

Therunnanse V. Andrayas Appu

286/1965

Present: Sansoni, C.J., and Tambiah, J.

N. H. THERUNNANSE, Appellant, and K. ANDRAYAS APPU and others, Respondents

S. C. 109/64—D. C. Galle, 6,240/L

Buddhist ecclesiastical law—Senior pupil of Viharadhipati—Action instituted by him in respect of Sanghika property—Maintainability—Civil Procedure Code, s. 247—Buddhist Temporalities Ordinance (Cap 318), ss. 4, 18, 20, 26.

Where the senior pupil of the Viharadhipati of a temple instituted an action under section 247 of the Civil Procedure Code claiming that certain Sanghika property belonging to the temple could not be seized in execution of a decree entered against the Viharadhipati—

Held, that the plaintiff had no status to file the action, because section 20 of the Buddhist Temporalities Ordinance says in unmistakable terms that all property belonging to a temple vests only in the trustee or Viharadhipati of the temple. Sections 26 and 18 of the Ordinance were not applicable in the present case.

APPEAL from a judgment of the District Court, Galle.

H. W. Jayewardene, Q.C., with *Ralph de Silva* and *I. S. de Silva*, for Plaintiff-Appellant.

J. W. Subasinghe, for 1st to 3rd Defendant-Respondents.

Cur. adv. vult.

May 21, 1965. SANSONI, C.J.—

This is an action filed under Section 247 of the Civil Procedure Code by an unsuccessful claimant. The Plaintiff is the senior pupil of Walawe Pematatana Thero, the Viharadhipati of Paragoda Raja

Maha Vihara. The latter as such Viharadhipati brought an action, D. C. Galle Case No. L. 5753, against the present 1st, 2nd and 3rd defendants for a declaration of title to lot C of Tiruwanaketiya Pansalawatte. The case was settled by the entering of a consent decree whereby the 1st and 2nd defendants and five others were declared entitled to that lot C and were also awarded a sum of Rs. 500 as costs against the present 4th defendant. In execution of that decree and to recover the sum of Rs. 500 the judgment-creditors caused the Fiscal to seize lot D which adjoins lot C. The present Plaintiff preferred a claim to lot D on the grounds that he was the senior pupil of the Viharadhipati and the lot could not be seized because it was Sanghika property. His claim was dismissed and he brought the present action.

The learned Additional District Judge dismissed the action on the ground that the Plaintiff had no status to maintain it, as the property was not vested in him and he has no right, title or interest recognizable in law to the property seized.

It is not in dispute that the lot seized is part of the temporalities of the Vihara, and is Sanghika property. The principal question we have to decide is whether the Plaintiff, who is not the Viharadhipati, has any right to the land seized which would enable him to say that the land should not be sold in execution of the decree entered against the Viharadhipati.

Section 20 of the Buddhist Temporalities Ordinance, Cap. 318, reads:— "All property, movable and immovable, belonging or in anywise appertaining to or appropriated to the use of any temple, together with all the issues, rents, moneys, and profits of the same, and all offerings made for the use of such temple other than the pudgalika offerings which are offered for the exclusive personal use of any individual bhikkhu, shall vest in the trustee or the controlling Viharadhipati for the time being of such temple, subject, however, to any leases and other tenancies, charges, and incumbrances already affecting any such immovable property."

This section enlarges the interest which section 4 vested in the Viharadhipati. That section reads:— "(1) The management of the

property belonging to every temple not exempted from the operation of this subsection shall be vested in a person or persons duly appointed trustee under the provisions of the Ordinance. (2) The management of the property belonging to every temple exempted from the operation of the last preceding subsection but not exempted from the operation of the entire Ordinance shall be vested in the Viharadhipati of such temple, hereinafter referred to as the 'controlling Viharadhipati'."

In view of the very clear words of section 20 we are unable to uphold Mr. Jayewardene's argument that the plaintiff, because he is a pupil of the Viharadhipati, has some right in this temple property. No doubt he has a right to make a claim against the Viharadhipati that he is entitled to maintenance from the common store of the Vihara. The Viharadhipati would use the rents and profits of the temple lands to meet such a claim. But that right which a priest has is a personal right against the Viharadhipati and not a right in the land.

Mr. Jayewardene's submission that the sale of property belonging to a temple is now governed by section 26 of the Ordinance is correct. Section 26 reads:— "No mortgage, sale or other alienation of immovable property belonging to any temple, shall be valid or of any effect in law: Provided that this section shall not apply either to a paraveni pangu or to a sale in execution of any property if the writ for the seizure thereof was issued after written notice of three months to the Public Trustee."

It will be seen that the proper time for applying the provisions of section 26, so far as this action is concerned, would be after the impugned mortgage sale or other alienation has taken place. Section 26 does not prohibit the seizure of a temple land in execution. It is common ground that no written notice was given to the Public Trustee, but even this circumstance does not help the Plaintiff. The section does, however, contemplate the seizure and sale of temple land in execution of a writ.

Section 18 which is relevant to this question enables a controlling Viharadhipati of a temple to sue under the name and style of

"trustee of—temple" for the recovery of any property vested in him under the Ordinance, as the 4th Defendant did in Case No. L. 5753. No objection can be taken here to the decree entered in that action, although Mr. Jayewardene seemed to suggest that it was a collusive one.

We need say no more, except that we agree with the learned Judge's finding that the Plaintiff had no status to file the present action, because section 20 says in unmistakable terms that all property belonging to this temple vests in the Viharadhipati.

The appeal is dismissed with costs.

TAMBIAH, J.—I agree.

Appeal dismissed.