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IN THE PRIVY COUNCIL

8 OF 1967

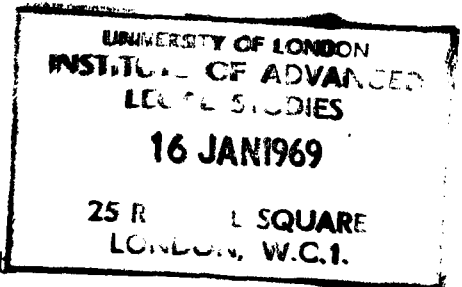
ON APPEAL  
FROM THE SUPREME COURT OF CEYLON

BETWEEN

MEERUPPE SUMANATESSA TERUNNANSE  
(Plaintiff) Appellant

- and -

WARAKAPITTIYE PANGNANANDA TERUNNANSE  
(Defendant) Respondent



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CASE FOR THE RESPONDENT

1. This is an appeal from a Judgment and decree of the Supreme Court of Ceylon dated 15th May 1963 allowing an appeal from a Judgment of the District Court of Matara dated 21st December 1960 and decree of the said Court dated 23rd March 1961 whereby in an action instituted by the Plaintiff Appellant, a Buddhist Priest, hereinafter called "The Appellant", against the Defendant Respondent, also a Buddhist priest, hereinafter called "The Defendant" for a declaration that :-

Record  
pp 133 to  
135  
pp 123 to  
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pp 132 to  
133

(a) he was entitled to certain premises described in para 2 of the amended Plaint dated 13th March 1956 as Viharadhipathi of a Temple called Welihinda Sudassanaramaya situated at Warahaptiya.

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(b) and for an order of ejection of the defendant from the said Temple property.

2. The main Questions for determination on this appeal are as follows :-

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(a) Whether the appellant is the lawful

Record

- Viharadhipathi of this Temple
- pp 152-153 (b) The effect of deed No. 2038 of 26-12-1930 (P 13) has on the rights of the appellant and the defendant.
- (c) Whether the appellant is a pupil of the last Viharadhipathi.
- pp 152-153 Whether by the said deed (P 13) Meeruppe Gunananda Thero had renounced or abandoned his right to this temple.
- (e) Whether Gunananda had any right to divert the succession from his pupil in favour of a co-pupil. 10
- (f) And whether a de facto Viharadhipathi can claim to be the lawful controlling Viharadipathi of this Temple.
3. It was common ground and not disputed that-
- (a) Akurugoda Sudassi was Viharadhipathi of this Temple and inter alia of 3 other temples.
- pp 149-153 (b) The Senior pupil of the said Sudassi was Meeruppe Gunananda in whose favour Suddassi executed Deed No. 6654 of 29-8-1928 (P 12). 20
- (c) The defendant was a pupil of the said Gunananda.
- (d) The appellant was not a pupil of the said Gunananda by robing or by ordination to confer pupillage on him.
4. It was conceded that succession to this temple is governed by the well known principle of Pupillary succession known as Sisyanu Sisya Paramparawa (i.e. from pupil to pupil). 30
- pp 31-33 5. (A) The defendant in his amended answer denied inter alia that :-
- (a) The appellant was entitled in law to function as the lawful Viharadhipathi.

(b) The appellant could maintain this action against the defendant who was the pupil of Gunananda Thero.

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(c) That Deed No. 2038 of the 21st December 1930 (P 13) was of force and effect in law to appoint the appellant Viharadhipathi of this temple as he was not a pupil of the last incumbent who officiated as the lawful controlling Viharadhipathi of this temple.

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(d) The appellant was entitled to the land in suit as the defendant was in possession of same as de facto incumbent.

(B) The defendant also pleaded that, with the income of the land of which he was in possession and with financial help from Dayakayas (Congregation) he had put up an Awasa and also a preaching hall in 1944 and presently on the said premises there exists a Buddhist Temple founded and maintained by him and he asked for a dismissal of the appellant's claim in this action.

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6. The trial in the District Court of Matara took place on the 20th September 1957 in the presence of the parties on 37 issues raised on that day and two more issues framed on the 13th of December 1957 and the trial continued upto and on the 7th of April 1960.

pp 34-37

P 44-11  
32-36

7. At the said trial it was in evidence that:-

(1) the appellant, according to his evidence, came to this Temple on Deed No. 2038 of the 21st December 1930 (P 13) about the year 1930.

P38-19

(2) Meeruppe Gunananda got from his tutor Akurugoda Sudassi Deed No. 6654 of the 29th August 1928 (P 12) appointing him Viharadhipathi of this Temple and 3 other Temples.

pp 149-151

pp 41  
11 16-18

(3) The said Gunananda ordinarily resided at Lalpe Sudarmaramaya which is supported

P 41 11 9-13  
; ; 24-36

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Record

- pp 154-156  
p 41 l 27  
p 45  
ll.23-33  
p 57  
ll.34-40
- by his declaration under section 41 (6) of the Buddhist Temporalities Ordinance 19 of 1931 Chapter 318 Vol. 10 of the Legislative Enactments of Ceylon and D 6 of the 25th March 1932. The said Gunananda died at Lalpe in 1944 having functioned as Viharadhipathi of this Temple at Welihinda though not permanently resident at this Temple but he used to investigate the affairs here and did not give up visiting this Temple. 10
- p 47  
ll.22-23  
p 47  
ll.17-19
- (4) The Appellant's claim was by virtue of Deed No. 2038 of 21st December 1930 (P 13) and as the second pupil of Sudassi Terunnanse and as the next Senior pupil of Gunananda Thero.
- p 48  
ll 43-45  
p 48 ll.1-4  
p 51  
ll. 22-23
- (5) The Appellant did not claim to be a robed or ordained pupil of Gunananda hence his claim, that, even if he failed on the Deed (P 13), he would have succeeded according to seniority, is not correct according to the rules of pupillary succession as his claim later was as the second pupil of Sudassi Therunnanse and because he has improved and looked after this Temple. 20
- p.49  
ll. 15-16
- (6) The defendant was robed by Meeruppe Gunananda who was resident at this Temple Welihinda Sudarmaramaya - D 6 Declaration made on the 29th March 1932 and was also ordained by Meeruppe Gunananda is also supported by his declaration dated 1st June 1932 (D 12) and that he was permanently resident at that time in this very Temple in dispute. 30
- p 155  
ll.11-12  
column 16
- p 160-162  
p 161 l.17  
Column 17
- (7) The Defendant by robing and ordination is a pupil of Gunanananda is supported by the evidence of Dinipitiya Suddhananda a pupil of Meeruppe Gunananda by ordination - Declaration of Saddhananda(P 25)
- p 11.  
ll.16-18  
p 156-159  
p 158  
ll.13-14  
Column 19  
p 123-128
8. By his judgment dated 21st December 1960 the Learned District Judge held that  
(a) There is no authority in the Tripitaka (the doctrine of the Buddha) for the word Sisyanu Sisya Paramparawa, though the Courts of Ceylon had for a long time interpreted the same to mean succession 40

from pupil to pupil

Record

(b) there is no right in a Viharadhipathi to make a disposition of temple property by act inter vivos or by last will.

(c) No priest can acquire movable or immovable property except for the five requisites.

(d) The Rule known as Sisyanu Sisya Paramparawa needs review and restatement,

10 A. answered issues 1 to 10 in favour of the Appellant and

B. issues 12, 17, 21, 22, 23, 24, 25, 27 and 30 in favour of the defendant, and entered judgment for the Appellant

(1) declaring the Appellant Viharadhipathi of the Temple

(2) declaring him entitled to the premises in dispute

(3) for ejectment of the defendant and

(4) for damages and costs.

20 9. A decree in accordance with the judgment of the Learned District Judge dated 21st December 1960 was drawn up on the 23rd March 1961 while the defendant appealed to the Supreme Court on the 23rd of March 1961 on the grounds stated in the Petition of appeal printed at pages 129-131 of the Record.

pp 132-133

10. The main grounds urged in the petition of appeal were as follows:-

30 (1) There was no evidence of renunciation or abandonment by Gunananda in favour of the appellant by P 13 of 1930

(2) Gunananda functioned in one of the temples and as such no renunciation or abandonment took place on his death the defendant became Viharadhipathi under the rule of pupillary succession.

Record

(3) Gunananda could not appoint a co-pupil to succeed him in the office of Viharadhipathi whilst being alive so that Deed 6554 of 29-8-28 (P 12) could only be a delegation of his right of management of this temple.

(4) The right vested in a Viharadhipathi to appoint a pupil to succeed him does not give a Viharadhipathi the right to change the law of pupillary succession in favour of a co-pupil by deed 2038 of 26-12-1930 (P 13).

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(5) That P 13 only gave a right to manage the temple but no right of succession arose to the appellant on the said deed.

(6) The answer to issues 22, 23 and 24 in favour of the defendant did not give rise to ejection of the defendant and damages in favour of the appellant.

pp 133-135

11. The appeal was heard before the Supreme Court on the 6th May 1963 and by their judgment dated 15th May 1963 the learned Judges of the Supreme Court (Sansoni J, and Herat J,) allowed the appeal of the defendant, set aside the judgment under appeal and dismissed the appellant's action with costs in both Courts.

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pp 152-153

12. Delivering the main Judgment of the Supreme Court Sansoni J, (with whom Herat J, agreed) considered the effect of deed P 13 as regards the case of the appellant who was only a co-pupil of Gunananda whilst the defendant, it is common ground, is the senior pupil of Gunananda.

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p 134  
ll. 22-23

13. The Learned Supreme Court Judge (Sansoni J,) next considered the well known definite and quite clear authorities regarding pupillary succession which needed no mention and interpreting deed P 13 came to the clear conclusion as to the effect of the said deed if regarded as an appointment. The Learned Judge said "It is quite clear on the authorities that if Deed P 13 is to be

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p 134  
ll. 24-27

regarded as an appointment of his successor as Viharadhipathi, Gunananda had no right to divert the succession from his own pupil and appoint the plaintiff to succeed him".

Record

10 14. The Learned Supreme Court Judges did not accept the arguments advanced on behalf of the appellant on abandonment by Gunananda of his rights as Viharadhipathi of this temple as stated by the Learned District Judge and held as follows :-

"The Plaintiff's counsel and the Learned District Judge has regarded Deed P 13 as an act by which Gunananda abandoned his rights as Viharadhipathi of the Welihinda Temple but we are unable to share this view".

p 134  
ll. 28-34

20 "There are no words in P 13 which convey the idea of abandonment. On the contrary Gunananda made provision in it for his pupils to exercise their rights in the Temple and is inconsistent with an abandonment of his rights".

15. The Learned Supreme Court Judges next considered the question of P 13 being in the same terms as P 12 by which Akurugoda Sudassi appointed his Senior pupil Meeruppe Gunananda to succeed him in this office of Viharadhipathi in these terms :-

30 "Further it is not the Plaintiff's case that Deed P 12 which is exactly in the same terms as P 13 was an act of abandonment by Sudassi. For if that had been the case Gunananda would have lost his claim to succeed Sudassi as Viharadhipathi. I think the more reasonable view to take of the Deed P 13 is that it was an appointment of the plaintiff by Gunananda to act for him as de facto Viharadhipathi of Welihinda Temple because Gunananda was residing in another temple".

p 134  
ll. 34-40

40 16. The Learned Supreme Court Judges next considered an argument advanced on behalf of the appellant to consider the evidence given by Gunananda in an earlier case brought by the appellant in the District Court of Matara (Case No.8777) on the 16th of July 1933 (D 1)

p 163-164

- Record  
p 164-165  
p 23  
pp 166-167  
D2 pp 167-169  
pp 169-170  
pp 170-174
- against K. Gunaratana of Welihinda Temple who filed answer on 8th November 1933 (D 3) when both Meeruppe Gunananda and Meeruppe Sumanatissa the appellant gave evidence and the Decree of the District Court of Matara was set aside in appeal on the 7th of June 1937 (P 19 and D4) and rejected the said argument based on the evidence given by the said Gunananda to the following effect.
- p 135  
ll. 1-9
- "But the plaintiff's counsel urged us to consider the evidence given by the plaintiff in an earlier case brought by the present plaintiff against a third party in respect of this Temple. The evidence was given in 1935. Gunananda then said that he gave this Deed to the Plaintiff (P 13) as he was living 30 miles away. He added "I was giving the Deed not temporarily. After 2 years I found it was difficult to manage Welihinda". This evidence may well mean that Gunananda found it more convenient to appoint a deputy to look after the affairs of this temple because he could not look after them, from 30 miles away".
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- p 167  
l. 2-3
17. The Learned Supreme Court Judge next referred to and accepted the arguments addressed on behalf of the defendant as regards renunciation in these terms:-
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- p 138  
ll.10-12
- "The law is clear that, although renunciation by a monk of his right to be Viharadhipathi may be inferred from facts and circumstances, such an inference will not be drawn if the matter is left in doubt".
- 30
- p 139  
ll.13-15
18. The Learned Supreme Court Judge after holding that it is usual for a monk who is Viharadhipathi of several Temples to give charge of one or more of these temples to other monks who would normally reside in and look after those temples and their temporalities the learned judge said :-
- 40
- p 134  
ll.15-18
- "It is not always convenient for a Viharadhipathi to look after temples which are situated some distance away from the temple in which he resides and he may appoint



managers or deputies for this reason".

Record

10 19. The Learned Supreme Court Judge, adverting to the acts of possession, or management of temple properties by the appellant who had the well known and generally accepted right of a Buddhist Monk to reside in a Temple of his tutor and to be maintained from its revenue and income rightly said "any act of possession or management by such appointies are referable to that appointment. They would all be on behalf of the lawful Viharadhipathi and would not give the appointies any claim to that title".

p 135  
11.18-21

20 20. The Learned Supreme Court Judge in the penultimate portion of his Judgment considered the position of the appellant who had been in the temple from 1930 and did various acts of Management with regard to the temple and its temporalities and said "In this case it would seem that the plaintiff has managed the affairs of the Welihinda Temple for many years and that the defendant recognised him as de facto Viharadhipathi".

p 135  
11.22-24

21. The Learned Supreme Court Judge, after holding that the appellant was a de facto holder of office, finally adverted to the -

(1) Claim of the appellant to be declared controlling Viharadhipathi of this temple and

30 (2) The allied right which he claimed to bring this action and he said as follows:-  
"But that would not enable the plaintiff to call himself or be declared controlling Viharadhipathi because he is not a pupil of Gunananda. His action must fail because he cannot establish title upon which he claimed to bring this action. "I would therefore set aside the Judgment under appeal and dismiss the plaintiff's action with costs in both courts".

p 135  
11.24-27

p 135  
11.28-29

40 22. Herat J, agreed with the judgment of Sansoni J.

p.135 l;.32

23. Decree in accordance with the judgment of

p 136

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the Supreme Court was drawn up on the 14th of June 1963.

p 140-143

24. Against the said Judgment and decree of the Supreme Court final leave to appeal to Her Majesty the Queen in Council was granted by the Supreme Court of Ceylon on 22nd May 1964 and decree was entered allowing same dated 27th of August 1964.

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The Respondent respectfully submits that the appeal should be dismissed with costs for the following, among other -

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R E A S O N S :-

(1) Because the questions for determination which arise on this appeal are mainly questions of law or of mixed law and fact and all of them have been correctly answered by the Supreme Court of Ceylon in favour of the respondent and against the appellant.

(2) Because the said decisions are decisions of the Supreme Court of Ceylon familiar with Buddhist Law, doctrine and local conditions and are in accordance with a correct appreciation of all the relevant law and evidence in this case.

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(3) Because in any event the appellant has not proved that he is a pupil of the last Controlling Viharadhipathi, Gunananda, and as such entitled to the office of Viharadhipathi and entitled to maintain this action.

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(4) Because the Supreme Court came to a correct conclusion on a true appreciation of all the evidence produced by both sides and all the relevant law as regards :-

(a) The correct interpretation of the principles of pupillary succession known as Sisyanu Sisya Paramparawa misapplied by the District Court.

(b) The appellant, who is not a pupil of the last Incumbent but a de facto

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Viharadhpathi on P 13, not having title against the true Viharadhipathi, which has not been correctly appreciated by the District Court.

10 (c) The right of action of the defendant who is the de Jure Viharadhipathi being prescribed in 3 years according to a long series of decisions of the courts of Ceylon as against an outsider or an imposter or a defacto occupant of the office of Viharadhipathi.

(d) The construction of the deed P 13 which was mis-construed by the District Court but has been correctly construed by the Supreme Court in the light of the surrounding circumstances and the law applicable to the same.

20 (e) The mis-interpretation by the District Court as regards renunciation and abandonment and the wrong inferences drawn by the District Court on same which have been corrected and those matters correctly decided by the Supreme Court.

30 (f) The wrong decision of the District Court that an appointment to a Viharadhipathiship can be a priest of some paramparawa (descent) in contradiction to descent of office from pupil to pupil which has been corrected and the matter correctly decided by the Supreme Court.

(g) The failure of the District Court to appreciate and apply correctly the absence of the right claimed by the appellant to bring this action as he failed to prove that he is the true controlling Viharadhipathi of this temple by pupillary succession.

40 (5) Because for reasons stated therein the judgment of the Supreme Court is right and ought to be affirmed

H.A. KOATTIGODE

# 8 OF 1967

IN THE PRIVY COUNCIL

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ON APPEAL  
FROM THE SUPREME COURT OF CEYLON

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B E T W E E N :-

MEERUPPE SUMANATESSA TERUNNANSE  
(Plaintiff) Appellant

- and -

WARAKAPITTIYE PANGNANANDA  
TERUNNANSE (Defendant) Respondent

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CASE FOR THE RESPONDENT

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