1934 *Present :* **Garvin S.P.J. and Dalton J.**

SADHANANDA TERUNANSE *v.* SUMANATISSA *et al.*

285—D. C. Tangalla, 3,375.

Buddhist temple—Juristic person—Prescription.

Semble, a Buddhist temple is not a juristic person.

APPEAL from a judgment of the District Judge of Tangalla.

L. A. Rajapakse (with him *Kariapper*), for plaintiff, appellant.

C. V. Ranawake (with him *S. Alles*), for defendants, respondents.

September 7, 1934. DALTON J.—

This is a matter which, at the termination of the argument, we stated should be settled. Judgment was then postponed to the first day of the next term to give the parties an opportunity of settling the matter, but we are now informed no settlement has been arrived at.

The first issue that has been answered in favour of the first and second defendants is ambiguously worded, but whether one takes it to be a finding that defendants have acquired a prescriptive title to the land, or a finding that the "temple" has done so, it cannot be supported, and plaintiff's appeal must succeed.

The action relates to an allotment of land nearly 2½ acres in extent. One H. Punchibaba obtained a Crown grant for the land in 1911. In 1918 Punchibaba by an informal document (exhibit D 2) purported to donate to and dedicate to a Buddhist priest Gnananda Tissa "and the priests of the Ariyawansa Saddamma Uttika Nikaya . . . . and to the Buddha Sasana" an undivided half share of the allotment in question with the plantation and "the incompleted Viharaya Tapodaramaya", subject to certain conditions, in order "to pave the way for converting this land to a Buddhist temple".

Gnananda, who was of the Amarapura sect, is stated to have possessed the whole property for four years, when he disrobed himself. After him a priest named Pannadara was in possession for a year or so, when he is stated to have left, and Pananda was then incumbent for six or seven years. The first defendant then became incumbent and was stated to be so for about two years, when this action was brought. It is found by the trial Judge that there were short spells of time when there was no priest in residence at the temple, whilst it is conceded that none of the priests named, who were not all of the same sect, succeeded each other by any rights of pupillary succession, or by any other right derived from the others. The second defendant was appointed trustee in June, 1931. Before him there was no trustee, whilst even the legality of his appointment is questioned by plaintiff.

Trouble seems to have arisen between Punchibaba and the first defendant because the latter refused to robe a son of Punchibaba. The latter, who was of Wahumpura caste, thereupon executed a deed of

transfer (exhibit P 2), dated September 11, 1930, for the whole of the allotment of land to N. Saddhananda Terunnanse, the present plaintiff. Punchibaba's son is now a pupil of the plaintiff and has now been robed by him. The alleged possession of the first defendant is said to have been disputed in November, 1930,

With regard to the question of the temple itself, it is very doubtful from the evidence when the temple came into existence. Temple is defined in the Buddhist Temporalities Ordinance, No. 8 of 1905, as "vihare, dagoba, and dewala . . . ." There seems to have been an incomplete vihare on the land in 1918, but the evidence establishes that it was not put up or completed until five years after the dedication in 1918. The dagoba was not erected until 1924, and then on a neighbouring piece of land, for the foundation stone was only laid in May, 1924. It is conceded there was no dewala at any time.

The trial Judge seems to have been of opinion that the temple came into existence in 1918, because the evidence showed that a date "21.10.18" had been engraved on the seemawa which is now attached to the temple. There is no doubt about the informal donation of the land and the dedication of it in 1918 to Gnananda, but the evidence leads one to conclude that the temple did not come into existence until several years later. Assuming for the moment that a temple is a juristic person, the evidence does not entitle one to conclude that here it had been in existence for a period of ten years prior to the date of the alleged ouster by plaintiff. The evidence is opposed to any such conclusion.

It is not necessary therefore for the purpose of this case to deal with the question whether in Ceylon a Buddhist temple is a juristic person. The term "temple" has, I think, in some of the earlier authorities, been somewhat loosely used, just as it has been in the argument before us, and it may equally apply to the incumbent or to some other authority of the temple, such as the trustee (*e.g., Silva v. Fonseka*[1]). Where, however, the question has come up for consideration in a more definite form in such cases as *Karthigasu Ambalavanar v. Subramaniar Kathiravelu*[2], *Maraliya v. Gunasekera*[3], and *Kurukal v. Kartigasu and another*[4]; it has been held that the personification of what is sometimes known as a "foundation" is foreign to the law in Ceylon. The view expressed by Professer Lee, *Introduction to Roman-Dutch Law (2 ed.), p. 114,* has been approved :—

> "We no longer attribute any kind of personality to an unincorporated charity, the only personality which comes in question being that of the trustees in whom the trust property is vested".

Nothing in any Buddhist Temporalities Ordinance has been cited that is contrary to that conclusion. If it were necessary, the decree must I think, be set aside on this ground also (*cf.* also *Civil Law of Ceylon* by P. Arunachalam, Vol. I., pp. 36-38, and *Rathanapala Unnanse v. Kowitigala Unnanse, 2 S. C. C. 26*).

With regard to the alleged possession of the land in dispute by the first defendant, he has only been in possession for two years at the most. The priests alleged to have been in possession before him were in possession

[1] *15 N. L. R. 239.*
[2] *27 N. L. R. 15.*
[3] *23 N. L. R. 261.*
[4] *2 Times of Ceylon L. R. 120.*

at intervals, and defendant cannot claim the benefit of their possession, since he does not claim under them. There has been no proof of undisturbed and uninterrupted possession, within the provisions of section 3 of the Prescription Ordinance, 1871, for ten years by the defendants. Hence, taking the first issue to refer to the defendants and not to the temple, the issue must be answered in the negative.

Plaintiff is therefore entitled upon the evidence to succeed in his claim to be declared entitled to the land, and his appeal must be allowed. Subject to the finding on the second issue being in favour of the plaintiff, he will also be entitled to the damages which were agreed upon in the sum of Rs. 20 per annum. The trial Judge has not dealt with the defendants' claim to compensation for improvements. The case must therefore go back to the lower Court for that question as raised in the second issue to be decided. The question of costs in the lower Court will be dealt with by the trial Judge on the conclusion of the further hearing. The plaintiff is entitled to his costs of the appeal.

Sent back.

GARVIN J.—I agree.