge of Chilaw.

C. S. Barr-Kumarakulasingham, for appellant.

N. Nadarajah (with him G. E. Chitty), for respondent.

Cur. adv. vult.

July 12, 1940. WIJEYWARDENE J.—

The five plaintiff-appellants instituted this action under section 102 (1) of the Trusts Ordinance against the defendant respondent in respect of Aiyanyake Devale.

Several issues were framed at the trial, three of which were as follows:—

Issue No. 3—Are the plaintiffs persons interested in the said trust within the meaning of section 102 of the Trusts Ordinance?

Issue No. 10—Is the Aiyanyake Devale a devale within the meaning of Ordinance No. 19 of 1931.

Issue No. 11—If so, can the plaintiff maintain the action?

The District Judge answered issues Nos. 3 and 11 in the negative and issue No. 10 in the affirmative and dismissed the plaintiff's action.

It is not possible to say that the finding of the District Judge on issue No. 3 is incorrect and the appeal must therefore be disallowed.

The observations of the learned District Judge on issue No. 10 with regard to the scope of the Buddhist Temporalities Ordinance, No. 19 of 1931, appear to me based on a misconception of the provisions of that Ordinance. By section 3 the provisions of the Ordinance are made applicable to every temple in the Island but the Governor is given the power to exempt any temple other than the Dalada Maligawa, the Sri-padasthana and the Atamasthana from the operation of all or any of its provisions. As it was found that the number of temples to be exempted was far in excess of the number of temples to be regulated by the Ordinance the various proclamations published under section 3 stated that all temples other than those mentioned in the respective schedules annexed to the proclamations were exempted from the operation of section 4 (1) of the Ordinance. Section 4 (1) vests the management of the property belonging to a temple not exempted from the operation of that sub-section in the trustee duly appointed under the provisions of the Ordinance. Section 4 (2) vests the management of the property belonging to a temple exempted from the operation of section 4 (1) in the Viharadipati of the temple referred to in the Ordinance as the Controlling Viharadipati.

It is admitted that the particular devale is a temple within the meaning of the Ordinance (*vide* section 2) and also that it is a temple exempted from the operation of section 4 (1). This devale should therefore come under section 4 (2) if it is regulated by the Ordinance. But section 4 (2) as indicated by me earlier vests the management of the property of such a "temple" in a "Viharadipati". This term "Viharadipati" is defined in the Ordinance as "the principal Bhikkhu of a temple other than a devale or kovila whether resident or not". It is clear from a consideration of these sections that a devale which is not brought under section 4 (1) does not fall under section 4 (2) as there is no Viharadipati for a devale. It is only in a case of a devale not exempted from the operation of section 4 (1) that the Ordinance authorizes the appointment of a trustee who may in certain circumstances be called a Basnayake Nilame. Section 5 of the Ordinance subjects only trustees appointed under the Ordinance and the controlling Viharadipatis to the general supervision of the Public Trustee.

As the devale in this case has not been brought under the operation of section 4 (1) of the Ordinance it falls entirely outside the Ordinance and none of its provisions is applicable to the devale in question.

The case of *Ratwatte v. The Public Trustee*¹ referred to in the judgment of the learned District Judge has no bearing on the question, as the devale in question in that case was the Kataragam Devale, Kandy, which was brought under the operation of section 4 (1) of the Buddhist Temporalities Ordinance by a proclamation published in the *Ceylon Government Gazette* No. 7,896 of December 4, 1931.

The appeal is dismissed with costs.

MOSELEY S.P.J.—I agree.

Appeal dismissed.

¹ (1933) 12 C. L. Rec. 208.