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17/1963

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

74032

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

- and -

- 10 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. MALALASEKERA (7th
Defendant)
5. D.L.F. PEDRIS (8th Defendant)
- 20 6. WIMALA DHAMMA HEWAVITARNE (10th
Defendant)
7. MUDALIYAR EGODAGE ALFRED
ABAYASEKARA (12th Defendant)
8. MUDALIYAR PIYADASA DHAMMASIRI
ABEYWARDENA RATNATUNGA (13th
Defendant)
- 30 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)
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) 10
14. DR. A.D.P.A. WIJEGOONEWARDENE (substituted in place of Rajah alias Rajasinghe Hewavitarne, deceased 9th Defendant) ... Respondents

CASE FOR THE RESPONDENTS

RECORD

pp:638,657

1. This is an appeal from a Judgment and decree of the Supreme Court of Ceylon, dated the 13th February, 1958, dismissing an appeal from a Judgment and decree of the District Court of Colombo, dated the 17th October, 1950, whereby, in an action instituted by the predecessor-in-title of the present Respondent No.1. (herein, also, referred to as the "Plaintiff") against the Appellant (herein, also, referred to as "the 1st Defendant") and thirteen others (against whom no relief was claimed but to whom, in the circumstances of the case, it was thought proper to give notice of the action) it was held that the Plaintiff was entitled to: (1) a declaration that he held certain lands and premises (described in Schedules to the Plaint as one property) as trustee of a charitable trust, and that as such trustee he was entitled to the said lands and premises; and (2) an Order for the ejection of the 1st Defendant from the said property. 20
2. The main questions for determination on this appeal are as follows :- 40
 - (A) Whether the institution in Colombo known as the Vidodaya Pirivena or Maligakande Temple was,

on the evidence before the Courts below, proved to be:-

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10 (a) a Buddhist "temple" within the meaning of that expression as defined in Section 2 of the Buddhist Temporalities Ordinance (C.222) the property and management whereof is, by ibid, Sections 4(2) and 20, vested in the controlling Viharadhipati (Chief priest) thereof for the time being which the Appellant claims to be; or

(b) primarily a "pirivena" (a Buddhist college devoted to the teaching of Buddhism) to which as an adjunct is attached an "aramaya" (a small temple) both being the property of a charitable trust governed by laymen in accordance with the relevant trust deeds.

20 (B) Whether or not the Appellant's claim to be the Viharadhipati of the said institution -

(a) has been established by the evidence in support thereof and

(b) is barred by prescription.

(C) Whether or not the concurrent decisions of both Courts below in favour of the Plaintiff on questions of pure fact and mixed law and fact are so devoid of legal and judicial merit as to merit intervention by the Board.

30 3. Relevant portions of the Trusts Ordinance (C.72) the Buddhist Temporalities Ordinance (C.222) and the Prescription Ordinance (C.55) are included in an Annexure hereto.

4. The facts are as follows :-

On the 6th December, 1873, thirteen persons, anxious to further the teaching of the Buddhist religion, entered into deed No. 925 (Pl) relevant portions of which are as follows:-

Pl, p.809

40 "Whereas a sum of Rs. Six thousand (Rs.6,000) should be collected for the purpose of purchasing a land and for other work in order to establish a Pirivena for teaching knowledge and precepts, etc. pertaining to Buddhism, chiefly to Bhikkhus" (Buddhist priests or monks) "and also to laymen, Whereas a Sabha (Society) capable of receiving and safeguarding that sum of money is necessary a Sabha consisting of the above-named persons"

p.809, 11.27-38

RECORD

(thirteen in all) "was appointed and the name Vidyadhara Sabha was given to it by the people assembled on.....at Maligakande Watte, situated within the four gravets of Colombo and belonging at present to Lansage Andiris Perera" (one of the said thirteen persons). "Further the thirteen members (Sabhapatheen) of this Vidyadhara Sabha having agreed to the following conditions covenanted among themselves to wit:-

p.810, 11.1-16

"1. It is hereby agreed to use in all matters connected hereunto the name Vidyadhara Sabha for this Sabha, and this Vidyadhara Sabha having received the sum of money subscribed for the work mentioned at the beginning, or a part of the same, that is any sum of money coming in from the Dayakayas (supporters) and, for its protection, having appointed a Secretary and a Treasurer as sanctioned by the rules, together with them each and every one of this Society to be responsible for the money collected until this work is completed. 10

"2. It is hereby agreed, as soon as the said sum of money has been fully collected, to purchase in the name of this Sabha a suitable land, or if a suitable land were conveniently to come, to build with that sum of money a Pirivena on such land, to keep as Principal thereof a learned and virtuous Bhikkhu to teach knowledge and precepts pertaining to Buddhism, to appoint with his approval other teachers, if the service of such other teachers were required from time to time, and to supply such teachers with the four needs (sivupasaya). 30

"

p.811, 11.1-5

"7. It was decided that this place (Sthanaya) shall be considered a common property belonging to the Sabha and be utilized for the promotion of learning and religion only and that any individuals or descendants of any individuals, their children, heirs, administrators, etc. shall have no rights or privileges in it". 40

p.810, 11.17-25
p.810, 11.34-39

Other Clauses provide for the payment of monthly subscriptions by members of the Sabha (Clause 3) which must always "consist of a full complement of thirteen persons, good and possessed of moral qualities", any lesser number not being qualified to

do any important work other than that of supplying the said four needs (Clause 5), the election of new members in place of those deceased (Clause 6) and appointments of new members in place of those whose resignations are accepted (Clause 13). p.810, 11.40-46
p.811, 11.36-45

5. By the year 1876 the said Vidyadhara Sabha (hereinafter also called "the Sabha") had established the Vidyodaya Pirivena (hereinafter also called "the Pirivena") and to the then Principal of the Pirivena - the Venerable Sipkaduwe Sumangala Nayake Thero (hereinafter referred to as "Sumangala") - a Buddhist priest of considerable eminence and learning - there was transferred, by one Lansage Andiris Perera, a member of the Sabha, certain land and houses which he owned, for purposes of the Pirivena and subject to the provisions of deed No.1259 (P2), dated the 31st March, 1876. To the said deed there were three parties: (1) Lansage Andiris Perera; (2) members of the Sabha; and (3) Sumangala. P2A, pp.818-822

6. From relevant recitals and clauses in the said deed No.1259, P2, one translation of which is printed in the Record as P2A, it is clear that: P2A, pp.818-822

(1) The Pirivena was established for the express purpose of teaching Buddhism and imparting knowledge to priests and laymen alike on land and premises known as Maligakande belonging to the said Lansage Andiris Perera. p.819, 11.9-15

(2) At the date of the execution of the deed, the 31st March, 1876, the said land and premises were valued at Rs.6000/- towards which the Sabha had collected only Rs.2,070/- which latter sum the owner, a devoted Buddhist, had agreed to accept for the dedication by him of the property. p.819, 11.21-26

(3) The owner had - as and by way of a dedication absolute and irrevocable and as Sanghika property - dedicated the said land and premises to Sumangala, Principal of the Pirivena, "and, on his demise, to the Sangha" (the whole body of priests) "including the priests who succeed to the office of Principal of the said Pirivena, as Sanghika property, so long as they live in accordance with the Buddhist doctrine, for the establishment of a Pirivena to impart knowledge both to the Buddhist laymen and Bhikkhus (priests or monks)" and also to all religionists of all countries..... p.820, 11.5-12
p.819, 11.26-34

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- p.819, 11.35-37 "Subject always to the protection and orders of the said.....Sabha constituted upon the said deed" (deed No.925 of 1873) "namely the gentlemen forming the parties of the second part and on their death those joining the said Sabha".
- p.819, 11.39-45 (4) Sumangala, as Principal of the Pirivena, on behalf of himself and his successors in office appointed by the Sabha, had accepted the deed as "a deed of trust subject to all the aforesaid directions, stipulations and conditions." 10
- p.820, 11.42-47 Other provisions in the deed relate to disciplinary rules to be framed and enforced by Principals of the Pirivena, for the removal of the said Principals by the Sabha upon their transgressing the Pirivena rules and regulations, and for non-interference by the Sabha in the Pirivena's internal affairs.
- p.820, 11.11-18
7. The Pirivena, with Sumangala as Principal, was carried on as an educational institution without any particular incident from 1876 up to the 4th April, 1884, on which date, as a result of the Sabha's efforts, the Pirivena acquired, by deed No.2134 (P3), certain adjoining land and premises known as "Palm House", for the sum of Rs. 2,000. By the said deed (P3), the owner of "Palm House", one Simon Perera Dharma Goonewardena, transferred the property in question to Mabotuwana Siddhartha Unnanse (hereinafter called "Siddhartha"), a pupil of Sumangala, who, later, predeceased him. 20
- P3, p.833
p.642, 11.36-38
- It was, and is, the Plaintiff's case that at all material times Siddhartha held the legal title to "Palm House" in trust for the charitable trust which had already been created by the said deeds of 1873 and 1876 (P1 and P2). 30
- P1, p.809
P2A (P2) p.818
8. On the lands transferred by the said deeds of 1876 and 1884, P2 and P3, the Sabha, between the years 1884 and 1942 erected, or caused to be erected, various buildings such as teaching halls, sets of rooms for teachers and students, a Shrine Room, Library, Sick Room, etc. and, as an appurtenant to the Pirivena, an Aramaya (a small temple) for the special use of Buddhist priests and students resident in the Pirivena. The Aramaya was maintained and improved by the Sabha from time to time and the Principal of the Pirivena at all times officiated as the Incumbent of the Aramaya. 40
- P2A(P2) p.818
P3, p.833
p.108, 1.35 to
p.109, 1.5.
- P5, p.862 9. Sumangala, the Pirivena's Principal, died on the 30th April, 1911, and, on his death, the

Sabha appointed the Venerable Mahagoda Nanissara Nayaka Thero (hereinafter called "Nanissara") as Principal of the Pirivena. Accepting the appointment, Nanissara officiated both as the Pirivena's Principal and the Aramaya's Incumbent until his death on the 6th November, 1922 (P6).

p.109, 11.9-16

P6, p.867.

10 Upon Nanissara's death in 1922 the Sabha appointed the Venerable Kahave Ratanasara Nayaka Thero (hereinafter called "Ratanasara") as Principal of the Pirivena and, accepting the appointment, Ratanasara officiated both as Principal of the Pirivena and Incumbent of the Aramaya until 1936 when he died.

p.109, 11.17-23

p.643, 11.12-16

20 Upon Ratanasara's death in 1936 the Sabha appointed the Venerable Baddegama Piyaratana Nayaka Thero (hereinafter also called "Piyaratana") as Principal of the Pirivena and, accepting the appointment, Piyaratana (who was the Plaintiff in this action) officiated both as Principal of the Pirivena and Incumbent of the Aramaya until the 24th February, 1960, when he died.

p.109, 11.24-30

Upon Piyaratana's death in 1960, the Sabha appointed the Venerable Kalukondayawe Pannasekera Nayaka Thero (hereinafter also called "Pannasekera") as Principal of the Pirivena and, accepting the appointment, Pannasekera has since officiated as Principal of the Pirivena and Incumbent of the Aramaya.

30 In this appeal, by decree of the Supreme Court dated the 5th August, 1960, Pannasekera has been substituted for the deceased Piyaratana and he is now Respondent No.1 to this appeal.

10. The present Appellant, for some time prior to 1934, had acted as a tutor at the Pirivena. In 1934 he suffered from an illness and on his recovery he was not assigned any teaching work at the Pirivena although he continued to reside on its premises.

p.643, 11.18-24,
33-34.

40 On the 28th March, 1936, following the death of the Pirivena's Principal, Ratanasara, he applied to the Sabha to be appointed as Principal in Ratanasara's place, but the application (P13) did not succeed. At a meeting held on the 6th April, 1936, the members of the Sabha unanimously decided to appoint Piyaratana (predecessor-in-title of the present Respondent No.1) to succeed Ratanasara as permanent Principal. In its letter to Piyaratana, dated the 7th April, 1936 (P26), the Sabha informed him of his appointment as Principal and suggested the

P.13, p.1000
p.643

P26, p.1004
p.643, 1.24 to
p.644, 1.15.

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p.644, 11.1-5 re-appointment of the Appellant as a tutor. The suggestion was not accepted and notwithstanding several subsequent letters on the subject which the Appellant addressed to the Sabha, his services as a tutor were not required. The Appellant appears to have incurred the displeasure of the said Ratanasara; and of the Sabha because of the fast he had undertaken at the Pirivena in protest against the Sabha's decision to levy fees from the pupil-monks in order to provide for the settlement of amounts due as electricity charges and municipal rates. 10

p.644, 11.11-27 11. Unsuccessful in his efforts to be re-appointed as a tutor, and generally frustrated, the Appellant, who continued to reside on the Pirivena premises, then put forward, for the first time in 1941, the claim that he was the Viharadhipati (Chief priest) of the "Vidyodaya Pirivena Vihara at Maligakanda" having been appointed as such by one Jinaratana Nayaka Thero (hereinafter called "Jinaratana") whose pupil he was and who had, on the 22nd June, 1941, executed a deed of appointment in his favour, but with the condition that upon his (Appellant's) death or voluntary renunciation the position should devolve on another of his (Jinaratana's) pupils whom he named. In the said deed (P7) Jinaratana claimed to be the "Viharadhipati inter alia of Maligakanda Vihara also called the Vidyodaya Pirivena Vihara" but he was in fact the aged incumbent of a temple at Hunupitya in Colombo and had nothing whatsoever to do with either the Pirivena or Aramaya with which this appeal is concerned. 20

P7, p.1044
p.644
In December, 1941, the Appellant wrongfully and unlawfully entered into occupation of a portion of the Pirivena premises (the "Sumangala Hall") and claimed to be entitled to all the lands and premises of the Pirivena. Ensuing difficulties made it impossible for the Pirivena to be carried on satisfactorily as a teaching establishment and led to the present proceedings. 30

p.110, 11.1-8
p.644, 11.23-27
12. Instituting this action in the District Court of Colombo against the present Appellant (herein also referred to as "the 1st Defendant") and thirteen others (herein referred to as "the 2nd to 14th Defendants") Piyaratana (herein, also, called "the Plaintiff") in his Plaint and Amended Plaintiff, dated, respectively, the 26th July, 1943, and the 2nd April 1947, set out the facts relevant to the Plaints substantially as they have been outlined in the preceding paragraphs hereof. Paragraphs 21 and 22 of the Amended Plaintiff were as follows: 40

pp. 58,105
12. Instituting this action in the District Court of Colombo against the present Appellant (herein also referred to as "the 1st Defendant") and thirteen others (herein referred to as "the 2nd to 14th Defendants") Piyaratana (herein, also, called "the Plaintiff") in his Plaint and Amended Plaintiff, dated, respectively, the 26th July, 1943, and the 2nd April 1947, set out the facts relevant to the Plaints substantially as they have been outlined in the preceding paragraphs hereof. Paragraphs 21 and 22 of the Amended Plaintiff were as follows: 50

10 "21. The Principals of the Pirivena appointed by the said Sabha and holding under it have been in the undisturbed and uninterrupted possession as trustees of a charitable trust for the purposes referred to in the said deed No.925 of the said portions of lands and premises described both in the Schedules A and B hereto for a period of over ten years by a title adverse to and independent of the 1st Defendant and of all others and have as such trustees acquired a title by prescription to the said lands and premises. p.109, 11.31-38

22. The said Piyaratana holds the said lands and premises in trust for or as trustee of the said charitable trust." p.109, 11.39-42

20 In the concluding paragraph 26 of the Amended Plaintiff the Plaintiff stated that the 2nd to 14th Defendants, were members of the Sabha, that they were made parties in order to give them notice of the action and that no relief was claimed against them. p.110, 11.16-18

13. The Plaintiff's prayer, in his Amended Plaintiff, was as follows:-

30 "(a) That the Court may be pleased to declare that the Plaintiff holds the said lands and premises described in the Schedules A and B hereto and now described in Schedule C hereto as one property in trust for or as trustee of the said charitable trust. p.110, 11.20-36

"(b) That the Plaintiff as such trustee be declared entitled to the lands and premises described in the Schedules A and B hereto and now described in the Schedule C hereto as one property.

40 "(c) That the 1st Defendant be ejected from the said lands and premises and the Plaintiff placed in quiet possession thereof and that the 1st Defendant be condemned to pay damages at Rs. 25/- per month from December, 1941

"(d) For costs

"(e) For such further or other relief as to this Court shall seem meet."

14. By his Answer, and Amended Answer, dated, respectively, the 5th April, 1944, and the 21st pp.71,115

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- p.116, 11.1-14
P2A (P2), p.818
- p.644, 11.44-45
- p.116, 11.23-33
P3, p.833
- p.117, 11.1-12
- p.117, 1.38 to
p.118, 1.5
P7, p.1044
- p.118, 11.20-33
- January, 1948, the 1st Defendant denied both the creation and objects of the Sabha and, inter alia, said that: the property transferred by deed No.1259 (P2) was dedicated to the Sangha, with Sumangala as "Chief recipient"; Sumangala and other monks having resided thereon the property "became the Maligakanda Temple"; the devolution of the control of the said Temple should be in accordance with Sumangala's Sisyanusisya Paramparawa (pupillary rules of succession under Buddhist ecclesiastical law); Sumangala, as head of both the Temple and the Pirivena, was the controlling Viharadhipati of the Temple and the Parivenadhipati of the Pirivena until his death in 1911; the legal and beneficial title to "Palm House" from the date of its purchase in April, 1884 upon deed No.2134 (P3), was held by the transferee Siddhartha for and on behalf of the Viharadhipati of the Maligakande Temple and not in trust for the charitable purposes stated in the Amended Plaintiff; on Sumangala's death in 1911 Jinaratana had succeeded him as Viharadhipati and under him "the priests referred to in succession" officiated as Principals of the said Pirivena; (in Reconvention) that Jinaratana had, by deed No.2622, dated the 22nd June, 1941, (P7) appointed him (the Appellant) as Viharadhipati by virtue of which office he was entitled to the possession of the property described in the Schedules to the Amended Plaintiff; and that in any event he was not liable to be ejected from the premises in question.
15. The 1st Defendant, in his said Amended Answer, prayed as follows:-
- "(a) that the Plaintiff's action be dismissed;
 - "(b) that the 1st Defendant be declared the Viharadhipati of the said Maligakande Temple and all the temporalities thereto belonging and the Parivenadhipati of the Vidyodaya Pirivena therein;
 - "(c) that the Plaintiff be ejected from the said lands and premises described in Schedules A and B which together are the Maligakande Temple land and are described in Schedule C of the Plaintiff and that this Defendant be placed in quiet possession thereof;
 - "(d) for costs; and
 - "(e) for such further and other relief"

16. By their Answer, dated the 7th March, 1944, the pp.69-71
2nd to 5th and 7th to 14th Defendants, as members
of the Sabha, supported the Plaintiff's case.

The 6th Defendant did not file an Answer.

p.214, 1.2
p.89, 11.30-31

17. Of the 32 Issues in the action which were
first framed on the 6th November, 1944, Issues
Nos. 19, 20 and 21 were, on the application of the
1st Defendant's Counsel, tried as Preliminary
Issues. These Issues were as follows:-

pp.76-79

p.79, 11.23-25

10 "19. Was the Plaintiff appointed lawful trustee
according to the requirements of the Trusts
Ordinance of 1918 and/or the Buddhist
Temporalities Ordinance? p.89, 11.33-38
p.78, 11.18-24

"20. Is the Plaintiff vested with the properties
set out in Schedules A and B?

"21. If Issues 19 and 20 or either of them are
answered against the Plaintiff, can
Plaintiff maintain this action?"

18. By his Judgment, dated the 20th November, 1944, pp.89-95
20 the learned District Judge answered the said
Preliminary Issues against the Plaintiff and
dismissed the action with costs.

The learned District Judge was of opinion that, p.94, 11.24-28
under Section 113(3) of the Trusts Ordinance, "the
memorandum in writing notariially executed is a
sine qua non without which the trust property does
not become vested in the newly appointed trustee
and without which he cannot claim a locus standi in
judicio. It was conceded that in this case there

30 was no written memorandum notariially executed of
the Plaintiff's appointment and he held, therefore,
that the Plaintiff had no status to maintain the
action as trustee of the Pirivena inasmuch as he
had not been duly appointed in the manner set out
in the said Section 113(2) and (3). p.94, 11.18-19
p.95, 11.16-20

19. Against the Judgment of the District Judge on
the said Preliminary Issues Nos. 19, 20 and 21 the
Plaintiff, on grounds set out in his petition of
appeal printed on pp.96-99 of the Record, appealed
40 to the Supreme Court of Ceylon which, by its
Judgment, dated the 25th October, 1946, set aside
the Judgment of the District Court and, answering
the said Issues in favour of the Plaintiff,
remitted the case to the District Court for
determination of the other Issues. pp.100-103

RECORD

p.102, 11.17-22
P2A(P2) p.818
Annexure

Delivering the main Judgment of the Supreme Court, Keuneman S.P.J. (with whom Jayatileke J. agreed) said that it was clear that so far as the trust deed (P2) was concerned the present case fell within Section 113 (1) of the Trusts Ordinance which was to the effect that the title to trust property devolves without any conveyance or assurance for vesting the property in a person as trustee where, in the trust instrument, it is declared or intended that the trustee shall be the person for the time being who holds or acts or discharges any duty in any public or private institution. The learned Judge was of the opinion that in the present case the said deed (P2) granted the legal estate to Sumangala as Principal of the Pirivena and after him to Principals of the Pirivena appointed by the Sabha. He held that sub-sections (2) and (3) of the said Section 113 were inapplicable, that, "as regards the matters raised and Issues 19, 20 and 21 there is no bar to the maintenance of the present action", and that the case must be sent back for determination of the other Issues.

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p.102, 11.6-11
P2(P2A)
p.818, 11.6-11

p.103, 11.18-19,
28-33

20. A decree in accordance with the said Judgment of the Supreme Court on the Preliminary Issues was drawn up on the 25th October, 1946, and, against the said Judgment and decree the 1st Defendant did not appeal. It is respectfully submitted that he cannot do so now.

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p.104

21. Subsequent to the case being remitted to the District Court for the trial of Issues other than the said Preliminary Issues Nos. 19, 20 and 21 (which, as already stated, had been decided by the Supreme Court in the Plaintiff's favour) the original Plaintiff was amended so as to make it clear that the action was concerned with a charitable trust.

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p.114, 11.21-34

The Amended Plaintiff is printed on pages 105 to 112 of the Record. An Amended Answer followed and this will be found on pages 115 to 118 of the Record. The Plaintiff's Replication is printed on page 119 of the Record.

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22. The amended pleadings led to an amendment of certain Issues and to the 35 Issues, as framed and amended, the Answers of the learned District Judge, all of them in the Plaintiff's favour, were as is stated in this and in the succeeding paragraphs below.

Before setting out the Issues and Answers however, it should be mentioned that both sides produced oral and documentary evidence in support of their respective cases (all of which evidence was carefully considered by the learned Trial Judge) and that while the Plaintiff gave evidence at considerable length, the Defendant No.1 did not go into the witness-box and did not call Jinaratana who had executed the said deed of appointment (P7) P7, p.1044
10 in his favour.

The learned District Judge answered Issues Nos.1 to 10 as follows:-

- "1. Was the Vidyodaya Pirivena founded by the members of the Vidyadhara Sabha?" p.76
Answer: "Yes" p.526, 1.41
- "2. Was Sri Sumangala Nayaka Thero appointed first Principal of the said Pirivena by the Vidyadhara Sabha? p.76
Answer: "Yes" p.526, 1.42
- 20 "3. Did the said Sabha have the right of appointment and dismissal of successors in office of the Principal of the said Pirivena? pp.77-78 p.122, 1.18
Answer: "Yes" p.526, 1.43
- "4. Was the Plaintiff duly appointed Principal of the said Pirivena by the said Sabha? p.77
Answer: "Yes" p.526, 1.44
- 30 "5.(a) Was the property described in Schedule A conveyed by deed 1259 to Hikkaduwe Sri Sumangala and his successors-in-office as trustees of a charitable trust?" p.77 p.123, 11.9-15
Answer to both (a) and (b): "Yes" p.526, 1.45
- "5.(b) If so were the purposes of the charitable trust those set out in deed 925 and deed 1259?"
- "6. Did M. Sidhartha Thero hold the property described in Schedule B of the plaint in trust for the aforesaid trust?" p.77 p.123, 11.19-20
Answer: "Yes" p.527, 1.1
- 40 "7. Were the lands described in Schedules A and B to the plaint possessed exclusively and p.77 p.123, 11.21-23

RECORD

adversely for a period of 10 years by the principals of the said Pirivena as trustees of the said trust?"

p.527, 1.2

Answer: "Yes"

p.77

"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?"

p.527, 1.3

Answer: "Yes"

p.77, 11.32-37

"9. (a) Was the Aramaya appurtenant to the said Pirivena?" 10

p.123, 11.24-26

"9. (b) If so, was it intended for the use of the Bhikkus resident in the said Pirivena?"

p.527, 11.4,5

Answer to both (a) and (b): "Yes"

p.77

"10. Did the Principals of the said Pirivena at all times officiate as incumbents of the said Aramaya?"

p.527, 1.6

Answer: "Yes"

23. The learned District Judge answered Issues Nos. 11 to 21, after a due examination of all the relevant evidence before him, as follows:- 20

p.77

"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?"

p.527, 1.7

Answer: "Yes"

p.77

"12. Is the Plaintiff entitled to an order of ejection against the 1st Defendant from the premises described in Schedules A and B to the plaint?" 30

p.527, 1.8

Answer: "Yes"

p.77. p.527, 1.9

"13. Damages agreed at Re 1 for the whole period".

p.78

"14. Are the 2nd to 14th Defendants duly elected members of the Vidyadhara Sabha?"

p.527, 1.10

Answer: "Yes"

"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?" p.78

Answer: "Yes, in accordance with the deeds P1 and P2." p.527, 1.11

10 "16. Were the properties set out in Schedules A and B or either dedicated as Sanghika property to the community of Buddhist monks?" p.78

Answer: "The properties were dedicated for the establishment of a Pirivena and not a temple for worship". p.527, 11.12-13

"17. Is the 1st Defendant the controlling Viharaadhipathy of the properties described in Schedules A and B or either?" p.78

Answer: "No" p.527, 1.14

20 "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 Sisyanusisya Paramparawa?" p.78

Answer: "The rules of Sisyanusisya Paramparawa do not apply to this institution." p.527, 11.15-16

"19. Was the Plaintiff appointed lawful trustee according to the requirements of the Trusts Ordinance of 1918 and/or the Buddhist Temporalities Ordinance?" p.78

30 Answer: "Yes" p.527, 1.17

"20. Is the Plaintiff vested with the properties set out in Schedules A and B?" p.78

Answer: "Yes" p.527, 1.18

"21. If Issues 19 and 20 or either of them are answered against the Plaintiff, can Plaintiff maintain this action?" p.78

Answer: "Yes" p.527, 1.19

40 24. Issues Nos. 22 to 35 were, after a due examination of all the relevant evidence, answered thus by the learned District Judge:-

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- p.78 "22. If Issues 14 and 15 are answered against the Plaintiff and Defendants 2nd to 14th, can Plaintiff maintain this action?"
- p.527, 1.20 Answer: "This does not arise".
- p.78 "23. Who were the persons who appointed the Plaintiff as Principal of the Pirivena?"
- p.527, 11.21-22 Answer: "Their names are set out in the minutes of the meeting of the Sabha held on 6.4.1936, Pl2."
- p.78 "24. Were such persons duly elected members of the 10 said Vidyadhara Sabha?"
- p.527, 1.23 Answer: "Yes"
- p.78 "25. Did they constitute a lawful body having the power to appoint a Principal?"
- p.527, 1.24 Answer: "Yes"
- p.78 "26. If either Issues 24 or 25 is answered in the negative, can Plaintiff maintain this action?"
- p.527, 11.25-26 Answer: "As Issues 24 and 25 are answered in the affirmative this Issue does not arise." 20
- p.79 "27. Was Sri Sumangala the incumbent of the Maligakande Temple?"
- p.79 "29. Did the premises described in Schedules A and B or either comprise the Maligakande Temple?"
- p.527, 11.27-31 Answer to Issues 27 and 29: "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." 30
- p.79 "28. Has the said incumbency devolved upon the 1st Defendant by pupillary succession?"
- p.123, 11.27-29
- p.527, 1.32 Answer: "No"
- p.79 "30. Is Devundara Jinaratana Nayaka Thero the senior pupil of Sri Sumangala?"
- p.527, 1.33 Answer: "Yes"

"31. Even so, can the 1st Defendant maintain his claim to be incumbent of the Temple on deed 2622 dated 22.6.1941?" (Ex. P7, p.1044). p.79

Answer: "No" p.527, 1.34

"32. Is the Plaintiff entitled to the premises described in Schedules A and B in trust for the purposes referred to in deed 925?" (Ex. P1 p.809). p.79

10 Answer: "Yes" p.527, 1.35.

"33. Is the claim of the 1st Defendant to the office of Viharadhipathi of the Vidyodaya Pirivena barred by prescription?" p.122, 11.27-29
p.124, 11.1-2

Answer: "Yes" p.527, 1.36

"34. Have the 2nd to 17th Defendants been either necessarily or properly made parties to this action," p.123, 11.38-39

20 Answer: "They were necessary according to the original plaint; according to the amended plaint they need not have been parties but their presence has not embarrassed the Plaintiff or the 1st Defendant. This issue has been raised only with regard to costs." p.527, 1.37 to p.528, 1.3

"35. If the premises described in Schedules A and B or either of them comprise the Maligakanda Temple is the 1st Defendant's claim, if any, to the incumbency of the said Temple barred by prescription?" p.124, 11.10-13

30 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 Viharadhipathy to any part of the premises in Schedules A and B is prescribed." p.528, 11.4-9

40 25. By his Judgment, dated the 17th October, 1950, incorporating the said Answers to Issues, the learned District Judge held that the Plaintiff was entitled to judgment as prayed for in the Amended Plaint (see paragraph 13 hereof) with costs against the 1st Defendant. pp.503-528

As to the dispute between the parties the

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learned Judge said:-

p.509, 11.7-13 "The substance of the whole dispute is whether the institution is a Buddhist temple, as all persons, particularly Buddhists, know what a Buddhist temple is, and if it is so how the office of Viharadhipati" (Chief priest) "passes when the officiating Viharadhipati dies or ceases to be a Buddhist priest, or whether it is an educational institution and whether lay people can manage its affairs even to appoint to the Chief Buddhist priest." 10

For reasons that he gave, the learned Judge, interpreting closely the documentary evidence before him and paying due attention to the relevant oral evidence, came to the following conclusions:-

p.512, 11.40-41 (1) "The Pirivena came up first or at any rate the Aramaya" (temple) "came up along with it but in either case as an adjunct to the Pirivena."

p.513, 11.10-12 (2) "Sumangala was appointed as Principal by the 20 Sabha and he was certainly the first Principal"

p.513, 11.12-14 (3) "The Sabha founded the Pirivena as set out in deed P1 of 1873".

p.517, 1.42 to p.518, 1.3 (4) "In this case there is no oral evidence or other evidence to contradict the deed P2. I find that this property was dedicated according to the terms of the deed P2..... It has been dedicated as Sanghika property not to establish a temple for worship but to establish and maintain a Pirivena to teach the principles precepts and doctrine of Buddhism to Buddhist priests and lay people of all religions." 30

p.518, 11.8-15 (5) A witness for the 1st Defendant (Dheerananda) had "stated in evidence that there could not be any dedication to the Sangha subject to conditions, and that no one would accept such a dedication. Here we find that Sumangala has accepted this dedication in the form it appears in P2. On being questioned about this Dheerananda said that that dedication would not be a Sanghika one. If that is the case the 1st Defendant's whole case falls to the ground; the property is still lay property subject to a trust." 40

P2A (P2) p.818

26. Further findings of the learned District Judge upon which his said Answers to Issues were based (see paragraphs 22 to 24 hereof) were as follows:-

(1) "This dedication has been made to provide for the educational needs of priests and laymen, priests primarily. The evidence is that only priests reside in the premises." p.521, 11.24-26

10 (2) As to the said "Palm House" purchased in the name of the said Siddhartha in 1884 (see paragraph 7 hereof):-

"This property has been used for the Pirivena and the reasonable conclusion is that the money was supplied by the Sabha. Anyway it has been possessed as part of the Pirivena property for more than ten years and I find that it too formed part of the property dedicated by the deed of 1876, P2, for the purpose of establishing and maintaining a Pirivena to teach Buddhism It forms part of the property subject to the purpose for which the other property was granted." p.521, 1.45 to p.522, 1.4

P2A (P2) p.818

20 (3) As to the said Jinaratana (from whom, as Viharadhipati of the Pirivena and Temple, the Defendant No.1 purported to derive his title):-

30 (i) Jinaratana was never the Viharadhipati of the Pirivena and its adjunct the Aramaya and he never officiated as such. p.521, 11.13-15

(ii) By habit and repute he was the senior pupil of Sumangala. p.522, 11.44-45

(iii) Sumangala died in 1911 and Jinaratana's claim to succeed him as Viharadhipati - assuming its validity - arose then. Any such claim of Jinaratana (who was alive at the date of the Judgment) was now prescribed and it was preposterous to think that a grantee from him (such as the Defendant No.1 claimed to be) could enforce his claim to the office. p.523, 11.1-8, 17-20

40 "Once prescription starts running against a Viharadhipati it continues to do so against his pupil who succeeds him."

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p.523, 11.34-36
P2A (P2) p.818

(iv) The interpretation of P2 by the Supreme Court (on the appeal against the District Court's decision on the Preliminary Issues Nos. 19 to 21, see paragraph 19 hereof) "stands even now."

p.523, 11.37-41

(v) "The words 'sangha' and 'sanghika' entitle any Buddhist priest to receive his education in this Pirivena and to reside in it for that purpose, but the legal title vests in the Principal appointed by the Sabha, and he is the Chief priest of the institution including the Aramaya."

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p.525, 11.36-39

(vi) "The members of the Sabha that appointed the Plaintiff as Principal had been duly elected and the Plaintiff has been duly appointed as Principal in accordance with the deed of 1873, Pl."

Pl, p.809

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pp.528-531

27. A decree in accordance with the Judgment of the learned District Judge was drawn up on the 17th October, 1950, and against the said Judgment and decree the 1st Defendant appealed to the Supreme Court of Ceylon on the grounds stated in his Petition of Appeal, printed on pages 532 to 537 of the Record.

p.640, 11.21-35

28. At the hearing of the appeal before the Supreme Court it was agreed by both sides that for the purposes of the appeal (which was now known as "the main appeal") the substitution of certain of the Defendants (members of the Sabha) which had followed the deaths of those who had been made parties should be accepted as duly made, that the two interlocutory appeals to the Supreme Court concerned with substitutions should be dismissed without any order as to costs, and that neither party should be entitled to the costs of the inquiries in the District Court relating to the substitutions.

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References to, and details of, proceedings leading to the said interlocutory appeals are not, it is submitted, relevant to the present appeal and are not, therefore, included herein.

pp.638-657

29. By their Judgment, dated the 13th February, 1958, the learned Judges of the Supreme Court (H.N.G. Fernando J. and T.S. Fernando J.) dismissed the main appeal with costs; and, in accordance with the said agreement of both sides, dismissed the said

interlocutory appeals, concerned with the substitution of parties, without any order as to costs.

30. Delivering the main Judgment of the Supreme Court, T.S. Fernando J. (with whom H.N.G. Fernando J. agreed), after reviewing the cases of both sides, referred to the findings of the Court below - that the Pirivena had been built first and that the Aramaya, whether built at the same time or later was an adjunct of the Pirivena - a sequence of events which, after a close examination of the old deeds P1, P2 and P3, he found to be correct. The learned Judge said that there was no witness available at the trial who was living about the year 1876 and able to give evidence on the question as to which came first - the Pirivena or Aramya. From the relevant oral and documentary evidence before him he found that "between 1873 and 1876 the land earmarked for dedication for the purpose the Sabha formed in 1873 contemplated had been utilised for the erection of certain buildings as residences for the monks who would be pupils and teachers at the Pirivena."

p.512, 11.40-41
p.645, 11.17,22-31
p.646, 11.15-18

31. The learned Supreme Court Judge (T.S.Fernando J.) next considered the Plaintiff's case that the 1876 deed, P2, created a charitable trust for religious education and the Defendant No.1's claim that on the premises in question there is a "temple" (within the definition of that word in Section 2 of the Buddhist Temporalities Ordinance (C.222)) the property and management whereof is (by Sections 4(2) and 20 of the Ordinance) vested in the Viharadhipati - an office which the Defendant No.1 claims to hold by virtue of his appointment as such by Jinaratana's deed, P7. The learned Judge said that the question whether the premises had been dedicated for the furtherance of religious education or for worship by Buddhist monks was, as the learned Trial Judge had correctly apprehended, to be determined by interpretation of the terms of the 1876 deed P2. Interpreting that deed he came to the clear conclusion that the dedication in question was for the establishment of a Pirivena and not a temple. He said :-

p.646, 1.19 to p.647 1.17
P2A (P2), p.818
Annexure
P7, p.1044
P2A (P2) p.818

"P2 is specific on the point that the dedication by the owner of the property and by the Sabha was for the establishment and continuance of a Pirivena to impart knowledge to Buddhist monks and laymen and even to people of other religions. It does not even refer to worship as one of the purposes of the dedication,

p.647, 11.21-27

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although no one can deny that worship will not be opposed to the avowed purpose of the dedication.

p.647, 11.27-30

"I am, therefore, of opinion that the institution that was carried on in the premises at the time of the filing of the action was not a 'temple' within the meaning of the Buddhist Temporalities Ordinance."

p.647, 11.31-34

32. The learned Supreme Court Judge referred to, but did not accept, the argument advanced on behalf of the 1st Defendant that the property in question had been dedicated as a sanghika gift (i.e. to the temple or whole body of priests) and, therefore, in accordance with Buddhist ecclesiastical law, the grantee under P2, (Sumangala), had held it for the said body, and, on his death, the title thereto had, upon an application of the Buddhist rules of succession known as Sisyanusisya Paramparawa, passed to his pupil, Jinaratana, who had appointed the 1st Defendant to the office of Viharadhipati. 10 20

The learned Judge said:-

p.649, 11.1-9
P2A (P2) p.818

"Even on the assumption that there is a 'temple' the terms of P2 show that the dedication, although expressed to be absolute and irrevocable and as sanghika property is nevertheless subject to the directions, stipulations and conditions laid down therein. One of these conditions is that the appointment of a Principal of the Pirivena is reserved to the Sabha and the removal of a Principal is also similarly reserved, except that in the latter case there is a requirement that the approval of a Sangha Sabha should be obtained." 30

p.649, 11.22-28

The learned Judge drew attention to the fact that there is no authority for the proposition that succession to the title cannot be specifically provided for in the case of a sanghika gift. He said that, on the contrary, some of the authorities contain specific references to the rule that succession is regulated by the terms of the original dedication. 40

p.649, 1.34 to
p.650, 1.6

33. The learned Supreme Court Judge (T.S.Fernando J.) said that the best answer to the argument for the 1st Defendant - that the property had been dedicated as a sanghika gift - was that so eminent a Buddhist scholar as Sumangala had accepted the gift subject to the said conditions as to succession; and that if it was correct to say (as an important witness for

the 1st Defendant had said) that a dedication of property as a sanghika gift was always unconditional and could not validly contain any reservation of the right to appoint a Viharadhipati then it followed that the dedication of the property in this case by the deed P2 was not a dedication as a sanghika gift - a conclusion which was reinforced by the probability that Sumangala, who had accepted the dedication, would not have contravened Buddhist ecclesiastical law by accepting a dedication of property as a sanghika gift to which conditions were attached. The learned Judge therefore rejected the 1st Defendant's claim to the office of Viharadhipati - a claim which was based upon the dedication of the property as a sanghika gift to which the rules of pupillary succession known as Sisyanusisya Paramparawa were applicable. Continuing, the learned Judge said:-

P2A (P2) p.818

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"The Sabha had the right, in my opinion, to appoint the Plaintiff as Principal in 1936 in the same way as it had appointed Nanissara in 1911 and Ratanasara in 1922.

p.650, 11.10-13

"Looked at in another way the existence of this very condition is indicative of the absence of an intention by the dedicator to establish a temple or other place of worship."

p.650, 11.13-15

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34. The learned Supreme Court Judge (T.S. Fernando J.) next referred to, and, for reasons that he gave, rejected, the argument advanced on behalf of the 1st Defendant to the following effect: even if the Plaintiff is the Principal of a Pirivena which was established by the Sabha, the 1st Defendant is nevertheless the Viharadhipati of a temple established on the same premises - having been appointed to that office by deed P7 executed by Jinaratana.

p.650, 1.31 to p.657, 1.25.

P7, p.1044

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The learned Judge said that there was no reliable evidence as to the succession of Jinaratana to Sumangala as Viharadhipati of the Maligakande Temple - assuming for this purpose that Sumangala held that office; and none as to any control which Jinaratana had exercised over the Sabha appointments of Nanissara and Ratanasara as Principals of the Pirivena. Continuing he said :-

p.651, 11.5-10

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"The inference is somewhat strong that the execution of P7 was a step in an attempt to create some sort of title for the Appellant" (1st Defendant) "at a time when he was desperate to find himself, if I may so term it, a place with honour at the Pirivena."

p.651, 11.28-31.

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- p.651, 11.17-23 As to the acceptance by the 1st Defendant of the Plaintiff's appointment and authority, the learned Judge said that this was apparent in the several letters he wrote to the Plaintiff and to the Sabha requesting them to re-instate him as a tutor at the Pirivena.
- p.652, 1.43 to p.653, 1.34 35. The learned Supreme Court Judge (T.S. Fernando J.) next referred to, and accepted, the argument that the Plaintiff was the trustee of a charitable trust created by the 1876 deed P2. He said:- 10
- p.653, 11.20-25 P2A (P2) p.818 "At the time P2 was executed the Trusts Ordinance (C.72) had not been enacted and the law of trusts in force was the English law. According to that law Andiris Ierera" (the owner of the property transferred by P2 - himself a member of the Sabha) "or the Sabha or both could have created a charitable trust. I can find no good reason for concluding that a Buddhist was excluded from exercising the right to create such a trust. 20
- p.653, 11.25-30 "P2, in my opinion, created a valid charitable trust for the advancement of religion or religious education. The devolution of the office of trustee of this trust being regulated by Section 113(1) of the Trusts Ordinance, the person appointed by the Sabha as Principal in place of..... Sumangala succeeded to the office of trustee on Sumangala's death." 30
- p.653, 11.30-34 P2A (P2) p.818 "I am in agreement with the main contention advanced by Mr. Herat" (for the Plaintiff) "and hold that the Trial Judge reached a correct finding that P2 created a valid charitable trust and that the office of trustee devolves on the person appointed from time to time by the Sabha."
- p.653, 11.34-45 The learned Judge agreed also with the alternative argument, advanced on behalf of the Plaintiff, that "if there was no charitable trust created there was a valid sanghika gift although not one in respect of which the Buddhist Temporalities Ordinance (C.222) had any application inasmuch as that Ordinance applied only to temples and temple property strictly so called." 40
36. As to "Palm House", the Pirivena premises described in Schedule B to the Plaintiff, the learned Supreme Court Judge (T.S. Fernando J.) said :-

"The title to these premises passed absolutely to Siddhartha".....(the transferee under deed No. 2134, P3) "in 1884 and all the evidence goes to show that the premises were used from that date onwards up to the time of the present suit for no purpose other than that of the Pirivena. The Trial Judge has stated that the reasonable conclusion is that the Sabha supplied the money for the purpose in 1884. However that may be, the trustee on P2 has possessed 'Palm House' as a part of the Pirivena property since 1884, i.e. for a period of nearly 60 years. In these circumstances the trustee has clearly obtained a prescriptive title to the premises. I may in this connection refer to the case of Ranasinghe v. Dhammananda ((1935) 37 N.L.R. 19, affirmed by the Privy Council, 39 N.L.R. 369) where it was held that even a de facto trustee for a vihare" (temple) "can acquire title by prescription for the benefit of the vihare.

p.654, 11.3-16

P2A (P2) p.818

"The Plaintiff therefore has legal title as trustee to the premises described in both Schedules A and B."

p.654, 11.16-18

37. The learned Supreme Court Judge next considered, but rejected, the argument advanced on behalf of the 1st Defendant that the Sabha that had appointed the Plaintiff as Principal of the Pirivena, at a meeting held on 6th April, 1936, was not validly constituted. After examining the relevant evidence the learned Judge said:-

p.654, 1.19 to p.655 1.26

"The Trial Judge, upon a consideration of this evidence, has found that the meeting was validly constituted and I do not consider that the evidence on the point and the arguments placed before us are of sufficient weight as to justify us, sitting in appeal, disturbing this finding of fact."

p.655, 11.22-26

38. On the liability of the 1st Defendant (the present Appellant) to be ejected from the Pirivena premises, the learned Supreme Court Judge (T.S. Fernando J.) having referred to the right of a Buddhist monk to reside in a vihare (temple) and to be maintained from its income, said:-

p.655, 11.27-39

"This right, is, however, lost if the pupil has been guilty of parajika or contumacious conduct In the case before us there is a body of unimpeachable evidence, to a large extent unchallenged, that the

p.655, 1.39 to p.656, 1.13

Appellant" (the 1st Defendant) "has made a portion of the teaching halls of the Pirivena living quarters for himself, has wrongly obtained the keys of the teaching hall and the library has withheld these keys from the Principal, has prevented the use of the dining hall by pupils and tutors, has diverted to himself letters addressed to the Plaintiff as Principal, has locked up the library preventing its use by others, removed the collection tills or boxes and generally disrupted the work of the teaching institution to such an extent that teaching has become impossible for the Principal and his staff. To complete his 'victory' over the Plaintiff he appears now to be conducting classes at these premises himself, including classes in English! 10

p.656, 11.13-26

"The Appellant's record of conduct has been such that, even if this institution had been a vihara proper and the Plaintiff had been the incumbent, a case has been made out for his ejection on the ground of parajika conduct. It is apparent, however, that it is quite unnecessary to consider the Buddhist ecclesiastical law in regard to expulsion from a temple of monks where the finding reached by the Court is that the Plaintiff is the legal title holder of premises subject to a charitable trust, not being a religious trust governed by the Buddhist Temporalities Ordinance. It has been amply demonstrated that the trustee" (the Plaintiff) "is unable to perform his duties and exercise his powers by the reasons of the acts of usurpation of office and the duty of the Court to order the ejection of the Appellant is therefore clear." 20 30

39. The learned Supreme Court Judge (T.S.Fernando J.) said finally:-

p.656, 11.27-29

"For the reasons which I have endeavoured to set out above" (see paragraphs 30 to 38 hereof) "and which are substantially the same reasons as those that found favour with the learned Trial Judge, I would dismiss the appeal with costs. 40

p.656, 11.30-33

"In the result Final Appeal No.26 of 1952 is dismissed with costs, and the Interlocutory Appeals Nos.73 and 192 of 1956 are dismissed without costs. Neither party will be entitled to the costs of the inquiries in the Courts below relating to the substitution of parties."

H.N.G. Fernando J. fully agreed with the Judgment of T.S. Fernando J. He explained that the delay in the preparation of the Judgment in the appeal was due to a misunderstanding for which he was responsible.

p.656, 1.37 to
p.657, 1.2

10 40. Three decrees in accordance with the said Judgment of the Supreme Court were drawn up on the 13th February, 1958. The first of the said decrees related to Final Appeal No.26 of 1952, i.e. the main appeal, and it is against this decree that the present appeal is presented.

pp.657-658
658-659,
660-661

The other two decrees related to Interlocutory Appeals Nos. 73 and 192 of 1956 and were made in accordance with the agreement of both sides previously arrived at. The present appeal is not, it is submitted, concerned with the subject-matter of the said Interlocutory Appeals (the validity of the substitution of certain persons as Defendants).

p.640, 11.21-35

20 Against the said Judgment and decree of the Supreme Court in Final Appeal No.26 of 1952, this appeal to Her Majesty in Council is now preferred, Conditional and final Leave to Appeal having been granted by decrees of the Supreme Court, dated, respectively, the 12th March, 1958, and the 25th March, 1958.

pp.673, 676

30 The original Respondent No.1 to this appeal, the said Piyaratana (the Plaintiff) died on the 15th February, 1960, and the present Respondent No.1. was, as a fit and proper person, substituted in his place by a Judgment and decree of the Supreme Court, dated the 5th August, 1960.

The Respondents respectfully submit that the appeal should be dismissed, with costs, for the following, among other

R E A S O N S

40 1. BECAUSE the questions for determination which arise on this appeal are mainly questions of fact or of mixed law and fact and all of them have been concurrently and correctly answered by the Courts below in favour of the Respondents and against the Appellant.

2. BECAUSE the said concurrent decisions are decisions of Courts familiar with Buddhist law and doctrine and with local conditions

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and are in accordance with a correct appreciation of all the evidence in this case and all the relevant law.

3. BECAUSE on any true appreciation of all the evidence produced by both sides and all the relevant law it is clear that the following conclusions of the Courts below are correct:-
- (A) A valid charitable trust with the primary object of teaching Buddhism to clergy and laity alike was created by the terms of the two deeds of 1873 and 1876, P1 and P2. 10
 - (B) The Pirivena (for the teaching of Buddhism) and its adjunct, the Aramaya (a temple mainly for the convenience of those attending the Pirivena) were established in furtherance of the objects of the said trust.
 - (C) The said trust is a charitable trust within Section 113(1) of the Trusts Ordinance (C.72) (and not a religious trust governed by the Buddhist Temporalities Ordinance (C.222)) and the title to the whole of the trust property devolves upon the Principal of the Pirivena for the time being (the trustee) without any conveyance vesting order or other assurance. 20
 - (D) The Plaintiff was validly appointed as Principal of the Pirivena by the Sabha and was ex officio the incumbent of the Aramaya. 30
 - (E) Upon the land and premises of the said charitable trust there is not, and there never has been, a "temple" within the definition of that word in Section 2 of the Buddhist Temporalities Ordinance (C.222) nor any Viharadhipati to control and manage any such "temple".
 - (F) The Appellant's Case that the said lands and premises were donated and acquired as a sanghika gift (i.e. to the temple or the whole body of priests), that, therefore, according to Buddhist Law, the Sisyanusisya Paramparawa rules of pupillary succession were applicable thereto, and that by virtue 40

of such application Sumangala's pupil Jinaratana became Viharadhipati of the said property (known as the "Maligakande Temple") and was thus empowered to appoint the Appellant to succeed him as Viharadhipati was clearly not established.

- 10 (G) Any donation dedication and transfer of property as a valid sanghika gift must be unconditional and in the present case this was not so for, in the relevant deed P2, the important power to appoint and remove the Principal of the Pirivena has been expressly reserved in favour of the Sabha.
- (H) Sumangala's acceptance of the conditional dedication in P2 reinforces the view that a true sanghika gift was neither intended nor effected by its terms.
- 20 (I) If, however, the donation in P2 is to be regarded as a sanghika gift then, in the absence of any authority to the contrary, it would be reasonable to regard it as a conditional but valid sanghika gift, which had been accepted by Sumangala as such for the establishment of a Pirivena - and this again would destroy the basis of the Appellant's claim.
- 30 (J) Even if the gift is regarded as an unconditional sanghika gift there was still the necessity for the Appellant to establish his right to be Viharadhipati and this he has failed to do.
- 40 (K) There was no evidence that Jinaratana (who did not enter the witness box) had ever functioned as Viharadhipati of the Maligakande Temple (or on the land and premises in question) and his appointment of the Appellant as such Viharadhipati by the deed P7 was therefore quite ineffective.
- (L) In any event Jinaratana's (and, therefore, the Appellant's) claim to be Viharadhipati is barred by prescription.
- (M) The Plaintiff, as trustee of a charitable trust, had acquired a prescriptive title to the said land and premises.

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(N) The Appellant has been guilty of contumacious conduct and is therefore liable to be ejected, and the Plaintiff is therefore entitled to an ejectment order.

(O) As to "Palm House": the title had, under the 1884 deed P3, passed to the transferee Siddhartha but the evidence was that it had always been used for purposes of the said Pirivena and the probability is that the Sabha had supplied the funds for its purchase. The trustee on the deed P2, i.e. the Principal of the Pirivena for the time being, has always possessed the property as part of the Pirivena property and, in any event, has acquired title thereto by prescription. 10

5. BECAUSE for reasons stated therein, the Judgments of the Courts below are right and ought to be affirmed. 20

DINGLE FOOT.

R.K. HANDOO.

ANNEXURE

THE TRUSTS ORDINANCE (C.72)

(16th April 1918)

10 2. All matters with reference to any trust, or with reference to any obligation in the nature of a trust arising or resulting by the implication or construction of law, for which no specific provision is made in this or any other Ordinance, shall be determined by the principles of equity for the time being in force in the High Court of Justice in England.

3. In this Ordinance, unless the context or the subject-matter otherwise implies -

20 (a) "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another person, or of another person and the owner, of such a character that, while the ownership is nominally vested in the owner, the right to the beneficial enjoyment of the property is vested or to be vested in such other person, or in such other person concurrently with the owner;

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113. (1) where, whether before or after the commencement of this Ordinance, it is declared or intended in any instrument of trust that the trustee of the trust shall be a person for the time being holding or acting in any public office, or holding or acting in any office or discharging any duty in any public or private institution, body, corporation, association, or community, or where any property comes into or is in the possession or ownership of any such person in any of the aforesaid capacities upon any constructive trust, the title to the trust property shall devolve from time to time upon the person for the time being holding or acting in any such office, or discharging such duty, without any conveyance, vesting order, or other assurance otherwise necessary for vesting the property in such person.

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(2) Where, whether before or after the commencement of this Ordinance, in the case of any charitable trust, or in the case of any trust for the purpose of any public or private association (not being an association for the purpose of gain), a method for the appointment of new trustees is prescribed in the instrument of trust (other than nomination in the manner referred to in paragraph (a) of Section 75), or by any rule in force, or in the absence of any such prescribed method is established by custom, then upon any new trustee being appointed in accordance with such prescribed or customary method, and upon the execution of the memorandum referred to in the next succeeding subsection, the trust property shall become vested without any conveyance, vesting order, or other assurance in such new trustee and the old continuing trustees jointly, or if there are no old continuing trustees, in such new trustee wholly. 10

(3) Every appointment under the last preceding subsection shall be made to appear by a memorandum under the hand of the person presiding at the meeting, or other proceeding at which the appointment was made, and attested by two other persons present at the said meeting or proceeding. Every such memorandum shall be notarially executed. 20

(4)

(5)

THE BUDDHIST TEMPORALITIES ORDINANCE (C.222)

(1st November, 1931)

2. In this Ordinance, unless the context otherwise requires -

"temple" means vihare, dagoba, dewale, kovila, avasa, or any place of Buddhist worship

"trustee" means a trustee of a temple appointed under the provisions of this Ordinance

10 "viharadhipati" means the principal bhikkhu of a temple other than a dewale or kovila, whether resident or not.

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.

20 (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".

30 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.

THE PRESCRIPTION ORDINANCE (C.55)

(1st January, 1872)

2. - In this Ordinance, unless the context otherwise requires -

"immovable property" shall be taken to include all shares and interest in such property, and all rights, easements, and servitudes thereunto belonging or appertaining.

3. - Proof of the undisturbed and uninterrupted possession by a defendant in any action, or by those under whom he claims, of lands or immovable property, by a title adverse to or independent of that of the claimant or plaintiff in such action (that is to say, a possession unaccompanied by payment of rent or produce, or performance of service or duty, or by any other act of the possessor, from which an acknowledgment of a right existing in another person would fairly and naturally be inferred) for ten years previous to the bringing of such action, shall entitle the defendant to a decree in his favour with costs. And in like manner, when any plaintiff shall bring his action, or any third party shall intervene in any action for the purpose of being quieted in his possession of lands or other immovable property, or to prevent encroachment or usurpation thereof, or to establish his claim in any other manner to such land or other property, proof of such undisturbed and uninterrupted possession as hereinbefore explained, by such plaintiff or intervenient, or by those under whom he claims shall entitle such plaintiff or intervenient to a decree in his favour with costs: 10 20 30

Provided that the said period of ten years shall only begin to run against parties claiming estates in remainder or reversion from the time when the parties so claiming acquired a right of possession to the property in dispute.

No.41 of 1961

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF CEYLON

B E T W E E N

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

... .. Appellant

- and -

VENERABLE KALUKONDAYAWE
PANNESEKERA NAYAKA
THERO, substituted in
place of Venerable
Baddegama Piyaratana
Nayaka Thero,
deceased) (Plaintiff)
and Others

... .. Respondents

CASE FOR THE RESPONDENTS

HATCHETT JONES & CO.,
90 Fenchurch Street,
London, E.C.3.