

# Pannavasa Thero V. Sudassi Thero

512/1958

Present: Sansoni, J., and T. S. Fernando, J.

**K. PANNAVASA THERO, Appellant, and D. P. SUDASSI THERO, Respondent**

**S. C. 526/56—D. C. Kurunegala, 6202**

*Buddhist ecclesiastical law—Proof that a temple is Sanghika property—Circumstance when dedication may be presumed—Appointment of incumbent by dayakayas—Invalidity—Buddhist Temporalities Ordinance, No. 9 of 1931, s. 41.*

Where there is evidence that a Buddhist temple came into existence before any living person was born, proof of a formal dedication of the temple as Sanghika property is not essential and a dedication may be presumed, since it is not possible to call witnesses who can speak to that matter from personal knowledge.

Corroborative evidence of a Buddhist monk's claim to the incumbency of a temple on the basis that it is Sanghika property may be afforded by admissions made by a senior co-pupil against his own interests and in the plaintiff's favour in a document executed under section 41 of the Buddhist Temporalities Ordinance.

Where a temple is Sanghika property and the rule of pupillary succession applies to it, the dayakayas have no power whatsoever to choose an incumbent.

**APPEAL** from a judgment of the District Court, Kurunegala.

*H. W. Jayewardene, Q.C., with D. R. P. Goonetilleke, for the Defendant-Appellant.*

*N. E. Weerasooria, Q.C., with T. B. Dissanayake, B. S. C. Ratwatte and G. Mudannayake, for the Plaintiff-Respondent.*

*Cur. adv. vult.*

December 9, 1958. **SANSONI, J.—**

The plaintiff, a Buddhist monk claiming to be the incumbent of the Wewagedara Temple brought this action against the defendant, who is also a Buddhist monk, complaining that the defendant had entered into forcible possession of the temple. The plaintiff prayed that he be declared the incumbent, that the defendant be ejected from the temple and that he be placed in possession thereof. The plaintiff claimed the incumbency by pupillary succession from the original incumbent Attadassi Thero, who died leaving Saranapala Thero, his senior pupil to succeed him. In the original plaint the plaintiff claimed that he was the senior pupil of Saranapala and thereby succeeded to the incumbency but he amended his plaint later and claimed that Saranapala had appointed him his successor in the incumbency of this temple.

The defendant in his answer and amended answer raised three defences :

(1) that the Wewagedara Temple now in existence was never dedicated to the Sangha, (2) that the plaintiff had abandoned the temple about 20 years earlier, (3) that the defendant had been invited to the temple by the dayakayas and had accepted the invitation.

There can be no doubt that there had at one time stood a temple known as the Wewagedara Temple on the land adjacent to the land on which the present temple stands. That old temple stood on a land called Pahala Pansalewatta, while the present temple stands on a land called Hettiyadalupothhehena. From the evidence on record it is far from easy to say when the new temple was built, yet that is a vital matter for decision in this case.

The plaintiff who was born in 1879 and was robed in 1894 has said that he lived in the present temple from 1894 until he was ousted in 1949. He also said that he was robed in the present temple by his tutor Saranapala, and that it was Saranapala who built the temple

now standing. Even though the plaintiff's evidence is not entirely consistent, it points to the new temple having been in existence in 1894, for the plaintiff has stated that he was robed there. One may also gather from his evidence that the old temple on Pahala Pansalewatta had ceased to exist before the plaintiff came to know of things, because the plaintiff also claimed to have heard of priests having been resident in the old temple, and nowhere in his evidence has he said that he ever saw that temple.

But the question whether the present temple was built within the memory of any living person or not has been answered plainly by the witnesses called for the defendant: the oldest of them is Mohotta who was 80 years old when he gave evidence. He said that when he first came to know of things there was Henegedara Priest in the Wewagedara temple, and this priest was followed by Nanneriya priest. When the latter left the temple, a dasa sil upasaka came to live in it, and he was followed by the plaintiff. It is clear therefore from his evidence that the present temple was in existence some time before the plaintiff was robed in 1894. He has not spoken to having seen the old temple, and he seems to have called the land on which the present temple stands Pansalewatta, for he said, " I know Pansalewatta, on that Pansalewatta there was a temple. There was a temple as long as I know. It may be that temple was built before I was born..... before I was born it was called Pansalewatta ". This evidence indicates that the present temple came into existence before any living person was born.

There is also the evidence of the defendant's witness Tikka who had lived in this village all his life, and worshipped in this temple from the time he was a boy. This witness was 60 years old when he gave evidence, and he said that he had heard that on the land adjoining the present temple land there was an old temple, but he had not even seen the site on which it had stood. He is not able to say who built the present temple, but he said that the land on which it stands had been set apart for the temple even before he was born.

The evidence of these two witnesses called by the defendant strongly supports the position taken by the plaintiff's Counsel at the trial (for there is a full note of his submissions) that the present temple is an old one whose origin no living person can speak to. On the other hand, the position of the defendant's Counsel at the trial seems to have been that this temple came into existence within living memory, and in the absence of proof of its dedication it could not be held that it was Sanghika property vested in an incumbent.

The learned District Judge took the view that the present temple came into existence after 1890, and he also thought that the old temple ceased to exist after 1890. I have examined closely the evidence of the plaintiff and the two oldest witnesses called by the defendant: and I am not able to uphold such a view. The correct position, I think, is that the present temple was in existence before the plaintiff or any of the other witnesses were born. Upon that view proof of a formal dedication is not essential and a dedication may be presumed, since it is not possible to call witnesses who can speak to that matter from personal knowledge.

The plaintiff has given evidence of a dedication ceremony, but his evidence regarding dedication is not easy to follow. He speaks of a Sanghika ceremony in or about 1912, but he also speaks of a dedication after he made a purchase, and the earliest deed of purchase which he has produced is P7 of 1922. The learned District Judge took the view that a dedication took place as and when a building came on the land. Perhaps he thought that in connection with the dagoba and the other buildings that came up subsequently there were ceremonies of dedication, but the defendant's witnesses were emphatic that there was never a dedication ceremony on the land and I think their evidence on this point is probably true so far as it relates to a dedication of the temple itself.

Strong corroboration of the plaintiff's claim that the temple is Sanghika property is afforded by the Declaration P11 made in 1932 by Gunaratana, the plaintiff's co-pupil. According to that document, which was executed under section 41 of the Buddhist Temporalities Ordinance, No. 19 of 1931, Gunaratana was robed in March 1894

by Saranapala who has been described as the late Adhipathi of Potgul Vihare in Hanguranketa, Potgul Vihare in Siyambalagoda, Wewagedara Temple and Madawa Vihare. Gunaratana has also signed declaration P2 made in 1932 by the plaintiff's pupil Buddharakkita in which Gunaratana describes himself as Viharadhipathi of the Potgul Vihare in Hanguranketa and Siyambalagoda, while the plaintiff is described in it as the Viharadhipathi of Wewagedara Vihare. As the learned District Judge says, this is an admission by Gunaratana against his own interests and in the plaintiff's favour : for Gunaratana was senior to the plaintiff as a pupil of Saranapala.

There was also another pupil of Saranapala called Ratanapala, the most senior of Saranapala's pupils, whose declaration is D8. The plaintiff, as I have already said, first came into Court as the senior pupil of Saranapala, and later amended his plaint and claimed the incumbency on the ground that Saranapala had appointed him to be the incumbent of Wewagedara Vihare. The learned District Judge has held in favour of the plaintiff on this issue ; he considered that the declaration P2 made by Gunaratana strongly supported the plaintiff on this point. Another fact which supports it is that the plaintiff and no other pupil has resided in this temple and administered its affairs from the time of Saranapala's death in 1913 until the dispute arose in 1949. The plaintiff has purchased shares of the land called Hettiyadalupothehena on several deeds between 1922 and 1951. His explanation was that he was buying up the interests of co-owners who owned shares of the land adjoining that portion on which the temple stood. This is a reasonable explanation which must be coupled with the plaintiff's evidence that he was buying these interests on behalf of the temple. Not a single document has been produced to show that either Gunaratana or Ratanapala ever exercised powers in respect of the temple, and I think the learned District Judge's finding that the previous incumbent Saranapala nominated the plaintiff as his successor is the only possible one on the evidence.

The learned District Judge has also rejected the defence of abandonment which was put forward in the answer, and was sought

to be proved by the witnesses called for the defence. It is clear from the evidence that the plaintiff has lived in the temple for about 50 years and officiated as incumbent for very many years uninterruptedly until his ouster in 1949. In 1932 there seems to have been an effort made by a priest called Dharmananda Unnanse to dislodge him. The dispute was inquired into by the Magistrate, who visited the temple and made inquiries at the spot. The Magistrate's order P3 made on 8.12.32 begins : " This is an ancient temple in a Duraya village populated almost entirely of Duraya people ". He later on says : " the Wewagedara priest Sudassi Unnanse is present and states that he has been conducting the services in this temple for the last 40 years". This is a reference to the present plaintiff. The defendant's witness tried to make out that the plaintiff was in this temple for 20 years on the invitation of the dayakayas, but that he had left the temple 15 or 20 years ago. They were unable to mention the name of any priest who officiated between the plaintiff's departure and the year 1949, and that shows the falsity of their evidence on this point. Of course the dayakayas have no power whatsoever to choose an incumbent, since, as I have already held, the temple is Sanghika property and the rule of pupillary succession applies to it.

Another point urged before us on behalf of the defendant-appellant was that although the plaintiff may have been ousted by certain villagers in September, 1949, the defendant took no part in that ouster and could not therefore be sued in this possessory action. It would seem that a crowd of villagers threatened the plaintiff and forced him to leave the temple on the 20th or 21st September, 1949. The plaintiff complained to the Police on 22nd September and Sub-Inspector Pilapitiya went to the temple and saw tiles, doors and locks being removed. He charged five persons with criminal trespass and other offences, and the cases were compounded on the 17th October, 1949. When the plaintiff thereafter tried to go back to the temple he was prevented from doing so and he petitioned the Police again on 15th November. Sub-Inspector Pilapitiya went to the temple and found the defendant in it. The defendant informed him that he had come there on the 5th of November on the invitation of the dayakayas, and he refused to vacate the temple.



Now it has been urged that the defendant had nothing to do with the dispossession of the plaintiff in September and he could not therefore be sued merely on the ground that he entered into possession in November. I think the correct way of looking at the dispute is to regard the ouster of the plaintiff in September as only a part of an unlawful transaction which continued till November, and the defendant's entry as another part of the same transaction. The plaintiff was dispossessed in September by the villagers who forced him to leave the temple, but he was prevented from re-entering into possession in November by the act of the defendant who refused to leave the temple which the plaintiff alone had a right to possess. The defendant could not have been unaware of the earlier history of the dispute and of the event which took place in September. He has not given evidence, and he has made no effort to dispel the suspicions which were attached to his act of entering into possession so soon after the plaintiff was dispossessed. It would be taking far too technical a view of the nature and purpose of a possessory action to hold that the remedy is not available to the plaintiff on the facts of this case.

I would dismiss this appeal with costs.

**T. S. FERNANDO, J.**—I agree.

*Appeal dismissed.*