

1.

No. 8 of 1967

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

MEERUPPE SUMANATISSA TERUNNANSE
(Plaintiff-Respondent)
Appellant

- and -

WARAKAPITIYE SANGANANDA TERUNNANSE
(Defendant-Appellant)
Respondent

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CASE FOR THE APPELLANT

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1. This is an appeal from the judgment and decree dated the 15th of May 1963 of the Supreme Court of Ceylon (Sansoni and Herat, JJ.) allowing the appeal of the Respondent from the judgment and decree of the District Court of Matara (declaring the Appellant to be the controlling Viharadhipathi and the Chief Incumbent of the Sudassanarama Temple in Welihinda and as such entitled to the land in dispute, ejection of the Respondent therefrom, agreed damages and costs). The Supreme Court dismissed the Appellant's action with costs in both Courts on the ground that he had failed to establish that he was the Viharadhipathi of the said Temple and his right to bring this action.

p.133 1.10-
p.135
p.136

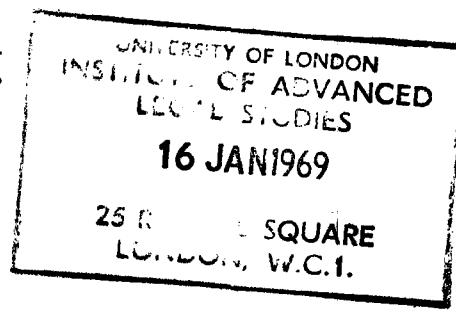
pp.123-128
pp.132-133
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2. The Appellant, as Viharadhipathi or Chief Incumbent of Sudassanarama Temple, Welihinda, instituted this action against the Respondent by his plaint dated the 20th of September 1954, and by his amended plaint dated the 13th of March 1956 prayed:-

pp.17-19
p.23 1.17-
p.26

- (a) that he be declared entitled to the high and low land called Pehimbiyagoda duwa and kumbura alias Hirikotuwe duwa, situate at



Warakapitiya in Weligam Korale of Matara District, Southern Province and which said land inclusive of the duwa, situated in the middle of the land is bounded on the North by Heendeniya Wekandiya, East by Pehimbiyaduwa, South by Kekilleduwa, West by Ratkeretolla and Tekkawatta and containing in extent about 18 acres and that the Respondent be declared not entitled to the same;

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(b) that the Respondent be ejected from the said premises and the Appellant be placed in possession thereof; and

(c) for damages and costs.

pp.31-34
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3. The Respondent by his third amended answer, dated the 21st of February 1957, denied that the Appellant was the rightful Incumbent of the Sudassanarama Temple and the Appellant's right to maintain this action, and denied also that he was in possession of the aforesaid land. The Respondent claimed to have been in possession of a land called Kekilladuwaaddara alias Mahapittaniya on which he had constructed an "avasa" or temple, and other buildings, and prayed inter alia that he be declared the Viharadhipathi of the said "avasa". The Respondent did not claim to be, and did not pray for a declaration that he was, the Viharadhipathi of the Sudassanarama Temple.

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p.34 11.15-
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4. At the trial, it was admitted that the Rev. Akurugoda Sudassi Terunnanse was at one time the Viharadhipathi of the said Temple, that among his pupils were the Rev. Meeruppe Gunananda and the Appellant, and that the succession to the said Temple was governed by the rule known as sisyanu sisya paramparawa. By agreement damages were fixed at Rs.500/- per year.

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p.35 1.14

5. The main questions for determination on this appeal are:-

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- 10 (i) Is the Appellant the Viharadhipathi of the said Temple either by virtue of an appointment by the said Rev. Gunananda by Deed No.2038 (P13) of the 26th of December 1930 and/or by the said Rev. Sudassi by Deed No.6654 (P12) of the 29th of August 1928, or by virtue of renunciation, abandonment or surrender of his rights by the said Rev. Gunananda as evidenced or constituted by the said Deed P13 and other acts and omissions; pp.152-153
pp.149-151
- 20 (ii) Even if the Appellant is not de jure the Viharadhipathi of the said Temple, does he have the status to maintain the present action as the de facto Viharadhipathi, having officiated, acted and exercised rights as such Viharadhipathi since the 26th of December 1930 and having been recognised as such by the Respondent;
- 30 (iii) In any event, is the Respondent stopped from denying the Appellant's title to the land in suit and his right to maintain this action since
- (a) he had entered the land in suit with the leave and licence of the Appellant and/or as his agent, and had not changed the character of his possession; and/or
- (b) he is the 'representative', within the meaning of section 115 of the Evidence Ordinance (Cap. 14), of the Rev. Gunananda who had acknowledged and recognised the Appellant as the Viharadhipathi of the said Temple.
- 40 6. At the trial the following issues were accepted, and at the conclusion of the trial, were answered as follows by the learned District Judge:- p.34 1.22-
p.37 1.28
p.126 1.4-
p.127 1.24

- (1) Did Sudassi Terunnanse appoint Rev.

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Gunananda the Viharadhipathi on Deed No.6654 of 29-10-1928 of the four temples mentioned therein inclusive of Welihinda Sudassanarama subject to the conditions mentioned therein?

Ans. Yes.

- (2) In pursuance of the conditions mentioned in Deed No.6654 of 1928 did Rev. Gunananda appoint the plaintiff Sumanatissa Unnanse his co-pupil as the Viharadhipathi from 26-12-1930 on Deed No.2038 of 26-12-30?

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Ans. Yes.

- (3a) Did Rev. Gunananda waive, abandon and surrender his rights to the Viharadhipathiship of Welihinda Sudassanarama as from 26-10-1930 or thereabouts?

Ans. Yes.

- (3b) Did the plaintiff as the next senior pupil of Akurugoda Sudassi Terunnanse become entitled to the Viharadhipathiship of Welihinda Sudassanarama Temple?

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Ans. Yes.

- (4) Is the plaintiff entitled to the Viharadhipathiship of Welihinda Sudassanarama if issues 2 and 3 and 2 or 3 are answered in the affirmative?

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Ans. Yes.

- (5) Did the plaintiff officiate, act and function as the Viharadhipathi of the said temple from 26-12-1930 and as such is he entitled to maintain this action?

Ans. Yes.

- (6) Is the claim of the defendant, if any,

prescribed by the provisions of the Prescription Ordinance?

Ans. Does not arise. The defendant has gone into occupation with the permission of the plaintiff and was rendering an account of the income.

10 (7) Is the defendant living on the premises referred to in para. 2 of the amended plaint with the plaintiff's permission?

Ans. Yes.

(8) Were the premises referred to in para.2 of the amended plaint entrusted to the care of the defendant in or about the year 1942, and did the defendant give the produce of the entire premises to the plaintiff in March, 1954?

Ans. Yes.

20 (9) Is the defendant in wrongful possession of the premises referred to in para. 2 of the amended plaint since March, 1954?

Ans. Yes. Rs.500/- a year from March, 1954 till plaintiff is restored to possession as agreed upon.

(10) Is the land described in the amended plaint a part of the temporalities belonging to the Welihinda Sudassanarama Temple?

30 Ans. Yes.

(11) Is the plaintiff entitled to the premises described in para. 2 of the amended plaint on the title pleaded by him?

Ans. Yes.

(12) Is the defendant in possession of the land called Pehimbiyagoda duwa and

kumbura alias Hirikotuveduwa?

Ans. Yes.

- (13) Do the boundaries set out in para. 2 of the amended plaint apply to the land called Pehimbiyagoda duwa and kumbura alias Hirikotuveduwa?

Ans. Yes.

- (14) Do the title deeds referred to in the pedigree filed with the plaint give the plaintiff title to the land claimed by him? 10

Ans. Yes.

- (15) If any one of the issues Nos.12 - 14 is answered against the plaintiff, can the plaintiff maintain this action?

Ans. Does not arise.

- (16) Do the conditions mentioned in Deed No.6654 of 29-10-1928 referred to in para. 3(d) of the amended plaint and in Issue No.1 raised on behalf of the plaintiff, have any force or effect in law? 20

Ans. Yes.

- (17) Is Deed No.2038 of 26-12-1930 referred to in para. 8 of the amended answer void and of no force or avail in law?

Ans. Is a valid deed.

- (18) If either of Issues 16 or 17 is answered against the plaintiff, can the plaintiff maintain this action? 30

Ans. Needs no answer in view of answers to issues 16 and 17.

- (19) If Issue No. 3 raised on behalf of

the plaintiff is answered in the negative, can the plaintiff maintain this action?

Ans. It is answered in the affirmative. Therefore plaintiff can maintain this action.

- 10 (20) Is the defendant entitled to claim the incumbency in question as a pupil of Gunananda Thero referred to in preference to the claim made by the plaintiff?

Ans. No.

- (21) Is the defendant in possession of the field called Kekilladuwaaddara alias Mahapittaniya as referred to in para. 12 of the amended answer?

Ans. Yes.

- 20 (22) Has the defendant constructed an 'avasa' in the said land Kekilladuwaaddara alias Mahapittaniya?

Ans. Yes.

- (23) Has the defendant been resident in and maintaining the buildings standing on the said land Kekilladuwaaddara as its Viharadhipathi?

Ans. Yes.

- 30 (24) If any one of the Issues No. 21, 22 or 23 is answered in the affirmative, has the plaintiff any claim against the defendant?

Ans. No. Because they are constructed with the income of these lands and the assistance of the Dayakayas.

- (25) Was the income derived from the land Kekilladuwaaddara utilised by the defendant for the maintenance of the 'avasa' referred to and of himself and his pupil Attadassa as set out in

paras. 13, 14 and 19 of the amended answer?

Ans. Yes.

- (26) If Issue No. 25 is answered in the affirmative, has the plaintiff any cause of action against the defendant?

Ans. Yes; because he had excess income and had agreed to give them according to the account particulars sent.

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- (27) Is the defendant a pupil both of Akurugoda Sudassi and Meeruppe Gunananda?

Ans. Yes.

- (28) If so is the defendant, in any event, entitled to be maintained on the lands and fields appurtenant to the temples mentioned in para. 3(a) of the amended plaint?

Ans. He has forfeited his right.

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- (29) Did the defendant only agree to give a part of the income of the field referred to in the answer as the plaintiff was in pupillary line from the original Incumbent of the temples referred to in the said para. 3 of the amended plaint?

Ans. No.

- (30) Has the defendant put up buildings and effected other improvements as set out in para. 22 of the amended answer?

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Ans. Yes.

- (31) If so, is the defendant entitled, in any event, to retain possession of the premises and improvements he has effected until compensation is paid?

Ans. No.

(32) If issues Nos. 30 and 31 are answered in the affirmative, what amount is due to the defendant as compensation?

Ans. No compensation is due.

(33) Is the 'avasa' built by the defendant on Kekilladuwaaddara alias Mahapittaniya a Buddhist temple within the meaning of 'temple' in Buddhist Temporalites Ordinance?

10 (34) If so, was the said temple founded by the defendant about 12 years ago as averred to in the amended answer?

Ans. (33 & 34) Even if it is a "temple" the defendant has forfeited his rights to be there.

(35) Has the defendant functioned as its Viharadhipathi for about 12 years?

Ans. He has only managed these properties for the plaintiff.

20 (36) If so, is the plaintiff's cause of action, if any, prescribed in law?

Ans. No.

(37) Can the plaintiff proceed with this action without a proper plan by reason of the provisions of Section 41 of the Civil Procedure Code?

Ans. Yes.

30 (38) Has the defendant entered the premises described in para. 2 of the plaint with the leave and licence of the plaintiff?

p.44 11.32-
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(39) Is the defendant estopped from denying the rights of the plaintiff to the said premises?

p.44 11.34-
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7. By Deed P13, the Rev. Gunananda, who was admittedly the de jure Viharadhipathi of the

said Temple, provided as follows:-

p.152 11.6-
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"That out of the four places of which Vihares I am the Adhikari by right of Deed No.6654 of 29th August, 1928 it is my desire that Meeruppe Sumanatissa Thero who is residing at Welihinda Sudassanarama Vihare aforesaid should be appointed Adhikari thereof as he is the fit person, to assume the duties of the said office.

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"Therefore know all men by these presents that I, Meeruppe Gunananda Sthavira, Viharadhipathi of Sudassanarama Vihare, do hereby, give, grant, convey and assure unto the aforesaid Meeruppe Sumanatissa Thero the full power to act as Adhikari of the Sangharama described in the schedule thereto and over all the movables such as Relics, Caskets and other objects of worship together with books, brassware etc. and all the immovable properties appertaining thereto and belonging to the said Vihare and to have and to hold the same from this day the aforesaid properties as Adhikari thereof"

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p.123 11.21
-23, 11.41-
42,p.124
11.16-17

The learned District Judge held that the Rev. Gunananda surrendered, renounced or abandoned the Viharadhipathiship in favour of the Appellant.

p.23,p.166-
167 1.14

In 1935 the Rev. Gunananda gave evidence in support of the Appellant in D.C. Matara Case No.8777, in which the Appellant claimed a declaration that he was the Viharadhipathi of the said Temple, testifying that by the Deed P.13 he appointed the Appellant Viharadhipathi, and that he executed the Deed P13, "not temporarily", but as he lived 30 miles away and found it difficult to manage the said Temple. It is respectfully submitted that the evidence as to the circumstances in which the deed P.13 was executed, its execution in 1930 and the fact that in 1935 the Rev. Gunananda acquiesced in and supported the Appellant's claim to be the Viharadhipathi of the said Temple, manifests the clear and unambiguous intention of the Rev. Gunananda to renounce and/or abandon the

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p.166 1.18
p.167 11.1-
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Viharadhipathship of the said Temple, and amply justifies the learned District Judge's finding.

It is respectfully submitted that the Supreme Court misconstrued the Deed P13 and misdirected itself in regard to the evidence, in holding that the Rev. Gunananda had not renounced or abandoned his rights as Viharadhipathi.

10 8. It is respectfully submitted that such renunciation or abandonment operated to deprive the pupils of the Rev. Gunananda of their rights of pupillary succession (vide Punnananda v. Welivitiye, 51 N.L.R. 372), and in accordance with the rule of sisyanu sisya paramparawa the Appellant became the Viharadhipathi of the said Temple. Alter-
20 natively, since an express abandonment of his rights by the Rev. Gunananda would have resulted in the Appellant becoming the Viharadhipathi of the said Temple, even if the Deed P13 purports to be merely an appointment of the Appellant as Viharadhipathi, it must in the circumstances be construed as an abandonment in order to give effect to the intention with which the Rev. Gunananda executed the said Deed.

30 9. By Deed P12 the Rev. Sudassi had validly and lawfully appointed the Rev. Gunananda the Viharadhipathi, inter alia, of the said Temple, in the following terms and subject to the following conditions:-

pp.149-151

"..... finding it difficult to carry on the said management because of my feeble state of health and old age and whereas Meeruppe Gunananda Thero being my chief pupil who knows Dhamma Vinaya well and who acts accordingly and who is quite fit to fill up the said post it is my desire to appoint him to the said office.

p.149 11.11
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40 Therefore know all men by these presents that I the aforesaid Akurugoda Sudassi Sthavira, Viharadhipathi of Welihinda Sudassanarama, do hereby grant, assign, convey and assure unto the said Meeruppe Gunananda Thero full authority to

manage, administer and hold the office of the Adhikariship of the four Sangha Aramas described in the schedule hereto together with all the movable such as relics, caskets and other articles of worship appertaining thereto inclusive of all chaityas, images, Dhamma preaching halls, lands, fields, etc. appertaining and belonging thereto of which I am the Adhikari thereof."

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p.150 11.5-
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"Further that after the demise of afore-said Meeruppe Gunananda Thero who is appointed Adhikari by these presents, the Senior pupil who is versed in Dhamma and Vinaya and who is just shall be selected as Adhikari by the common consent of the other pupils.

That if the Bhikku who should be appointed to the said Adhikariship according to seniority happens to be one who is weak and incapable of performing the Sasanika acts another who is younger shall be appointed as Adhikari with his consent who is capable of performing the aforesaid duties."

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p.123 1.18

It is respectfully submitted that the learned District Judge correctly held that the Rev. Sudassi validly and lawfully appointed the Rev. Gunananda the Viharadhipathi of the said Temple, and that thereafter the Appellant became the Viharadhipathi of the said Temple in terms of the provisions of the Deed Pl2, either in 1930 by virtue of an appointment by the Rev. Gunananda or at the latest in 1944, upon the death of the Rev. Gunananda.

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p.124 11.4-

p.123 11.39
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10. Even if the Appellant is not the de jure Viharadhipathi of the said Temple, this action is not an actio rei vindicatio in which a plaintiff must prove a good title as against the rest of the world, but merely an action for a declaration of title as against a particular defendant only, in which a plaintiff need only prove a better title than the defendant (vide Pathirana v. Jayasundere, 58 N.L.R. 169, 171, 172 - 173).

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It is respectfully submitted

- (a) that any claim which the Respondent may have had was prescribed, at the latest, upon the expiry of three years after the death of the Rev. Gunananda in 1944; and
- (b) that the Respondent was placed in possession of the land in suit by the Appellant and/or with his leave or licence; and
- (c) that the Appellant has admittedly officiated, acted and exercised rights as Viharadhipathi of the said Temple from 1930 onwards, and has been recognised as de facto Viharadhipathi by the Respondent.

p.124 1.35-
p.125 1.15

p.135 11.22-
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Accordingly, the Appellant has the status to maintain this action.

It is respectfully submitted that the Supreme Court erred in law in assuming that the Appellant must establish that he was the de jure Viharadhipathi of the said Temple in order to be able to maintain the present action.

p.135 11.24-
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11. Though the learned District Judge has omitted to give specific answers to issues (38) and (39), his answers to issues (7) and (8) and his findings relating to the character of the Respondent's possession show that the Respondent entered into possession of the land in suit as an agent, tenant or licensee of the Appellant, has not changed the character of such possession and has not gone out of possession prior to disputing the Appellant's title and status, and accordingly is estopped from denying the title of the Appellant to the land in suit and his right to maintain this action (vide section 116 of the Evidence Ordinance, Cap.14; Ponniah v. Sellan, 55 N.L.R. 116).

p.126 11,13-
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p.124 1.35-
p.125 1.15

12. It is respectfully submitted that the Rev. Gunananda, by virtue of the acts and omissions referred to in paragraph 7 above, would have been estopped from denying the title of the

Appellant to the land in suit and his right to maintain this action by virtue of the provisions of section 115 of the Evidence Ordinance (Cap. 14) in any action between the Appellant and the Rev. Gunananda subsequent to the date of the Supreme Court judgment and decree in D.C. Matara Case No.8777. The present Respondent, being a 'representative' of the Rev. Gunananda within the meaning of section 115 of the Evidence Ordinance, is hence estopped from denying the title of the Appellant to the land in suit and his right to maintain this action.

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13. The Appellant applied on the 13th of June 1963 to the Supreme Court for Conditional Leave to Appeal to the Privy Council against the judgment and decree of the Supreme Court, and Conditional Leave was granted on the 7th of May 1964. The Appellant applied on the 30th of May 1964 to the Supreme Court for Final Leave to Appeal to the Privy Council, and Final Leave was granted on the 27th of August 1964.

p.140
p.143 l.17-
p.144

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p.145

It is respectfully submitted that this appeal should be allowed, with costs throughout, for the following among other

R E A S O N S

1. BECAUSE the Rev. Gunananda abandoned or renounced the Viharadhipathiship of the said Temple.

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2. BECAUSE upon such abandonment or renunciation, and/or upon the execution of the Deed P13, the Appellant became the Viharadhipathi of the said Temple.

3. BECAUSE the Rev. Gunananda validly and lawfully appointed the Appellant the Viharadhipathi of the said Temple in the exercise of the powers conferred by the Deed P12 and/or of the powers appertaining to the Viharadhipathi of a Temple, the succession to which is governed by the rule of sisyanu sisya paramparawa.

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4. BECAUSE in any event the Appellant became

the Viharadhipathi of the said Temple, under and by virtue of the provisions of the Deed P12, at least upon the death of the Rev. Gunananda.

5. BECAUSE the Appellant being admittedly at least the de facto Viharadhipathi of the said Temple has the status to maintain this action instituted in personam against the Respondent for a declaration of title, ejection and damages.

10 6. BECAUSE the Respondent is estopped from denying either the title of the Appellant to the land in suit or his right and status to maintain this action.

7. BECAUSE the judgment of the Supreme Court is wrong.

8. BECAUSE the findings, reasons, judgment and decree of the District Court are right, and ought to be restored.

E.F.N. GRATIAEN

MARK FERNANDO

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- and -

W.S. TERUNNANSE Respondent

C A S E

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