Present: Bertram C.J. and De Sampayo J.

1922.

SILVA v. VIPULASENASABHA *et al.*

343—D. C. Colombo, 37,571.

Buddhist Temporalities Ordinance, No. 8 of 1905, s. 41—Must license be obtained from Governor before gift is made?—Interest transferred not in land, but in proceeds of sale—Is it repugnant to section ?

By a deed plaintiff made an offering of a property for the use of the great *Sangha*, and transferred the possession to the great *Sangha* of the Ramanna sect for the use of the great *Sangha* of the four quarters of the Ramanna sect, under the presidency of the first defendant, and appointed four trustees. If any difficulty arose in regard to the holding of the property, the trustees for the time being were authorized to sell it with the consent of the Chief Terunnanse, and with the proceeds to improve Sri Lankaramaya, where first defendant resided.

Held, that the deed was not obnoxious to the provisions of section 41 of Ordinance No. 8 of 1905.

Under section 41 a license may be taken out from the Governor in respect of a devise, grant, or conveyance already made.

"The object of the section is not to control gifts of money, but to control the permanent tying up of land. The interest conferred in this case is not in the land, but in the proceeds of its sale."

The plaint was as follows:—

(4) The plaintiff was induced to execute the deed No. 940 by the false representation of the defendants that the same was a donation of the said land, subject to certain reservations to trustees to be held by them perpetually for the benefit of the entire priesthood of the Buddhist religion, whereas, and in point of fact, the said deed purports to be a

transfer only of the possession to a certain sect of the Buddhist priests known as the Ramanna sect, and is not a transfer of the *dominium* in perpetuity to trustees for the benefit of the entire Buddhist priesthood.

The said Ramanna sect is a body of Buddhist priests who have no corporate existence in law.

(5) The plaintiff pleads that the said deed No. 940 is liable to be set aside on the grounds and for the reasons following:—

(*a*) That the said deed is inconsistent with and repugnant to the said intention of the plaintiff.

(*b*) That the said deed is bad in law, inasmuch as it is vague, indefinite, and inconclusive as to the transfer of the *dominium*.

(*c*) That the said deed in effect creates a donation of the said land for the benefit of a Buddhist temple without the license of His Excellency the Governor, and is therefore void as repugnant to the provisions of section 41 of the Buddhist Temporalities Ordinance, 1905.

(6) The second, third, and fourth defendants have entered into possession of the said land, and they and the first defendant refuse to give up possession of the said land and to cancel the said deed though thereunto requested to the plaintiff's damage of Rs. 500.

The plaintiff prays—

(1) That the said deed No. 940 be declared null and void.

(2) That the plaintiff be declared to be the owner of the said land.

(2*a*) That the defendants be ejected from the said land, and the plaintiff be placed in possession thereof.

(3) That the defendants be condemned jointly and severally to pay to the plaintiff the said sum of Rs. 500.

The case went to trial on the following issues:—

(1) Is the deed No. 940 of October 25, 1913, bad in law because it purports to be a transfer for the benefit of the Buddhist temple known as Sri Lankaramaya, and the license of the Governor for such transfer has not been obtained in terms of section 41 of the Ordinance No. 8 of 1905 ?

(2) Is the said deed null and void on the ground that it purports to be a transfer to the *Sangha* of the Ramanna sect who are a body of priests having no corporate existence in law ?

(3) Is the deed in favour of any Buddhist temple ?

(4) If Sri Lankaramaya was not a temple, or not held in *sanghika*, is the deed void as a gift for the benefit of an institution which did not at the time exist.

The learned District Judge (W. S. de Saram, Esq.) delivered the following judgment:—

Two translations of this deed have been filed; one by the plaintiff marked B and one by the defendants marked D 1. There is one difference to which my attention has been drawn by either side. In D 1 the property is donated to first defendant as *sanghika* property for the benefit of the priests, including the priests of the Ramanna sect under the incumbency of the first defendant. According to translation B it is not clear in the corresponding passage to whom the property is directly donated, though the persons for whose use it was donated is similarly indicated. According to plaintiff's translation B, the gift is accepted

1922.

Silva v. Vipulasena-sabha

by first defendant, who accepts it as a *Sangha* gift for supervising it for the benefit of the great *Sangha* and the sect in accordance with the said covenants and terms prescribed for *Sanghika* property. It is similarly accepted according to defendants' translation. It has been contended for the plaintiff that there is no donee directly named in the deed. In view of the above facts I am unable to accept that contention. It would appear that the donee was the first defendant who accepted the property as *sanghika* property for the benefit of the class designated. Therefore, in my opinion, the gift cannot fail for want of a donee. It is a gift to first defendant in trust for the designated class of persons. The next point for consideration is for whom he really holds the property in trust. It has been contended for plaintiff that if this is not a gift to the temple, it is, at all events, a gift to a person in trust for the benefit of the temple, and, therefore, it is obnoxious to section 41 of Ordinance No. 8 of 1905. Mr. Hayley has contended that the description of the property gifted as *sanghika* property would indicate the intention on the part of the donor to gift it to the temple; that *sanghika* property cannot be held except for a temple, and therefore, this was nothing more nor less than a gift of *sanghika* property, either to the temple or to somebody in trust for the temple. Nowhere in the translation is it stated that the property is gifted to the temple or in trust for the temple. On the first clause of the deed it is recited to be donated for the use of the " modest, well-conducted, and precept-living *great Sangha* coming from the four quarters including the great *Sangha* of the Ramanna se" ; " on the next clause " the great *Sangha* of the Ramanna sect for the use of the great *Sangha* of the four quarters of the Ramanna sect," and it is provided that at the termination of the two life interests reserved, the trustees mentioned in the deed should include such life interest as the property of the religion as mentioned above, and that on the demise of the life holders their life interests in the two rooms should become the property of the religion for the benefit of the above-mentioned great *Sangha* of the Ramanna sect. If this were really intended as a gift to the temple, or to a trustee in trust for the temple, the donor must, in order to avoid the requirements of a license under section 41 of the Ordinance, have used these phrases to hide his true object.

Much reliance has been placed by plaintiff on the description of the property as *sanghika* property. I see no reason to suppose that the words have been used as a cloak to the intention to gift the property to the temple or for the benefit of the temple.

Therefore the deed has to be interpreted as it stands. I at one time during the course of the argument was inclined to think that the three trustees appointed under the deed may have been intended to be three donees holding the property in trust, but I do not think that that would be a correct interpretation of the deed.

. . . . . .

Moreover, the three trustees have not accepted the gift, but only the trust. Therefore, in my opinion, the only donee is the first defendant as clearly indicated in defendants' translation. Therefore it is not a gift to the temple. It has been contended by plaintiff that the Sri Lankaramaya is a temple. It seems to me, therefore, that, in the absence of any evidence for the plaintiff, I must accept the evidence for the defence that the Sri Lankaramaya was not a temple at the time material to this case. If that be so, then it follows that the property is not held in trust for a temple, and that, therefore, the gift is not obnoxious to the Ordinance. Now, a clue may be obtained as to the use of the words *sanghika* by the donor. For this was not truly a

temple, and he wished to provide that the gift should, as far as possible, be applied like temple property, and used the word *sanghika* property in describing the property donated. It does not follow that by using the word *sanghika* in describing the property that the Sri Lankaramaya was a temple. The property was clearly not intended to be a personal gift to first defendant, but was intended for the use of the designated class of persons, and the Sri Lankaramaya not being a temple, and the donor desiring to preserve the property as much as possible on the lines of *sanghika property*, has, in my opinion, for that reason used the term *sanghika* property.

The District Judge after discussing other questions held as follows:—

(1) That the deed is not a transfer for the benefit of a Buddhist temple, and therefore it is not bad in law because of the absence of a license.
(2) That the deed is not a transfer to the *Sangha* of the Ramanna sect, but to a person in trust for the sect, and that it is not null and void.
(3) In the negative.
(4) The gift was for the benefit of a definite class and not of an institution. I therefore hold that the deed No. 940 of 1913 is a good and valid one. Plaintiff's action is dismissed, with costs.

The translation of deed No. 940 filed by plaintiff was as follows:—

No. 940 B.

KNOW ALL MEN BY THESE PRESENTS—

Whereas under and by virtue of a deed of conveyance No. 3,619 dated November 10, 1905, and attested by Charles Peris of Colombo, Notary Public, I, Wijesunderage Harmanis de Silva Appuhamy of Third Division, Maradana, within the gravets of Colombo, in the District of Colombo, Western Province, am seized and possessed of all that allotment of land with the houses, buildings, and plantations standing thereon, bearing assessment No. 7, situate in Dematagoda on the Kolonnawa road, within the gravets aforesaid, containing in extent 1 rood and 26 perches, and of the value of Rs. 10,000, which property is fully described in the schedule below. I, moved by my strong heartfelt faith in the religion of the Buddha, have made offering (of the said property) reserving life interest in two rooms only of the aforesaid houses to the two persons indicated, subject to the conditions hereinafter mentioned for the use of the modest, well-conducted, and precept-living great *Sangha* coming from the four quarters, including the great *Sangha* of the Ramanna sect under the supervision of Medaduva Sugata Vinayalankara Kavidaja Vipulasenasabha Sthavira of the Ramanna sect, residing at the Sri Lankaramaya belonging to the Ramanna sect, and situated at Dean's Passage road, Maradana, within the gravets aforesaid, so that it (the said gift) may continue to exist so long as the religion of the Buddha last, subject to *Sanghika* rules.

I have offered and transferred the possession hereafter as *sanghika* property of this whole land and the houses, save and except the two rooms hereinafter mentioned and the plantations and the whole income arising therefrom, to the great *Sangha* of the Ramanna sect

1922.

Silva v. Vipulasena-sabha

for the use of the great *Sangha* of the four quarters of the Ramanna sect under the supervision of the aforesaid Vipulasenasabha Swaminvahanse; upon the demise of the Vipulasenasabha Swaminvahanse, who has full power for the supervision of this property, it is hereby directed and authorised that a competent Terunnanse to undertake the supervision should be caused to be elected by the Sangha Sabha of the Ramanna sect.

In order that the income, &c., of this property may be taken good care of, and that (such) income, &c., may in a proper manner and with due accounts be bestowed on the great *Sangha* under the supervision of Vipulasenasabha Swaminvahanse, and that everything that ought to be done in connection therewith may be done, the following three persons, namely, Mr. Watutantrige Simon de Allis of Darley road, within the gravets of Colombo; Mr. Totewatte Don Manuelge Gabriel Silva of Second Division, Maradana, within the aforesaid gravets; and Mr. Ambepitiya Waduge William Gunawardene of Maligakanda, within the aforesaid gravets, are hereby appointed as trustees.

Should any one of the three trustees aforesaid neglect to take proper care of this property, or conduct himself in an unbecoming manner in disobedience to the *Sangha* of the Ramanna sect, or fail to perform those duties which ought to be performed in connection therewith, Vipulasenasabha Swaminvahanse is hereby empowered to remove such trustee immediately at his discretion and appoint another in his stead by writing; upon the death of any one of these three trustees aforesaid, the Terunnanse having the controlling authority for the time being is empowered to appoint a successor.

If any difficulty arise in regard to the holding of the property as it is, the trustees for the time being are hereby authorized upon a written consent of the Chief Terunnane then holding the (controlling) power, to put up the property to public auction, and sell it to the highest bidder, and with the proceeds to improve, due accounts being kept, the Sri Lankaramaya situated in Dean's passage, Maradana, Colombo, and belonging to the Ramanna sect for the benefit of the *Sangha* residing (therein).

In the event of the property being sold, should the trustees act as they like without utilizing it for the purpose of improving the Sri Lankaramaya keeping accounts (of the same), Sri Lankarama Sadhaka Samitiya is hereby authorized to recover the funds by process of law.

Should the said Sri Lankakrama Sadhaka Samitiya be then not in existence, anyone of the *dayakayas* is hereby empowered to act as aforesaid.

Out of the property thus offered, life interest in one of the rooms mentioned above is reserved to me, Wijesunderage Harmanis de Silva Appuhamy, the donor, and life interest in the other to Munasinghe Arachchige James Appuhamy, who lives in the said premises, and has rendered assistance to me.

Should the said Munasinghe Arachchige James Appuhamy during the time he remains here do any act in opposition to me, Harmanis Appuhamy, or to the aforesaid *Sangha* who belong to the religion, or to the trustees, or should he act disobediently and prejudicially, the trustees mentioned above in this deed are hereby empowered to remove him at their discretion, and terminate his life interest in the said room, and include it as the property of the religion as mentioned above.

It is also hereby directed that upon the demise of each one of us, namely, aforesaid Wijesunderage Harmanis de Silva Appuhamy and

Munasinghe Arachchige James Appuhamy, the said two rooms also should become the property of the religion for the benefit of the above-mentioned great *Sangha* of the Ramanna sect.

I declare that I have not heretofore committed any acts whereby another is or may become entitled to the property hereby donated or to any person of it, or to any interest or estate in it, and I covenant for myself, and my heirs, executors, and administrators to warrant and defend this donation in the case of all disputes that may arise in connection therewith, and to give any deed or instrument that may hereafter be required for the purpose of further confirming the premises, I, the aforesaid Vipulasenasabha Bhikshu, do hereby accept the said *sanghika* gift for supervising it for the benefit of the great *Sangha* of our sect in accordance with the said covenants and directions prescribed for *sanghika* (property).

We, the trustees aforesaid, do hereby declare that we consent to act in accordance with the trusteeship and directions and covenants prescribed above, and that we accept (the trusteeship).

Pereira, K. C. (with him *H. V. Perera*), for the appellant.

Jayawardene, K.C. (with him *C. D. Silva*), for the respondents.

Goonesekera, for the intervenient, respondent.

March 15, 1922. BERTRAM C.J.—

This is an action, instituted with reference to a deed of trust dedicating certain property for Buddhist religious purposes, praying that the deed be declared null and void, and that the plaintiff, the original donor, should be declared to be the owner of the land so dedicated. The plaintiff is now dead, and the action is being carried on by his administrator. The deed of trust referred to was executed on October 25, 1913. The subject of the dedication was a valuable property situated in Dean's Passage, and said to be worth Rs. 10,000. The donor recites that "moved by my strong heartfelt faith in the religion of the Buddha, he had made offering of the said property," subject to certain reservation "for the use of the modest, well-conducted, and precept-living great *Sangha* coming from the four quarters, including the great *Sangha* of the Ramanna sect." It was further recited that the sect referred to was under the presidency of the first defendant, who resided at an institution described as Sri Lankaramaya belonging to the Ramanna sect. The donor proceeded to say that he had offered and transferred the possession of the property to the great *Sangha* of the Ramanna sect for the use of the great *Sangha* of the four quarters of the Ramanna sect under the presidency of the first defendant. The deed provided for the management of the property by the first defendant, and for the election of persons to succeed him in the management. It further appointed four trustees. Later, the deed proceeds as follows: "If any difficulty arise in regard to the holding of the property as it is, the trustees for the

1922.

BERTRAM C. J.

Silva v. Vipulasena-sabha

time being are hereby authorized upon a written consent of the Chief Terunnanse then holding the controlling power, to put up the property to public auction and sell it to the highest bidder, and with the proceeds to improve, due accounts being kept, the Sri Lankaramaya, situated in Dean's Passage, Maradana, Colombo, and belonging to the Ramanna sect for the benefit of the *Singha* residing therein."

Mr. H. J. C. Pereira, who appears for the appellant, maintains that this deed is void, on the ground that it is obnoxious to the provisions of section 41 of the Buddhist Temporalities Ordinance, No. 8 of 1905, inasmuch as in substance and intention it is a gift of property for the use of a temple. Further, he says that, if that is not the real object of the gift, the gift does contain a provision which is of itself obnoxious to that section. He refers to the contingent direction that in the event of difficulties arising, the trustees, upon the assent of the Chief Terunnanse, may sell the property and devote the proceeds of the sale for the improvement of the institution above described as Sri Lankaramaya.

I do not think that there is any substance in either of these contentions. With regard to the claim that the deeds come within section 41 of the Buddhist Temporalities Ordinance, it seems to me that it is a perfectly straightforward honest deed, and that its intention is correctly described by the words of dedication. It is a gift of property for the benefit of the *Sangha*, and it follows the ordinary formula of such dedications. All gifts of property of this description, according to Buddhist ecclesiastical law, are made for the benefit of the *Sangha* as a whole. It is by an exception of this principle, which was developed in the course of time, that such a gift may be made to a specified class of persons. This is precisely what is done here. The dedication is made to a specified class of the *Sangha*, namely, the Ramanna sect. These principles are explained in a previous judgment of my own in the case of *Saranankara Unnanse v. Indajoti Unnanse*.[1] The dedication is perfectly general. It puts the property in the hands of the trustees, who are to act under the direction of the manager, and they have full discretion to use the property for the benefit of the sect referred to. It is not suggested by the donor that they are to devote the proceeds of the property so dedicated to any particular temple. Nor can I see any such direction latent in the words of the deed.

Mr. Pereira, however, presses the point that in the latter part of the deed there is a clause which he says gives a temple a contingent interest in the property. It is not necessary for us to discuss whether the institution referred to is in fact a temple. Evidence has been taken on the subject, and the learned Judge has found as a fact that at the date of the deed this institution could not be

[1] *(1918) 20 N. L. R. 394 and 396.*

described as a temple. As I have said, it is not necessary to express an opinion on that point, because I think Mr. Pereira's contention is fundamentally erroneous. It is said that this clause vests an interest in immovable property in this institution. Now, what precisely does this clause direct ? It empowers the trustees, if they experience difficulties, to take a particular course, viz., with the consent of the Chief Terunnanse, that is to say, the manager for the time being, to sell the property and to devote the proceeds to the institution in question. Mr. Pereira suggests that the power given to the trustees so to act with this consent gives the trustees of the institution referred to—said to be a temple—a right of action, calling upon the Court to order a sale of the property, and the application of the proceeds of the sale for the benefit of the institution.

I confess I cannot recognize that the words give any such right of action to the trustees of the supposed temple. The words simply empower the trustees in their discretion, if they experience any difficulty, and if they get the consent of the Chief Terunnanse, to sell the property, and to devote the proceeds to the institution referred to. I fail to see how, within the meaning of the section, this can be described as giving an interest in the property to the institution which would be entitled to the proceeds of the sale. The object of the section is not to control gifts of money, but to control the permanent tying up of land. The interest conferred in this case is not in the land, but in the proceeds of its sale.

But even if these words could be construed as conferring an interest in land, is that interest nullified by the effect of section 41? Section 41 is a re-enactment with very important modifications of an old legislative provision, namely, the Proclamation of September 18, 1819. That Proclamation referred to the Kandyan Provinces only. It expressly recited that no donation or bequest to a temple could by the existing customary law be made without the previous consent or license of the sovereign authority in those provinces; and it declared that it should not be lawful for anyone in those provinces to make a donation or bequest of any land to a vihare without having *first* signified through the Resident or the Government Agent his or her desire to make such bequest or donation, and *without* having received a license to give or bequest the property. That Proclamation was thus in very explicit terms. But in section 41 of Ordinance No. 8 of 1905 (which is in precisely the same terms as the corresponding section in the Ordinance No. 3 of 1889), the phraseology of that original enactment seems to me to have been deliberately and extensively modified. There is no requirement that the consent shall first be obtained. The words are very greatly relaxed. The formula now adopted appears to contemplate the possibility of a gift confirmed by a subsequent license. The words are, " unless a license by the Governor under the public

1922.

BERTRAM C.J.

Silva v. Vipulasena-sabha

seal of the Island be obtained," and, again, " if such license is not obtained." It seems to me that these words were so relaxed with the express intention of allowing in appropriate cases that a license should be taken out in respect of a devise, grant, or conveyance already made. In the present case the supposed right of the temple only arises upon a contingency. It does not vest until the contingency occurs. In my opinion the license in such a case need not be taken out until the event contemplated actually happens.

The point on which I think that the case must be decided is that it has not been made out that the deed in question does confer any interest, or even vest any contingent interest in the property referred to. But even apart from this, the present plaintiff has no *locus standi*. The action must be brought by the heirs; not by the donor or administrator representing the donor.

The plaint asks that the deed should be declared null and void, and that the plaintiff should be declared to be the owner (which I take to mean the beneficial owner) of the said land. I do not think that that claim has been made out. I would uphold the judgment of the learned Judge, and dismiss the appeal, with costs.

DE SAMPAYO J.—I agree.

Appeal dismissed