

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

(Passedaway) Rev. Vilakatupotha Sri

Seelanandabhidana.

Chief Rev. of Pahala

Dolospattuwe,

Chief Incumbant of Usgala

Swarnabimbarama

RajamahaViharaya &

Presently at Sri

Bhoderukkaramaya,

Malagane, Hettipola.

PLAINTIFF

C.A. Case No. 556/2000F

DC Kuliypitiya Case No. 6155/L

(Disrobed) Rev. Hengamuwe Anuruddha

Incumbant Rev. Usgala

Swarnabimbarama Rajamaha

Viharaya, Kobaigane

1st SUBSTITUTED-PLAINTIFF

Rev. Nikaweratiye Mangalahimi

Incumbant Usgala

Swarnabimbarama Rajamaha

Viharaya, Kobaigane.

2ND SUBSTITUTED-PLAINTIFF

-Vs-

Wedanaidelage Appunaide
Alias Arachchi Naidelage Appu
Naide,
Kokkawilagama, Kobaigane.

DEFENDANT

AND NOW

Rev. Nikaweratiye Mangalahimi
Incumbant-Usgala
Swarnabimbarama Rajamaha
Viharaya, Kobaigane.

**2NDSUBSTITUTED-PLAINTIFF-
APPELLANT.**

-Vs-

Wedanaidelage Appunaide
Alias Arachchi Naidelage Appu
Naide.
Kokkawilagama, Kobaigane.

DEFENDANT-RESPONDENT.

BEFORE

: Deepali Wijesundera J.

: M.M.A. Gaffoor J.

COUNSEL

: M.C. Jayaratne with M.D.J.

Bandara for the Substituted-
Plaintiff-Appellant.

Defendant – Respondent is
absent and unrepresented.

ARGUED ON

: 11th February, 2015

DECIDED ON

: 15th June, 2015

Deepali Wijesundera J.

The original plaintiff who was the Chief Incumbent of Usgala Swarnabimbarama Rajamaha Viharaya has instituted action in the District Court of Kuliapitiya against the Defendant Respondent seeking a declaration that the land called Kahatagahamula Watte and Pinyaya Hena, Siyambalagahamula Watte, Mahawewa, Dangahamula Watte in extent of five acres and twenty six perches depicted as *Lot 4* in plan 2631 described in the scheduled to the plaintiff is the property of the said Rajamaha Viharaya and to evict the defendant respondent and those holding under him therefrom. The respondent has filed his answer and

trial had commenced on 19/04/1993. The original plaintiff had passed away and the substituted plaintiff has self-disrobed and the second plaintiff appellant has been substituted in place of the deceased original plaintiff.

At the commencement of the trial in the District Court the defendant respondent has admitted that the property described in the schedule to the plaintiff is a property belonging to the Usgala Swarnabimbarama Rajamaha Viharaya. On conclusion of the trial the learned District Judge has dismissed the plaint. This appeal has been filled by the second substituted plaintiff appellant against the said judgment.

The learned counsel for the appellant submitted that the District Judge has rejected the plaint stating that the substituted plaintiff failed to prove the succession to the temple and that the plaintiff failed to prove the devolvement of the title to the land in question. The appellant's counsel stated that the second substituted plaintiff had a right to defend an action filed by the original plaintiff because it is a 'sangika' property and cited the judgment in **Chandrawimala Therunnanse Vs Siyadoris 47 NLR 304-310**. He further stated that the appellant has taken steps to protect the sangika property owned by the Usgala Rajamaha Viharaya.

He also stated that the respondent failed to object to the second plaintiff respondent being substituted in place of the deceased plaintiff and the learned District Judge failed to consider this issue. He further submitted that according to the prevailing law a sangika property is not a property owned by a private person or a corporate body therefore the incumbent Viharadhipathi or any Reverend who has acquired sufficient, interest as Viharadhipathi has a 'locus standi' to sue a third party to protect the sangika property.

The defendant respondent after issuing notice several times never came to this court. He was absent and unrepresented at all times. In the district Court the defendant respondent has recorded an admission as follows.

“පැමිණිල්ලේ උප ලේඛනයේ විස්තර කර ඇති දේපල උස්ගල ස්වර්ණ බිම්බාරාම රජමහා විහාරය සතු දේපල බැව් විත්තිකරු පිළිගනියි.”

Therefore it has been admitted by the defendant respondent that the land in issue is the property of the Rajamaha Viharaya. The learned District Judge has misdirected himself when he went to explore how the original Chief Incumbent Priest acquired title to the said land, when the defendant himself had admitted the land belonged to the Temple. A sangika property is owned by the Temple and not by the priests.

The defendant when giving evidence and his witness Hapuarachchi has stated in evidence that the land belonged to the temple and that the defendant was given to reside in the land for the services he was providing to the temple. These services were later on stopped by a viharadipathy as stated by the defendant in evidence. A person who ceases to work for the temple does not have the right to enjoy the benefits of the temple land.

The defendant respondent in the District Court has not produced a single document to show that his predecessors were given the temple land for the services, they provided on a 'Sannasa' or a grant.

In the case of **Chandrawimala Therunnanse Vs Siyadoris** it has been stated "that a Bikku who is not the rightful incumbent, can maintain an action in respect of sangika property of a temple if he has acquired sufficient interest as viharadhipathi" in the instant case on the demise of the original plaintiff and the disrobing of the substituted plaintiff the second plaintiff respondent has come forward to protect the sangika property. Sangika property is the property of the Temple and not the private property of the priests therefore when the defendant has admitted the land belonged to the temple there is no necessity for the plaintiff to prove his succession to the temple.

For the afore stated reasons the judgment dated 19/04/1993 of the learned District Judge of Kuliyaipitiya is set aside. We allow the appeal, the relief prayed for by the second plaintiff appellant in prayer (a) of the petition of appeal.

JUDGE OF THE COURT OF APPEAL

M.M.A. Gaffoor J.

I agree

JUDGE OF THE COURT OF APPEAL