

In the Court of Appeal of the Democratic Socialist Republic of Sri Lanka

C.A. (DCF) Case No: 0407-96

D.C. (Mt. Lavenia) Case
No: 205/ZL

**In the matter of an Appeal in terms of
Article 138 and 154P of the Constitution of
the Democratic Socialist Republic of Sri
Lanka, read with the Buddhist
Temporalities Ordinance, No. 19 of 1931
(as amended)**

Rev. Howpe Somananada Thero
Sri Maha Viharaya, Pamankada
Dehiwala

Plaintiff

Vs.

1. Rev. Kahatuduwe Hemasiri Thero
Siri Sunandaramaya,
Kalubowila, Dehiwala

1st Defendant

2. Rev. Benthara Sumanatissa Thero
Pinwatta Purana Viharaya, Dehiwala
(Deceased)

2nd Defendant

2 (A) Rev. Kahathuduwe Hemasiri Thero
Siri Sunandaramaya,
Kalubowila, Dehiwala

Substituted 2 (A) Defendant

And now between

1. Rev. Kahathuduwe Hemasiri Thero
(Deceased)

1 (A). Mavussagolle Lankananda Thero
Siri Sunandaramaya
Kalubowila, Dehiwala

1 (A) Defendant-Appellant

2. Rev. Benthara Sumanatissa Thero
Pinwatta Purana Viharaya, Dehiwala
(Deceased)

2 (A) Rev. Kahathuduwe Hemasiri Thero
(Deceased)

Substituted 2 (A) Defendant-Appellant

2 (B) Mavussagolle Lankananda Thero
Siri Sunandaramaya
Kalubowila, Dehiwala

Substituted 2 (B) Defendant-Appellant

Vs.

Rev. Howpe Somananada
(Deceased)
Walpola Piyananda Thero
Sri Mahaviharaya,
Sri Mahavihara Mawatha, Pamankada,
Dehiwala

Plaintiff-Respondent

Before: M.T.Mohomad Laffar, J.
S.U.B. Karalliyadde, J.

Counsel: Mr. Manohara De Silva P.C. with Hirosha Munasinghe and H. Kumarage
for the 1st (A) Defendant-Appellant
Dr. Jayatissa Costa P.C. with Mr. Wijeratne Hewage for the Plaintiff-
Respondent

Written submissions tendered on:

03.09.2013 by the 1 (A) Defendant-Appellant

01.10.2021, 08.06.2020 by the Plaintiff-Respondent

Argued on: 02.08.2021

Decided on: 28.10.2021

S.U.B. Karalliyadde, J.

This Appeal emanates from a judgement of the learned District Judge of Mt. LavInia dated 22.07.1996. The facts of the case before the District Court were as briefly as follows;

The Plaintiff-Respondent (hereinafter referred to as the Plaintiff) instituted the action bearing No.205/ZL in the District Court against the 1st and 2nd Defendant-Appellants (hereinafter referred to as the 1st and 2nd Defendants) seeking for reliefs *inter-alia*, a declaration that the Plaintiff is the *Viharadhipathi* of *Sri Sudharmaramaya* temple situated in *Kalubowila*, evict the 1st and 2nd Defendants who are in forcible occupation of the temple, restore the Plaintiff in possession therein and the damages. The Plaintiff has alleged *inter-alia*, that the provisions of the Buddhist Temporalities Ordinance, No. 19 of 1931 (as amended) (hereinafter referred to as the Ordinance) applies to the temple, it is a *Sanghika* property, the method of succession of *Viharadhipathiship* of the temple is line of pupillary (*Shishshanushishaya parampanawa*), according to the line of pupillary of succession the Plaintiff is entitled to a declaration that he is the *Viharadhipathi* of the temple in dispute, the 1st and 2nd Defendants are in forcible occupation of the temple since 25.06.1975. The 1st and 2nd Defendants alleged *inter-alia*, that the temple which is in dispute is a private (*pudgalika*) property of Rev. *Madawala Sunannda Thero* who was the first *Viharadhipathi*

of the temple, since it's a private property of Rev. *Sunanda Thero*, the provisions of the Ordinance do not apply to the temple, said Rev. *Sunanda Thero* alienated his rights of the property by a deed of gift bearing No. 7479 in the year 1907 (marked as පැ 1) to his 7 pupils, thereafter those pupils entered into an agreement bearing No. 8478 in 1948 (marked as පැ- 4) to hold the *Viharadhipathiship* in rotation, accordingly, Rev. *Benthara Sumanatissa Thero* who was also a party to පැ - 4 as well as the Tutor (*Nayaka Thero*) of the 1st Defendant became the *Viharadhipathi* of the temple in the year 1970 for a period of 6 years, on his demise, the 1st Defendant became the *Viharadhipathi* of the temple.

By the impugned judgment the learned District Judge has concluded that *Sri Sudharmaramaya* temple is a temple property, the method of secession of *Viharadhipathiship* of the temple is line of pupillary (*Shishshanushishaya parampanawa*), the Plaintiff is entitled to a declaration that he is the *Viharadhipathi* of *Sri Sudharmaramaya* and therefore, the Plaintiff is entitled to the reliefs as prayed for in the plaint.

At the beginning of the trial following three admissions were recorded;

1. මෙම පත්සල් දේපල බෞද්ධ හා දේවාල පනතට යටත් වන බවත්,
2. මුල් විහාරාධිපති වහන්සේ මඩවල සුනන්ද ස්ථවිරයන් බව ද පිළිගනී.
3. 1907.01.19 දින දරණ අංක: 7479 හා 1948.12.16 දින දරන අංක: 8478 දරණ ඔප්පු ලියා ඇති බව පාර්ශවකරුවන් පිළිගනී.

It has been admitted by both parties that the provisions of the Ordinance apply to the temple in dispute and the first *Viharadhipathi* of the temple was Rev. *Madawala Sunanda Thero*.

“Section 58 of the Evidence Ordinance reads that, ‘*No fact need be proved in any proceeding which the parties thereto ... agree to admit at the hearing, ... or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings ...*’.

In the case of *Mariammai vs Pethrupillai* (21 NLR 200) it was decided that if a party in a case makes an admission for whatever reason, he must stand by it; it is impossible for him to argue a point on appeal which he formally gave up in the Court below.

In the case of *Uvais vs Punyawathi (1993 (2) SLR 46)* it was held that it is sometimes permissible to withdraw admission of questions of law but admissions on the questions of facts cannot be withdrawn.

In the action in hand, there is no entry in the trial proceedings to the effect that the above-mentioned admissions were withdrawn at a later stage. In terms of section 3 of the Ordinance, the provisions of the Ordinance apply for every temple in Sri Lanka. Therefore, in view of admission No. 1, the Defendants are estopped from arguing that the temple in dispute does not govern by the provisions of the Ordinance and it is not a temple property. The learned Counsel for the Defendants submitted to this Court that admission No. 1 may have recorded before the District Court for the reason that section 23 of the Ordinance deals with the private property of priests. I cannot agree with that submission of the learned Counsel for the reason that in terms of section 3 the provisions of the Ordinance apply only to the temple property and section 23 explains as to which circumstances the private property of a priest becomes the property of the temple and not *visa versa*. Under those circumstance, the Court can conclude that the property in dispute is a temple property of *Sri Sudharmaramaya*.

In terms of section 4 (2) of the Ordinance, when the management of the property belonging to a temple is exempted from the operation of sub-section 1 of that section but not exempted from the operation of the entire Ordinance such property should vest in the *Viharadhipathi* of such temple who is referred to as the “*controlling Viharadhipathi*” (*Pemananda Thero vs Thomas Perera - 56 NLR 413*). As per the interpretation in section 2 of the Ordinance, ‘*Viharadhipathi*’ means the principal *bikkhu* of the temple.

The general rule of succession of management and the title to a property of a temple is line of pupillary (which is known as *Shishshanushishaya parampanawa*) from the first incumbent of that temple. Accordingly, if the incumbency of a temple is in dispute, in the absence of evidence to the contrary, it must be presumed that the incumbency should be subject to the *Shishshanushishaya parampanawa* rule of succession (*Unnanse vs. Unnanse - (1921) 22 NLR 323, Dhammajothi vs. Sobitha - (1913) 16 NLR 408, Gunaratne Unnanse vs. Dhammananda - (1921) 22 NLR 276, Therunnanse vs. Therunnanse - (1905) Matara Cases 236*).

There is no evidence in the case in hand that Rev. *Madawala Sunanada Thero* who was admittedly the first *Viharadhipathi* of *Sri Sudharmaramaya* temple had appointed any particular pupil out of the line of pupillary as his successor for the management and the title to that temple. The uncontradicted evidence of the case is that Rev. *Kodagoda Pannasara Thero* was the senior pupil of Rev. *Madawala Sunanada Thero*, Rev. *Kodagoda Pannananda Thero*'s senior pupil was Rev. *Kombala Medhananda Thero* and his senior pupil is Rev. *Haupe Somananda Thero*, who is the Plaintiff in the case. Therefore, the Court can come to the conclusion that the succession of the *Viharadhipathiship* of the temple in dispute should be according to that line of succession.

Under the above stated circumstances, I hold that the determinations of the learned District Judge are according to the law and the facts of the case. Therefore, I affirm the impugned judgement dated 22.07.1996 of the learned District Judge and dismiss the appeal. The Defendant will pay Rs. 50,000/- to the Plaintiff as costs of this appeal.

JUDGE OF THE COURT OF APPEAL

M.T. MOHOMAD LAFFAR J.

I agree.

JUDGE OF THE COURT OF APPEAL