

Pannananda Thero V. Sumangala Thero

367/1965

Present: H. N. G. Fernando, A. C. J., and Abeyesundere, J.

T. PANNANANDA THERO, Appellant, and G. SUMANGALA THERO, Respondent

S. C. 196/64 (Inty.)—D. C. Kurunegala, 152/L

Civil Procedure Code—Section 404—Buddhist ecclesiastical law—Dispute as to right to possess the temporalities of a Vihare—Death of plaintiff pending action—Substitution of successor in title—Procedure.

Where a plaintiff who sues for a declaration that he is the lawful Viharadhipathi of a Vihare, and entitled to possess the temporalities thereof, dies during the pendency of the action, a person who can establish that, under the Buddhist ecclesiastical law, he would be the successor in title to the incumbency upon the assumption that the deceased plaintiff himself had been the incumbent is entitled to substitution under section 404 of the Civil Procedure Code.

APPEAL from an order of the District Court, Kurunegala.

H. W. Jayewardene, Q.C., with N. R. M. Daluwatte, for the Petitioner-Appellant.

N. E. Weerasooria, Q.C., with W. D. Gunasekere, for the Defendant-Respondent.

August 27, 1965. **FERNANDO, A. C. J.—**

In this action the plaintiff has sued for a declaration that he is the lawful Viharadhipathi of a Vihare, and entitled to the temporalities thereof, and also for possession of a number of properties stated to be temporalities of the Vihare. It is very clear from the pleadings that the dispute between the plaintiff and the defendant chiefly

concerned the question of the right to possess the temple properties.

After trial the learned District Judge dismissed the plaintiff's action and an appeal against that dismissal was taken to this Court. During the pendency of this appeal the plaintiff died, and an application was made to this Court for substitution of the present petitioner in place of the plaintiff, in order to enable the petitioner to prosecute the pending appeal. That application was referred to the District Court for determination. There the petitioner sought to prove that he has succeeded the plaintiff as Viharadhipathi of the temple, and to have himself substituted on that basis. The learned District Judge, however, refused the application for substitution holding that there was no legal provision which enabled the petitioner to have himself substituted by way of summary procedure.

In my opinion the difficulty is met by section 404 of the Civil Procedure Code. The title to temple property is vested by law in the controlling Viharadhipathi for the time being (subject of course to certain exceptional cases). Therefore, on the assumption that the deceased-plaintiff was the incumbent of the Vihare, then, on his death, the title to the temple property is vested by law in his successor. If, therefore, the present petitioner is the lawful successor of the plaintiff, the title to the property, which is the subject of this action, has now vested in him. The position taken up by the petitioner, therefore, is that there has been by operation of law a creation or a devolution in his favour of interests in the lands which are the subject of this action ; and if he can establish to the satisfaction of the District Court that he would be the successor in title to the incumbency upon the assumption that the deceased-plaintiff himself had been the incumbent, then the petitioner will be entitled to substitution under section 404. The correctness of that assumption will of course have to be decided in the substantive appeal.

The order appealed from is set aside and the case is remitted to the District Court for a determination of the question whether the petitioner will be, under the Buddhist Ecclesiastical Law, the

successor to the incumbency, if any, held by the deceased-plaintiff. If that question is determined in favour of the petitioner, he will be substituted, subject to any appeal to this Court. The costs of the former proceedings in the District Court, and the costs of this appeal will abide the determination of the District Judge. The substantive appeal (No. 55/61F) can be listed for argument only after this order has been complied with.

ABEYESUNDERE, J.—I agree.

Order set aside.