

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC

OF SRI LANKA.

CA 869/96 (F)

D.C.Colombo Case No. 4916/ZL

Ven. Padiyapalalle Seevali Thero,  
No. 10, Buddhist Centre Road,  
Colombo 10.

Defendant-Appellant

Vs.

Ven.Hagoda Vajira Thero,  
No.10.Buddhist Centre Road,  
Colombo 10.

Plaintiff-Respondent.

BEFORE : A.W.A. SALAM, J.  
COUNSEL : J.C. Boange for the defendant-Appellant.  
Kuvera de Zoysa with Asiri Dissanayake for the Substituted  
Plaintiff-Respondent.  
ARGUED ON : 01.03.2011.  
WRITTEN SUBMISSIONS TENDERED ON 26.05.2011.  
DECIDED ON : 28.08.2012

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A W Abdus Salam, J

For sake of convenience the parties to this appeal are referred to in the rest of this judgement in the same manner as they are referred in the caption to the original action. The plaintiff sued the defendant for a declaration that he is the Viharadhipathy of the temple known as "Buddhist Centre" (hereinafter referred to as the "centre") and situated at No 7, Buddhist Centre Road, Colombo 10

and ejection of the defendant from the said "Buddhist Centre". The defendant filed answers countering the plaintiff for a similar declaration and ejection of the plaintiff. The defendant Ven Hirivaddala Jinaratana died pending the determination of the case in the district court and Ven Padiyapalalla Seevali was appointed in that behalf as the substituted-defendant. The learned district judge at the conclusion of the trial by judgement dated 1.8.1996 held inter alia that the plaintiff is the Viharadhipathy of the temple in question and that the defendant is liable to be ejected therefrom and the present appeal arises from the said judgement.

The background to the dispute is that Ven. Hagoda Daminda and Ven. Thelumbara Pavarakeerthi jointly developed the Buddhist Centre and executed a written agreement making Ven. Hagoda Daminda the Viharadhipathi of the said Centre during his lifetime and Ven. Thelumbara Pavarakeerthi the successor on the demise of the former. The agreement further provided that upon the demise of both of them their senior most pupil Ven. Hagoda Vajira to succeed to the office of Viharadhipathi.

In terms of the agreement referred to above on the demise of both monks, who jointly established the "centre"

Ven.Hagoda Vajira succeeded to the office of Viharadhipathi on 7<sup>th</sup> September, 1975. The appointment of Ven.Hagoda Vajira has also been ratified at the Sanga Sabhava on 5<sup>th</sup> October 1975. The plaintiff's action is based on the premise that the defendant obstructed him in the discharge of his functions as the chief incumbent or Viharadhipathy of the Buddhist Centre.

In the answer, the defendant maintained that Ven. Thelumbara Pavarakeerth prior to his demise executed deed bearing No 3 attested by Walter Wimalachandra appointing 12 of his pupils to succeed to the post of Viharadhipathi of the Centre after his demise. The defendant further pleaded in his answer that three of the pupils named in the deed bearing No.3 either disrobed or demised making him entitled to succeed to the incumbency.

The matter of the dispute thereupon proceeded to trial and the learned district judge held inter alia that the plaintiff is the Viharadhipathy of the Centre in question and the defendant is liable to be ejected. The main issue that came to be decided in the lower court was whether the plaintiff has rightly succeeded to the office of Viharadhipathy of the Centre under and by virtue of the agreement bearing No 10673.

It is quite significant that in 1537/L (P4) the plaintiff in this case has sued 12 persons including Ven Hirivaddala Jinaratana who was the 4<sup>th</sup> defendant in that case. One of the findings of the learned district judge in that case was the agreement marked as P3 in this case is valid and the plaintiff in this case is the most senior in pupillage. The appeal preferred by the 1st defendant- appellant against the judgement in 1537/L has been abated non-prosecution. The learned district judge had come almost to the same decision as in the case of 1537/L with regard to the validity of P3.

As regards the validity of D2 the learned district judge has come to the specific finding that since there is a prohibition against the revocation of the terms and conditions laid down in P3, the document marked D2 is of no force or avail in the light of the agreement P3 and therefore the plaintiff should be considered as rightly being in the office of Viharadhipathy.

Based on the oral testimony adduced and the supporting documents produced by the plaintiff, the learned district judge entertained no doubt (on a balance of probability) that the plaintiff is the Viharadhipathy of the Centre and that the defendant has no right whatsoever to dispute the

right of the plaintiff to be in such office. Having considered the evidence adduced at the trial and the reasoning adopted, I am unable to subscribe to the view that the findings and the impugned judgement are inconsistent with the evidence led at the trial and/or contrary to the law applicable. In the circumstances, it is my considered view that the appeal preferred by the deceased defendant merits no favourable consideration. Accordingly, the appeal stand dismissed. There shall be no costs.

Judge of the Court of Appeal

WC/-