Privy Council Appeal No. 10 *of* 1959

Rev. Mapitigama Buddharakkita Thero - - - - *Appellant*

v.

Don Edmund Wijewardena and others - - - - - *Respondents*

FROM

THE SUPREME COURT OF CEYLON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 26TH APRIL, 1960

Present at the Hearing:
VISCOUNT SIMONDS
LORD REID
LORD TUCKER
LORD DENNING

[*Delivered by* LORD DENNING]

This case arises out of the will of Mrs. Helena Wijewardena, a widow who died on 10th November, 1940. She took a great interest in a famous Buddhist temple at Kelaniya called the Raja Maha Vihare (Great Royal Temple) and by her will she gave 250 acres of land to it. Since her death the land has been managed by the trustees of her will. They have had possession of it and collected the rents and profits from it. They have used the income for the purposes of the temple, as for instance, in making improvements to it, paying the tom-tom beaters, and so forth. This went on for many years. But in 1954 the Viharadipathi (the High Priest or chief incumbent) of the temple claimed that he was entitled to have from the trustees an account of the income they had received and to have them pay to him the moneys in their hands, and furthermore that he was entitled to possession of the land itself.

On 6th July, 1955, the Judge of the District Court (Sirimanne, A.D.J.) held that the Viharadipathi was entitled to an account of the income and payment of it but that he was not entitled to possession of the land. The trustees of the will appealed to the Supreme Court of Ceylon (Basnayake, C.J. and Pulle, J.) who on 18th June, 1957, allowed the appeal and set aside the order of the District Court. The Viharadipathi now appeals to Her Majesty in Council. He accepts the decision that he is not entitled to possession of the land, but he claims that he is entitled to have the income paid over to him.

Their Lordships must point out that there is no suggestion that the trustees of the will have mismanaged the property or misappropriated the funds. They have applied the income for the purposes of the temple: and in so far as this has been done with his consent or concurrence, the Viharadipathi does not seek to disturb it. But he seeks to obtain payment of any sums which were not paid out with his concurrence: and he does seek to have the income paid over to him for the future. He claims that it is for him to apply it as he thinks fit for the purposes of the temple: and not for the trustees of the will to do it. The District Court decided in favour of the Viharadipathi on this point, but the Supreme Court decided it in favour of the trustees of the will.

This issue depends largely on the true interpretation of the will. Mrs. Helena Wijewardena died on 10th November, 1940. By her will she appointed her three sons to be her executors. The material gift was in clause 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."

She afterwards, in clause 7, gave considerable property to her same three sons as trustees for certain charitable purposes which she specified, including restoration work at the Kelaniya Temple, aiding her poor relations and supporting Buddhist charitable institutions.

The executors seem to have assumed that, under the provisions contained in clause 5, it was their duty to convey the land to the Viharadipathi. Accordingly they selected 250 acres out of the 1,000 acres of paddy fields: and on 27th November, 1942, they executed a deed by which they conveyed it to the then Viharadipathi, the Reverend Mapitigama Dharmmarkkitha High Priest and his successors in office "subject always to the conditions in the said will expressly contained, namely, that the management of the said property for the said Vihare shall be in the Trustees in the said will."

A serious question has now arisen as to the meaning of the word "management" in the will and in the deed: but their Lordships observe that for many years after the execution of that deed, the trustees managed the 250 acres in this sense, that they not only collected the income from the 250 acres, but they also applied it as they thought fit for the purposes of the Vihare. The then Viharadipathi, the Reverend Mapitigama Dharmmarkkita died on 19th July, 1947, and was succeeded by the Reverend Mapitigama Buddharakkita Thero, the plaintiff in this action. The trustees of the will continued to collect and apply the income as before. No complaint was made by the Viharadipathi until February 1954, when his solicitor claimed the money in the hands of the trustees as income of the 250 acres.

Have the trustees of the will been doing wrong all these years in applying the income themselves for the purposes of the Vihare? That depends on the true interpretation of clause 5 of the will.

The Viharadipathi sought in his case before their Lordships to say that a Vihare (Buddhist Temple) is a juristic person and as such entitled to accept and own property: and that accordingly when the testatrix said: "I give two hundred and fifty acres . . . to the Rajamal Vihare Kelaniya" this operated as an outright gift to the Temple. Their Lordships cannot accept this view. There is a long line of authority to show that a Buddhist Temple is not a juristic person. It is not like the deity of a Hindu Temple. It is not a corporation. It has no legal personality. The authorities to this effect are so numerous and so weighty that Mr. Pennycuick before their Lordships did not feel able to controvert them.

The Viharadipathi next sought to say that, even though a Vihare is not a juristic person, nevertheless the 250 acres were vested in him the Viharadipathi by virtue of the Buddhist Temporalities Ordinance (chapter 222 of the legislative enactments of Ceylon). The material provisions of this Ordinance are as follows:—

"2. "temple" means vihare . . . or any place of Buddhist worship . . .

4. (1) The management of the property belonging to every temple . . . shall be vested in a person . . . duly appointed trustee under the provisions of this Ordinance.

20. All property movable, and immovable, belonging or in any wise appertaining to or appropriated to the use of any temple . . . shall vest in the trustee . . . for the time being of such temple.

25. All issues rents moneys profits and offerings received by any trustee for or on behalf of a temple shall with the sanction of the

public trustee be appropriated by such trustee for the following purposes:

(here are set out several purposes directly connected with the temple, but also)

(*d*) the promotion of education.

(*e*) . . . the customary hospitality to bhikkhus and others. . . ."

The Viharadipathi is himself the trustee of the Raja Maha Vihare duly appointed under the provisions of the Ordinance.

At first sight sections 4 and 20 do seem wide enough to cover property which is given by will to a temple such as is contained in the first sentence of clause 5 of the will. Such property would seem to be "property belonging to" a temple. But their Lordships have come to the conclusion that this is not correct. If the definition of "temple" is written into clause 20, we find that it says that all property belonging to a Vihare or any place of Buddhist worship shall vest in the trustee. But a vihare is not a juristic person. A place of Buddhist worship is not a juristic person. It cannot have property belonging to it. Some interpretation must be sought beyond the literal words. To what then does section 20 apply? The answer given by the Supreme Court of Ceylon was that it deals only with *sanghika* property which has been dedicated to the Sangha, that is, it deals only with property which has been dedicated to the priesthood as a whole, with all the ceremonies and forms necessary to effect a dedication, but with special attention to the priests of a particular temple. Viewing the object and intent of the Ordinance, their Lordships think this is correct. Vast temporalities were granted in olden days by the Sinhalese kings to the Sangha (priesthood) of the ancient temples. These priests had renounced all worldly possessions and were unable adequately to protect and manage their properties. The Buddhist Temporalities Ordinance was passed so that trustees could be appointed to manage such properties. It did not apply at all to property which was vested in private trustees for the benefit of the temple as a charitable trust.

Mr. Pennycuick seemed disposed to concede that, so far as dispositions *inter vivos* were concerned, the Ordinance only applied to property which had been dedicated to the sangha with all the ceremonies and formalities necessary to effect a dedication, see *Wickremesinghe* v. *Unnanse* 22 N.L.R. 236: but he submitted that, so far as dispositions by will were concerned, there was no need for any ceremonies or formalities. No gift by will could ever take effect, he said, if such ceremonies or formalities were needed: because of necessity the donor was not able to be present to comply with them. Their Lordships realise the force of this contention, but they do not feel able to give effect to it. It must be remembered that it is only in comparatively recent times that a person in Ceylon has been permitted to dispose of property by will: and the legislature may well be presumed to have intended that gifts by will should take effect only under the Ordinances regulating wills and trusts and not under the Buddhist Temporalities Ordinance.

Their Lordships think that this can be tested by taking this very case: Under clause 5 of the will, the testatrix clearly intended that the 250 acres should be managed by the trustees of the will: and that it should be applied for the purposes of this particular temple only. But if section 20 of the Ordinance applies so as to vest the 250 acres in the Viharadipathi, it would mean that the management of the property would be vested in him, see section 4 of the Ordinance; and the income could be applied, not only for the purposes of this particular temple, but also for the various purposes of section 25 of the Ordinance. Thus the provisions of clause 5 of the will would be overridden by the terms of the Ordinance. Their Lordships cannot agree to an interpretation of the Ordinance which would lead to this result.

Their Lordships are of opinion therefore that the 250 acres of land did not vest in the Viharadipathi by virtue of section 20 of the Buddhist Temporalities Ordinance.

There remains a further point which was taken on behalf of the Viharadipathi. Even if the 250 acres did not come within the Ordinance, nevertheless the trust in the will must be given effect. On its proper construction it was, said Mr. Pennycuick, a gift for the general purposes of the Temple. The Temple was not merely a building. It was a charitable institution. A gift to it must be construed as a gift for the purposes of the institution which can and should be carried out by paying the income to the governing body of the institution. It was a valid charitable trust. The income should therefore, he said, be paid over to the Viharadipathi as the trustee of the Temple.

Their Lordships feel the force of this argument but they do not think it should be given effect. The effect of the first sentence in clause 5 of the will is cut down by the second sentence: "The management of the same for the benefit of the said Vihare I entrust to my Trustees". Their Lordships think that the word "management" in this sentence is not to be confined to management of the property strictly so called, that is, to the cultivation and letting of the land and the collection of the income. It extends also to the management of the income. The words "for the benefit of the said Vihare" connote that the trustees are to consider the ways in which the Vihare should benefit. In short that they should decide on the particular purposes to which the income should be applied. And their Lordships are the more disposed to accept this interpretation when they remember that for 12 years or more the parties have acted on that footing.

True it is that this means that there is no great distinction between the position of the trustees of the will under clause 5 and their position under clause 7, except that the purposes are different. But their Lordships feel it unnecessary to search for any further distinction. The intention of the testatrix may well have been to effect a distinction as to the purposes and nothing more.

In the result their Lordships are of opinion that the trustees of the will are the persons to decide how the income should be applied for the purposes of the Temple. They find themselves in agreement with the judgment of the Supreme Court of Ceylon. They will humbly advise Her Majesty that this appeal should be dismissed. The appellant must pay the costs.

(39120) Wt. 8078—37 100 5/60 D.L.

In the Privy Council

REV. MAPITIGAMA BUDDHARAKKITA THERO

v.

DON EDMUND WIJEWARDENA AND OTHERS

DELIVERED BY LORD DENNING

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