

1963 Present : Basnayake, C.J., and Herat, J.

HANWELLE PIYARATANA THERA, Appellant, and **JINANANDA THERA**,
Respondent

S. C. 569/60-D. G. Kurunegala, 8852

*Rei vindicatio action-Reliance by plaintiff on s. 23 of Buddhist Temporalities Ordinance-
Burden of proof.*

Plaintiff, who was the controlling Viharadhipathi of a temple, instituted a rei vindicatio action in respect of certain property. He based his claim on the provisions of section 23 of the Buddhist Temporalities Ordinance. The 2nd defendant was the pupil of the deceased bhikkhu who had been the owner of the property.

Held that the burden was on the plaintiff to establish that the property was pudgalika property within the meaning of section 23 of the Buddhist Temporalities Ordinance.

APPEAL from a judgment of the District Court, Kurunegala.

H. W. Jayewardene, Q.G., with D. R. P. Goonetilleke and L. G. Seneviratne, for 2nd Defendant-Appellant.

G. R. Gunaratne, with G. G. Mendis, for Plaintiff-Respondent.

June 18, 1963 .**BASNAYAKE, C.J.-**

This is an action by Kanumale Jinananda Thera, the Controlling Viharadhipathi of the Bulupitiya Vihara, against Jayaweera Mudiyanse-lage Kiri Mudiyanse of Bulupitiya and Hanwella Piyaratana Thera of Eanwella Temple in Devamedhi Udukaha Korale. The plaintiff in his final plaint dated 7th May 1959 states that Bulupitiya Vihara is a temple exempted from the operation of the provisions of section 4 (1) of the Buddhist Temporalities Ordinance No. 19 of 1931, and that he is the controlling Viharadhipathi of that Vihara by virtue of a decree dated 24th August 1951 in the District Court of Kurunegala case No. 6582. He now asks that the three lands referred to in the schedule to the plaint be declared the property of Bulupitiya Vihara and that the defendants be ejected therefrom and for damages.

These lands were purchased on 20th January 1904 on deed No. 19980 (PI) attested by Notary Madawala Ratnayake Mudiyanse-lage Ranhamy, By that deed Nettipalagedera Sonuthara Thera of Ratmale Temple and his brothers Mapa Mudiyanse-lage Mudalihamy, Ausadahamy and Hetuhamy sold for Rs. 300 to Niyangoda Seelaratana Thera of Bulupitiya Temple the land described therein as-

" All that Pillewa now garden only, in extent of one lahas of kurakkan sowing together with the plantations thereon, excluding its adjoining field called Kudawewe Kumbura of three pelas of

paddy sowing extent situated at Buluptiya in the aforesaid Korale and bounded together on the East by Pansalwatta on the South by Pillewa and field of Ranmenika on the West by Pinkumbura and Badewetiya to the land and on the North by hena belonging to Appuhamy. "

The plaintiff relies on section 23 of the Buddhist Temporalities Ordinance and claims that by virtue of that enactment property purchased on PI should go to the Bulupitiya Vihara. Section 23 reads-

" All pudgalika property that is acquired by any individual bhikkhu for his exclusive personal use, shall, if not alienated by such bhikkhu during his life-time, be deemed to be the property of the temple to which such bhikkhu belonged unless such property had been inherited by such bhikkhu."

There is no evidence that this property was acquired for the exclusive personal use of Seelaratana Thera whose pupil is the 2nd defendant-appellant. So that the question of the application of section does not arise as the plaintiff is not entitled to call in aid that section unless he can establish that the property is pudgalika property acquired by the deceased for his exclusive personal use. The plaintiff has failed to establish that this property was acquired for the exclusive personal use of Seelaratana Thera. There is also no evidence of dedication. The learned District Judge was wrong in giving judgment for the plaintiff. We therefore allow the appeal and dismiss the plaintiff's action with costs.

HERAT, J.-I agree.

Appeal allowed.

- End -