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15, 1960

IN THE PRIVY COUNCIL

No. 10 of 1959

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON

B E T W E E N

REV. MAPITIGAMA BUDDHARAKKITA THERO,  
TRUSTEE OF THE KELANIYA RAJAMAHA  
VINARE, KELANIYA (Plaintiff)

Appellant

- and -

1. DON EDMUND WIJewardena
2. DON ALBERT TARRANT WIJewardena
3. PHILIP SEVALI WIJewardena  
(Defendants)

Respondents

RECORD OF PROCEEDINGS

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Solicitors for the Appellant.

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Solicitors for the Respondents.

IN THE PRIVY COUNCIL

No. 10 of 1959

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON

UNIVERSITY OF LONDON  
W.C.1.  
- 7 FEB 1961  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

B E T W E E N

REV. MAPITIGAMA BUDDHARAKKITA THERO,  
TRUSTEE OF THE KELANIYA RAJAMAHA  
VIHARE, KELANIYA (Plaintiff)

Appellant <sup>49803</sup>

- and -

1. DON EDMUND WIJewardena
2. DON ALBERT TARRANT WIJewardena and
3. PHILIP SEVALI WIJewardena  
(Defendants)

Respondents

RECORD OF PROCEEDINGS

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1.

IN THE PRIVY COUNCIL

No. 10 of 1959

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON

B E T W E E N

REV. MAPITIGAMA BUDDHARAKKITA THERO,  
TRUSTEE OF THE KELANIYA RAJAMAHA  
VIHARE, KELANIYA (Plaintiff) Appellant

- and -

10 1. DON EDMUND WIJEWARDENA  
2. DON ALBERT TARRANT WIJEWARDENA and  
3. PHILIP SEVALI WIJEWARDENA  
(Defendants) Respondents

RECORD OF PROCEEDINGS

No. 1

PLAINT

IN THE DISTRICT COURT OF COLOMBO

REV. MAPITIGAMA BUDDHARAKKITA THERO,  
TRUSTEE OF THE KELANIYA RAJAMAHA  
VIHARE, KELANIYA Plaintiff

20

Vs.

1. DON EDMUND WIJEWARDENA of Turret Road,  
Colombo  
2. DON ALBERT TARRANT WIJEWARDENA of  
"Sriyala" Elliot Road, Borella, and  
3. PHILIP SEVALI WIJEWARDENA of No.11,  
Galle Face Court, Colombo Defendants

On this 15th day of October, 1954.

The Plaintiff of the Plaintiff above named  
appearing by Somasiri Gunasekera, his Proctor  
states as follows:-

In the  
District Court  
of Colombo

No. 1  
Plaint.  
15th October,  
1954.

In the  
District Court  
of Colombo

No. 1

Plaint.

15th October,  
1954

- continued.

1. The defendants reside within the local limits of the jurisdiction of this Court.

2. The Plaintiff is the Trustee of the Rajamaha Vihara, Kelaniya duly appointed as such in terms of the Buddhist Temporalities Ordinance.

3. By her Last Will No. 4115 which was duly admitted to Probate in Testamentary Proceedings No. 9566 of the District Court of Colombo the late Mrs. Helena Wijewardene made the following bequest:-

"I give two hundred and fifty acres of all that paddy field called Kalawewa Farm situate in the North Central Province Ceylon to the Rajamaha Vihare Kelaniya. The selection of the two hundred and fifty acres I leave to my Executors and the management of the same for the benefit of the said Vihare. I entrust to my Trustees hereinafter named". 10

4. By Deed No. 4489 dated 27th November 1942 attested by G.A.H. Willie, Notary Public, the late Mr. D.R. Wijewardena and the 1st defendant above named as Executors of the Estate of the late Helena Wijewardena conveyed and transferred 250 acres of land more fully described in the Schedule hereto to the Rev. Mapitigama Dhammarakkita Thero, High Priest as Trustee of the said Rajamaha Vihare Kelaniya and his successors in office as Trustee. 20

5. The said Deed of Transfer further provided that the transfer was "subject always to the conditions in the said Will expressly contained namely that the management of the said property for the benefit of the said Vihara shall be in the Trustees in the said Will named or provided for and their successors duly appointed in terms of the said Will, such Trustees being at present the said Don Richard Wijewardena, Don Edmund Wijewardena, and Don Louis Joseph Wijewardena". 30

For a First cause of action.

6. The plaintiff states that the Trustees named or provided for in the said Will and their successors duly appointed in terms of the said Will have as such Trustees managed and possessed the land more fully described in the Schedule hereto and have received the income thereof from the date of the said transfer up to date. The defendants above 40

named now occupy the office of such Trustees having been duly appointed thereto.

In the  
District Court  
of Colombo

No. 1

Plaint.

15th October,  
1954

- continued.

10 7. The Plaintiff states that the Trustee of the Rajamaha Vihara is entitled in law to property belonging to or in anywise appertaining to or appropriated to the use of the said Vihare, but the said Trustees have failed to pay over to him the rents and profits derived from the said land that had to be managed by them for the benefit of the said Vihara.

8. The plaintiff as Trustee of the said Rajamaha Vihara has called upon the defendants to account for the said rents and profits but they have wrongfully refused to do so and have taken up the position that the Plaintiff is not entitled to any information as to the income.

20 9. A cause of action has accrued to the Plaintiff to sue the defendants for an accounting in respect of the income of the said lands more fully described in the Schedule hereto for the period from 27th November 1942 up to date of action. The Plaintiff states that the nett income for the said period may reasonably be assessed at Rs.350,000/-.

For a Second cause of action:

30 10. The Plaintiff states that the said lands described in the Schedule hereto are property... appropriated to the use of Rajamaha Vihara and is vested in him and that he is in Law entitled to possess and manage the said lands notwithstanding any provisions in the Last Will No. 4115 and deed of transfer No. 4489.

11. The defendants are possessing and managing the said lands in derogation of Plaintiff's rights and have denied his right to receive the income or even the details and information relating to it.

12. A cause of action has thus accrued to the Plaintiff to sue the defendants for a declaration of his right to possess the said lands and for ejectment of the said defendants therefrom.

Wherefore the Plaintiff prays:-

40 (a) that the defendants be ordered to account for the income from the said lands more fully described in the Schedule and that judgment be entered in favour of the plaintiff for such sum as may be found due to him on such accounting.



In the  
District Court  
of Colombo

No. 1

Plaint.

15th October,  
1954

- continued.

- (b) in default of such accounting judgment be entered in favour of the Plaintiff ordering the Defendants jointly and severally to pay to the Plaintiff the sum of Rs.350,000/-.
- (c) for interest at the rate of Six per centum per annum on all sums found due from the time they became due till date of action and thereafter at the legal rate on the aggregate amount of the decree till payment in full
- (d) for a declaration that the Plaintiff is entitled to possess the lands more fully described in the Schedule hereto and for ejectment of the Defendants and all those holding under the Defendants from the said lands 10
- (e) for costs of suit, and
- (f) for such other and further relief not specifically prayed for as to this Court shall seem meet.

Sgd. S. Gunasekera  
Proctor for Plaintiff.

20

The Schedule above referred to

All those lands called Kalawewa Mukalane and Kusalanagamawila forming a divided part of the above situated in the villages Palugaswera Kalawewa and Alahapperuwagama in Kelegama Korale in the District of Nuwarkalawiya North Central Province and bounded on the North by Crown land called Kusalanagamawila forming part of Kusalanagama and Parana Ela, East by Crown lands called Kalawewamukalana and Berawagalwila forming parts of Ukkulanapallama Village, South by Road to Kalawewa and on the West by Railway Reservation Ela Parana Ela and Lot B to be allotted to Mr. D.W. Wijewardena's children and containing in extent two hundred and fifty acres (A250.R0.PO) as per Plan No. 278 dated 10th May 1942 made by D. Attgalle Licensed Surveyor 30

Sgd. S. Gunasekera  
Proctor for Plaintiff.

Settled by  
G.T. Samarawickrema Esqr.,  
E.G. Wickremanayake Esqr. Q.C.  
Advocates.

40

No. 2

ANSWER of the 1st and 3rd DEFENDANTS

IN THE DISTRICT COURT OF COLOMBO

REV. MAPITIGAMA BUDDHARAKKITA THERO,  
TRUSTEE of the KELANIYA RAJAMAHA  
VIHARE, KELANIYA

Plaintiff

Vs.

1. DON EDMUND WIJewardena of Turret

Road, Colombo

2. DON ALBERT TARRANT WIJewardena of  
"Sriyala" Elliot Road, Borella and

3. PHILIP SEVALI WIJewardena of No.11  
Galle Fact Court, Colombo

Defendants

10

On this 26th day of January, 1955.

The answer of the 1st and 3rd Defendants above named appearing by their Proctor Henricus Abraham Abeywardene states as follows:-

1. These defendants admit the averments in paragraphs 1, 2, 3, 4 and 5 of the plaint.

20

2. These defendants deny the averments in paragraphs 8, 9, 10, 11 and 12 of the plaint.

3. Answering paragraph 6 of the plaint these defendants admit the averments therein and state that the 2nd defendant, who is now dead, resigned from the office of Trustee on or about the 2nd of July 1953 and that P.R. Wijewardene was appointed a Trustee in place of the said 2nd defendant.

30

4. Answering paragraph 7 of the plaint these defendants deny that the plaintiff is entitled to be paid the income derived from the land described in the Schedule to the plaint.

5. Further answering these defendants say that the Last Will mentioned in paragraph 3 of the plaint creates a charitable trust over the said land for the benefit of the Vihare mentioned in the plaint. The power to use the income of the said trust property for the benefit of the said

In the  
District Court  
of Colombo

No. 2

Answer of the  
1st and 3rd  
Defendants.

26th January,  
1955.

In the  
District Court  
of Colombo

No. 2

Answer of the  
1st and 3rd  
Defendants,  
26th January  
1955  
- continued.

Vihare is vested in these defendants as trustees  
of the said Last Will along with the other  
trustee P.R. Wijewardene.

Wherefore these defendants pray for a dismissal of  
the Plaintiff's action, for costs and for all such  
other relief as to the Court may seem meet.

Sgd. H.A. Abeyewardene

Proctor for 1st and 3rd Defendants.

Settled by:  
Kingsley Herat  
H.V. Perera, Q.C.  
Advocates.

10

No. 3

Issues framed.  
2nd June, 1955.

No. 3

PROCEEDINGS BEFORE THE DISTRICT COURT  
AND ISSUES FRAMED

7338/L

2.6.55.

Mr. Adv. E.G. Wikramanayake Q.C. with  
Mr. G.T. Samarawickrema for Plaintiff,  
instructed by Mr. S. Goonesekera  
Mr. Adv. Kingsley Herat with Mr. Adv.  
Felix Dias for Defendant instructed by  
Mr. H.A. Abeyewardene.

20

Mr. Wikramanayake opens his case.  
He says that on deed No. 4489 of 1942, 250 acres  
depicted in plan No. 278 of 1942 was granted to the  
Plaintiff by the executors. No income had been  
given to the Plaintiff at any time by the Trustees.  
He claims the income which he values at Rs.350,000/-  
from 27.11.52. He also asks that the Plaintiff be  
put in possession of the land. The 1st Defendant  
was the Trustee under the Last Will of Mrs.  
Wijewardene. There were two other trustees, Messrs.  
D.A.T.Wijewardena and P.C.Wijewardena were appoint-  
ed by Deed No. 440 as Trustees with the 1st Defend-  
ant. Mr. D.A.T.Wijewardena has since died. From  
his point of view, no successor has been appointed,  
because the appointments must be by notarial deed.  
But if the Defendants so desire, he has no object-  
ion to any trustee who is appointed being added as  
a party. He reads section 20 of the Buddhist  
Temporalities Ordinance. He says that the property  
has vested in the trustee of the Vihare.

30

40

Mr. Herat states his case. He states that the entire action is misconceived. He says that Mrs. Wijewardena, by her last Will Clause 5 which is set out in para 3 of the plaint, gave 250 acres out of the paddy field of Kalawewa Farm to the Rajamaha Vihare, Kelaniya. The Last Will appointed executors and trustees. She owned about 1000 acres of a property called Kalawewa Farm and out of that 250 acres were allotted to the Vihare. His position is that this is a Trust outside the Buddhist Temporalities Ordinance. He submits that this is a charitable trust.

10

In the  
District Court  
of Colombo

No. 3  
Issues framed  
2nd June, 1955  
- continued.

Mr. Wikramanayako suggests the following issues:

1. Is the Plaintiff entitled
  - (a) to an accounting in respect of the income from the 250 acres depicted in Plan No.278 of 10 May 1947, referred to in the Schedule to the plaint;
  - (b) to be paid the said Income
2. If issue 1 is answered in the affirmative, what sum is the Plaintiff entitled to on the accounting?
3. In default of proper accounting, to what sum is Plaintiff entitled?
4. Is the Plaintiff entitled to be placed in possession of the said 250 acres?

20

Issues suggested by Mr. Herat:

Mr. Herat suggests that the words "referred to in the Schedule to the plaint" be added in issue 1 (a)

30

His application is allowed

5. Did the last Will referred to in para 3 of the plaint create a charitable trust in respect of the land referred to in the Schedule to the plaint for the benefit of the Rajamaha Vihare, Kelaniya?
6. Is the power to use the income of the said property for the benefit of the said Vihare vested in the 1st and 3rd Defendants and Mr.

40

In the  
District Court  
of Colombo

No. 3

Issues framed  
2nd June, 1955  
- continued.

P.R. Wijewardena as trustees of the said Last Will?

- 7. If issues 5 and 6 or either of them is answered in the affirmative, is the Plaintiff entitled -
  - (a) to maintain this action;
  - (b) to be paid the income derived from the said property?

The issues are accepted.

Mr. Herat moves that issues 1, 4, 5, 6 and 7 be tried first. 10

Mr. Wikramanayake has no objection.

But it is agreed that the rest of the trial will go on even if there is an interlocutory appeal.

No. 4

Plaintiff's  
Evidence

No. 4

PLAINTIFF'S EVIDENCE.

Mr. Wikramanayake calls:-

Mapitigama  
Buddharakkita  
Thero.

Examination.

MAPITIGAMA BUDDHARAKKITA THERO - affirmed,  
Viharadhipathi, Rajamaha Vihare, Kelaniya.

I am the Plaintiff, I am the Trustee of the Rajamaha Vihare, Kelaniya. I am the Viharadhipathi and the Trustees. This is one of the Temples where an appointment has to be made by the Public Trustee I produce the letter of appointment by the Public Trustee marked P1. My predecessor in the office of Trustee was my tutor the Reverend Dhammarakkita. I produce marked P2 a certified copy of the Last Will of the late Mrs. H. Wijewardena No. 4115 dated 20th July 1935. That last Will was admitted to Probate in Testamentary Case No. 9566 of this Court. 20 30

(Counsel reads Clause 5 of P. 2)

After the last will was admitted to Probate and the estate was administered, the Executors by deed No. 4489 of 27 November 1942 marked P3 conveyed to my predecessor in office Rev. Dhammarakkita a defined 250 acres of Kalawewa Farm, depicted in plan No. 278 of 10th May 1944.

(Mr. Herat marks plan No. 278 of 10.5.44 D1).

The exccutors in 1942 were D.R. Wijewardena, D.E. Wijewardena and D.W. Wijewardena. Probate was issued to D.R. Wijewardena and D.E. Wijewardena as D.W. Wijewardena had predeceased Mrs. Wijewardena.

In the  
District Court  
of Colombo

No. 4

Plaintiff's  
Evidence

Clause 7 of the Last Will creates a trust in respect of certain other properties and nominated D.R. Wijewardena and D.E. Wijewardena and D.W. Wijewardena as trustees.

(Counsel reads clause 7 of P.2)

10 Of the three trustees mentioned in the Last Will, D.W. Wijewardena predeceased the Testatrix and the two surviving trustees appointed Mr. D.L. Wijewardena in place of Mr. D.W. Wijewardena.

Mapitigama  
Buddharakkita  
Thero.

Examination  
- continued.

I know that D.W. Wijewardene is dead; he died in 1949. D.R. Wijewardena died in 1950. I produce deed No. 430 marked P4 whereby the sole surviving Trustee D.E. Wijewardena appointed D.A.T. Wijewardena to be Trustee in place of D.W. Wijewardene and decided to defer the appointment of a new Trustee in place of D.R. Wijewardena. I produce marked P5 Deed No. 440 of 25 Jan. 1951 whereby D.E. Wijewardena and D.A.T. Wijewardena the two then functioning trustees appointed P.S. Wijewardena the 3rd Defendant in place of D.R. Wijewardena. D.A.T. Wijewardena the 2nd defendant is dead. D.E. Wijewardena is the 1st Defendant. I have not been able to find any deed on which an appointment has been made in place of D.A.T. Wijewardena. I have searched the registers in the Land Registry. There is no deed of appointment of a successor registered. D.A.T. Wijewardena died a few days after this action was filed. I have called for from Dr. D.E. Wijewardena a statement of the accounts relating to this property and asked for a cheque of the money lying in his hands as trustee of this account. I produce marked P6 a copy of the letter dated 3rd February 1954. My proctor received a reply from their proctor Mr. H.A. Abeyewardene dated 10th February 1954, which I produce marked P7. My proctor sent a reply dated 16 February 1954, which I produce marked P8. No reference was made to the accounts which I had called for.

On the matter of this appointment of a successor to D.A.T. Wijewardena, the answer sets out that somebody had been appointed in his place. I have already told the Court I was not able to find any deed by which he was appointed. I tried to ascertain from the proctor for the Defendants how

In the  
District Court  
of Colombo

No. 4

Plaintiff's  
Evidence

Mapitigama  
Buddharakkita  
Thero.

Examination  
- continued.

Cross-  
examination.

the appointment had been made. I produce marked P9 a letter dated 22nd November 1954, sent to Mr. H.A. Abeyewardene by my Proctor.

(Counsel reads P9)

I produce marked P10 the reply dated 3rd December 1954. (Counsel reads P10).

(It is admitted that there was no appointment by a deed)

Cross-examined: My predecessor in title was Mapitigama Dharmarakkita Thero. He was the Viharadipathi of the Temple and the Trustee until his death. He died on 19th July 1947.

10

Q. Possession of the 250 acres has always up to now been with the trustee appointed under the Last Will? A. Yes.

Q. No accounts were submitted to your predecessor or to you?

A. I cannot say whether any accounts had been given to my predecessor, but when I asked for accounts no accounts were given to me.

20

Q. You were living in the temple with your tutor?

A. No. Only during the vacation periods I was in the temple. I have been studying in several places. I was a boarder in the Vidyalankara Pirivena.

Q. At the time your tutor died, where were you?

A. I was living in a Temple in Temple Lane. I was studying at Pembroke Academy.

Q. You must have gone to Kelaniya Temple during the weekends?

A. On Poya days I used to go once a month.

30

Q. During Mrs. Wijewardene's lifetime also restoration work was going on in the Rajamaha Vihare?

A. Yes.

Q. In fact, the Wijewardenas Family are the principal Dayakayas in the Rajamaha Vihare?

A. There are several others. They are also the chief Dayakayas.

Q. This restoration work Mrs. Wijewardena was carrying on for a long time? A. Yes.

Q. She was also responsible for the expenses connected with the Duruthu Perahera in January?

40

A. No. A part of the expenses were borne by her. Rs.10,000 to Rs.12,000 had to be spent for the Duruthu Perahera, about Rs.1,000 is given by the Wijewardena family as a contribution towards the Duruthu Perahera.

Q. Restoration work which was carried on was very expensive during her lifetime? A. Yes.

Q. The Buddha Puja takes place every day? A. Yes.

Q. And for that certain expenses have to be incurred? A. Yes.

10 Q. The regular Tom Tom beaters have to be paid and other expenses in this connection? A. Yes.

Q. After Mrs. Wijewardena's death that work of restoration and the Buddha Puja are still carried on?

A. Out of the income of the temple the Tom Tom beaters are provided with houses to live in. Their salaries are paid by the Kalawena trustees.

Q. That Buddha Puja takes place daily?

20 A. Yes, but it has no connection with the Kalawewa Trustees. The temple is responsible for the expenditure for the Buddha Puja and the Kalawena trustees pay the salary of the Tom Tom beaters and the Tom Tom beaters are supplied with quarters and food by the temple. I asked for a part of the paddy for the purpose of conducting the Buddha Puja but they refused to give me. When the Sabha asks for money, about Rs. 1,000 is sent. We sent several letters asking for donations for this, and the Kalawena Trust sends a cheque for Rs.1000/- when  
30 applied for. I apply for it every year.

Q. The maintenance work in the temple is still going on?

A. Recently some work has been started and the salaries of the Tom Tom beaters are regularly paid. I did not approve of the work they have started recently. A wall was built round the Sacred Bo Tree which I did not approve of.

40 (To Court: Mr. Reid has drawn a plan including the wall round the Bo Tree, but this wall is not built according to that plan. The present engineer does not know of that plan drawn up by Mr. Reid).

Q. Mrs. Wijewardena during her lifetime had a certain plan drawn up showing the restoration work she intended carrying on? A. Yes.

In the  
District Court  
of Colombo

No. 4

Plaintiff's  
Evidence

Mapitigama  
Buddharakkita  
Thero.

Cross-  
examination  
- continued.



In the  
District Court  
of Colombo

No. 4

Plaintiff's  
Evidence

Mapitigama.  
Buddharakkita  
Thero.

Cross-  
examination  
- continued.

Q. After her death work is being carried out according to that plan?

A. No. There is no connection whatever to that plan drawn up by Mrs. Wijewardena.

Q. But any way work is being carried on?

A. After this dispute arose, after 10 years, this is the only piece of work they did.

I am not aware that there is a separate account for the Kalawena Trust Fund.

Q. You know the Bomandala was built at a cost of 10 R.15,000?

A. That is what I referred to earlier.

Q. You have been taking part in various political campaigns?

A. I do social service and religious duties.

Q. I am asking about elections to Parliament?

A. I did not take part in the elections. Whatever social activities there are in the country, I associate myself. I have been in the Pembroke Academy and the Vidyalankara Pirivena. 20

Q. The trustees had occasion to disapprove of your conduct?

A. D.E. Wijewardena sent me to come to his house to discuss matters about the temple. I said I will not go to houses, if he wanted to discuss matters about the temple he should come to the temple.

Q. Have you been associating yourself at election meetings?

A. At some meetings I may have spoken. Some of those speeches of mine may have been helpful to those election campaigns. 30

Q. There was an election meeting in support of Mrs. Wimala Wijewardena in the temple premises itself?

A. Never.

Q. Have you been associating with Mrs. Wimala Wijewardena in connection with her election campaign?

A. Yes. Many of us of that area helped her, and I too may have made some speeches.

Q. Rightly or wrongly Mr. D.E. Wijewardena did not approve of your action? 40

A. Dr. Wijewardena has never spoken to me twice in his lifetime. He has only come to these temple premises on two occasions and spoken to me about two or three words.

Q. That is because the relations between the two of you were not cordial?

10 A. D.E. Wijewardena is not a Buddhist. He had no connection whatsoever with this temple. He never called to discuss any religious matters with me and he never gives alms in his house. It was Mr. D.C. Wijewardena who did work in connection with this temple. He is the husband of Mrs. Wimala Wijewardena.

Q. You have had no cordial relations or associations with any of the other Wijewardenas, except with Mr. D.C. Wijewardena?

20 A. I was closely associated with D.R. Wijewardena when he was alive. I was the first to be informed of his death. I attended to all his funeral matters and also attended the 7 days alms giving of D.R. Wijewardena. When D.W. Wijewardena was alive also I was closely associated with him. Other members of the family had nothing to do with the temple. Many of them are Christians.

Re-examined.

Q. When was the last election? A. About 1952.

Q. It was put to you that you did not associate with the other members of the Wijewardena family except Mr. D.C. Wijewardena?

30 A. Yes. I was the junior pupil of Mapitigama Dhammarakkita Thero. The senior pupil was Rev. Sangarakkita Thero. I came to succeed my tutor and by reason of that I was appointed under a deed.

Q. In respect of your appointment there was litigation in this Court, your senior pupil brought an action against you?

A. Yes, it was dismissed.

Q. In that action who provided the money for you?

40 A. D.C. Wijewardena spent a large sum of money for me.

Q. Did Mr. D.R. Wijewardena provide any money?

A. A small sum of money was given by him.

Q. You were asked about your association with D.E. Wijewardena, you said he was not a Buddhist?

A. Yes.

In the  
District Court  
of Colombo

No. 4

Plaintiff's  
Evidence

Mapitigama  
Buddharakkita  
Thero.

Cross-  
examination  
- continued.

Re-examination.

In the  
District Court  
of Colombo

No. 4

Plaintiff's  
Evidence

Mapitigama  
Buddharakkita  
Thero.

Re-examination  
- continued.

Q. Dr. D.E. Wijewardena holds spiritual seances and mediums?

A. His wife is a Christian and he was devoted to seances. He was not a Buddhist.

Q. You have claimed in this action Rs.350,000 as the income for that period?

A. As far as I know. It may be even more than that.

Q. Is that a large sum of money even for the Kelaniya Vihare? A. Yes.

10

Q. Do you think you as trustee of the Vihare will be justified in having all that money and spending it? A. No.

Q. Have you brought this action out of personal animosity with the Wijewardenas or to recover the money that is due to the temple?

A. It is the property of the temple and for the benefit of the temple. There is no reason for me to have any personal animosity with the Wijewardenas.

Q. You said for the last 10 years they spent hardly anything on the temple? A. Yes.

Q. After this dispute arose they have built a Bomandala?

A. When the dispute arose I questioned them about it. It is not in keeping with the plan of Mr. Reid. Mr. Reid's plan is the one on which Mrs. Wijewardena wanted the restoration work done.

Sgd. A.L.S. Sirimanne  
A.D.J.

Mr. Wikramanayake closes his case on the issues to be tried first reading in evidence Pl - P10.

Mr. Herat says he is not calling evidence on these issues.

No. 5

ADDRESSES TO COURT

No. 5

Addresses to  
Court  
2nd June, 1955.

Mr. Herat addresses Court. He submits that a legacy is only to a person recognised by law; it must be to a natural person or a corporation. You cannot devise property to an inanimate object or even to, what in legal language is referred to as a foundation. *Pia Causa* is recognized in Roman Law, for example, a hospital. Roman Dutch jurists

10 ignored *pia causa*. He submits that under the Roman Dutch Law when the testatrix said in her Will that she gave those 250 acres to the Rajamaha Vihara, that was a bequest which would be void. . . That bequest standing by itself is void because it is a legacy of 250 acres left to this Vihara, It has been held that a Temple is not a legal person and therefore unable to be the possessor of legal rights. He submits that the temple, as such, cannot own any property. He says that the property should have been dedicated to the Sangha. He concedes that on a reading of the Will it is clear that the testatrix intended the 250 acres should be given to the temple, but for legal reasons it must fail. The only way to give it is to say that a charitable trust is created rather than say that it is a bequest to the temple which cannot be recognised by law. The temple is not a legal person and as such cannot have legal rights. He cites 36  
20 N.L.R. 422 at page 423.

Adjourned.

Sgd.) A.L.S. Sirimanne

A. D. J.

After Lunch 2.6.55.

Same appearances.

30 Mr. Herat continues his address. He submits that it would be doing violence to the language of Clause 5 if it is interpreted to mean that the gift was to the Viharadhipathi for the time being. He cites 37 N.L.R. 19 at 21. He submits that there are no beneficiaries when there is a charitable trust; there is only a charitable object. Hanbury on Modern Equities 6th Ed. 154 (1952). Chapter 72 Section 3 (g) Trusts Ordinance. 29 N.L.R. 65.

40 48 N.L.R. 289 at 292. He submits that when there is a charitable trust any person interested in that charitable object can come to Court to get the trustees to perform that trust, but he cannot ask for possession. The possession must be with the trustees. If the trustees are mismanaging the person interested can only compel performance. Plaintiff to ask for an accounting must satisfy Court that the proprietary rights are vested in him. He cannot do so unless he can satisfy the Court that the property is vested in him under Section 20. He

In the  
District Court  
of Colombo

No. 5

Addresses to  
Court.

2nd June, 1955  
- continued.

In the  
District Court  
of Colombo

No. 5

Addresses to  
Court.

2nd June, 1955

- continued.

cannot show that the property is vested in him unless he can satisfy the Court that it is property belonging appertaining or appropriated to the temple. He cannot say that because the Courts here have construed those words to mean nothing more than Sanghika property. You cannot have laity managing Sanghita property. He submits that the only way in which Clause 5 of the Will can be given effect to is by construing this to mean a charitable trust. He submits that the executors' conveyance P3 was given makes no difference. What the executors did does not affect the question because they are executors merely conveyed whatever rights they had. He submits that the power granted to the trustees for management under the Will cannot be taken away. The power of managing the estate is in any event given by the testatrix to the executors. If issues 5 and 6 are answered in the affirmative then issue 1 must be answered in the negative and Issue 4. He cites Morice vs. Bishop of Burhal 1804 9 Besey 399 at 404 and 405. Keaton on Trust 6th Ed. 124 and 125 (1954). The chapter relating to Charitable Trusts is Chapter 10 of Trusts Ordinance Chapter 72. Refers to Section 109 which he says does not mean that the Chapter relating to Charitable trusts does not relate to a Buddhist charitable trust. He cites 42 N.L.R. 453. Under Section 111 there is no prescription. 10

Mr. Wikramanayake replies. He refers to the Buddhist Temporalities Ordinance which he says treats the temple as the owner of property. Refers to Section 4 Chapter 222 and Sections 20, 23, 24 and 26. The statute has used words showing these things as belonging to the temple. He agrees that in interpreting a Will paramount importance should be given to the intention of the testator. He submits that the Will falls into three parts (1) personal alienations (2) specific creation of Wijewarden Charitable Trust. The Testatrix sets out the property which is the subject of this charitable trust. He refers to Clause 7 (c) of P2. The third part of the Will he submits deals with the gift to the Raja Maha Vihara. He submits that the Raja Maha Vihare can as indicated by the Buddhist Temporalities Ordinance have property belonging to it. He cites 27 N.L.R. 15 at 20. He submits that under the Common Law the position is that if a person gives to a temple he constitutes himself a trustee for the purpose of the gift. In this case the testatrix retained the dominium as trustee 30 40 50

and she can convey that dominium to anybody as trustee. The executors as her representatives executed a deed of transfer whereby they conveyed that dominium (P3) to Dhammarakkita and his successors in title. The decision in 37 N.L.R. he says is in his favour. He submits that a gift to a temple includes a gift to the Viharadipathi of the temple. 37 N.L.R. at 21. He stresses the words "..... prior to its enactment..... from the ecclesiastical point of view".

10

Further hearing 15.6.55.

Sgd. A.L.S. Sirimanne  
A. D. J.  
2.6.55.

No. 6

ADDRESSES TO COURT

15.6.55.

Appearances as before.

Mr. Wikramanayake continues his address to Court. He says that property can belong to the Temple but such property will be vested in the trustee under the Buddhist Temporalities Ordinance, under Section 20. He cites 2 Browns at Page 333. The point he makes here is that the provisions of the Ordinance supersede the conditions of the Sannas.

20

He refers to 36 N.L.R. and 37 N.L.R. the cases cited by Mr. Herat. He cites 19 N.L.R. 242 at page 244.

30

He also refers to Section 41 of the Ordinance 8 of 1905. He cites Morgans Digest Part III, page 472, 53 N.L.R. 245 and 42 N.L.R. 455.

He says that with regard to Issue 4, if the Court holds that the management would be given to others under the Ordinance he is the beneficiary. Even if the Court holds against him that the management may be in somebody else, then the Court would not be able to accept this issue because he would then lead evidence of facts which make the Court

In the  
District Court  
of Colombo

No. 5

Addresses to  
Court.

2nd June, 1955  
- continued.

No. 6

Addresses to  
Court.

15th June, 1955.

In the  
District Court  
of Colombo

No. 6

Addresses to  
Court.

15th June, 1955

- continued.

alter its view whether he is entitled to be placed in possession. That is assuming that the property is devised to the Vihare subject to the condition that the management be vested in somebody else.

Mr. Herat moves for permission to address Court further.

I allow him.

Mr. Herat cites 1899 Appeal Cases page 309, at 315.

(It is now 4 p.m. Further hearing on 30/6)

10

Sgd. A.L.S. Sirimanne  
A. D. J.

No. 7

Addresses to  
Court.

30th June, 1955.

No. 7

ADDRESSES TO COURT

30. 6.55

Same appearances.

Mr. Herat resumes his address to Court. He refers to 2 Browns 333 cited by Mr. Wikremanayaka. That case he submits, does not help Mr. Wikremanayaka. On the other hand, he says, it is really in support of the argument advanced by him that those words in the Buddhist Temporalities Ordinance "property belonging to or otherwise appertaining to a temple" mean only Sanghika property. He cited to Court the case reported in 37 N.L.R. at page 19 and 21, where the view was taken that property belonging to or otherwise appertaining to the use of the temple must be construed in the sense that it means Sanghika property. The case in 2 Browns is merely an illustration of that.

20

He further states that the case reported in 37 N.L.R. at page 19 was cited by him for the proposition that the language in Chapter 222, Section 20, related to Sanghika property. He also cites 48 N.L.R. at page 11. He relies very strongly on 27 N.L.R. page 215 and 36 N.L.R. page 422 only to prove that the temple is not a legal persona.

30

He submits that the case reported in 36 N.L.R.

is not an obiter dictum on the question that a temple is a juridistic persona, but that it is a ratio decidendi. He refers to the 19 N.L.R. case cited by Mr. Wikromanayake. There he submits the matter is purely obiter dictum. He submits that the Court will consider it is bound by the judgment in 27 N.L.R. at page 15 and not by the case reported in 36 N.L.R. at page 422.

In the  
District Court  
of Colombo

No. 7

Addresses to  
Court.

30th June, 1955  
- continued.

10 He says that with regard to the case cited from Morgans Digest at page 472, judgment was delivered somewhere in 1840. This was long before our Trusts Ordinance. If at all, he says, it supports the view he takes that it is a charitable trust. The case reported in 53 N.L.R. at page 245 is irrelevant as far as this case is concerned. He submits that the word "management" in the Will implies possession and control. It is not the mere management which is given, but the management for the benefit of the Vihare. He says that every  
20 word in the devise has to be given effect to. He submits that those words implies with the Trustees impose a trust in her trustees not merely to manage, but to manage it for the benefit of the temple.

He says that the claim of the Plaintiff as formulated in this action must therefore fail.

Mr. Wikromanayake addresses Court. He reads Section 20 of the Buddhist Temporalities Ordinance. In contrast with the Buddhist Temporalities Ordinance, he says there is no similar ordinance governing Hindu Temples. He refers again to the case reported in 2 Browns. He says that the devisee has made three separate settlements, one she gives some property to her relations, the other she gives to the temple and the third she creates a charitable trust. She gives it to the trustees to  
30 administer for this same temple.

Order 6/7

Sgd. A.L.S. Sirimanne  
A. D. J.

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In the  
District Court  
of Colombo

No. 8

JUDGMENT OF THE DISTRICT COURT

No. 8

7338/L

J U D G M E N T

Judgment of the  
District Court.  
6th July, 1955.

By Clause 5 of a Last Will dated 20/7/35 (P2)  
a testatrix made the following bequest:

"5. I give 250 acres out of all that paddy field  
called Kalawewa Farm situate in the North  
Central Province Ceylon to the Raja Maha  
Vihare Kelaniya. The selection of the 250  
acres I leave to my executors and the manage- 10  
ment of the same for the benefit of the said  
Vihare I entrust to my trustees hereinafter  
named".

The executors executed a conveyance No.4489  
of 1942 (P3) by which they purported to transfer  
250 acres to Dhammarakkita Thero the then incum-  
bent of this Vihare and his successors in office,  
subject to the conditions in the Last Will in re-  
gard to the management of the property.

The Plaintiff is the present Viharadapathi 20  
and duly appointed trustee (vide P1) of the Raja  
Maha Vihare. He complains that the trustees have  
neither given him the income nor accounted for it  
since 1942. He asks that they be ordered to hand  
over the income now, and for an accounting of the  
income up to date. He estimates the income at  
Rs.350,000/-. He also states that the property  
vested in him and that he is entitled to possess  
it notwithstanding the provisions in the Last Will.

The Defendants (who are the trustees) have 30  
taken up the position in their answer that the  
words used in the Last Will create a charitable  
trust over the land for the benefit of the Vihare,  
and that the power to use the income is vested in  
them.

This being a testamentary disposition it is  
conceded that the primary object of the Court  
should be to give effect to the intentions of the  
testatrix. The language of clause 5 is simple -  
to repeat the first sentence "I give 250 acres.... 40  
in the North Central Province ..... to the Raja

Maha Vihare Kelaniya", and whatever the legal implications may be, I think the intention of the testatrix is quite clear.

She gave 250 acres to the Raja Maha Viharo, that is to say, she desired that this Vihare should get the benefit that could be derived from those 250 acres of land.

10 Now, it has been argued for the Defendants that, though one loosely speaks of giving things to a "temple", yet a temple as a *pia causa* or a foundation known to the Roman Law is unknown to the Roman Dutch law - that a temple is not a juristic person and therefore incapable of receiving a gift.

20 Two cases have been cited to me. In the case reported in 36 N.L.R. at page 422, a man called Punchi Banda by an informal document purported to donate to a priest called Gnananda Tissa "and the priests of the Ariyawansa Saddamara Uttiki nikaya .....and the Buddha Sasana" an undivided half share of an allotment of land "to pave the way for converting this land to a Buddhist temple". The question for decision was whether the temple had prescribed to the land. It was not established when the temple came into existence. Their Lordships said:

30 "Assuming for the moment that a temple is a juristic person the evidence does not entitle one to conclude that here it had been in existence for a period of 10 years prior to the date of the alleged ouster by plaintiff.

.....

It is not necessary therefore for the purpose of this case to deal with the question whether in Ceylon a Buddhist temple is a juristic person"

They did say later that "the personification of what is sometimes known as a foundation is foreign to the law in Ceylon". But this was I think obiter.

In the case reported in 37 N.L.R. at page 19 the decision was that where an incumbent of a Vihare possesses land not expressly gifted to that Vihare he is in the position of a *de facto* trustee and as such can acquire the title by prescription for the benefit of the Vihare.

In the  
District Court  
of Colombo

No. 8

Judgment of the  
District Court.  
6th July, 1955  
- continued.

In the  
District Court  
of Colombo

No. 8

Judgment of the  
District Court.

6th July, 1955  
- continued.

There is no direct finding there that a temple was not a juristic person.

For the Plaintiff, a very old case reported in Morgan's Digest Part III at page 474 was cited. The decision was in 1846. In that case a land which was seized was claimed by the Plaintiff who was the presiding Roman Catholic Missionary at Batticaloa and the manager of the Church and property thereof. The Plaintiff's claim was based on a deed on which the property was "sold assigned and transferred unto the church of St. De Croos". The District Judge dismissed the plaintiff's action holding that the deed was not a legal deed inasmuch as:

(1) the Church alone and no trustees were named in it and consequently there was no person able to be contracted with;

(2) that there was no one to deliver to and no delivery could therefore have taken place under the deed.

The Supreme Court set aside the judgment and held that Deeds in this form ad pios usus are valid and that the plaintiff can maintain this action. "The Dutch law restricting donations of this description" says the judgment "do not appear to have been acted on or enforced by the English Government in this island".

The language used in the Buddhist Temporalities Ordinance, Chapter 222, also indicated that our law looks upon the "temple" as capable of having property belonging to it. Apart from Section 20, we find the phrase "property of the Temple" in Section 21, "property belonging to the temple" in Section 26, and the words in Section 24 (1) indicate that the temple can even have a bank account.

So that, in spite of the legal dicta referred to in the 36 N.L.R. case, pious laymen have continued to make their donations "to the temple", and everybody knew what they meant.

All such property (in my view) became property belonging to the temple and the person or persons in charge of the management of its affairs would be entitled to utilize the income derived from such property for the benefit of the temple which was in their charge.

In this instance, when the testatrix said "I give 250 acres to the Raja Maha Vihare" it would be a mere pretence to say that one cannot understand what she meant. Nor should the gift be rendered ineffectual (as Mr. Herat suggests) on the ground that the temple being made of brick and mortar is incapable of receiving a gift.

In the  
District Court  
of Colombo

No. 8

Judgment of the  
District Court.  
6th July, 1955  
- continued.

10 The first part of Clause 5 must of course be considered with the rest of that clause - "the selection of the 250 acres I leave to my executors" (there can be no doubt about the meaning of this) "and the management of the same for the benefit of the said Vihare I entrust to my trustees herein-after mentioned". Mr. Herat has argued that the words "the management of the same for the benefit of the Vihare I entrust to my trustees" has the effect in law of creating a charitable trust, and that by these words the testatrix gave to the trustees complete control of the income derived  
20 from the 250 acres.

I have carefully considered this argument but I am unable to agree.

I do not think that the words convey any meaning other than that which the language so clearly expresses - "The management of the same" i.e. the 250 acres "for the benefit of the Vihare I entrust to my trustees". It is the management of the property (in my view) which was entrusted to the trustees, not the control of the income. They were  
30 enjoined, of course, to manage the property in such a way as to get the maximum benefit for the Vihare.

It is unnecessary to find out a reason why the testatrix should give property to the temple and appoint someone else to manage that property - but there could be a variety of reasons. One probable reason could be that knowing as she did that the person who would ordinarily manage the affairs of the temple would be a priest, she thought that such a person (with his time taken up by devotion to  
40 religious duties and management of the temple at Kelaniya) would be quite unsuited for efficiently managing a property situated in the North Central Province.

The testatrix therefore placed the management of the 250 acres in the hands of three lay trustees. She had no intention, in my opinion, of placing the management of the income in their hands.

In the  
District Court  
of Colombo

No. 8

Judgment of the  
District Court.

6th July 1955  
- continued.

If that was her intention, as Mr. Herat argued, she would have had no difficulty whatsoever in making it clear. This very Will shows that she had that intention in regard to the management of certain other properties and that in respect of them she created a charitable trust as she wished. The relevant parts of Clause 7 of the Last Will read as follows:

- "7. I give all that property situated at Deans Road, Colombo ..... and all the estate Nagenehenakande ..... and all the property situated at Nagalingam Street ... unto the said Don Richard Wijewardene, Don Edmund Wijewardene and Don Walter Wijewardene in trust to use the net income thereof ... for the following charitable purposes:
- (a) To continue gradually the restoration work now being carried on by me at the Kelaniya Temple. 10
- (b) To aid ... my relatives who are or may become poor ... 20
- (c) To support in such manner and to such extent as my trustees think fit such Buddhist charitable institutions and temples ... the trust shall be known as the Wijewardene Charitable Trust".

The three persons named are the same trustees referred to in Clause 5, and (a) above refers to restoration work at this very Temple.

I find it impossible to accede to the argument that the intention of the testatrix in regard to the 250 acres and the property referred to in Clause 7 was exactly the same. 30

The testatrix did create a charitable trust but not in regard to the 250 acres referred to in Clause 5.

I am also unable to agree with the contention put forward for the Plaintiff that because these 250 acres would be "property belonging to the temple" the Viharadapathi must necessarily have possession of it under Section 20 of Chapter 222, I see no objection to laymen managing such property even if it is called Sanghika property particularly so if that was the grantor's wish. 40

The executors executed the deed P3 referred to above. Mr. Wikramanayake argues that they thereby conveyed the legal title to the Viharadapathi. It will be remembered that the executors were directed to select 250 acres. They had done so. It is customary for executors or administrators to execute deeds of this nature at the termination of testamentary proceedings. I do not think that any legal consequences tending to defeat the intentions of the testatrix could flow from such a conveyance.

In the  
District Court  
of Colombo

No. 8

Judgment of the  
District Court.  
6th July 1955  
- continued.

I am of opinion that the Plaintiff as Viharadapathi of the Raja Maha Vihara is entitled to receive the income derived from the 250 acres - the management and consequently the possession of which would be with the trustees.

I would answer the issues submitted for decision as follows:-

1. (a) Yes
- (b) Yes
4. No.

In regard to this issue Mr. Wikramanayake suggested that I should postpone answering it till the whole case was concluded as the Plaintiff might be entitled to claim possession if the trustees have mismanaged the estate. There is no reason to assume this and, as far as one can gather, the Plaintiff in this action claimed to be entitled to possession purely by the operation of Section 20 of Chapter 222, not on any other ground. I think the issue might be answered now.

5. No.
6. No.
7. Does not arise.

I think it would be best that an order in regard to costs should be made at the end of the trial.

Call case on 12/7 to fix a date for further hearing.

Sgd. A.L.S. Sirimanne  
A.D.J.

6/7/55.

Delivered in open Court.

Sgd. A.L.S. Sirimanne  
A.D.J.

6/7.

In the  
District Court  
of Colombo

No. 9

ORDER OF THE DISTRICT COURT

No. 9

D.C. 7338/L

17/11/55.

Order of the  
District Court  
17th November,  
1955.

Mr. Advocate E.G. Wikramanayake, Q.C. with Mr. Advocate G.T. Samarawickreme and Mr. Advocate P. Gunasekera instructed by Mr. K.D. Senaweera for Plaintiff.

Mr. Advocate K. Herat with Mr. Advocate F.R. Dias instructed by Mr. H.A. Abeywardene for Defendant.

Mr. Herat submits that accounts should be filed first and objections to these accounts before the inquiry can take place. 10

Mr. Wikramanayake agrees.

Order: I direct the defendant to file accounts of the income and expenditure from the 250 acres from 11th November 1940.

Accounts to be filed on 1/2/1956.

Sgd. A.L.S. Sirimanne  
A.D.J.

No. 10

No. 10

20

Motion.

MOTION

21st January,  
1957.

D.C. 7338/L

21/1/57.

Mr. Advocate K. Herat with  
Mr. F.R. Dias for Defendants,  
instructed by Mr. H.A. Abeywardene.

The Plaintiff and his proctor are absent.

Mr. Herat moves that the accounts already filed be accepted as no objections have been filed. He also moves for costs as (he states) no intimation was given to him that the accounts would be accepted and he had, therefore, got ready for inquiry today. 30

The accounts filed are accepted.

The Defendants are entitled to the day's costs.

Forward record to Supreme Court.

Sgd. A.L.S. SIRIMANNE  
A.D.J.

No. 11

ADDRESSES TO AND ORDER OF DISTRICT COURTIn the  
District Court  
of Colombo

D.C. 7338/L

29/1/57.

No. 11

Mr. K.D. Senaweera for plaintiff.

Mr. Advocate K. Herat for defendants 1 and 3  
instructed by Mr. H.A. Abeywardene.Addresses to and  
Order of District  
Court.29th January,  
1955.

10 Mr. Senaweera submits that an order for costs should be made in his favour. He points to the last line in the judgment of 6/7/55 on the preliminary issues where the Court said that it would make an order as to costs at the end of the trial. The trial is now over as the accounts filed by the defendants have been accepted by the plaintiff.

20 Mr. Herat points out that plaintiff claimed Rs. 350,000/- but according to the accounts which have been accepted the amount is Rs.66,629/22. He points out that the claim was reduced by nearly 1/6th. He also points out that he succeeded on the question of possession. He asks that those two factors be taken into consideration in deciding the question of costs. He submits that the fairest order would be that the costs in any event should come out of the estate, his clients are only trustees. He states that the Court has answered only Issues 1 to 4. An interlocutory appeal has been taken. He submits that if an order for costs is made against him then it must be understood that if he succeeds in appeal - in regard to Issue 7 being answered in his favour - then this order for costs should not stand.

30

Order

40 The plaintiff in this case has partly succeeded as submitted by Counsel for the defendants. Having considered all the submissions made by Counsel on both sides I am of opinion that the plaintiff should be awarded half costs of the action. I cannot agree that those costs should be borne by the estate of the deceased. I think it is obvious that in the event of the plaintiff succeeding in appeal the Supreme Court would make an appropriate order in regard to costs and that this order would not then be enforceable.

Sgd. A.L.S. Sirimanne

A.D.J.



In the  
Supreme Court  
of Ceylon

No. 12

PETITION OF APPEAL TO THE SUPREME COURT

No. 12

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

Petition of  
Appeal to the  
Supreme Court  
16th July, 1955.

REV. MAPITIGAMA BUDDHARAKKITA THERO,  
Trustee of the Kelaniya Rajamaha  
Vihare, Kelaniya Plaintiff

Vs.

1. DON EDMUND WIJEWARDENE of Turret Road,  
Colombo
2. DON ALBERT TARRANT WIJEWARDENE of  
Siriyaala, Elliot Road, Borella and
3. PHILIP SEVALI WIJEWARDENE of No. 11  
Galle Face Court, Colombo Defendants

10

D.C. Colombo  
No. 7338/Land

1. DON EDMUND WIJEWARDENE of Turret  
Road, Colombo
2. PHILIP SEVALI WIJEWARDENE of No. 11  
Galle Face Court, Colombo  
1st and 3rd Defendants - Appellants

20

Vs.

REV. MAPITIGAMA BUDDHARAKKITA THERO,  
Trustee of the Kelaniya Rajamaha  
Vihare, Kelaniya  
Plaintiff - Respondent

TO: THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER  
JUDGES OF THE HONOURABLE THE SUPREME COURT OF THE  
ISLAND OF CEYLON

On this 16th day of July 1955.

The Petition of appeal of the 1st and 3rd  
Defendants-Appellants above named appearing by  
Henricus Abraham Abeyewardene their Proctor states  
as follows:-

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1. The Plaintiff-Respondent as Controlling  
Viharadhipathi of the Rajamaha Vihare, Kelaniya  
brought this action No. 7338/Land of the District  
Court of Colombo against these defendants appel-  
ants and one D.A.T. Wijewardene who was named as  
the 2nd defendant in the plaint.

2. Shortly after the plaint was filed the said 2nd defendant died, but the plaintiff respondent took no steps to substitute anybody in his place.

In the  
Supremo Court  
of Ceylon

No. 12

Potition of  
Appeal to the  
Supreme Court.  
16th July, 1955  
- continued.

3. The Plaintiff-Respondent's action was brought on the following basis:- The late Helena Wijewardena Lama Etani by her last Will No. 4115 duly proved in Testamentary Case No. 9566 of the District Court of Colombo, in Clause 5 of the said Will, made the following bequest:- "I give two hundred and fifty acres of all that paddy field called Kalawewa Farm situate in the North Central Province, Ceylon, to the Rajamaha Vihare, Kelaniya the selection of the two hundred and fifty acres I leave to my executors and the management of the same for the benefit of the said Vihare I entrust to my Trustees hereinafter named". At the time the Plaintiff-Respondent instituted this action, the Trustees mentioned in the said clause 5 were these defendants-appellants and the said D.A.T. Wijewardene The Plaintiff-Respondent brought this action for an accounting in respect of the income from the said two hundred and fifty acres, payment to him of the said income, for delivery of possession of the said extent of land to the Plaintiff-Respondent and for ejection of the Trustees from the said land.

4. These defendants-appellants filed answer pointing out that the said D.A.T. Wijewardene was dead, that he had resigned office during his lifetime, and that P.R. Wijewardene had been appointed Trustee on or about 2nd July 1953 in place of the said D.A.T. Wijewardene. These Defendants-appellants also averred that the aforesaid clause 5 of the said Last Will created a Charitable trust over the said land for the benefit of the said Vihare and that the power to use the income of the said trust property for the benefit of the said Vihare is vested in these defendants-appellants as Trustees of the said Last Will along with the other Trustee P.R. Wijewardene. These Defendants-appellants denied that the said Trust property was vested in the Plaintiff-respondent as controlling Viharadhipathi under Section 20 of the Buddhist Temporalities Ordinance Chapter 222 of the Legislative Enactments of Ceylon, and that he was entitled to be paid the income of the said Trust property.

5. The case went to trial on the following issues:-

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of Ceylon

No. 12

Petition of  
Appeal to the  
Supreme Court.  
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- continued.

1. Is the Plaintiff entitled
  - (a) to an accounting in respect of the income from the 250 acres depicted in plan 278 of 10th May 1947 referred to in the schedule to the plaint?
  - (b) to be paid the said income?
2. If issue 1 is answered in the affirmative, what sum is the Plaintiff entitled to on the accounting.
3. In default of proper accounting, to what sum is plaintiff entitled? 10
4. Is the plaintiff entitled to be placed in possession of the said 250 acres?
5. Did the Last Will referred to in paragraph 3 of the plaint create a charitable trust in respect of the land referred to in the Schedule to the plaint for the benefit of the Rajamaha Vihare, Kelaniya?
6. Is the power to use the income of the said property for the benefit of the said Vihare vested in the 1st and 3rd Defendants and P.R. Wijewardene as Trustees of the said Last Will 20
7. If issues 5 and 6 or either of them is answered in the affirmative, is the plaintiff entitled
  - (a) to maintain this action?
  - (b) to be paid the income derived from the said property?

6. At the instance of Counsel issues 1, 4, 5, 6 and 7 were tried first. 30

7. After hearing argument, the learned Additional District Judge of Colombo A.L.S. Sirimanne, Esquire, delivered his order on the 6th of July 1955 answering issues 1 (a) and (b) in the affirmative, issue 4 in the negative, issue 5 in the negative issue 6 in the negative and that the answer to issue 7 did not arise.

8. The learned Judge directed that the trial on the remaining issues be fixed for 17th November, 1955.

9. Being dissatisfied with the order of learned Judge in answering issues 1 (a) and (b) in the affirmative and issues 5 and 6 in the negative, these defendants-appellants appeal to Your Lordships' Court on the following among other grounds of appeal:-

(a) the said judgment is contrary to law and the weight of evidence in the case

10 (b) it is respectfully submitted that a temple as such is not a juristic person and is not capable of being the devisee under clause 5 of the said Last Will so as to vest dominion of the 250 acres in itself

(c) that the means of giving effect to the intention of the testatrix is to construe clause 5 as creating a charitable trust, with the Rajamaha Vihare, Kelaniya, as the charitable object of the charitable trust.

20 (d) that in this view the title to the 250 acres is vested in these defendants-appellants as trustees of the said charitable trust and that the provisions of the Buddhist Temporalities Ordinance are not applicable to this charitable trust

(e) that in the circumstances, the income is not payable to the plaintiff-respondent but that these defendants-appellants are under obligation to apply the income for the benefit of the said Vihare.

30 (f) that in any event, the words of Clause 5 create a trust in respect of the income with these appellants as trustees, who are obliged to use that income for the benefit of the Vihare.

40 Wherefore these defendants-appellants by way of these interlocutory appeal pray that Your Lordships' Court be pleased to set aside the judgment of the said learned Judge and to answer issues 1(a) and (b) 5 and 6 in favour of these appellants and also in consequence to answer issue 7 in the negative, for cost and all such other relief as to Your Lordships' Court may seem meet.

Sgd.) H.A. ABEYWARDENE

Proctor for 1st and 3rd  
Defendants-appellants.

Settled by:  
Mr. Kingsley Herat  
Advocate.

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of Ceylon

No. 12

Petition of  
Appeal to the  
Supreme Court.

16th July, 1955  
- continued.

In the  
Supreme Court  
of Ceylon

No. 13

CROSS-OBJECTIONS OF THE PLAINTIFF-RESPONDENT

No. 13

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Cross-objections  
of Plaintiff-  
Respondent.

No. 7338/Land  
S.C. No. 183.

27th January,  
1956.

REV. MAPITIGAMA BUDDHARAKKITA THERO,  
Trustee of the Kelaniya Rajamaha  
Vihare, Kelaniya Plaintiff

Vs.

1. DON EDMUND WIJEWARDENE of Turret  
Road, Colombo and 2 others Defendants 10

1. DON EDMUND WIJEWARDENE of Turret  
Road, Colombo  
2. PHILIP SEVALI WIJEWARDENE of No. 11  
Galle Road, Colombo  
1st and 3rd Defendants - Appellants

Vs.

REV. MAPITIGAMA BUDDHARAKKITA THERO,  
Trustee of the Kelaniya Rajamaha  
Vihare Plaintiff - Respondent 20

On the 27th day of January 1956.

The Cross Objections of the Plaintiff-Respondent appearing by K.D. Senaweera his Proctor states as follows:-

1. The Plaintiff-respondent filed this action against the defendants-appellants asking for an accounting in respect of the income received by them and for a declaration that the plaintiff is entitled to possession of the land described in the schedule to the plaint and for the ejection of the defendants therefrom. 30

2. After trial the Learned Judge ordered the defendants-appellant to account in respect of the income but held that the management and consequently the possession was in terms of the provisions in the instrument of the Trust vested in the defendants.

3. The defendants-appellant have appealed from the said Judgment and the plaintiff-respondent begs

to object to the finding in the decree that the plaintiff-respondent is not entitled to possession of the said land on the following among other grounds that may be urged by Counsel at the hearing of the appeal.

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Cross-objections  
of Plaintiff-  
Respondent.

27th January,  
1956  
- continued.

(a) The said finding is contrary to law and against the weight of evidence led in the case.

10 (b) The Plaintiff respondent submits that the said land is properly appropriated to the use of the Rajamaha Vihare and its possession and management and is in law vested in him as the Controlling Viharadihipathi of the said Vihare.

(c) It is submitted that the plaintiff-respondent is by provisions of statute both entitled to and under a duty to possess and manage the said lands notwithstanding any provisions in Last Will No. 4115 and the Deed of Transfer to the Plaintiff-respondent.

20 (d) It is submitted that on a proper construction of the provision in the Last Will there is no limitation on the right of the plaintiff-respondent to possess and manage the said land

(e) It is submitted that in any event the plaintiff-respondent was entitled to have the land removed from the possession of the defendants on the proof of mismanagement and/or wrongful denial of the rights and the finding in respect of this matter was premature.

Wherefore the plaintiff-respondent prays:-

- 30 (a) that the finding of the Learned District Judge that the plaintiff-respondent is not entitled to possession of the said land be set aside,
- (b) that the plaintiff-respondent be declared entitled to possession of the said land and for an order for ejection of the defendant therefrom,
- (c) for costs,
- 40 (d) for such other and further relief not specifically prayed for as to Their Lordships' Court might seem meet.

Sgd. K.D. SENWEERA  
Proctor for plaintiff-respondent.

In the  
Supreme Court  
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No. 14

JUDGMENT OF THE SUPREME COURT

No. 14

S.C. No. 183 D.C. Colombo (Inty) No. 7338/L.

Judgment of the  
Supreme Court.  
18th June, 1957.

WIJEWARDENE & ANOTHER v. BUDDHARAKKITA THERO

Present: BASNAYAKE, C.J., and PULLE, J.

Counsel: H.V. PERERA, Q.C. with K. HERAT, for  
1st & 3rd Defendant-Appellants  
E.B. WIKRAMANAYAKE, Q.C. with  
S. NADESAN, Q.C. G.T. SAMARAWICKREMA  
and PRINS GUNASEKERA for Plaintiff-  
Respondent

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Argued on: 5th, 6th and 7th February 1957.

Decided on: 18th June 1957

Basnayake, C.J.

By her Last Will, Helena Wijewardene, widow of Tudugallege Don Philip Wijewardene, Mohandiram, made a bequest of 250 acres of paddy land situate at Kalawewa for the benefit of the Raja Maha Vihare at Kelaniya. The bequest which was made in Clause 5 is in these terms:

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"I give two hundred and fifty acres out of all that paddy field called Kalawewa Farm situate in the North Central Province Ceylon to the Raja Maha Vihare, Kelaniya. The selection of the 250 acres I leave to my Executors and the management of the same for the benefit of the said Vihare I entrust to my Trustees hereinafter named".

By clause 7 of the same Will she created a charitable trust for religious as well as other purposes and made bequests of her property both movable and immovable to her children. The following religious purposes are specially mentioned.

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(a) to continue gradually the restoration work now being carried on by me at the Kelaniya temple

(b) to support in such manner and to such extent as my trustees may think fit such Buddhist charitable institutions and temples as my trustees may from time to time select.

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In the final clause of the Will, the testatrix gave her trustees power to sell any of the trust property and to invest the proceeds in other immovable property. That clause reads as follows:-

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18th June, 1957  
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10 "I give my Trustees under this my Will full power and authority to sell and convert into money by Public Auction or private contract any property of mine if according to the circumstances at the time it becomes necessary or expedient so to do and to invest the proceeds of such sale and conversion in other immovable property".

After the administration was over, on 27th November 1942, the Executors of Helena Wijewardena's estate transferred to the trustee of the Raja Maha Vihare, Mapitigama Dhammarakkita, the paddy fields bequeathed for the benefit of the Vihare. The habendum in the Executors' conveyance is to the following effect:-

20 "To have and to hold the said property and premises hereby conveyed into the said Reverend Mapitigama Dharmarakkhita High Priest and his successors in Office as aforesaid subject always to the conditions in the said Will expressly contained namely that management of the said property for the benefit of the said Vihare shall be in the Trustees in the said Will named or provided for and their successors duly appointed in terms of the said Will such Trustees being at present the said Don Richard Wijewardene, Don  
30 Edmund Wijewardene and Don Louis Wijewardene".

Mapitigama Dhammarakkita died on 19th July 1947 and he was succeeded by the plaintiff Mapitigama Buddharakkita, who instituted this action on 15th October 1954, against the three defendants one of whom is a trustee designated in the Will and the other two are the successors of the other original trustees who are dead. He prayed -

40 (a) that the defendants be ordered to account for the income from the said lands more fully described in the schedule and that judgment be entered in favour of the plaintiff for such sum as may be found due to him on such accounting.

(b) in default of such accounting judgment be entered in favour of the plaintiff ordering the defendants jointly and severally to pay to the plaintiff the sum of Rs.350,000/-



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- (c) for interest at the rate of six per centum per annum on all sums found due from the time they became due till date of action and thereafter at the legal rate on the aggregate amount of the decree till payment in full
- (d) for a declaration that the plaintiff is entitled to possess the lands more fully described in the schedule hereto and for ejectment of the defendants and all those holding under the defendants from the said lands 10
- (e) for costs of suit.

The defendants pleaded that the Last Will created a charitable trust over the land for the benefit of the Vihare and that the power to use the income of the trust property for its benefit was vested in them as trustees in the last Will, and they asked that the action be dismissed.

The following issues were framed at the trial. 20

(1) Is the plaintiff entitled:-

(a) to an accounting in respect of the income from the 250 acres depicted in Plan No. 278 of 10th May 1947, referred to in the schedule to the plaint;

(b) to be paid the said income

(2) If issue (1) is answered in the affirmative, what sum is the plaintiff entitled to on the accounting?

(3) In default of proper accounting, to what sum is plaintiff entitled? 30

(4) Is the plaintiff entitled to be placed in possession of the said 250 acres?

(5) Did the Last Will referred to in paragraph 3 of the plaint create a charitable trust in respect of the land referred to in the schedule to the plaint for the benefit of the Rajamaha Vihare, Kelaniya?

(6) Is the power to use the income of the said property for the benefit of the said Vihare 40

vested in the 1st and 3rd Defendants and Mr. P.R. Wijewarden as trustees of the said Last Will?

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(7) If issues 5 and 6 or either of them is answered in the affirmative, is the plaintiff entitled -

(a) to maintain this action;

(b) to be paid the income derived from the said property?

10 It was agreed that issues (1), (4), (5), (6) and (7) should be tried first.

The plaintiff gave evidence and stated that the trustees have been and are still in possession of the paddy fields, that they are managing it, and that they use the income for certain purposes connected with the Vihare such as making improvements to the Vihare, paying the tom-tom beaters their salaries and making donations to the Vihare whenever the Sabha is in need of money. He made no allegation  
20 that the trustees were mismanaging the property or misappropriating the funds.

The defendants led no evidence and after hearing the arguments the learned Judge held that the gift made by the deceased testatrix was a bequest to the Temple which according to his view of the Buddhist Temporalities Ordinance was capable of receiving property. He read the Will as conferring on the trustees the management of the property only and not the control of the income, but held that the plaintiff was not entitled to possession. He  
30 did not refer to the execution of the conveyance by the Executors as of any consequence and attached no importance to it, and he held that the plaintiff was entitled to receive the income from the paddy fields while the defendants were entitled to manage them and possess them. He answered the first issue in the affirmative, the fourth, fifth and sixth in the negative, and held that the seventh did not arise for decision.

40 Learned counsel for the appellants submits that the learned District Judge has failed to read the Will as a whole for the purpose of ascertaining the intention of the testatrix, and that it is wrong to base the construction of the Will on any one clause. He contends that a Buddhist Vihare or

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temple, which is an inanimate thing, is not a juristic person and cannot therefore receive or hold property.

I am in agreement with the submissions of learned counsel for the appellants. Clause 5 purports to create a trust for the benefit of the Temple and for that purpose the 250 acres of paddy field at Kalawewa are given to the trustees who are required to manage the same for the benefit of the Vihare. No case has been cited in which it has been held that a Buddhist Temple is a juristic person. The question appears to have been raised in the case of Sadhananda Terunanse v. Sumana Tissa et al 1. but not decided.

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Learned Counsel for the respondent argued that by implication the Buddhist Temporalities Ordinance has given corporate status to a Buddhist Temple. I am unable to agree with that contention. The present Ordinance does not declare a temple to be a juristic person nor did any of the previous Buddhist Temporalities Ordinances do so. The property of a temple was vested in a trustee on behalf of the Sangha and it was the trustee that was always empowered to sue and be sued. To constitute a corporation it is not necessary that any particular form of words should be used in the statute. It is sufficient if the intention to incorporate appear clearly therefrom. There is no such intention expressed in the Buddhist Temporalities Ordinance nor is such an intention implied in the statute. In fact the scheme of the Ordinance can be regarded as negating such an intention.

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Learned counsel for the respondent also argued that Clause 5 of the Will did not create a trust but merely made provision for management of the property that was given to the Vihare, which was a juristic persons capable of taking property. I have already expressed the view that a temple is not a juristic person. I am also unable to agree with counsel's contention that Clause 5 does not create a Trust.

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It would appear from the case of Wickremesinghe v. Unnanse 2. that for a dedication to the Sangha there must be a donor, a donee, and a gift. There must be an assembly of four or more bhikkhus. The property must be shown; the donor and donee must appear before the assembly, and recite three times the formula generally used in giving property to

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the Sangha with the necessary variation according as it is a gift to one or more. Water must be poured into the hands of the donee or his representative. The Sangha is entitled to possess the property from that time onwards. No property can become sanghika without such a ceremony. Sometimes there is a stone inscription recording the grant or a deed is given.

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10 The procedure laid down in the above case for giving property to the Sangha is in accord with the Vinaya (Kullawagga Sixth Khandhaka, sections 2, 4, and 5). A temple does not, by the mere fact that it is a place of worship, become the property of the Sangha. A private individual can have on his property a temple and it would be his private property. A temple or any other property given to the Sangha must be dedicated in the manner prescribed in the Vinaya. Then and then only can it become sanghika property. In order to perfect the paper title and complete the entries in the Register of Documents kept under any law for the time being regulating the registration of documents it has been the practice after the formal dedication is over for the donor to execute a deed conveying the property for the use of the Sangha to a trustee named in the deed. He is at times entrusted with the administration of the gift subject to the terms specified in the grant.

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30 Learned counsel for the respondent also argued that even if the property had been given to the trustees for the benefit of the Vihare, by virtue of section 20 of the Buddhist Temporalities Ordinance it vested in the trustee appointed under the Buddhist Temporalities Ordinance. I am unable to uphold that submission. The Buddhist Temporalities Ordinance deals with sanghika property which has been dedicated to the Sangha of a particular Vihare. It declares that such property is vested in the trustee or controlling Viharadhipathi of the Vihare. Property can be given to the Sangha only as sanghika property and in accordance with the customary mode of dedication, but a person is not prevented from creating a trust for the benefit of a Vihare in accordance with the Trusts Ordinance. Such trust property does not become sanghika or pudgalika property. Nor does such property vest in the trustee of the temple appointed in terms of the Buddhist Temporalities Ordinance. Such property would be governed by the trust created by the

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author of the trust. Section 109 of the Trusts Ordinance which provides that Chapter 10 of that Ordinance shall not apply to religious trusts regulated by the Buddhist Temporalities Ordinance, does not have the effect of bringing within the category of religious trusts regulated by the Buddhist Temporalities Ordinance every trust which a person may create for the benefit of a Buddhist temple or for any Buddhist religious purpose. It excluded the application of that Chapter to such trusts as are governed by the Buddhist Temporalities Ordinance. The main object of the Buddhist Temporalities Ordinance is to regulate the management and control of the vast temporalities granted by the Sinhalese Kings to be Sangha of the ancient temples of the Island, as the Sangha being mendicants who have given up all worldly interests were unable to protect and manage them. The history of the legislation on this subject goes beyond 1889. When the Kangyan Provinces were ceded to the British Government and after it gave up its active participation in the protection of the Buddhist religion, from time to time, efforts were made to regulate by law the vast endowments made by the Sinhalese Kings to the cause of the Buddhist religion. Till 1931 the trustees were laymen but in that year Buddhist Temporalities Ordinance introduced a departure from the practice of excluding bhikkhus from the office of trustee on account of the abuse of their trust by the lay trustees. That Ordinance permitted a Viharadhipathi to nominate himself as trustee instead of appointing a lay trustee. I see no justification for enlarging the scope of the Buddhist Temporalities Ordinance by holding that it governs every trust designed for the advancement of the Buddhist religion or the maintenance and welfare of a temple. A question similar to the one that arose in this case arose in the case of Wijewardene Nilame v. Naina Pulle 3. In that case the Government of Ceylon transferred certain lands to the Dewe Nilame of the Dalada Maligawa and the Nayakas of Malwatta and Asgiriya in trust for the use of the Vihares and Dewales of the Kandyan Province which had been in receipt of allowances from the Government up to about the year 1847. The chief question for decision in that case was whether the trustees under the Buddhist Temporalities Ordinance superseded the trustees appointed by the Crown grant. The provisions of that Ordinance (No. 8 of 1905) in regard to the vesting of property in a trustee were the same as those in

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the present Ordinance and this Court held that the property granted by the Crown did not fall within the terms of the Ordinance. Ennis J. stated in the course of his judgment:

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10 "If, for example, a testator left property to a trustee for the use of a specified Buddhist temple and a specified philanthropic institution, the official trustees of the temple could not interfere in the management of the property by the trustees appointed by the Will; the same position occurs when the property is vested in trustees for the benefit of a number of different Vihares. The Ordinance, in my opinion, provides only for the vesting and administration of property, which belongs etc. exclusively to a particular temple, in the trustees appointed under the Ordinance."

De Sampayo J. agreed with the judgment of Ennis J. and stated that -

20 "Although the property is granted for the use of the Vihares and Dewalas, I think, and if it were necessary to decide it I should hold, that a special trust of the above kind can subsist with the trusts created by the Ordinance and that the trustees' rights are not merged in the powers of the trustees under the Ordinance. It seems to me that the Ordinance substitutes the trustees thereunder

30 appointed for the priestly incumbents under the Buddhist ecclesiastical law and that the subject matter of the trusts created by the Ordinance are the temporalities which were or would have been administered by such priestly incumbents. It is true that in this case the trustees under the Crown Grant happen to be the Dewe Nilame and the High Priests of Malwatte and Asgiriya, but that circumstance is in the nature of an accident and does not affect the general question whether the Ordinance is intended to draw in property which is

40 already legally vested in trustees appointed by an instrument of trust independently of the ordinary administration of temple property. The income, when divided and given over, may, if at all, be said to belong to the respective temples, but the management and possession of the property itself and the disposal of the income would surely remain with such trustees"

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I am in respectful agreement with the view  
cited above.

The order of the learned District Judge is  
wrong. We therefore set it aside and allow the  
appeal with costs both here and below.

Sgd. HEMA H. BASNAYAKE  
Chief Justice

Pulle, J. I agree.

Sgd. M.F.S. PULLE  
Puisne Justice

1. 36. N.L.R. 422  
2. 22 N.L.R. 236  
3. 1 C.W.R. 167

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No. 15

Decree of the  
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No. 15

DECREE OF THE SUPREME COURT

D.C. (Inty) 183  
1955

DON EDMUND WIJEWARDENE of Turret Road,  
Colombo and ANOTHER

1st and 3rd Defendants-Appellants

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against

REV. MAPITIGAMA BUDDHARAKKITA THERO,  
Trustee of the Kelaniya Rajamaha Vihare,  
Kelaniya Plaintiff- Respondent

Action No. 7338/Land.

District Court of Colombo.

This cause coming on for hearing and deter-  
mination on the 5th, 6th, 7th February and 18th  
June 1957 and on this day, upon an appeal prefer-  
red by the 1st and 3rd Defendants-Appellants before  
the Hon. H.H. Basanayake, Q.C., Chief Justice and  
the Hon. M.F.S. Pulle, Q.C. Puisne Justice of this  
Court, in the presence of Counsel for the 1st and  
3rd Defendants-Appellants and Plaintiff-Respondent.

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It is considered and adjudged that the order of the  
District Judge be and the same is hereby set aside,  
and the appeal is allowed with costs both here and  
below.

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(Vide copy of judgment attached)

Witness the Hon. Hema Henry Basnayake, Q.C., Chief  
Justice at Colombo the 26th day of June, in the  
year One thousand nine hundred and fifty-seven and  
of Our Reign the Sixth.

Sgd. W.G. WOUTERSZ.  
Deputy Registrar, S.C.

No. 16

ORDER IN COUNCIL GRANTING LEAVE TO THE  
PLAINTIFF-APPELLANT TO APPEAL

AT THE COURT AT BUCKINGHAM PALACE.

The 30th day of July, 1958

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY  
PRIME MINISTER MR. ORMSBY-GORE  
LORD PRESIDENT MR. BROOKE  
LORD MILLS MR. MOLSON

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WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 22nd day of July 1958 in the words following viz:-

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Mapitigala Buddharakkita Thero in the matter of an Appeal from the Supreme Court of Ceylon between the Petitioner Appellant and (1) Don Edmund Wijewardene (2) Ray Wijewardene and (3) Philip Sivali Wijewardene Respondents setting forth (amongst other matters) that the Petitioner is the Viharadipathi (Chief incumbent) and trustee of the Raja Maha Vihare (great royal temple) a famous Buddhist temple situated at Kelaniya in the Island of Ceylon; that by the Will of one Helena Wijewardena widow of Tudugallage Don Philip Wijewardene (thereinafter called "the testator") a bequest was made of 250 acres of paddy land situate at Kalawewa in the North Central Province of Ceylon for the benefit of the said Raja Maha Vihare the bequest being in the following terms "I give two hundred and fifty acres out of all that paddy field called Kalawewa Farm, situate in the North Central Province Ceylon to the Raja Maha Vihare, Kelaniya. The selection of the 250 acres I leave to my executors and the management of the same for the benefit of the said Vihare I entrust to my Trustees hereinafter named"; that the testator died on the 10th November 1940 and after the estate had been administered the Executors on 27th November 1942 transferred to the trustee of the said Raja Maha Vihare the Rev. Mapitigama Dhammarakkita Thero the land bequeathed for the benefit of the Vihare the habendum in the

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In the  
Privy Council

No. 16

Order in Council  
granting leave  
to Plaintiff-  
Appellant to  
appeal.

30th July, 1958.



In the  
Privy Council

No. 16  
Order in Council  
granting leave  
to Plaintiff-  
Appellant to  
appeal.

30th July, 1958  
- continued.

said conveyance being as follows "To have and to hold the said property and premises hereby conveyed unto the said Reverend Mapitigama Dharmarakkhita High Priest and his successors in office as aforesaid subject always to the conditions in the said Will expressly contained namely that management of the said property for the benefit of the said Vihare shall be in the Trustees in the said Will named or provided for and their successors duly appointed in terms of the said Will such Trustees being at present the said Don Richard Wijewardene, Don Edmund Wijewardene and Don Louis Wijewardene"; that the said trustee died on the 19th July 1947 and was succeeded by the Petitioner; that on the 15th October 1954 the Petitioner instituted in the District Court of Colombo an action against the three Respondents of whom one is one of the trustees designated in the said Will and the other two the successors of the two original trustees now deceased praying (a) that the Defendants be ordered to account for the income from the said lands and that Judgment be entered in favour of the Petitioner for such sum as may be found due to him on such accounting and (b) that in default of such accounting Judgment be entered in favour of the Petitioner ordering the Defendants jointly and severally to pay the Petitioner the sum of Rs. 350,000/-; that the Court gave Judgment on the 6th July 1955 in favour of the Petitioner holding that the gift made by the deceased testatrix was a valid bequest to the Temple; that the Respondents appealed to the Supreme Court and that Court delivered Judgment on the 18th June 1957 setting aside the Judgment of the District Court and holding inter alia that a Buddhist Vihare is not a juristic person and cannot receive or hold property and that property cannot validly be given to a temple unless it be given to the Sangha (Buddhist Clergy) and dedicated in the manner prescribed in the Buddhist Ecclesiastical rules of Vineya; that on the 28th August 1957 final leave to appeal to Your Majesty in Council was granted to the Petitioner by the said Supreme Court; That the Petitioner under paragraph 10 of the Appellate Procedure (Privy Council) Order 1921 was required within ten days after obtaining such final leave to appeal (i.e. on or before the 7th September 1957) to serve on the Respondents a list of all such documents as he considered necessary for the due hearing of the Appeal; that owing to the ill-health of the Petitioner's Proctor the said list was served only on the 12th September 1957; that

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the Petitioner thereupon made application for extension of time on the 17th September 1957 and the Respondents made an application for the dismissal of the Appeal on the 18th September 1957 and the Court gave Judgment on the 19th February 1958 refusing the Petitioner's application and granting that of the Respondents: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal to Your Majesty in Council from the Judgment of the Supreme Court of Ceylon dated the 18th June 1957 and for further or other relief;

In the  
Privy Council

No. 16

Order in Council  
granting leave  
to Plaintiff-  
Appellant to  
appeal.

30th July, 1958.

- continued.

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion (1) that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Supreme Court of Ceylon dated the 18th day June 1957 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs and (2) that the Respondents' costs of opposing this Petition ought to be paid by the Petitioner in any event;

"And Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same"

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of Ceylon for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

Sgd. W.G. AGNEW.

Exhibits

"P.1"

Certificate  
Issued by the  
Public Trustee.  
3rd April, 1952.

E X H I B I T SExhibit P.1CERTIFICATE ISSUED BY THE PUBLIC TRUSTEE

Reference No. BT 1 Cl.

BY virtue of the powers vested in me by Section 11 (2) of the Buddhist Temporalities Ordinance (Chapter 222), I, DON EDMUND WIJEWARDENE, the Public Trustee of Ceylon, do hereby appoint MAPITIGAMA BUDDHARAKKHITA THERO of Kelaniya Raja Maha Vihare, as Trustee of Kelaniya Raja Maha Vihare, situated at Kelaniya in Colombo District being the person nominated to be Trustee by himself in his capacity as Viharadhipati of the said Kelaniya Raja Maha Vihare by his letter dated March 21, 1952. 10

GIVEN under my hand and seal at COLOMBO this Third day of APRIL One thousand nine hundred and fifty two

Sgd. D.E. WIJEWARDENE  
Public Trustee of Ceylon.

"P.2"

Last Will  
No.4115.  
20th July, 1935.

Exhibit P.2.

20

LAST WILL No. 4115

THIS IS THE LAST WILL AND TESTAMENT of me HELENA WIJEWARDENA of Sri Ramya, Colpetty, widow of Tudugallege Don Philip Wijewardena, Mohandiram, deceased.

2. I hereby revoke all Wills and other Testamentary writings if any heretofore made or executed by me and declare this to be my Last Will and Testament.

3. I appoint my sons Don Richard Wijewardene Don Edmund Wijewardena and Don Walter Wijewardene Executors of this my Will. 30

4. I give all my Jewellery to my Executors to be securely deposited and enshrined in a Temple or a Dagoba as an offering.

5. I give two hundred and fifty acres out of all that paddy field called Kalawewa Farm situate in the North Central Province Ceylon to the Rajamal

Vihare Kelaniya. The selection of the 250 acres I leave to my Executors and the management of the same for the benefit of the said Vihare I entrust to my Trustees hereinafter named.

Exhibits

"p.2"

Last Will  
No.4115.

20th July, 1935  
- continued.

6. I direct my Executors to distribute all my plate household furniture motor cars and other effects equally among my children who shall not question the propriety of the division and allotment made by my Executors.

10 7. I give all that property situated in Dean's Road, Colombo and bearing assessment Nos.2, 2a, 2b, 2c, 4, 6, 6a, 8, 10, 12, 14, 16, 16a, 18, 20, 22 and described in Fiscal's Conveyance No. 3390/1887 and all the estate Neganahirakande and any land adjoining thereto which I may hereafter purchase and all that property situated in Nagalingam Street bearing assessment No. 898/224 unto the said Don Richard Wijewardena Don Edmond Wijewardena and Don  
20 Walter Wijewardena in trust to use the net income thereof after meeting costs of maintenance taxes and other necessary disbursements for the following Charitable purposes that is to say

(a) to continue gradually the restoraticn work now being carried on by me at the Kelaniya Temple.

(b) To aid either occasionally or regularly my relations who are or may become poor including members of my own family and who in the judgment of my Trustees are in need of such aid in consequence of illness financial difficulties and the like or on the occasion of marriage deaths and the like.  
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(c) To support in such manner and to such extent as my Trustees may think fit such Buddhist charitable institutions and temples as my Trustees may from time to time select.

In carrying out the said Trust my trustees may devote the income to the said purposes in such proportions as they may think fit and they shall have an absolute discretion in the administration of this Trust and no question whatever shall be  
40 raised as to the manner in which they distribute the income of the said Trust properties or as to their choice of the objects of the Trust. The said Trust shall be known as the Wijewardene Charitable Trust. I declare that in the event of my said Trustees dying or resigning or becoming

Exhibits

"P.2"

Last Will  
No.4115.

20th July, 1935

- continued.

incapable of acting the remaining Trustees shall appoint in the stead of the Trustees dying resigning or becoming incapable the earliest name from the following list who is able and willing to act namely my sons Don Louis Joseph Wijewardena and Don Albert Tarrant Wijewardena and my son in law Dr. Arthur Fritsz Sensviratne but without fettering the discretion of the remaining trustees for the time being I desire that when the list of persons above named is exhausted or they are unwilling to act as far as possible Trustees shall be chosen from other members of my family I empower my Trustees to accept donations either from members of my family or others either to be used as income or to augment the Wijewardena Charitable Trust Fund and to administer the same as if it had been included in the devise hereinbefore made. 10

My Trustees shall prepare a statement of accounts annually showing the income and expenditure and the manner in which the net income has been applied and issue copies thereof to all my children and after the death of the last surviving child issue copies thereof to any descendant of mine who shall apply for the same. 20

8. I give and devise the properties next hereinafter specified to my children as respectively named subject to the conditions that each devisee shall only enjoy the income of the property devised to him or her during life and shall not gift sell mortgage or lease for a longer period than five years at a time or lease during the pendency of an existing leasing except during the last six months of its term or otherwise howsoever alienate or encumber the same; and that such property shall not be liable to be seized or sold in execution against such devisee; but that such property shall on the death of such devisee pass to and devolve on such of his or her descendants or if there be no descendant such of his or her brothers (except my son Don Charles Wijewardena) or sisters or descendants of brothers (including the said Don Charles Wijewardena) or sisters as such devisee may by any testamentary disposition appoint; and in failure of any such appointment on all his or her children in equal shares the issue of a deceased child taking per stirpes the share which such deceased child would have taken if living and in the event of there being no descendant of such devisee on his or her brothers (except the said Don Charles Wijewardena) and sisters in equal shares the issue of any deceased brother (including the said Don 30 40 50

Charles Wijewardena) or sister taking per stirpes the share which the deceased brother or sister (including the said Don Charles Wijewardena if he had not been excluded as aforesaid) would have taken if living; and that in the event of any alienation encumbrance or seizure in contravention of the above prohibition and restriction such alienation encumbrance or seizure shall be null and void and the property shall at once pass to the Fidei commissaries above designated as if the devisee had died immediately before such alienation encumbrance or seizure I further declare that the conditions hereinbefore specified shall apply to any of my children and grandchildren now living or in vente sa mere to whom any of the said properties or share therein shall pass under the foregoing dispositions as strictly and in like manner as if such property or share had been devised by me directly and immediately to such child or grandchild. I make these provisions as it is my desire that my children and descendants shall keep together and retain my properties in the family as long as possible under the law of entail.

The properties I give and devise to my several children subject to the aforesaid conditions are;

(a) To my son Don Philip Alexander Wijewardena an undivided half share of my home Sri Ramya aforesaid.

(b) To my daughter Agnes Helen Jayawardena the property called "Lake View" in Norris Road Pettah Colombo and the property No.132 Hill Street Colombo.

(c) To my son Don Luis Joseph Wijewardena one undivided fourth share of my property in 4th and 5th Cross Street, Pettah Colombo and the property Kapuralgewatte in Saidewatte.

(d) To my son Don Richard Wijewardena one undivided fourth share of the said property in 4th and 5th Cross Street Pettah aforesaid and my property in Hospital Street in the Fort of Colombo.

(e) To my son Don Edmund Wijewardena an undivided half share of Kohombe estate in Kakapalya, an undivided half share of the remainder of the aforesaid Kalawewa Farm the property known as Andris Appu's Property at Saidewatte aforesaid and the property called Annagewatte Kakapaliya aforesaid.

Exhibits

"p.2"

Last Will  
No.4115.

20th July, 1935  
- continued.

Exhibits

"p.2"

Last Will  
No.4115.20th July, 1935  
- continued.

(f) To my daughter Harriet Seneviratne the remaining half share of the said property "Sri Ramya" and the property called Uonagama at Saidewatte aforesaid.

(g) To my son Walter Wijewardena one undivided fourth share of the property in 4th and 5th Cross Street Pettah aforesaid the property known as Saidewatte Waluwa and the remaining half share of the remainder of the said Kalawewa Farm.

(h) To my son Don Albert Tarrant Wijewardena the remaining half share of the said Kohombe Estate. 10

9. I give and devise the remaining undivided fourth share of the property in 4th and 5th Cross Street Pettah aforesaid to my aforesaid Trustees in trust to apply so much of the net income thereof as they shall in their discretion think fit in the maintenance according to her station in life of my daughter-in-law the wife of my said son Don Charles Wijewardena and in the maintenance education and advancement in life of the children of my said son including those that may be born hereafter and out of the balance income to pay to my said son Don Charles Wijewardena each month such sum as my trustees may in their absolute and unfettered discretion decide to allow him for that month and on the death of the said Don Charles Wijewardena to convey the said property and hand over the unexpended income to the children of the said Don Charles Wijewardena equally the issue of any deceased child receiving the share which their parent would have taken if living. 20 30

Provided however that if at any time and from time to time during his life the said Don Charles Wijewardene should in writing request the Trustees to convey any part or share of the said property to any one or more of his children who have either attained majority or are about to be married the Trustees shall do so and in any such case the Trustees shall distribute any part or share of the Trust property or its income remaining at the death of the said Don Charles Wijewardena only among the other issue of the said Don Charles Wijewardena. I declare that the conditions hereinbefore specified in clause 8 in respect of the devisees to my other children shall apply mutatis mutandis to whatever share shall be received by the children of the said Don Charles Wijewardene as strictly and in like manner as if the same conditions had been embodied 40

and specified in this clause it being my desire that my descendants through the said Don Charles Wijewardena should as in the case of my other descendants keep together and retain my property in the family as long as is possible under the law of entail.

Exhibits

"P.2"

Last Will  
No.4115.

20th July, 1935  
- continued.

10 In the event of the death resignation or incapacity of any of them the said Don Richard Wijewardena Don Edmond Wijewardena and Don Walter Wijewardena the provisions hereinbefore contained regarding the appointment of New Trustees in respect of the Wijewardene Charitable Trust shall apply

10. I direct that any debts of mine testamentary expenses and estate duty shall be paid from the proceeds of sale of the following properties in so far as the proceeds of mortgage investments and ready money in my estate shall be insufficient for the purposes:- Viz.

- 20 (a) Property in Lunawa  
(b) Havelock Town Property  
(c) Thurstan Road Property  
(d) Pinnalanda Estate  
(e) Shares in Companies

30 In the event of there not being sufficient money to pay estate duty (after payment of debts and testamentary expenses) from the sources indicated above I declare that a fixed proportion only of the duty payable in respect of each devise shall be paid by my Executors and the deficiency shall be met by each devisee (including the devisee in Trust).

11. All the rest and residue of my property if any I give devise and bequeath to all my children in equal shares; should any of them predecease me leaving issue such issue shall take the share of such predeceased child.

40 12. I give my Trustee under this my Will full power and authority to sell and convert into money by public auction or private contract any property of mine if according to the circumstances at the time it becomes necessary or expedient so to do and to invest the proceeds of such sale and conversion in other immovable property

IN WITNESS whereof I the said Helena Wijewardena



Exhibits

"p.2"

Last Will  
No.4115.

20th July, 1935  
- continued.

do set my hand to this my Last Will and Testament and to one other of the same tenor and date at Colombo this twentieth day of July One thousand nine hundred and thirty five.

SIGNED AND DECLARED by the within )  
named Testatrix as and for her )  
Last Will and Testament in the )  
presence of us present at the same )  
time who in her presence and in )  
the presence of one another hereto )  
affix our signatures as witnesses )

Sgd.  
H. WIJewardena

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Sgd. G.A.H. WILLE  
N.P.

Sgd. G.A.H. WILLE  
Sgd. P.L. KEEGAL.

I, GEORGE ALFRED HENRY WILLE of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing Last Will and Testament having been read over and explained by me to the within named Helena Wijewardena in the presence of the subscribing witnesses George Alfred Herbert Wille of Bambalapitiya Colombo and Pelham Liebert Keegal of Dehiwal all of whom are known to me the same was signed by the said Helena Wijewardena and also by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present at the same time on the twentieth day of July One thousand nine hundred and thirty five at Colombo.

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I further certify and attest that in the original in line 15 on page 1 the words "hereinafter named" and between line 10 and 11 on page 4 the words "the law of entail" were interpolated and in line 8 on page 2 the fourth letter "e" of the word "members" and the fourth letter "a" of the name "Sri Ramya" wherever it appears, were deleted before the foregoing Last Will and Testament was read over and explained as aforesaid date of attestation

40

20th July 1935

Which I attest  
Sgd. G.A.H. WILLE  
Notary Public

True copy of the Last Will filed in D.C. Colombo Testamentary case No. 9566. Sgd. ....  
D.C. Colombo Secretary  
6.3.1950.

Exhibits

Exhibit P. 3.

DEED No. 4489 attested by G.A. WILLE,  
Notary Public

"P.3"  
Deed No. 4489  
attested by  
G.A. Wille,  
Notary Public.  
27th November,  
1942.

Application No. D.2642

Prior Registration:

Anuradhapura B  $\frac{4}{325-326}$

No. 4489

10 TO ALL TO WHOM THESE PRESENTS SHALL COME DON  
RICHARD WIJEWARDENE and DON EDMUND WIJEWARDENE both  
of Colombo in the Island of Ceylon Executors of  
the Will of Helena Wijewardene of "Sri Ramya" Col-  
petty Colombo aforesaid deceased

SEND GREETING

20 WHEREAS the said Helena Wijewardene was in her  
lifetime seised and possessed of or otherwise well  
and sufficiently entitled to all that paddy field  
called Kalawewa Farm situated in the North Central  
Province and in the First Schedule hereto fully  
described

AND WHEREAS the said Helena Wijewardene died  
at Colpetty Colombo aforesaid on the 10th day of  
November 1940 having made and executed her Last  
Will and Testament dated the 20th day of July 1935  
attested by George Alfred Henry Wille of Colombo  
aforesaid Notary Public whereof she appointed her  
sons the said Don Richard Wijewardene and Don Edmund  
Wijewardene and also her son Don Walter Wijewardene  
since deceased Executors

30 AND WHEREAS the said Will was duly proved in  
Testamentary Proceedings No. 9566 of the District  
Court of Colombo and Probate thereof granted on  
the 10th day of October 1941 to the said Don  
Richard Wijewardene and Don Edmund Wijewardene as  
Executors as aforesaid

40 AND WHEREAS by the said Will the said Helena  
Wijewardene gave and devised inter alia 250 acres  
out of the said property unto the Rajamal Vihare  
Kelaniya declaring that the selection of the 250  
acres she left to her Executors and the management  
of the same for the benefit of the said Vihare she  
entrusted to the Trustees in that behalf in the  
said Will named, to wit, the said Don Richard  
Wijewardene and Don Edmund Wijewardene and the  
said Don Walter Wijewardene since deceased.

Exhibits

"p.3"

Deed No. 4489  
attested by  
G.A. Wille,  
Notary Public.  
27th November,  
1942.  
- continued.

AND WHEREAS in pursuance of the provisions in that behalf in the said Will contained the said Don Richard Wijewardene and Don Edmund Wijewardene as remaining Trustees appointed in the stead of the said Don Walter Wijewardene deceased Don Louis Joseph Wijewardene of Colombo aforesaid.

AND WHEREAS the debts of the said Estate and Estate Duty in respect thereof having been paid it is expedient that the Executors of the said Will should convey the said property to the Trustees of the said Rajamal Vihare Kelaniya viz., Reverend Mapitigama Dharmmarakkhitha High Priest.

10

NOW KNOW YE and THESE PRESENTS WITNESS that the said Don Richard Wijewardene and Don Edmund Wijewardene as Executors as aforesaid in pursuance of the premises do hereby grant convey assign transfer set over and assure unto the said Reverend Mapitigama Dharmmarakkhitha High Priest as Trustee of the said Rajamal Vihare Kelaniya and his successors in office as such Trustee the 250 acres selected by the Executors out of the Kalawewa Farm and in the Second Schedule hereto fully described together with all rights privileges easements servitudes and appurtenances whatsoever to the said property and premises belonging or used or enjoyed therewith or reputed or known as part and parcel thereof and all the estate right title interest property claim and demand whatsoever of the said Helena Wijewardene deceased and of the said Don Richard Wijewardene and Don Edmund Wijewardene as Executors as aforesaid in to out of or upon the same.

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TO HAVE AND TO HOLD the said Property and premises hereby conveyed unto the said Reverend Mapitigama Dharmmarakkhitha High Priest and his successors in office as aforesaid subject always to the conditions in the said Will expressly contained namely that the management of the said property for the benefit of the said Vihare shall be in the Trustees in the said Will named or provided for and their successors duly appointed in terms of the said Will such Trustees being at present the said Don Richard Wijewardene Don Edmund Wijewardene and Don Louis Joseph Wijewardene.

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AND the said Don Richard Wijewardene and Don Edmund Wijewardene as Executors as aforesaid do hereby covenant and agree with the said Reverend Mapitigama Dharmmarakkhitha High Priest and his

10 successors in Office as aforesaid as Trustees of the said Vihare that they the said Don Richard Wijewardene and Don Edmund Wijewardene as Executors as aforesaid have not at any time heretofore made done or committed or been party or privy to any act deed matter or thing whereby or by means whereof the hereby granted and assigned premises or any part thereof are is can shall or may be in any wise impeached or oncumbered or prejudicially affected in title charge estate or otherwise howsoever

IN WITNESS whereof the said Don Richard Wijewardene and Don Edmund Wijewardene as Executors as aforesaid do set their respective hands to these presents and to two others of the same tenor and date at Colombo aforesaid on this Twenty seventh day of November One thousand nine hundred and forty two

THE FIRST SCHEDULE above referred to

20 1. ALL THOSE three allotments of land called Palugaswewahenyaye and Henyaye situated in the villages Palugaswewa Kalawowa and Alahapperuwagama in Kelegama Korale in the District of Nuwarkalawiya North Central Province bounded on the North by Crown land called Palugaswewahenyaye East by Crown land called Palugaswewahenyaye Alahaperumahena and Henyaye land purchased by A. Amankanda lands described in plans Nos. 171444 and 163781 the watercourses Goharuwavila Kumbure claimed by H. Isac Sumana and K. Vidanage Booliya a pond and the 30 Mahawela Oya South by land purchased by Simon de Silva a watercourse and the Kalaoya West by the Kalaoya and Crown land called Palugaswewahenaye in extent exclusive of the Mahawela Oya and Maha Ela passing through the land four hundred and thirteen acres three roods and twenty perches (A413.R3.P.20) as per Survey dated second July 1896 authenticated by D.G. Mantell Surveyor General.

40 2. An allotment of land called Kalawewa Mukalana and Kusalanagamawele situated at Kalawewa in Kelegam Korale aforesaid bounded on the North by streams lands described in plans Nos. 171424, 163781 and 161145 the Mahawela Oya Crown lands called Kalawewa Mukalana and Kusalanagamawila reservation for a road and reservation along the path East by reservation along the stream Crown lands called Kalawewa Mukalana and Baravagalawela stream reservation for

Exhibits

"P.3"

Deed No. 4489  
attested by  
G.A. Wille,  
Notary Public.  
27th November,  
1942.  
- continued.

Exhibits

"P.3"

Deed No. 4489  
attested by  
G.A. Wille,  
Notary Public.  
27th November,  
1942  
- continued

a road and Channel and land described in plan No. 160806 South by Crown lands called Beravagalwela and Kalawewa Mukalana reservation for a path and a stream West by the Kala Oya in extent exclusive of the Channel Stream path and reservations along it and reservation for road and path passing through the land and stream and Channel six hundred and sixty nine acres two roods and seventeen perches (A669.R2.P17) as per survey dated 22nd May 1897 authenticated by F.H. Grinlinton Surveyor General. Which said lands adjoin each other and form one property and form their situation as respects each other can be included in one survey.

10

THE SECOND SCHEDULE above referred to

ALL THOSE lands called Kalawewamukalana and Kusalanagamawila forming a divided part of the above and bounded on the North by Crown land called Kusalanagamawila forming part of Kusalanagama and Parana Ela East by Crown lands called Kalawewamukalana and Berawagalwila forming parts of Ukkulanpallama Village South by Road to Kalawewa and West by Railway Reservation Ela Parana Ela and lot B to be allotted to Mr. D.W. Wijewardene's children and containing in extent two hundred and fifty acres (A250.R0.P0) as per plan No. 278 dated 10th May 1942 made by D. Attgalle Licensed Surveyor

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WITNESSES:-

Sgd. Gerald E. de Alwais                      Sgd. D.R. Wijewardene  
Sgd. B.C.A. Nelson                              Sgd. D.E. Wijewardene  
Sgd. G.A. WILLE  
N.P.

30

I, GEORGE ALFRED HENRY WILLE of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing instrument having been read over by the within named Executors Don Richard Wijewardene and Don Edmund Wijewardene in the presence of the subscribing witnesses Gerald Ernest de Alwis of 131B Urana Lunawa in the said Island and Percival Clement Annesly Nelson of 34, Castle Street in Colombo aforesaid all of whom are known to me the same was signed by the said Don Richard Wijewardene and Don Edmund Wijewardene and also by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present at the same time at Lake House McCallum Road in Colombo aforesaid on this twenty seventh day of November One thousand nine hundred and forty two

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I FURTHER CERTIFY AND ATTEST that in the Original on page 6 in line 5 and in the Duplicate on page 6 in line 6 the words "to be" and "children" were interpolated respectively and in the original on page 6 in line 5 and in the duplicate on the same page in line 6 the word "Mr." was written and typed on erasure respectively before the foregoing instrument was read over as aforesaid and that no consideration was paid in my presence and that the Original of this instrument bears a stamp of the value of Rs. 1/- and the duplicate a stamp of the value of Rs. 10/-

10

Date of Attestation  
27th November, 1942

Which I attest  
Sgd. G.A. WILLE  
Notary Public.

SEAL

Exhibits

"P.3"

Deed No. 4489  
attested by  
G.A. Wille,  
Notary Public.  
27th November,  
1942  
- continued.

I, R.M.D. RANASINGHE, Addl. Registrar of Lands, Colombo, hereby certify that the foregoing is a true copy of a deed of Executors Conveyance made from the duplicate filed of record in this Office and the same is granted on the application of S. Gunasekera Esqr.

20

Sgd. ....  
Addl. Registrar of Lands

Land Registry,  
Colombo.  
12th July, 1954.

Exhibit P.4.

DEED No.430 attested by C.S. de S. Seneviratne  
Notary Public

30

Application No. D.2642  
7/7/54

Prior Registration:- Colombo A 227/210, A 86/287,  
K 28/211, 7/395, 25/81, 58/61,  
19/128  
Anuradhapura B 55/281.

No. 430

"p.4"

Deed No. 430  
Attested by  
C.S. de S.  
Seneviratne  
Notary Public.  
28th June, 1950.

THIS INDENTURE is made at Colombo on this Twenty Eighth day of June One thousand nine hundred and fifty BETWEEN DON EDMUND WIJewardena of No. 35 Turret Road, (hereinafter sometimes called and referred to as "the surviving Trustee") of the one part and DON ALBERT TARRANT WIJewardena of "Sriyala" Elliott Place, Borella, Colombo (hereinafter

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Exhibits

"P.4"

Deed No. 430  
 Attested by  
 C.S. de S.  
 Seneviratne  
 Notary Public.  
 28th June, 1950  
 - continued.

sometimes called and referred to as "the New Trustee") of the second part

WHEREAS by her Will No. 4115 dated 20th July 1935 attested by George A. Wille of Colombo Notary Public Helena Wijewardena late of "Sri Ramya", after making various devisees, devised and bequeathed the following properties and subject to the following Trusts

(1) All that property situated at Dean's Road and described in the First Schedule hereto, all that property situated at Nagalagam Street, Colombo and described in the Second Schedule hereto and all the Estate called Neganahira Kande situated at Eswatte and described in the Third Schedule hereto unto Don Richard Wijewardena, Don Edmund Wijewardena and Don Walter Wijewardena in trust to use the net income thereof after meeting costs of maintenance taxes and other necessary disturbances for the following charitable purposes that is to say:- 10

(a) to continue gradually the restoration of the work carried on by her at the Kelaniya Temple. 20

(b) to aid either occasionally or regularly my relations who are or may become poor including members of her family and who in the judgment of her Trustees are in need of such aid in consequence of illness financial difficulties and the like on the occasion of the marriages deaths and the like

(c) to support in such manner and to such extent as her Trustee think fit such Buddhist charitable institutions and temples as her Trustees may from time to time select 30

(B) All that two hundred and fifty acres of all that paddy field called Kalawewa Farm situated at Palugasewewa Kalawewa and Alahapperumwa Kalawiya in the Central Province and described in the Fourth Schedule hereto to the Rajamal Vihare Kelaniya and the management of the same for the benefit of the said Vihare was entrusted to Don Richard Wijewardena, Don Edmund Wijewardena and Don Walter Wijewardena as Trustees 40

AND WHEREAS the said Helena Wijewardena died on the 10th November 1940 and her said Will was duly proved in Testamentary Proceedings No.9566 of the District Court of Colombo

AND WHEREAS the said Don Walter Wijewardena

predceased the Testatrix and the said Don Richard Wijewardena and Don Edmund Wijewardena in exercise of the powers in that behalf conferred on them by the Last Will and by Section 75 of the Trust Ordinance appointed Don Louis Joseph Wijewardene of "Ixora Villa" Greenpath Colpetty as Trustee in place of the said Don Walter Wijewardena deceased.

10 AND WHEREAS the said Don Louis Joseph Wijewardena died on the 19th day of September 1949 and the said Don Richard Wijewardena on the 13th June 1950.

30 AND WHEREAS the said sole surviving Trustee Don Edmund Wijewardena (hereinafter referred to as "the Surviving Trustee") is desirous of appointing Don Albert Tarrant Wijewardene of "Sriyala" Elliott Road, Borella, Colombo (hereinafter referred to as "the New Trustee") to be a Trustee in respect of the Trusts above mentioned in place of the said Don Louis Joseph Wijewardena deceased and it has been decided to defer the appointment of a New Trustee in place of the said Don Richard Wijewardena deceased

NOW THIS INDENTURE WITNESSETH as follows:-

30 1. In exercise of the powers conferred on him the said Will and by Section 75 of the Trust Ordinance and of all other powers and authorities enabling him to do so, the Surviving Trustee appoints the New Trustee to be a Trustee in place of the said Don Joseph Louis Wijewardena and to act jointly with the said surviving Trustee in the execution of the several Trust powers and authorities above mentioned and containing in the said Last Will in place of Don Joseph Louis Wijewardena.

40 2. The said Surviving Trustee hereby declare that the properties described in the First, Second, Third and Fourth Schedule hereto and all income derived thereof and all rights and suits in relation thereto shall vest in the said New Trustee jointly with the Surviving Trustee upon the trusts and with and subject to the powers and provisions of the said Will

3. IT IS HEREBY DECLARED that the New Trustee shall have the same powers authorities and discretions and shall in all respects act as if he had originally been nominated a Trustee by the Author of the Trust

Exhibits

"p.4"

Deed No. 430  
Attested by  
C.S. de S.  
Seneviratne  
Notary Public.  
28th June, 1950  
- continued.



Exhibits

"P.4"

Deed No. 430

Attested by  
C.S. de S.  
Seneviratne  
Notary Public.  
28th June, 1950.  
- continued.

AND the said New Trustee doth hereby consent to be Trustee under the Provisions of the said Last Will and Testament of the said Helena Wijewardena in respect of the Trusts above mentioned

IN WITNESS whereof the Surviving Trustees and the New Trustee have set their hands hereunto and to two others of the same tenor and date as those presents on the day month and year above written

THE FIRST SCHEDULE above referred to

10

ALL THAT part of a garden with the buildings standing thereon and lying at Maradana within the Municipality and District of Colombo Western Province and bounded on the North by the other part of this garden of Payagalage Don David on the East by the High Road on the South by the Road to Maradana Cinnamon Gardens and on the West by the garden of Don David containing in extent thirty one decimal Nine Two square Perches more or less as described in the Figure of Survey annexed to the Title Deeds which said premises less the portion acquired by the Municipality are according to a recent survey described as follows:- All those premises bearing assessment Nos. 596, 508 and 510 in Maradana Road and Nos. 4, 6, 8, 10, 12, 16 and 20 in Deans Road coloured pink situated at 2nd Division Maradana aforesaid and bounded on the North by premises bearing assessment No. 504 in Maradana Road, East of Maradana Road, South by Dean's Road, and West by premises bearing assessment No. 36 in Dean's Road containing in extent Twenty perches and decimal Six Nine of a Perch (AO.RO.P20.69) according to the Figure of Survey No. 3771 dated the 24th day of October 1941 made by E.M. Anthonisz Licensed Surveyor and Leveller

20

30

THE SECOND SCHEDULE above referred to

ALL THAT part from the garden called Halgahawatte situated at Pass Nakelagam Street within the Municipality and District of Colombo Western Province bearing assessment Nos. 92, 92, (1-4) and 94 formerly No. 898/224 and bounded on the North East by the part belonging to Justina Perera on the South East by the Canal on the South West by the part belonging to Johannes Perera and on the North West by the High Road containing in extent twelve square perches and Twenty Four Hundredth of a square perch (AO.RO.P12.24/100) according to the Figure of Survey dated the 2nd day of July 1832 made by F. Reimers District Surveyor

40

THE THIRD SCHEDULE above referred toExhibits

10 1. ALL THAT allotment of land called Negenahirakande situated at the village Eswatte in the Udugahapattu of Hewagam Korala in the District of Colombo Western Province and bounded on the North by land described in Plan No. 54355 and private property called Dodangaswatte on the East by land described in Plan No. 54396 belonging to Muthutantri Haramanis Fernando on the South by the portion of the same land in extent six acres three roods and on the West by land described in Plan No. 54352 containing in extent Thirty Acres (A30.R0.P0) according to the Figure of Survey No. 54357 dated 22nd May 1861 given under the hand of H.A. Evalt Surveyor General.

"P.4"

Deed No. 430  
 Attested by  
 C.S. de S.  
 Seneviratne  
 Notary Public  
 28th June, 1950  
 - continued.

20 2. ALL THAT allotment of land called Negenahirakande with the buildings and plantations thereon situated at Eswatte aforesaid and bounded on the North by a portion of the same land belonging to Pathberiage Karlis Appu and others on the East by the land said to belong to the late Simon de Livera Mudaliyar and now of Mr. Willsford on the South by a part of the same land belonging to Suduhakuruge Babanisa and others and on the West by the land described in Plan No. 54357 now said to belong to Muthutantride Solomon Fernando containing in extent Thirty Five Acres and Three Roods (A35.R3.P0) as described in the Diagram or Map No. 821 dated the 16th day of January 1917 made by J.H.W. Smith Fiscal's Licensed Surveyor.

30 3. ALL THAT allotment of land called Negenahirakande situated at Eswatte aforesaid and bounded on the North by Neganahirakande now of Mrs. H. Wijewardena East by land described in T.P.No.54398 South by a portion of the same land given to villages as planter's share and West by land described in T.P. No.54352 containing in extent Three Acres and One Rood (A3.R1.P0) according to the Figure of survey No. 262 dated 1st September 1925 made by H.G.E. Perera Licensed Surveyor

40 Which said lands adjoin each other and form one property and are included in one survey to wit:- No. 4414 dated 21st April 1942 made by H.G.E.Perera Licensed Surveyor as follows:-

bounded on the North by Dodangahawatta of Suduhakuruge Ginoris Fernando and Wallimunidewage Sadiris

Exhibits

"P.4"

Deed No. 430  
 Attested by  
 C.S. de S.  
 Seneviratne  
 Notary Public.  
 28th June, 1950  
 - continued.

Fernando and by a portion of this land of Pathberiyage Bela Nona East by Glen Orse Estate South by the lands Suduhakurage Rina Fernando, Baddehakuruge Buiya Fernando, Kiriporuge Podina Fernando. Girimaladewage Podia Fernando and others, Hissella Kankanamalage Marihamy and Pathberiyage Bela Nona and West by lands of Suduhakuruge Seda Fernando Dr. John Fernando and Baddehakuruge Sediris Fernando containing in extent Sixty Six Acres and Twenty Six Perches (A66.RO.P26).

10

4. ALL THAT allotment of land called Neganahira-kande situated at Eswatte aforesaid and bounded on the North by a portion of this land of Don Robert Jayawardena, East by a portion of this land allotted to planter's share, South by Hettikande Estate and by the Logan Estate of Renerith Group and on the West by the remaining portion of the land containing in extent Seven Acres (A7.RO.PO) as per figure of Survey No. 3740 dated 9th July 1935 made by H.G.E. Perera Licensed Surveyor.

20

5. ALL THAT allotment of land called Neganahira-kande and of the trees and plantations standing thereon situated at Eswatte aforesaid and bounded on the East by the Tea Estate on the South by the garden called Hettikandewatte belonging to Peter Ondatji and on the West by the remainder of the same land and on the North by a portion of this land containing in extent Eleven Acres (A11.RO.PO) now described in Plan No. 4413 dated 20th April 1942 made by H.G.E. Perera Licensed Surveyor as follows:-

30

bounded on the North by portion of this land of Muhandirange Robert Jayawardene, W. Stanley Fernando and Raigamage Haramanis Appuhamy, East by Glenorse Estate South by Hettikandewatte and West by land of Amuwaladewage Julices Fernando containing in extent Ten Acres Three Roods and Thirty Perches (A10.R3.P30) which said land is a divided portion of all that land called Neganahira Kanda and of the trees and plantations standing thereon situated at Eswatte aforesaid and bounded on the East by Tea Estate on the South by the garden called Hettikandewatte belonging to Peter Ondatji on the West by Owita of Pathberiyage people and others and on the North by a portion of this land containing in extent within these boundaries about Twenty One Acres and Two Roods (A21.R2.PO) which said land A10.R3.P30 was previously described in the Deed hereof as an undivided portion in extent 11 Acres low and the Eastern side from and out of the above mentioned A21.R2.PO.

40

50

THE FOURTH SCHEDULE above referred toExhibits

10 ALL THOSE land called Kalawewa Mukalana and Kusalanagamawila situated in the villages Palugaswowa, Kalawewa and Alahapperuwagama in Kolegam Korale in the District of Nuwara Kalawiya Central Province and bounded on the North by Crown land called Kusalanagamawila forming part of the Kusalanagama and Parana Ela East by Crown land called Kalawowa Mukalana and Barawagalewila forming parts of Ukkulanpallama Village South by Road to Kalawewa and West by Railway Reservation, Ela, Parana Ela and Lot B to be allotted to Mr. D.W. Wijewardena's children and containing in extent Two Hundred and Fifty Acres (A250.R0.P0) as per Plan No. 278 dated 10th May 1942 made by D.A. Attygalle Licensed Surveyor.

"P.4"  
 Deed No. 430  
 Attested by  
 C.S. de S.  
 Seneviratne  
 Notary Public.  
 28th June, 1950  
 - continued

## Witnesses.

Sgd. Gerald E. de Alwis                      Sgd. D.E. Wijewardena  
 Sgd. B.P. Kariapperuma                    Sgd. Illegibly

20    Sgd. C.S. de S. SENEVIRATNE.

30 I, CYRIL SYDNEY DE SILVA SENEVIRATNE of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing instrument having been duly read over by the within named Executants Don Edmund Wijewardene and Don Albert Tarrant Wijewardene who are known to me and who have signed as "D.E. Wijewardene" and "D.A.T. Wijewardene" respectively in the presence of Gerald Ernest de Alwis of No. 162 Skinner's Road North Colombo and Baron Perera Kariapperuma of Gonawala, Kelaniya, who have signed as "Gerald E. de Alwis" and "B.P. Kariapperuma" respectively the subscribing witnesses hereto both of whom are known to me the same was signed by the said Executants and also by the said Witnesses and by me the said Notary in my presence and in the presence of one another all being present at the same time at Colombo on this Twenty eighth day of June One thousand nine hundred and fifty.

40 AND I FURTHER CERTIFY AND ATTEST that in the original in page 2 in line 6 the word "Temple" last line the figures "9566" in page 4 in line 13 the word "the" in page 5 in line 11 "perch" in page 6 line 31 the word "Ginoris" in page 7 in line 21 "West" in line 27 the word "Glen-Orse" were typed on erasure and in the duplicate in page 1 in line 23 the word "thereof after" in page 3 in line 26 the word "shall" in page 4 line 3 the word "and"

Exhibits

"P.4"

Deed No. 430  
Attested by  
C.S. de S.  
Seneviratne  
Notary Public.  
28th June, 1950  
- continued.

in line 40 "Payagalge" were typed on erasures before the same was duly read over as aforesaid and that the Duplicate of this Instrument bears two stamps of the value of Rs. 15/- and the original a stamp of Rs.1/-

Date of Attestation  
28th June 1950

SEAL  
Which I attest  
Sgd. C. S. de S. SENEVIRATNA  
Notary Public.

10

I, R.M.D. RANASINGHE Additional Registrar of Lands Colombo hereby certify that the foregoing is a true copy of a deed of appointment to New Trustees made from the duplicate filed of record in this office and the same is granted on the application of S. Gunasekera Esqr.

Sgd. R.M.D. RANASINGHE  
Adl. Registrar of Lands

Land Registry,  
Colombo, 12th July, 1954.

20

"P.5"

Deed No. 440  
Attested by  
C.S. de S.  
Seneviratne.  
25th January,  
1951.

Exhibit "P.5"

DEED No.440 attested by C.S. de S. SENEVIRATNE  
Notary Public

Application No. D.2642  
7.7.42

Prior Registration:- Colombo A 277/210, A 86/287  
K 28/211, 7/595, 25/81, 58/61,  
19/128.  
Anuradhapura B 55/281.

No. 440.

30

THIS INDENTURE made at Colombo on this Twenty Fifth day of January One thousand nine hundred and fifty one BETWEEN DON EDMUND WIJEWARDENE of No.35 Turret Road, Colombo, and DON ALBERT TARRANT WIJEWARDENE of "Sriyala" Elliot Place, Borella, Colombo (hereinafter sometimes called and referred to as "the Surviving Trustees") of the one part and PHILIP SIVALI WIJEWARDENE of No. 12, 27th Lane, Inner Flower Road, Colombo (hereinafter sometimes called and referred to as "the New Trustee") of the second part

40

WHEREAS by her Will No. 4115 dated 20th July 1935 attested by George A. Wille of Colombo Notary Public Holona Wijewardena late of "Sri Ramya" Colpetty, after making various devises, devised and boqueathed the following properties and subject to the following trusts.

Exhibits

"p.5"

Deed No. 440  
Attested by  
C.S. de S.  
Seneviratne.

25th January,  
1951

- continued.

10 (1) All that property situated at Dean's Road and described in the First Schedule hereto, all that property situated at Nagalagam Street, Colombo and described in the Second Schedule hereto and all that Estate called Naganahire Kande situated at Eswatto and described in the Third Schedule hereto unto Don Richard Wijewardene, Don Edmund Wijewardene and Don Walter Wijewardena in trust to use the net income thereof after meeting costs of maintenance taxes and other necessary disbursements for the following charitable purposes that is to say:-

(a) to continue gradually the restoration of the work carried on by her at the Kelaniya Temple.

20 (b) to aid either occasionally or regularly my relations who are or may become poor including members of her family and who in the judgment of her Trustees are in need of such aid in consequence of illness financial difficulties and the like on the occasion of the marriage death and the like.

(c) to support in such manner and to such extent as her Trustees think fit such Buddhist Charitable institutions and temples as her Trustees may from time to time select.

30 (2) All that Two hundred and fifty acres of all that paddy field called Kalawewa Farm situated at Palugaswewa Kalawewa and Alahapperuma Kalawiya in the North Central Province and described in the Fourth Schedule hereto to the Rajamal Vihare Kelaniya and the management of the same to the benefit of the said Vihare was entrusted to Don Richard Wijewardena, Don Edmund Wijewardena and Don Walter Wijewardena as Trustees.

40 AND WHEREAS the said Helen Wijewardena died on the 10th November 1940 and her said Will was duly proved in Testamentary Proceedings No.9566 of the District Court of Colombo.

AND WHEREAS the said Don Walter Wijewardene predeceased the Testatrix and the said Don Richard Wijewardene and Don Edmund Wijewardene in exercise of the powers in that behalf conferred on them by

Exhibits

"p.5"

Deed No. 440  
Attested by  
C.S. de S.  
Seneviratne.  
25th January,  
1951  
- continued.

the Last Will and by Section 75 of the Trust Ordinance appointed Don Louis Joseph Wijewardene of "Ixora Villa" Greenpath Colpetty as Trustee in place of the said Don Walter Wijewardena deceased.

AND WHEREAS the said Don Louis Joseph Wijewardene died on the 19th day of September 1949 and the said Don Richard Wijewardene on the 13th June 1950.

AND WHEREAS the said Don Edmund Wijewardene the then sole surviving Trustee appointed the said Don Albert Tarrant Wijewardene to be a Trustee in respect of the above mentioned trusts in place of the said Don Louis Joseph Wijewardene, deceased, by Deed No. 430 dated 28th June 1950 and attested by the Notary attesting these presents

10

AND WHEREAS the present Trustees the said Don Edmund Wijewardene and the said Don Albert Tarrant Wijewardene having ascertained under the provisions of the Last Will relating to selection of New Trustees from Arthur Fritz Seneviratne that he is not willing to act as a Trustee on account of continued ill health are now desirous of appointing another member of the family of the author of the Trust namely the said Philip Savali Wijewardene to be a Trustee in respect of the Trusts above mentioned in place of his father the said Don Richard Wijewardene, deceased

20

N O W THIS INDENTURE WITNESSETH as follows:-

1. IN exercise of the powers conferred on them by the said Will and by Section 75 of the Trust Ordinance and of all others and authorities enabling them to do so, the said surviving Trustees appoints the New Trustees to be a Trustee in place of the said Don Richard Wijewardene and to act jointly with the said surviving Trustee in the execution of the several trust powers and authorities above mentioned and containing in the Last Will in place of Don Richard Wijewardene.

30

2. THE said surviving Trustees hereby declare that the properties described in the First, Second, Third, and Fourth Schedule hereto and all income derived thereof and all rights and suits in relation thereto shall vest in the said New Trustee jointly with the surviving Trustee upon the trusts and with and subject to the powers and provisions of the said Will.

40

3. IT IS HEREBY DECLARED that the New Trustee shall have the same powers authorities and discretions and shall in all respects act as if he had originally been nominated a Trustee by the author of the Trust.

AND the said Now Trustee doth hereby covenant to be a Trustee under the provisions of the said Last Will and Testament of the said Helena Wijewardena in respect of the Trusts above mentioned

10 IN WITNESS whereof the surviving Trustees and the New Trustees have set their hands hereunto and to two others of the same tenor and date as These Presents on the day month and year above written.

THE FIRST SCHEDULE above referred to

20 ALL THAT part of a garden with the buildings standing thereon situated and lying at Maradana within the Municipality and District of Colombo Western Province and bounded on the North by the other part of this garden of Payagalage Don David on the East by the High Road and on the South by the Road to Maradana Cinnamon Gardens and on the West by the garden of Don David containing in extent Thirty one decimal nine two square perches more or less as described in the Figure of Survey annexed to the Title Deeds which said premises less the portion acquired by the Municipality are according to a recent survey described as follows:- All those premises bearing assessment Nos. 506, 508 and 510 in Maradana Road and Nos. 4,6,8,10,12,16 and 20 in Dean's Road coloured pink situated at 2nd Division Maradana aforesaid and bounded on the North by premises bearing assessment No. 504 in Maradana Road East by Maradana Road, South by Dean's Road and West by premises bearing assessment No.36 in Dean's Road containing in extent Twenty perches and Decimal Six Nine of a Perch (AO.RO.P20.69) according to the Figure of Survey No. 3771 dated the 24th day of October 1941 made by E.M. Anthonisz Licensed Surveyor and Leveller.

30

40

THE SECOND SCHEDULE above referred to

ALL THAT part from the garden called Halgahawatta situated at Pass Nakelagam Street within the Municipality and District of Colombo Western Province bearing assessment Nos. 90, 92 (1-4) and 94, formerly No. 898/224 and bounded on the North East by the part belonging to Justina Perera on the South East by the Canal on the South West by the part

Exhibits

"P.5"

Deed No. 440  
Attested by  
C.S. de S.  
Seneviratne.  
25th January,  
1951  
- continued.



Exhibits

"P.5"

Deed No. 440  
 Attested by  
 C.S. de S.  
 Seneviratne.

25th January,  
 1951

- continued.

belonging to Johannes Perera and on the North West by the High Road containing in extent twelve square perches and Twenty Four Hundredths of a square perch (A0.R0.P12.24/100) according to the figure of Survey dated the 2nd day of July 1932 by F. Reimers District Surveyor.

THE THIRD SCHEDULE above referred to

1. ALL THAT allotment of land called Neganahira-kande situated in the village Eswatte in the Udugaha Pattu of Hewagam Korale in the District of Colombo Western Province and bounded on the North by land described in Plan No. 54355 and private property called Dodangaswatte on the East by land described in Plan No. 54396 belonging to Muthutantri Haraman-is Fernando on the South by the portion of the same land in extent six acres and Three Roods and on the West by land described in Plan No. 54352 containing in extent Thirty Acres (A30.R0.P0) according to the Figure of Survey No. 54357 dated 22nd May 1861 given under the hand of H.A. Avalt Surveyor General. 10 20

2. ALL THAT allotment of land called Neganahira-kande with the buildings and plantations thereon situated at Eswatte aforesaid and bounded on the North by a portion of the same land belonging to Pathberiage Karlis Appu and others on the East by the land said to belong to the late Simon de Livera Mudaliyar and now of Mr. Willsford on the South by a part of the same land belonging to Suduhakuruge Babanisa and others and on the West by the land described in plan No. 54357 now said to belong to Matutantrige Solomon Fernando containing in extent Thirty Five Acres and Three Roods (A35.R3.P0) as described in the Diagram or map No. 921 dated the 16th day of January 1917 made by J. H. W. Smith Fiscal's Licensed Surveyor. 30

3. ALL THAT allotment of land called Neganahira-kande situated at Eswatte aforesaid and bounded on the North by Neganahirakande now of Mrs. H. Wijewardene East by land described in T.P. No. 54396 South by a portion of the same land given to villagers as planters share and west by land described in T.P. No. 54352 containing in extent Three Acres and One Rood (A3.R1.P0) according to the Figure of Survey No. 262 dated 1st September 1925 made by H.G.E. Perera Licensed Surveyor. 40

Which said lands adjoining each other and form one property and are included in one survey to wit:

No. 4414 dated 21st April 1942 made by H.G.E. Perera Licensed Surveyor and are described in the said survey as follows:- bounded on the North by Dodan-gahawatta of Suduhakuruge Ginoris Fernando and Walimunidewage Sadhiris Fernando and by a portion of this land of Pathberiyage Bela Nona East by Glen-Orse Estate South by the lands of Suduhakuruge Pina Fernando Baddehakuruge Buiya Fernando, Kiriporuge Podina Fernando Girimaladewage Podia Fernando and others, Hissolle Kankanamalage Marihamy and Pathberiyage Bela Nona and West by lands of Suduhakuruge Sada Fernando Dr. John Fernando and Baddehakuruge Soderis Fernando containing in extent Sixty Six Acres and Twenty Six Perches (A66.R0.P26)

Exhibits

"p.5"

Deed No. 440  
Attested by  
C.S. de S.  
Seneviratne.  
25th January,  
1951  
- continued.

10

20

4. ALL THAT allotment of land called Neganhirakande situated at Eswatte aforesaid and bounded on the North by a portion of this land of Don Robert Jayawardene, East by a portion of this land allotted to planter's share South by Hettikande Estate and by the Logan Estate of Penrith Group and on the West by the remaining portion of the land containing in extent Seven Acres (A7.R0.P0) as per Figure of Survey No. 3740 dated 9th July 1935 made by H.G.E. Perera Licensed Surveyor

30

40

50

5. ALL the land called Neganahirakande and of the trees and plantations standing thereon situated at Eswatte aforesaid bounded on the East by the Tea Estate on the South by the garden called Hettikandewatte belonging to Peter Ondatji and on the West by the remainder of the same land and on the North by a portion of this land containing in extent Eleven Acres (A11.R0.P0) now described in Plan No. 4413 dated 20th April 1942 made by H.G.E. Perera Licensed Surveyor as follows:- bounded on the North by portion of this land of Muhandiramage Robert Jayawardene W. Stanley Fernando and Raigamage Haramanis Appuhamy, East by Glenorse Estate South by Hettikandewatte and West by land of Amuwaladewage Julius Fernando containing in extent Ten Acres Three Roods and Thirty Perches (A10.R3.P30) which said land is a divided portion of all that land called Neganahira Kande and of the trees and plantations standing thereon situated at Eswatte aforesaid and bounded on the East by Tea Estate on the South by the garden called Hettikandewatte belonging to Peter Ondatji on the West by Owita of Pathberiyage people and others and on the North by a portion of this land containing in extent within these boundaries about Twenty One Acres and Two Roods (A21.R2.P0) which said land A10.R3.P30 was

Exhibits

"p.5"

Deed No. 440  
 Attested by  
 C.S. de S.  
 Seneviratne.  
 25th January,  
 1951  
 - continued.

previously in extent 11 acres low and the Eastern side from and out of the above mentioned A21.R2.PO.

THE FOURTH SCHEDULE above referred to

ALL THOSE lands called Kalawewamukalana and Kusalanagamawila situated in the village Palugaswewa, Kalawewa and Alahapperuwagama in Kelogam Korale in the District of Nuwara Kalawiya North Central Province and bounded on the North by Crown land called Kusalanagamawila forming part of Kusalanagama in Parana Ela East by Crown lands called Kalawewamukalana and Barawagalewila forming parts of Ukkulanpallama Village South by Road in Kalawewa and West by Railway Reservation Ela Parana Ela and Lot B to be allotted to Mr. D.W. Wijewardene's children and containing in extent Two Hundred and Fifty acres (A250.R0.PO) as per Plan No. 278 dated 10th May 1942 made by D.A. Attygalle Licensed Surveyor. 10

## Witnesses

Sgd. Gerald E. de Alwis                      Sgd. Illegibly                      20  
 Sgd. R.V. Simon Wijetunge              Sgd. Illegibly  
 This is the signature of  
 Ranasinghe Aratchige Simon      Sgd. P.S. Wijewardene  
 Wijetunga

Sgd. C.S. de S. SENEVIRATNE  
 N.P.

I, CYRIL DE SILVA SENEVIRATNE of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing instrument having been duly read over by the within named Executants Don Edmund Wijewardene Don Albert Tarrant Wijewardene and Philip Sivali Wijewardene who have signed as "D.E.Wijewardene" "D.A.T. Wijewardene" and "P.S. Wijewardene" respectively who are known to me in the presence of Gerald Ernest de Alwis of Skinners Road North Colombo who has signed as "Gerald E. de Alwis" and Ranasinghe Aratchige Simon Wijetunga of Buller's Road, Colombo who has signed in Singhalese characters the subscribing witnesses hereto both of whom are known to me the same was signed by the said Executants and also by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present at the same time at Colombo on this twenty fifth day of January One thousand nine hundred and fifty one 30 40

AND I FURTHER CERTIFY and attest that in the Original in page 1 line 17 the word "described" was typed over erasure, page 3 line 2 the word "predeceased" was rectified page 5 the figure "0" was rectified and in the Duplicate in page 1 line 7 and 11 the word "Philip" and the figures "4115" were typed over erasures page 3 line 5 the word "of" was rectified line 22 the words "relating to ... Trustees" were interpolated page 4 line 3 and 7 the word "Trustee" was rectified page 5 line 27 the word "square" was interpolated page 6 line 14, 24, the words "land" "Eswatte" were rectified page 7 line 3 the word "Walimunidewage" was deleted lines 9 and 16 the words "Sadiris" and "Logan" were rectified page 8 line 8 the word "Perches" were deleted before the foregoing instrument was read over as aforesaid and that the Duplicate of this Instrument bears three stamps to the value of Rs.15/- and the original a stamp of the value of Rs.1/-.

Exhibits

"p.5"

Deed No. 440  
 Attested by  
 C.S. de S.  
 Seneviratne  
 25th January.  
 1951  
 - continued.

20 Date of attestation  
 25th January 1951.

Which I attest  
 Sgd. C.S. de S. SENEVIRATNE  
 Notary Public.

I, R.M.D. RANASINGHE, Additional Registrar of Lands Colombo, hereby certify that the foregoing is a true copy of a deed of appointment of New Trustees made from the duplicate filed of record in this office and the same is granted on the application of S. Gunasekera Esqr.

30 Sgd. R.M.D. RANASINGHE  
 Addl. Registrar of Lands.

Land Registry,  
 Colombo, 12th July, 1954.

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Exhibits

"P.6"

Letter,  
3rd February,  
1954.

Exhibit "P.6"

LETTER

3rd February 54.

Dr. D.E. Wijewardene,  
Turret Road,  
Colombo.

Kelaniya Kalawewa Trust

Dear Sir,

I am instructed by my client Ven. Mapitigama  
Buddharakkita Thero the Viharadhipati and Trustee  
of the Kelaniya Raja Maha Vihara to request you to  
furnish him within five days a statement of the  
accounts relating to the above Trust and also for-  
ward a cheque for the money lying in the hands of  
the Trustees to this account.

10

Yours faithfully,

(Sgd.) .....

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Exhibit "P.7"

"P.7"

Letter.  
10th February,  
1954.

LETTER

H.A. Abeywardene  
Proctor & Notary  
Tele Office 2569  
Bungalow 8870

132, Hultsdorf,  
Colombo.

10th February, 1954.

20

S. Gunasekera, Esq.,  
Proctor S.C.,  
Colombo.

Kelaniya Kalawewa Trust

Dear Sir,

Your letter dated 3rd February 1954 addressed  
to Dr. D.E. Wijewardene has been handed to me.

30

I shall send you a reply within ten days.

Yours faithfully,

(Sgd.) .....

---

Exhibit "P.8"

LETTER

H.A. ABEYEWARDENE  
Proctor & Notary  
Tele Office 2569  
Bungalow 8870

132, Hultsdorf,  
Colombo.  
16th February 1954.

Exhibits

"P.8"

Letter.  
16th February,  
1954.

S. Gunasokera, Esq.,  
Proctor S.C.,  
Colombo.

10

Kalawowa Trust

Dear Sir,

Further to my letter of the 10th instant my client is legally advised that your client is not entitled to claim the money lying in the hands of the Trustees appointed under the Will of the late Mrs. Helena Wijewardene as income of the 250 acres of the paddy field called Kalawewa Farm dealt with by Clause 5 of her Last Will.

Yours faithfully,

(Sgd.).....

20

Exhibit "P.9"

LETTER

H.A. ABEYEWARDENA Esq.,  
Proctor S.C.  
Colombo.

22nd November.

"P.9"

Letter.  
22nd November,  
1954.

D.C. COLOMBO NO.7338/L  
Trustee of the Kelaniya Rajamaha Vihare  
Vs. D.E. Wijewardena and others

Dear Sir,

30

With reference to your letter of 2nd November 1954 regarding the above I shall thank you to furnish the particulars of the document by which Mr. Philip Rayvatha Wijewardena has been appointed to succeed the late Mr. D.A.T. Wijewardene.

Yours faithfully,

(Sgd.) .....

Exhibits

"P.10"

Letter,  
3rd December,  
1954.

H.A. ABEYEWARDENE  
Proctor & Notary  
Tele Office 2569  
Bungalow 8870.

Exhibit "P.10"

LETTER

132, Hultsdorf,  
Colombo.

3rd December 1954.

S. Gunasekera, Esq.,  
Proctor,  
Colombo.

D.C. Colombo Case No.7338/L  
Trustee of the Kelaniya Vihare  
Vs.

10

Dr. D.E. Wijewardene and others

Dear Sir,

With reference to your letter of the 22nd ultimo I send herewith a certified extract from the minutes of the meeting of the Trustees held on the 2nd day of July 1953 when Mr.P.R.Wijewardene was appointed Trustee in place of the late Mr. D.A.T. Wijewardene.

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Yours faithfully,

(Sgd.) .....

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