

1945

*Present: Keuneman S.P.J. and Rose J.*PEMANANDA *et al.*, Appellants, and SARANAPALA, Respondent.358-359—*D. C. Tangalla, 4,978.**Buddhist Temporalities—Claim for future maintenance by pupil of incumbent—
Legality of.*

The plaintiff, claiming to be a pupil of a former incumbent of a Buddhist temple, obtained a decree against the trustee of the temple granting maintenance from the date of the plaint up to the date of decree and a further declaration as regards his right to get maintenance.

It was not proved by the defendant that the plaintiff had other means of maintenance.

Held, that the decree for future maintenance was valid.

Quære, whether the plaintiff could not have claimed future maintenance even if he had other means of maintenance.

A PPEAL from a judgment of the District Judge of Tangalla. The plaintiff, as a pupil of a former incumbent of Wanawasa Kuda Vihare, claimed (1) maintenance out of the income of the vihare, (2) residence in that vihare. On the question of maintenance the trial Judge gave judgment for plaintiff in a sum of Rs. 20 per month from the date of action till date of decree and thereafter for such reasonable sum as the trustee can pay as maintenance upon a proper allotment of the income received by him.

H. V. Perera, K.C. (with him C. V. Ranawake), for the first defendant, appellant in No. 358, and first defendant, respondent in No. 359.

E. B. Wikramanayake, for the second defendant, appellant in 359, and second defendant, respondent in 358.

N. E. Weerasooria, K.C. (with him S. R. Wijayatilake), for the plaintiff, respondent in both appeals.

November 29, 1945. KEUNEMAN S.P.J.—

In this case the plaintiff obtained a decree that he was entitled to reside in the Vihare in question and obtained a decree for maintenance from the date of the plaint up to the date of decree and a further declaration as regards his right to get maintenance. There are two

appeals in the case, the first by the first defendant, the Incumbent, and the second by the second defendant, the Trustee. As regards the right of residence, the plaintiff's claim in the plaint was that he was entitled to a particular room in the Vihare and to a quarter share of the income of the Vihare on the footing that he was one of four pupils of his tutor priest, who had been Incumbent of the Vihare, but at the trial this position was not maintained and Counsel for the plaintiff said that he was not claiming any particular room in the temple but merely a right of residence and also that he waived his claim to quarter share of the income and merely claimed a reasonable sum as maintenance out of the income. Counsel for the first and second defendant first took up the position that if the only question raised was the right of residence then perhaps there was no need for the contest at all because all priests are entitled to residence. Later, however, in the course of the proceedings, Counsel for the plaintiff suggested as issue 7 "Is plaintiff entitled to residence in the Wanawasa Kuda Vihare?", and on this occasion Counsel for the first and second defendant said that he did not concede that the plaintiff had such a right as a pupil of Sinhala Ratnapala.

Now, it does appear that this question of residence was not one of the admitted, conceded points and evidence had to be led with regard to it and the issue had to be decided. In my opinion, the issue has been rightly decided and the principal point that arises, as far as the first defendant's appeal is concerned is as to whether there should have been an order for costs made against him. On that point it has to be remembered that the plaintiff himself had considerably modified his position since the date of the plaint and I think that must be taken into account in deciding the question of costs. On the other hand, there appears to have been an issue still subsisting as to whether the plaintiff was entitled even to a right of residence. In all the circumstances I think that as regards that issue the more appropriate order was that there should be no costs awarded either to the plaintiff or to the first defendant in respect of this issue. In the circumstances, in appeal No. 358 I delete the order directing the first defendant to pay the costs of the plaintiff. There will, however, be no order for costs of appeal because the first defendant has raised many other points besides this question of costs in his appeal.

As regards the right of maintenance, Mr. Wikramanayake referred us to the case of *Gunaratne v. Punchibanda*¹ and other cases and argued that "a claim for maintenance implies that the necessity for maintenance exists or has existed, because the person claiming it had no other means of maintenance, or has not been maintained by anyone other than the person from whom maintenance has been claimed". This is what was held by Schneider J. in the 29 N. L. R. case, but Schneider J. applied that argument to what he called past maintenance, meaning thereby maintenance due before the date of the plaint and he cited with approval certain judgments with regard to past maintenance. One of these judgments said that it was necessary before you claimed past maintenance to show expenditure from your own pocket or the incurring of liability

¹ 29 N. L. R. 249.

to pay others. Now, undoubtedly this applies to past maintenance in the sense I have indicated but in the present case what is claimed is not past maintenance but what Schneider J. called future maintenance namely, maintenance after the date of the plaint. It may or may not be a matter of importance that Schneider J. himself dealt with this question a future maintenance but did not apply the arguments which he had adduced in the case of past maintenance. On the other hand the question may well be considered as to whether future maintenance in the sense of maintenance after the date of the plaint is to be placed upon the same footing as past maintenance, namely, maintenance before the date of the plaint. I do not think, however, that it is necessary to decide this point because I think the basis of fact on which Mr. Wikramanayake could possibly succeed has not really been established in this case. In the circumstances appeal No. 359 is dismissed with costs.

ROSE J.—I agree.

Decree varied in Appeal No. 358.

Appeal No. 359 dismissed.
