

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

C.A. 819/98(F)

D.C. Balapitiya No. 1770/SPL

Rev. Magala Somananda Thero
Shylatharama Purana Wiharaya,
Galagoda,
Karadeniya.

Appellant

Vs.

Rev. Magala Buddhananda Thero
Siri Wijayarama Wiharaya,
Magala South,
Karadeniya.

Respondent

C.A. 819/98(F)

D.C. Balapitiya No. 1770/SPL

Before : K.T. CHITRASIRI, J.

Counsel : Daya Guruge for the Defendant-Appellant
Shantha Jayawardena for the Plaintiff-Respondent

Argued &

Decided on : 19.09.2013

K.T. CHITRASIRI, J.

Heard both Counsel in support of their respective cases. Plaintiff-Respondent (hereinafter referred to as the Plaintiff) filed this action by his plaint dated 15.10.1993 seeking to have a declaration, declaring that he is the Viharadhipathi of Siri Vijayarama temple in Magala South. He also has claimed damages amounting to Rs. Thirty thousand from the Defendant-Appellant. (hereinafter referred to as the Defendant) In paragraph 17 of the answer filed by the Defendant, it is stated that the Plaintiff and the Defendant were the pupils of Rathgama Pagnalankara Thero. In that, it is also stated that the Defendant attended to the duties assigned to the Viharadhipathi of the disputed temple, Siri Wijayarama Viharaya since the demise of the said Rathgama Pagnalankara Thero but has not referred to the manner in which he is entitled to the Viharadhipathiship. The issues in the lower Court have been framed accordingly. Thereafter both the parties gave evidence. Having considered the evidence, the learned District Judge decided the case in favour of the Plaintiff. Being aggrieved by the said decision of the learned District Judge, the Defendant filed this appeal.

At the outset both Counsel submitted that the issue in this case is to determine Viharadhipathiship of Siri Wijayarama temple in Magala South. They also conceded that the said Viharadhipathiship should be given to the senior most pupil of Rathgama Pagnalankara Thero. The way in which senior most pupil is determined had been

decided in the Case of Somaratne Vs. Jinaratne. [42 NLR 361] In the said decision in Somaratne Vs. Jinaratne, it was held thus:

“Under the Buddhist ecclesiastical law pupilage is conferred by robing or by ordination and a robed pupil is entitled to succeed to the incumbency of his tutor, whether he has been ordained or not.”

Both parties concede that the law applicable in this instance should be the law referred to above.

Then the issue is to determine the person who was robed first, amongst the two parties to the action. Admittedly, both the Plaintiff and the Defendant were robed on the same day namely 12.05.1950. They both were being robed by their teacher, Ratgama Pagnalankara Thero who was the Viharadhipathi of Siri Vijayarama Viharaya. Both the Plaintiff and the Defendant being the pupils who were robed on the same day under Ratgama Pagnalankara Thero, question then arises as to who was robed first on that date.

Learned Counsel for the Appellant submitted that the Plaintiff in his evidence has admitted that the Defendant was robed before him. In support of his contention, he referred to the evidence of the Plaintiff found at page 113 in the appeal brief.

I have carefully perused the said evidence of the Plaintiff. In those proceedings, it is seen that the Plaintiff has only stated:

“ඒ ස්වාමීන් වහන්සේ මට පෙරයි”

However, the words “මට පෙරයි” has been deleted and the learned District Judge has placed his initials confirming the said deletion. Therefore, on the face of the record, Court cannot decide those two words as evidence in this case. Therefore, it is wrong to state that the Plaintiff has admitted that the Defendant was robed before him.

However, the learned Counsel for the Appellant then submitted that the said deletion has not taken place though a line has been drawn across those two words indicating the deletion. In support of this contention, he referred to the proceedings found on the next trial date namely 30.04.1996. At the commencement of the proceedings on that date, the learned District Judge has recorded the alterations made to the proceedings of the previous date. In those proceedings, the deletion of the words 'මට පෙරයි' has not been shown though the other alterations that were made to the proceedings dated 23.01.1997 had been separately recorded.

I have looked at this matter carefully. The learned District Judge has placed his signature confirming the deletion as an act of the learned District Judge. Therefore, even though the said deletion has not been recorded separately on the next date, this Court cannot disregard the said deletion made by the Judge having placed his signature. It may have been a failure on the part of the stenographer who recorded the proceedings to have omitted the deletion recorded. In the circumstances, I am not inclined to accept that there had been an admission by the Plaintiff admitting that the Defendant was robbed first when the two words by which the plaintiff has alleged to have admitted the seniority of the defendant has been deleted by the learned District Judge.

Be that as it may, when the totality of the evidence is considered no evidence is forthcoming to show that the Defendant was robbed first. To the contrary, the Defendant-Appellant in his evidence has admitted that the Plaintiff is elder to him as far as robing is concerned. It is evident by the following evidence.

ප්‍ර: රත්ගම පඤ්ඤාලංකාර ස්වාමීන් වහන්සේට ගෝලයෝ කී නමක් හට්ටියාද? උ: දෙනමයි.

ප්‍ර: කවුද ඒ දෙනම. වැඩිමහල් පිළිවෙලට කියන්න?

උ: මාගල බුද්ධානන්ද හිමි වන මෙම නඩුවේ පැමිණිලාකාර ස්ථවිර සහ විත්තිකාර සෝමානන්ද ස්ථවිර කියන මම.

(Vide proceedings at page 153 of the appeal brief)

He has also admitted that he is not the senior pupil of Ratgama Pagnalankara Thero. It is seen by his following evidence.

ප්‍ර: එතකොට 1974 පඤ්ඤාලංකාර ස්වාමීන් වහන්සේ අපවත් වෙනකොට තමුන්

වහන්සේ ජ්‍යෙෂ්ඨ ශිෂ්‍යයාද ?

උ: නැහැ.

(Vide proceedings at page 161 of the appeal brief)

This position is also confirmed by the evidence of the Defendant referred to below.

ප්‍ර: රත්ගම පඤ්ඤාලංකාර ස්වාමීන් වහන්සේට ගෝලයෝ කී නමක් සිටියාද?

උ: දෙනමයි.

ප්‍ර: කවුද ඒ දෙනම, වැඩිමහල් පිළවෙලට කියන්න?

උ. මාගල බුද්ධානන්ද හිමි වන මෙම නඩුවේ පැමිණිලිකාර ස්ථවිර සහ විත්තිකාර සෝමානන්ද ස්ථවිර කියන මම.

(Vide proceedings at page 153 of the appeal brief)

In the circumstances, relying upon the said admissions by the Defendant himself, it is clear that the Plaintiff is the senior pupil of Ratgama Pagnalankara Thero. Moreover, it is also evident that the Defendant has thought of claiming the Viharadhipathiship only after the Plaintiff changed his Nikaya in the year 1987. Till such time the Defendant has accepted the Plaintiff as the Viharadhipathi having conceded the seniority of the Plaintiff. This is seen by the way in which the questions were posed to the Plaintiff by the Counsel for the Defendant. It reads thus:

“ ප්‍ර: ඒ වාගේම තමුන් වහන්සේට යෝජනා කරන්නේ 1987 දී තමුන් වහන්සේ අමරපුර සිරි සද්ධම්මවංශ මහා නිකායෙන් ඉවත් වූ පසු ශිෂ්‍යානු ශිෂ්‍ය

පරම්පරාව අනුව මෙම ස්ථානයේ විභාගාධිපතිකම ලබා සිටියේ විත්තිකාර
ස්වාමීන්වහන්සේය කියලා ?

උ: පිලිගන්නේ නෑ

ප්‍ර: තමන් වහන්සේ පිලිගන්නවා පඤ්ඤාලංකාර ස්වාමීන් වහන්සේට
ගෝලයන් දෙන්නයි නිරිඳේ කියලා ?

උ: ඔව්.

ප්‍ර: වැඩිමහල් ගෝලය තමන් වහන්සේ, 2වෙනි ගෝලයා විත්තිකාර ස්වාමීන්
වහන්සේ.”

(Vide proceedings at pages 144 and 145 of the appeal brief).

Therefore, it is clear that the Defendant had made an effort to become the Viharadhipathi due to the reason of the plaintiff changing his Nikaya. Therefore, it is clear that the Defendant was willing to accept the Plaintiff as the Viharadhipathi since the year 1975 until the plaintiff changed his Nikaya in the year 1987.

In the circumstances, it is abundantly clear that the Plaintiff has clearly established that he is the senior most pupil amongst the two parties to the action of Ratgama Pagnalankara Thero. Therefore, I do not see any wrong to have come to the same conclusion by the learned District Judge as well.

At this stage, I also wish to refer to the decision in Alwis Vs. Piyasena Fernando. [1993 (1) SLR 119] In that decision, G.P.S. de Silva, C.J. stated that the Appellate Courts are slow to interfere with the decisions arrived by the trial Judge on the facts of the case unless it amounts to a perverse Judgment. In this instance too, the issue before this Court is basically on the question of facts raised before the Original Court Judge. Therefore, it is not correct for me to interfere with the said decision of the learned District Judge as I do not find it perverse.

At this stage, learned Counsel for the Appellant submits that it is wrong to have awarded the damages against the Defendant. I do not find any evidence adduced by the Plaintiff claiming damages. Therefore, the decision as to the damages cannot be allowed to stand. Accordingly, the decision made in the Judgment as to the damages is set aside.

For the aforesaid reasons, the appeal concerning the decision in respect of the Viharadhipathiship of Siri Vijayaramaya is dismissed. The appeal as to the damages awarded in the impugned Judgment is allowed. Accordingly, the appeal is partly dismissed without costs.

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Cr/-