

Est. G. 2.

15,1960

No. 10 of 1959

IN THE PRIVY COUNCIL

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON

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

B E T W E E N

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

52989

and

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

C A S E FOR THE RESPONDENTS

RECORD

20 1. The Plaintiff - Appellant (hereinafter called "the Plaintiff") appeals from the judgment and decree of the Supreme Court of Ceylon dated the 18th June 1957 which set aside the judgment and decree of the District Court of Colombo dated the 6th July 1955 and dismissed with costs the Plaintiff's action against the Defendants-Respondents (hereinafter called "the Respondents").

p.34, l.1 -  
p.42, l.13.  
pp.20-25.

30 2. On the 15th October 1954, the Plaintiff filed a plaint pleading two causes of action, in the first of which he claimed that he, as trustee and Viharadhipathi (chief incumbent) of the Buddhist Temple called Rajamaha Vihare, was entitled to the income from certain lands held and possessed by the Defendants as trustees of the Last Will of the late Helena Wijewardena and prayed that the Defendants as the trustees of the said Last Will be ordered to account for the said income, and in the second of which he claimed the right to possess and manage the said lands and prayed for a declaration accordingly and for the ejection of the Defendants thereupon.

pp.1-4.

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p.46, l.20 - 3. The Defendants, who are the trustees of the  
p.52, l.45. Last Will of the late Helena Wijewardena No. 4115  
dated the 20th July 1935 and duly admitted to  
probate (Exhibit P.2), contested the Plaintiff's  
claims upon the grounds pleaded in the answer dated  
p.5, l.1 - the 26th January 1955, namely, that the said Last  
p.6, l.10. Will created a charitable trust for the benefit of  
the said Vihare and that the Defendants, as  
trustees, had the right, and were under a duty,  
to use the income for the trust purpose and that  
they were under no duty to hand over the income to  
the Plaintiff. 10

4. The principal questions of law arising on  
this Appeal are:

- (a) Whether a Buddhist Temple is a juristic person;
- (b) Whether a Buddhist Temple as such is capable of  
taking as a devisee under a Last Will;
- (c) Whether Clause 5 of the said Last Will creates  
a charitable trust in respect of the lands in  
question for the benefit of the Rajamaha  
Vihare; 20
- (d) Whether Section 20 of the Buddhist  
Temporalities Ordinance (Chapter 222 of the  
Revised Legislative Enactments 1939 - Vol. 2  
page 650) vests in the trustee of a temple  
appointed under that Ordinance all lands held  
under any trust for the benefit of the temple  
irrespective of their being "sanghika"  
property.

5. The trial proceeded upon the following  
issues:- 30

- p.7, l.15 - 1. Is the Plaintiff entitled  
p.8, l.8. (a) to an accounting in respect of the income  
from the 250 acres depicted in Plan No.278  
of 10 May 1947, referred to in the  
Schedule to the plaint;  
(b) to be paid the said Income
- 2. If issue 1 is answered in the affirmative,  
what sum is the Plaintiff entitled to on the  
accounting? 40
- 3. In default of proper accounting, to what sum  
is Plaintiff entitled?

4. Is the Plaintiff entitled to be placed in possession of the said 250 acres?
5. Did the last Will referred to in paragraph 3 of the plaint create a charitable trust in respect of the land referred to in the Schedule to the plaint for the benefit of the Rajamaha Vihare, Kelaniya?
- 10 6. Is the power to use the income of the said property for the benefit of the said Vihare vested in the 1st and 3rd Defendants and Mr. P.R. Wijewardena as trustees of the said Last Will?
7. If issues 5 and 6 or either of them is answered in the affirmative, is the Plaintiff entitled -  
(a) to maintain this action;  
(b) to be paid the income derived from the said property?

20 6. Issues 1, 4, 5, 6 and 7 were tried first and the only evidence in the case is the testimony of the Plaintiff and the documents produced by him.

p.8,11.10-12  
p.8, 1.18 -  
p.14, 1.32.

7. The Plaintiff's evidence established the following facts:-

30 (a) That members of the Wijewardena family were among the principal benefactors of the Rajamaha Vihare and that the late Helena Wijewardena was in her life-time interested not only in the restoration of the Vihare but also in other pious works connected with the temple such as the maintenance of drummers and of the Duruthu Perahera (religious procession);

p.10,11.34-37

p.10, 1.38 -  
p.11, 1.17.

40 (b) That the executors of the said Last Will, by deed No. 4489 dated the 27th November 1942 (Exhibit P.3), transferred the lands in question to Reverend Mapitigama Dharmmarakkitha, the Viharadipathi of the said Vihare, and to his successors in office, subject to the conditions contained in the Will, namely, that the management of the property for the benefit of the Vihare should be in the trustees under the Will;

p.53, 1.1 -  
p.57, 1.27.

(c) That the Plaintiff became the Viharadipathi of the said Vihare on the death of the said Reverend Mapitigama Dharmmarakkitha and that he was appointed the trustee of the Vihare

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p.46, 11.1-18. under Section 11(2) of the Buddhist  
Temporalities Ordinance (Cap. 222) by letter of  
appointment dated the 3rd April 1952  
(Exhibit P.1).

p.26, 11.20-  
32. 8. The Plaintiff did not, either in his  
pleadings or in his evidence, make any allegation  
of mismanagement or misappropriation against the  
Defendants and did not file any objections to  
the accounts filed by the Defendants on the order  
of the District Court.

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9. Clause 5 of the said Last Will is as  
follows:-

p.46, 1.36 -  
p.47, 1.4.

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

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10. Section 20 of the Buddhist Temporalities  
Ordinance (Cap. 222) is as follows:-

"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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pp.20 - 25

11. The learned District Judge in his  
judgment, delivered on the 6th July 1955, held that  
the Plaintiff was entitled to an accounting in  
respect of the income from the said lands and to  
be paid the said income but that the Plaintiff was  
not entitled to the possession of the lands.  
Decree was entered accordingly.

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12. The learned District Judge took the view  
that a Buddhist Temple could take gifts of land  
under a will and that Clause 5 of the said Last

Will entrusted to the trustees under the Will of the management of the property in question but not the control of the income.

13. In regard to the Plaintiff's claim to the possession of the said lands the learned District Judge said (rightly it is submitted) as follows:-

10 "I am also unable to agree with the contention put forward for the Plaintiff that because these 250 acres would be "property belonging to the temple" the Viharadapathi must necessarily have possession of it under Section 20 of Chapter 222, I see no objection to laymen managing such property even if it is called Sanghika property particularly so if that was the grantor's wish. p.24, l.37 - p.25, l.11.

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

30 14. The Defendants appealed to the Supreme Court from the judgment and decree of the District Court. The Plaintiffs filed cross-objections praying that the learned District Judge's finding that the Plaintiff was not entitled to the possession of the said lands be set aside and that the Plaintiff be declared entitled to possession and to an order ejecting the Defendants therefrom. pp.28 - 31 pp.32 - 33

15. The Supreme Court (Basnayake C.J. and Pulle J.) by its Judgment dated the 18th June 1957, allowed the Defendants' Appeal and dismissed the Plaintiff's action with costs in both Courts. pp.34 - 42

40 16. The learned Chief Justice (with whom Pulle J. agreed) held:-

(a) that Buddhist Temples are not juristic persons according to the general law and that a corporate status has not been conferred on them by the Buddhist Temporalities Ordinance; p.38, ll.9 - 29.

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p.38, 1.39 -  
p.39, 1.19.

(b) that property cannot be effectively gifted or dedicated so as to make it "Sanghika" property unless the procedure laid down by the Buddhist Ecclesiastical Law for such dedication is followed;

p. 39, 1.29 -  
p. 42, 1.2.

(c) that section 20 of the Buddhist Temporalities Ordinance (Cap. 222) operates only in regard to "Sanghika" property.

p.38, 11.30 -  
38.

(d) that Clause 5 of the said Will created a charitable trust for the benefit of the Rajamaha Vihare, the trustees being the trustees holding office under the Will.

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17. On the question whether Buddhist temples are juristic persons, the learned Chief Justice said:-

p.38, 11.9 -  
29.

"No case has been cited in which it has been held that a Buddhist Temple is a juristic person. The question appears to have been raised in the case of Sadhananda Terunanse v. Sumana Tissa et al 1. but not decided.

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

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18. In regard to the requirement of formal dedication, the learned Chief Justice said:

p.38, 1.39 -  
p.39, 1.19.

"It would appear from the case of Wickremesinghe v. Unnanse 2. that for a dedication to the Sangha there must be a donor,

10 a donee, and a gift. There must be an assembly of four or more bhikkus. The property must be shown; the donor and donee must appear before the assembly, and recite three times the formula generally used in giving property to the Sangha with the necessary variation according as it is a gift to one or more. Water must be poured into the hands of the donee or his representative. The Sangha is entitled to possess the property from that time onwards. No property can become sanghika without such a ceremony. Sometimes there is a stone inscription recording the grant or a deed is given.

20 "The procedure laid down in the above case for giving property to the Sangha is in accord with the Vinaya (Kullawagga Sixth Khandhaka, section 2, 4 and 5). A temple does not, by the mere fact that it is a place of worship, become the property of the Sangha. A private individual can have on his property a temple and it would be his private property. A temple or any other property given to the Sangha must be dedicated in the manner prescribed in the Vinaya. Then and then only can it become sanghika property."

19. In regard to the scope of section 20 of the Buddhist Temporalities Ordinance the learned Chief Justice said:-

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

p.39, 1.29 -  
p.40, 1.38.

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of the Buddhist Temporalities Ordinance. Such property would be governed by the trust created by the author of the trust. Section 109 of the Trusts Ordinance which provides that Chapter 10 of that Ordinance shall not apply to religious trusts regulated by the Buddhist Temporalities Ordinance, does not have the effect of bringing within the category of religious trusts regulated by the Buddhist Temporalities Ordinance every trust which a person may create for the benefit of a Buddhist temple or for any Buddhist religious purpose. It excluded the application of that Chapter to such trusts as are governed by the Buddhist Temporalities Ordinance. The main object of the Buddhist Temporalities Ordinance is to regulate the management and control of the vast temporalities granted by the Sinhalese Kings to the Sangha of the ancient temples of the Island, as the Sangha being mendicants who have given up all worldly interests were unable to protect and manage them. The history of the legislation on this subject goes beyond 1889. When the Kangan Provinces were ceded to the British Government and after it gave up its active participation in the protection of the Buddhist religion, from time to time, efforts were made to regulate by law the vast endowments made by the Sinhalese Kings to the cause of the Buddhist religion. Till 1931 the trustees were laymen but in that year Buddhist Temporalities Ordinance introduced a departure from the practice of excluding bhikkus from the office of trustee on account of the abuse of their trust by the lay trustees. That Ordinance permitted a Viharadhipathi to nominate himself as trustee instead of appointing a lay trustee. I see no justification for enlarging the scope of the Buddhist Temporalities Ordinance by holding that it governs every trust designed for the advancement of the Buddhist religion or the maintenance and welfare of a temple."

20. It is respectfully submitted that the Judgment of the Supreme Court is right for the reasons given in the Judgment of the learned Chief Justice and also for the following reasons:-

(a) Section 3 of the Civil Law Ordinance No. 5 of 1852 (Chapter 66, Vol. 1 Legislative Enactment 1938 Revision) introduced the English Law of Corporations into Ceylon. It is submitted that the Law of Ceylon



as it now stands leaves no room for piecemeal foundations as juristic entities.

10 (b) Clause 5 of the Last Will 4115 cannot in law be interpreted as a devise to the fluctuating body of priests of the Rajamaha Vihare because direct ownership of immovable property by a fluctuating and unincorporate body of individuals became impossible after the abolition of joint property in immovable property by section 7 of the Wills Ordinance No. 21 of 1844 (Cap. 49 of the Legislative Enactments 1918 Revision Vol. 11 page 35)

It is respectfully submitted that the appeal should be dismissed with costs throughout for the following amongst other

R E A S O N S

1. BECAUSE the judgment of the Supreme Court is right;
- 20 2. BECAUSE a Buddhist Temple is not a juristic person according to the law of Ceylon and cannot take under a Will;
3. BECAUSE the direct ownership of immovable property by an unincorporate body of individuals is not possible according to the law of Ceylon;
4. BECAUSE Section 20 of the Buddhist Temporalities Ordinance (Cap. 20) does not operate so as to vest in the Plaintiff any property other than Sanghika property;
- 30 5. BECAUSE the lands in respect of which the action was brought is not "Sanghika" property.
6. BECAUSE the interpretation of Clause 5 of the Last Will No. 4115 contended for by the Defendants is the only interpretation which can save the intention of the testatrix.

WALTER JAYAWARDENA

No. 10 of 1959

IN THE PRIVY COUNCIL

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O N A P P E A L  
FROM THE SUPREME COURT OF CEYLON

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B E T W E E N

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

and

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

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C A S E FOR THE RESPONDENTS

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