

1946 Present : Keuneman S.P.J and Jayatileke J.

DHARMARATNA, Appellant, and INDASARA ISTHAVIRA,
Respondent.

390—D. C. Matara, 16,531.

Buddhist Ecclesiastical Law—Right of individual priest to select for himself a particular place in the vihare against the wishes of the controlling Viharadhipathi—Liability to be ejected from the temple premises.

Where the plaintiff, the controlling Viharadhipathi of a Buddhist temple, permitted the defendant, who was his pupil, to occupy temporarily the room in the temple known as the *Poyage* but the defendant persisted in his occupation of the room and refused to leave it though requested so to do—

Held, that the defendant was guilty of contumacy and was liable to be ejected from the temple premises.

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

H. V. Perera, K.C. (with him *L. A. Rajapakse, K.C.*, and *S. W. Jayasuriya*), for the plaintiff, appellant.

N. Nadarajah, K.C. (with him *V. Wijetunge*), for the defendant, respondent.

Our adv. vult.

October 25, 1946. KEUNEMAN S.P.J.—

The plaintiff is the controlling Viharadhipathi of the Agrabodhi Vihare at Weligama. He alleged that the defendant who was his pupil had been disobedient and disrespectful to him, and further was in wrongful and forcible possession of the premises known as the *Poyage*. The plaintiff asked that the defendant be ejected from the premises of the temple. The defendant denied the allegations in the plaint. A number of issues were framed, and after trial the District Judge dismissed the plaintiff's action with costs.

Except for one matter which I shall presently mention, the District Judge has not definitely held whether the acts of disobedience and disrespect were actually done by the defendant. For instance, evidence

was called by the plaintiff to show that the defendant on one occasion took a plate of rice and was about to dash it on the head of the plaintiff, and also other acts of disrespect were spoken to. All that the District Judge says on this part of the case is—"The relationship between the plaintiff and the defendant had deteriorated; acts and counteracts have been done but how, why and when this state of affairs started is not disclosed by the evidence". This finding is not helpful, and the District Judge would have been well advised to hold definitely what acts, if any, were done by the defendant and under what circumstances.

It is fair, however, to mention that none of the "counteracts" are charged against the plaintiff personally.

As the case stands at present, however, we have no help from the District Judge to decide the degree of blame attaching to the defendant as regards these matters.

There is one matter, however, which is clear. The defendant, at first with the permission of the plaintiff, occupied the room in the temple known as the *Poyage*. This has been described as the confessional room of the priests. In this room at the season of "Wass" the priests perform a *Poya kerima* ceremony—which is a sort of mutual confession. There can be little doubt that thereafter the defendant claimed a right of exclusive occupation of that room, with the result that the *Poya-kerima* ceremony could not be held. The defendant, though often requested so to do, refused to leave the *Poyage* and kept the key of the *Poyage* in his possession. Even at the trial he stated that he was not prepared to leave the *Poyage*, and maintained that the plaintiff asked him to leave the *Poyage* without a cause and gave instances of other priests who had occupied the *Poyage* before him.

There can be no doubt that the defendant is making an untenable claim, and in doing so is defying the authority of his tutor, the Viharadhipathi.

In *Piyadasa v. Duramitta*¹ a predecessor of the Maha Nayake or High Priest of the Malwatte Vihare had granted to the defendant in that dispute an informal document authorising him to put up a new building in the temple premises and to use such building as a permanent residence for himself and his pupils. The defendant put up the building at his own expense and after the death of his tutor claimed the right to continue in possession of that house. In this connection de Sampayo J. pointed out that the informal document was insufficient to create an interest in the property, and doubted whether in any event the High Priest had a right to create an interest which was to last beyond his own tenure of office; and added—

"The first defendant, in the next place, falls back upon the general principle that *sangika* property is common to the entire priesthood and that an individual priest cannot be ejected therefrom. The principle was stated by Cayley C.J. in *Dharmajoti v. Tikiri Banda*² as follows: 'A Buddhist priest cannot be ejected from a Buddhist vihare except for some personal cause irrespective of the rights of property'. There is no doubt about this Buddhist law. . . .

¹ (1921) 23 N. L. R. 24.

² (1881) 4 S. C. C. 121.

This right of the priesthood, however, surely does not mean that an individual priest can select for himself a particular place in the vihare independently of the chief incumbent and against his wishes. I think that any persistent assertion and insistence on any such alleged right is a 'personal cause' for which he may properly be asked to leave. Such conduct would amount to contumacy, and in the exercise of ecclesiastical discipline and order the incumbent has, I think, sufficient authority even to eject the offending priest".

This applies with equal or greater force to the present case. It is true that the defendant entered the *Poyage* with the permission of the plaintiff, but it is clear that the permission applied only to a temporary occupation and that that permission has long since been withdrawn. In spite of this the defendant persists in his occupation of the *Poyage* and refuses to leave the room though requested so to do. In the words of de Sampayo J. the defendant has been guilty of "contumacy" and has rendered himself liable to be ejected from the temple premises. In this case however it is not necessary to go so far, and the plaintiff is not unwilling to take an order of ejection of the defendant merely from the *Poyage*.

In all the circumstances I set aside the judgment of the District Judge and enter judgment for the plaintiff, declaring him entitled to possession of the room known as the *Poyage*. The plaintiff will be put in possession of the said room and the defendant will be ejected therefrom. The plaintiff will be entitled to costs in the court below and in appeal.

JAYETILEKE J.—I agree.

Appeal allowed.
