

~~C.11.92~~

17/1963

1.

IN THE PRIVY COUNCIL

No. 41 of 1961

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
19 JUN 1964
25 RUSSELL SQUARE
LONDON, W.C.1.

B E T W E E N :

VENERABLE VAGISVARACHARYA MORONTUDWE SRI
NANESWARA DHAMMANANDA NAYAKA THERO
(1st Defendant) Appellant

74031

- and -

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1. VENERABLE KALUKONDAYAWE PANNASEKERA
NAYAKA THERO, substituted in place of
VENERABLE BADDEGAMA PIYARATANA NAYAKA
THERO, deceased (Plaintiff)
2. CHRISTOPHER WILLIAM WIJEKOON KANNANGARA
(3rd Defendant)
3. HENRY WOODWARD AMARASURIYA (5th Defendant)
4. DR. G.P. MALASEKERA (7th Defendant)
5. D.L.F. PEDRIS (8th Defendant)
6. WIMALA DHAMMA HEWAVITARNE (10th Defendant)
7. MUDALIYAR EGODAGE ALFRED ABAYASEKARA (12th
Defendant)

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8. MUDALIYAR PIYADASA DHAMMASIRI ABEYWARDENA
RATNATUNGA (13th Defendant)
9. N.S. MOONESINGHE (substituted in place of
DR. AMARASINGHE who was substituted in
place of DR. B.E. FERNANDO, deceased (15th
Defendant) who was substituted in place of
DR. D.B. PERERA, deceased (14th Defendant)

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10. DUDLEY SENANAYAKE (substituted in place of
DON STEPHEN SENANAYAKE, deceased (2nd
Defendant)
11. DR. A.M. SAMARASINGHE (substituted in place
of JOTHIPALA SUBASINGHE, deceased 19th
Defendant, who was substituted in place of
B.R. DIAS, 11th Defendant who resigned)
12. GAMINI JAYASURIYA (substituted in place of
WILLORAGE HENRY WILLIAM PERERA, deceased
6th Defendant)
13. PERCIVAL UPAJIVA RATNATUNGA (substituted
in place of DAYA HEWAVITARNE, deceased
16th Defendant who was substituted in place
of JACOB MOONESINGHE, deceased 4th Defendant)
14. DR. A.D.P.A. WIJEGOONEWARDENE (substituted
in place of RAJAH alias RAJASINGHE
HEWAVITARNE, deceased 9th Defendant)

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Respondents

CASE FOR THE APPELLANTRecord

1. This is an appeal by the First Defendant-Appellant-Appellant (hereinafter called "the Appellant") from the Judgment and Decree of the Supreme Court of Ceylon, dated the 13th February 1958, whereby the Supreme Court dismissed with costs the appeal of the Appellant from the Judgment and Decree of the District Court of Colombo, dated the 17th October 1950. The said Decree of the District Court had declared the Plaintiff in the action (now deceased and hereinafter called "the Plaintiff") entitled to certain premises as trustee of a Charitable Trust and ordered the ejection of the Appellant from the said premises.
2. The action from which this appeal arises was instituted in the District Court of Colombo on the 26th July 1943, and in the amended plaint, dated the 2nd April 1947, the Plaintiff averred, inter alia, that :
- (a) on or about the 6th December 1873 a number of persons including one Lansage Andiris Perera, the original owner of that part of the premises in dispute described in schedule A to the plaint, formed themselves into an association called the Vidyadhara Sabha, the principal object of which was to obtain premises in which to establish a pirivena or college for the teaching of Buddhism, to appoint learned and pious priests to the teaching staff including the principalship of the pirivena.
- (b) for the better manifestation of the rules and purposes of the said Vidyadhara Sabha a notarial deed No. 925 dated the 6th December 1873 was executed by its members.
- (c) the said Vidyadhara Sabha, with money collected by it, constructed a building on the premises owned by Andiris Perera, one of its members and established a college called the Vidyodaya Pirivena. In or about the same year they appointed the Venerable Hikkaduwe Sri Sumangala Nayake Thera as the principal or Paraveniadhpathy of the said pirivena.
- (d) in pursuance of an agreement between the Vidyadhara Sabha, the said Andiris Perera and the said Principal of the Pirivena, a notarial deed was executed on the 9th March 1876 whereby a part of the
- p.638, l.1 -
p.661, l.9
- p.503, l.22 -
p.531, l.37
- p.58, l.28 -
p.66, l.30.
p.105, l.1 -
p.112, l.10
- p.106, l.30 -
p.107, l.6
- p.107, ll.9-12
- p.107, ll.12-29
- p.107, l.40 -
p.108, l.8
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disputed premises was conveyed to the Venerable Hikkaduwe Sri Sumangala Nayake Thera, the Principal of the Vidyodaya Pirivena and to his successors in office to be held subject to the protection and control of the Vidyadhara Sabha.

- 10 (e) the remaining part of the premises in dispute (described in schedule B to the plaint) was transferred in 1884 by its then owner to Mabotuwana Siddharta Thera to be held in trust for the Charitable purposes set out in the amended plaint. p.108, 11.9-34
- (f) the Plaintiff was appointed by the Vidyadhara Sabha in 1936 as the Principal of the said Pirivena and holds the disputed premises as trustee of a Charitable trust for the purposes referred to in deed No. 925 of the 6th December 1873. p.109, 11.25-30
- (g) the Plaintiff and his predecessors in office have acquired prescriptive title as trustees to the disputed premises. p.109, 11.31-38
- 20 (h) the Appellant has been in unlawful occupation of the disputed premises since 1941. p.110, 11.1-8

Upon these averments the Plaintiff prayed that he be declared entitled to the premises in dispute as trustee of the Charitable trust pleaded and that the Appellant be ejected from the premises. p.110, 11.20-36

The amendment of the plaint on the 2nd April 1947 was to plead a public Charitable trust instead of a trust the beneficiaries of which were according to the original plaint the members of the Vidyadhara Sabha.

- 30 3. In his amended Answer, dated the 21st January 1948, the Appellant admitted the execution of Deed No.925 of the 6th December 1873 but denied that the Pirivena had been established by the Vidyadhara Sabha. The Pirivena was started by the Venerable Hikkaduwe Sri Sumangala Nayake Thera and was already in existence at the time the said Sabha was formed. Venerable Sri Sumangala Nayake Thera and other monks were in residence in the dispute premises since 1873 and when the premises were dedicated in 1876 with the Venerable Sri Sumangala as the Chief recipient the premises became the Maligakande Temple, of which the Venerable Sri Sumangala became the Viharadhipathi (the controlling chief priest). The Appellant is the present Viharadhipathi by right of pp.115-118
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pupillary succession and as such is entitled to the premises in dispute. The Appellant admitted that the Vidyadhara Sabha had purported to exercise the function of appointing principals of the Pirivena without any legal right to do so and that in any event the appointment of the Plaintiff as Principal was made by a Sabha not constituted in accordance with the terms and conditions laid down by Deed No. 925 of the 6th December 1873 and was therefore illegal. The Appellant, in addition to asking for the dismissal of the Plaintiff's action, prayed in reconvention (a) for a declaration that he was the Viharadhipathi of the Maligakande Temple and all the temporalities appertaining thereto and also the Paraveniadhpathy of the Pirivena, and (b) for an order ejecting the Plaintiff from the premises in dispute.

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4. The issues raised at the trial and the answers ultimately given by the learned trial judge are as follows:

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p.76, l.33 -
p.79, l.14.
p.122, l.16 -
p.124, l.13

"Issue 1. Was the Vidyodaya Pirivena founded by the members of the Vidyadhara Sabha?

Answer: Yes.

Issue 2. Was Sri Sumangala Nayaka Thero appointed first Principal of the said Pirivena by the Vidyadhara Sabha?

Answer: Yes.

Issue 3. Did the said Sabha have the right of appointment and dismissal of successors in office of the Principal of the said Pirivena?

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Answer: Yes.

Issue 4. Was the plaintiff duly appointed Principal of the said Pirivena by the said Sabha?

Answer: Yes.

Issue 5. Did the title to the property described in Schedule A to the plaint vest in the said Sri Sumangala and his successors in office as trustees of a charitable trust for the purposes referred to in deed No. 925.

Answer: Yes.

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Issue 6. Did Mabotuwana Sidhartha Thero hold the property described in Schedule B to the plaint in trust for the said trust?

Answer: Yes.

Issue 7. Were the lands described in Schedules A and B to the plaint possessed exclusively and adversely for a period of over ten years by the Principals of the said Pirivena as trustees for the said trust?

10 Answer: Yes.

Issue 8. Was the Aramaya standing on the lands mentioned in Schedules A and B to the plaint erected or caused to be erected by the said Sabha?

Answer: Yes.

Issue 9a. Was the Aramaya an appurtenant to the said Pirivena?

Answer: Yes.

20 Issue 9b. If so, was it intended for the use of the Bhikkhus resident in the said Pirivena?

Answer: Yes.

Issue 10. Did the Principals of the said Pirivena at all times officiate as incumbent of the said Aramaya?

Answer: Yes.

30 Issue 11. Did the 1st defendant in or about December, 1941, wrongfully and unlawfully enter into occupation of a portion of Sri Sumangala Memorial Hall as alleged in paragraph 24 of the plaint?

Answer: Yes.

Issue 12. Is the plaintiff entitled to an order of ejectment against the 1st defendant from the premises described in Schedules A and B to the plaint?

Answer: Yes.

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Issue 13. Damages? - agreed upon at Re.1 for the whole period.

Issue 14. Are the 2nd to 14th defendants duly elected members of the Vidyadhara Sabha?

Answer: Yes.

Issue 15. Are the 2nd to 14th defendants entitled to any rights of control over the properties set out in Schedules A and B to the plaint?

Answer: Yes in accordance with deeds P1 and P2. 10

Issue 16. Were the properties set out in Schedules A and B or either dedicated as Sanghika property to the community of Buddhist monks?

Answer: The properties were dedicated for the establishment of a Pirivena and not a temple of worship.

Issue 17. Is the 1st defendant the controlling Vihara-adhipathy of the properties described in Schedules A and B or either? 20

Answer: No.

Issue 18. If issue 16 is answered in the affirmative, did the devolution of the control and management of the said properties take place according to the rules of the Sisyanu Sisya Paramparawa?

Answer: The rules of Sisyanu Sisya Paramparawa do not apply to this restitution.

Issue 19. Was the plaintiff appointed lawful trustee according to the requirements of the Trusts Ordinance of 1918 and/or the Buddhist Temporalities Ordinance? 30

Answer: Yes.

Issue 20. Is the plaintiff vested with the properties set out in Schedules A and B?

Answer: Yes.

Issue 21. If issues 19 and 20 or either of them are answered against the plaintiff, can plaintiff maintain this action?

Answer: Yes.

Issue 22. If issues 14 and 15 are answered against plaintiff and defendants 2nd to 14th, can plaintiff maintain this action?

Answer: Does not arise.

10 Issue 23. Who were the persons who appointed the plaintiff as Principal of the Pirivena?

Answer: Their names are set out in the minutes of the meeting held on 6.4.36 P12.

Issue 24. Were such persons duly elected members of the said Vidyadhara Sabha?

Answer: Yes.

Issue 25. Did they constitute a lawful body having the power to appoint a Principal?

Answer: Yes.

20 Issue 26. If either issues 24 or 25 is answered in the negative, can plaintiff maintain this action?

Answer: As issues 24 and 25 are answered in the affirmative this issue does not arise.

Issue 27. Was Sri Sumangala the incumbent of the Maligakande Temple?

30 Answer: The premises in Schedules A and B did not comprise the Maligakande Temple, there was no office of an incumbent for this institution, but the Principal of the Pirivena is the chief priest of the whole institution including the aramaya and temple.

Issue 28. Has the said incumbency devolved upon 1st defendant by pupillary succession?

Answer: No.

Issue 29. Did the premises described in

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Schedules A and B or either comprise the Maligakande Temple?

Answer: The premises in Schedules A and B did not comprise the Maligkande Temple, there was no office of an incumbent for this institution, but the Principal of the Pirivena is the chief priest of the whole institution including the aramaya and temple.

Issue 30. Is Devundara Jinaratna Nayaka Thero the senior pupil of Sri Sumangala?

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Answer: Yes.

Issue 31. Even so, can the 1st defendant maintain his claim to be incumbent of the Temple on deed 2622 dated 22.6.1941?

Answer: No.

Issue 32. Is the plaintiff entitled to the premises described in Schedules A and B in trust for the purposes referred to in Deed 925?

Answer: Yes.

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Issue 33. Is the claim of the 1st defendant to the office of Viharadhipathi of the Vidyodaya Pirivena barred by prescription?

Answer: Yes.

Issue 34. Have the 2nd to 17th defendants been either necessarily or properly made parties to this action?

Answer: They were necessary according to

the original plaint. According to the amended plaint they need not have been made parties but their presence has not embarrassed the plaintiff or the 1st defendant.

Issue 35. If the premises described in Schedules A and B or either of them comprise the Maligakande Temple is the 1st defendant's claim if any, to the incumbency of the said Temple barred by prescription?

10 Answer: I have held that these premises do not comprise the Maligakande Temple and that that part of the premises called the "aramaya" or Maligakande Temple form part of the Pirivena. The 1st defendant's claim to be Viharadhipathi to any part of Schedules A and B is prescribed."

20 Of these issues issues 19, 20 and 21 were tried as preliminary issues of law and were answered by him in favour of the Appellant. The Supreme Court, on an appeal taken by the Plaintiff reversed the judgment of the learned District Judge and sent the case back for the trial of the remaining issues.

5. The provisions of the Buddhist Temporalities Ordinance (Cap. 222, Vol. 5 of the Legislative Enactments, 1938 Ed.) relevant to this appeal are as follows:-

Definitions of Temple and Viharadhipathi

in Section 2:

30 Section 2. ... " 'temple' means vihare, dagoba, dewale, kovila, avasa, or any place of Buddhist worship, and includes the Dalada Maligawa, the Sripadasthana, and the Atamasthana of Anuradhapura; ...

... 'viharadhipati' means the principal

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bhikkhu of a temple other than a dewale or kovila, whether resident or not.

* * * * *

Section 4. (1) The management of the property belonging to every temple not exempted from the operation of this subsection shall be vested in a person or persons duly appointed trustee under the provisions of this Ordinance.

(2) The management of the property belonging to every temple exempted from the operation of the last preceding subsection but not exempted from the operation of the entire Ordinance shall be vested in the viharadhipati of such temple hereinafter referred to as the 'controlling viharadhipati'.

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* * * * *

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

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6. The judgment of the learned District Judge contains the following findings:

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- (a) that there was no "avasa" (residence for monks) on the disputed premises in 1873. p.511, 1.20
- (b) that at the time the land described in Schedule A to the plaint was conveyed to the Venerable Sri Sumangala Nayake Thera in 1876, there was on the premises a residence for monks and probably also a shrine room and a small Bo tree. p.510, 11.36-40
- 10 (c) that the premises were dedicated in 1876 to the sangha (priesthood) as sanghika property not for the purpose of establishing a temple for worship but to establish and maintain a pirivena. p.517; 1.45 -
p.518, 1.3
- (d) that the pirivena came up first or at any rate the aramaya came up along with it but in either case as an adjunct to the pirivena. p.512, 11.39-41
- 20 (e) that the Vidyadhara Sabha founded the Vidyodaya Pirivena and appointed the Venerable Srisumangala Mahanayake Thera as its first Principal. p.513, 11.10-12
- (f) that succession to sanghika property can be prescribed by the deed of dedication and that the deed of 1876 had excluded pupillary succession and had given the power of nominating the Principal of the Pirivena to whom the property would pass. p.515, 11.10-23
- 30 (g) that neither the Venerable Hikkaduwe Sri Sumangala nor Jinaratana Nayake Thera who appointed the appellant acted as the Viharadhipathi of the Pirivena Vihare at Maligakande. p.519, 11.31-34
p.521, 11.13-15
- (h) that the money for the purchase of the land in Schedule B to the plaint was provided by the Vidyadhara Sabha and that in any event, this land was possessed as part of the property of the p.521, 1.45 -
p.522, 1.4

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Pirivena for over the prescriptive period of ten years.

- p.522; 1.44 - (i) that Jinaratana was the senior pupil of the
p.523, 1.4 Venerable Hikkaduwe Sri Sumangala but that any claim based on pupillary succession was barred prescription because he never acted as Viharadhipathy.
- p.525, 11.36-39 (j) the members of the Vidyadhara Sabha that appointed the plaintiff were duly elected and that the plaintiff was appointed Principal in accordance with the directions in deed No. 925 of 1873. 10
- p.526, 11.37-39 (k) the appellant, being neither a pupil nor a tutor is not entitled to residence and that his presence in the premises obstructs the execution of the trust.
7. In the absence of direct testimony and of the records of the Vidyadhara Sabha prior to 1924, the findings of fact of the learned trial judge are largely a matter of inference.
- p.638, 1.1 - 8. The Appellant appealed to the Supreme Court
p.657, 1.3 and the Supreme Court (H.N.G. Fernando J. and T.S. Fernando J.) dismissed the appeal with costs. 20
- p.646, 11.36-39 9. T.S. Fernando J., with whom H.N.G. Fernando J.
p.647, 11.27-30 agreed, took the view that although the premises in question was Sanghika property, it was not a temple within the meaning of the Buddhist Temporalities Ordinance (Cap.222 Vol.5 Legislative Enactments of Ceylon, 1938 Edition) because it was not a place dedicated primarily for Buddhist worship. He further held that, even if it was a temple, the terms of dedication in deed No.925 of 1873 are subject to the directions, stipulations and conditions contained therein. In so holding he purported to follow the decisions of the Supreme Court in Rathanapala Umanse vs. Kewitiagala Unanse (1879 2 S.C.C. 26), Sumanatissa vs. Gunaratna (39 New Law Reports 253) and in Dharmapala Unanse vs. Medegama Sumana Unanse (26 New Law Reports 274) which have established the principle that the rule of succession to Sanghika property is governed by the terms of the original dedication. 30
- p.647, 1.45 -
p.648, 1.42
- p.650, 11.37-41 10. T.S. Fernando J. took the view that although the Venerable Sri Sumangala Mahanayake Thera described himself as the Viharadhipathi such references carried little weight in determining whether there

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- was in law a Viharadhipathi in the institution established in the disputed premises. The appointment by the Venerable Sri Sumangala of a monk as Kruthiadhikari or manager an appointment appropriate to a Vihare or temple, was held not to be of significance because there was no evidence justifying the inference that a like appointment in respect of a pirivena is inappropriate. In regard to the Appellant's claim that Jinaratana Nayake Thera officiated as Viharadhipathi of Maligakande Temple, the Supreme Court thought there was no reliable evidence that this priest did anything at all to evidence his right of control. The attempt on the part of the Malwatte Chapter to exercise control over the Vidyodaya Pirivena and the fact that Jinaratana Nayake Thero has been referred to as the Viharadhipathi by that Chapter appears to have been discounted completely by the Supreme Court because the Vidyadhara Sabha ignored a summons to appear before the executive committee of the Chapter.
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11. In dealing with the argument on behalf of the Appellant that even if the right to appoint the Principal of the Pirivena was in the Sabha, such a right cannot be interpreted as giving a lay body the right to appoint the Viharadhipathi, T.S. Fernando J. said:
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- "The true answer to this contention appears to me to be that there was no office of Viharadhipathi contemplated for the institution established on the premises in question."
- The reason for this view is that he accepted the main argument of the 1st Respondent's counsel that the deed of 1876 created a charitable trust and that the office of trustee devolved on the person appointed as Principal from time to time by the Sabha.
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12. With regard to the land described in Schedule B to the plaint, the Supreme Court accepted the finding of the learned trial judge that the trustee had acquired title by prescription.
13. The Supreme Court also held that the appointment of the Plaintiff at a meeting of the Sabha at which only seven members were present was good because seven were a sufficient quorum because in its view there were no grounds to disturb the finding of the trial Court that the seven members present had been validly elected.
- p.651, 11.1-11
- p.651, 11.3-6
- p.651, 11.32-44
- p.652, 11.33-39
- p.653, 11.30-35
- p.654, 11.7-12
- p.655, 11.18-26

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- p.656, 11.16-22 14. On the question of the ejectment of the Appellant from the premises, T.S. Fernando J. took the view that the matter falls to be decided according to the law of trusts and that the order for ejectment was good because the conduct of the Appellant amounted to a usurpation of the powers of the trustee. Nevertheless he examined the Buddhist Ecclesiastical Law on the expulsion of monks and decided that the Appellant had been guilty of "parajika" conduct. 10
- p.656, 11.13-16 15. It is common ground that the premises in dispute was Sanghika property, but it is submitted that both Courts fundamentally erred in assuming that there could be more than one kind of Sanghika property. Under the Buddhist Ecclesiastical Law recognised in Ceylon, Sanghika property is property dedicated to the entire Sangha or priesthood. The trust property of a charitable trust for Buddhist religious purposes would not be Sanghika property in any sense. The essential difference between these two kinds of property is clear and has been recognised in the judgment of the Board in Mapitigama Buddharakkita Thero vs. Don Edmund Wijewardena and Others 1960 A.C. Under the Buddhist Ecclesiastical Law private property is converted into Sanghika property when the religious ceremony of dedication to the entire Sangha is complete. But after the Frauds Ordinance of 1840, it became usual to execute a notarial deed conveying the land. It is submitted that the deed cannot add to or take away from the legal consequences of the dedication. Any provision in the deed contrary to the law relating to the nature of Sanghika property would not take legal effect. The fact that the dedicator had misconceived the legal nature of Sanghika property makes no difference. 20 30
16. It is submitted that the Supreme Court has erred in taking the view that the institution established in the premises was not a "temple" within the meaning of the Buddhist Temporalities Ordinance. The learned trial judge has found that there were on the premises at the time of the dedication in 1876 an avasa (a residence for monks). He has also found that residence was provided exclusively for monks. Although the avasa may have come into existence for the purposes of the Pirivena it is none the less a temple within the meaning of the Buddhist Temporalities Ordinance, and indeed according to the Buddhist Ecclesiastical Law. And when the land on which the avasa or 40 50

temple was converted into Sanghika property by dedication such property became appurtenant to that avasa or temple, and must have been regarded as such since Sanghika property, though dedicated to the entire priesthood, is appurtenant to a particular temple.

17. It is also submitted that both Courts below misapplied the principle in Rathanapala Unnanse vs. Kewitigala Unnanse (2 S.C.C. 26). The general rule that the succession to temple property can be regulated by the original dedication means, in the context of the decisions referred to by the Supreme Court, no more than that such dedication can provide which of the customary forms of succession is to operate in respect of the property so dedicated. The case of the temple in question is clearly not one of the recognised exceptional cases.

18. The finding that the Venerable Sri Sumangala and his successor Jinaratana Nayake Thero did not act as the Viharadhipathi of the temple was, it is submitted, a wrong inference that naturally followed the errors of law referred to in the three preceding paragraphs hereof. It is humbly submitted that the reasonable inference to be drawn from the facts proved is that the said two high priests did officiate as Viharadhipathis of the temple and that, consequently, their rights in the disputed premises were not lost through prescription.

19. It is submitted that in any event the appointment of the Plaintiff as Principal is bad in law because the meeting of the Sabha at which the Plaintiff was appointed did not have the necessary quorum and because four of the persons who voted as members were not properly elected. The documentary and oral evidence led in the case show that there had been since 1887 a considerable amount of confusion regarding the relative powers and functions of the original Sabha constituted in 1873 and those of another body set up by a notarial deed No. 2431 dated the 12th December 1887. Mr. W.H.W. Perera who claimed to be a member of the Vidyadhara Sabha for 44 years said in evidence that the members of the body constituted in 1887 had no rights of voting at elections of new members of the original Sabha, while Mudaliyar Abayasekera who was a member of the Sabha elected in 1926 stated in evidence that the members of the later body had the right of voting and were allowed to vote. The minute books of

p.212, 11.19-32
p.410, 11.19-22

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the Sabha showed that the meetings of the Sabha were not summoned nor conducted in a regular manner.

20. It is further submitted with respect that the Supreme Court had no jurisdiction to pronounce upon the question whether a priest has been guilty of parajika conduct and that in any event the facts proved do not justify the view of the Supreme Court in regard to the Appellant's conduct. It is submitted with respect that if the contention of the Appellant regarding the Buddhist Ecclesiastical Law applicable to Sanghika property is right, it was his duty to resist the claims of the lay Sabha and of the Plaintiff who was acting under its authority; and in any event, the Appellant was not alone in the view he took of the claims of the Sabha. The Malwatte Chapter, the highest disciplinary authority for the sect to which the Appellant belonged, shared his view and the Venerable Sri Sumangala Mahanayake Thero himself had by describing himself as Viharadhipathi lent support to that view. 10 20

p.676, 1.10 - 21. Final Leave to Appeal to Her Majesty in Council was granted on the 23rd March 1958, and p.677, 1.10 the Vidyodaya and Vidyalankara University Act No. 45 of 1958 was brought into operation on the 19th February 1959. The effect of the Act was to grant to the Vidyodaya Pirivena the legal status and the constitution of a University. The office of Principalship of the Pirivena has ceased to exist. 30

p.758, 1.37 - 22. On the 15th February 1960, the Plaintiff died, p.765, 1.26 and the Venerable Kalukundayawe Pamasekhara Nayaka Thera (hereinafter referred to as the 1st Respondent) made an application to the Supreme Court for a certificate that he was the proper person to be substituted in the place of the Plaintiff-Respondent on the footing that he had been appointed the Principal of the Vidyodaya Pirivena. The Plaintiff opposed the application on the ground that the action had abated with the death of the Plaintiff and could not be continued against him. 40

p.765, 1.29 - The Supreme Court held against the Appellant's contention and by its Order dated the 5th August 1960 p.769, 1.10 granted the certificate prayed for. The effect of the Vidyodaya and Vidyalankara University Act referred to in the preceding paragraph hereof was not considered by the Supreme Court.

23. It is humbly submitted that even if the Plaintiff had not died pending the hearing of this appeal, his rights being rights qua principal were extinguished when the Vidyodaya and Vidyalankara University Act No. 45 of 1958 came into operation.

10 24. It is humbly submitted that, in any event, the substituted 1st Respondent would not be entitled to obtain for his benefit the confirmation of the decrees made in the Court below in favour of the Plaintiff.

25. It is humbly submitted that this appeal should be allowed with costs throughout and the Plaintiffs action dismissed for the following among other

R E A S O N S

1. BECAUSE there is only one kind of Sanghika property and that it is not possible in law to invest such property with a special character or to limit its use for any special purpose.
- 20 2. BECAUSE the Supreme Court was wrong in holding that the disputed property was not a "temple" within the meaning of the Buddhist Temporalities Ordinance.
3. BECAUSE the Supreme Court and the District Court misapplied the decision in the case of Rathanapala Unnanse v. Kewitigala Unnanse (2 S.C.C. 26).
- 30 4. BECAUSE the Supreme Court and the District Court were wrong in holding that the Venerable Sri Sumangala Mahanayake Thera and his successor Jinaratana Mahanayake Thera did not act as Viharadhipathis of the Maligakande Temple.
5. BECAUSE the Supreme Court and the District Court erred in holding that the Plaintiff and his predecessors had acquired title by prescription to the disputed property or to any part thereof.
- 40 6. BECAUSE in any event, the Plaintiff had not proved that he was the duly appointed Principal of the Vidyodaya Pirivena.
7. BECAUSE the 1st Respondent (substituted) is

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not entitled to have the decrees of the
Courts below affirmed as between himself
and the Plaintiff.

E.F.N. GRATIAEN.

WALTER JAYAWARDENA.

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

VENERABLE VAGISVARACHARYA MORON-
TUDUWE SRI NANESWARA DHAMMANANDA
NAYAKA THERO (1st Defendant)
Appellant

- and -

VENERABLE KALUKONDAYAWE PANNASE-
KERA NAYAKA THERO, substituted in
place of VENERABLE BADDEGAMA
PIYARATANA NAYAKA THERO, deceased
(Plaintiff) and OTHERS (Defendants)
Respondents

CASE FOR THE APPELLANT

T.L. WILSON & CO.,
6 Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Appellant.