

1965

Present : Sansoni, C.J., and Sirimane, J.

D. M. J. WEERAMAN, Appellant, and P. SOMARATNA
THERO, Respondent

S. C. 276/63—D. C. Tangalle, 28/L

Buddhist ecclesiastical law—Rei vindicatio action instituted by person claiming to be controlling Viharadhipathi of a temple—Maintainability of action by plaintiff as trustee—Buddhist Temporalities Ordinance, ss. 4 (2), 10 (1).

Plaintiff brought this action for declaration of title to certain property claiming to be the controlling Viharadhipathi of a temple. He averred in the plaint that the temple was exempted under section 4 (2) of the Buddhist Temporalities Ordinance. The evidence led at the trial showed that this was not an exempted temple and that, therefore, the plaintiff was not entitled to sue as controlling Viharadhipathi.

Held, that the plaintiff was not entitled to maintain the action by having himself duly appointed trustee under the Buddhist Temporalities Ordinance at the present stage of the action.

APPPEAL from a judgment of the District Court, Tangalle.

F. A. Abeywardene, with *L. C. Seneviratne*, for Defendant-Appellant.

H. W. Jayewardene, Q.C., with *M. T. M. Sivardeen* and *I. S. de Silva*, for Plaintiff-Respondent.

December 10, 1965. SANSONI, C.J.—

The plaintiff brought this action for declaration of title to a certain paddy field claiming to be the controlling Viharadhipathi of the Kanuketiye Hathagala Purana Vihare. He averred in paragraph 2 of his plaint that it was exempted under Section 4 (2) of the Buddhist Temporalities Ordinance. The defendant in his answer did not admit this averment, and it therefore became necessary for plaintiff to prove that he was entitled to bring this action in that capacity.

At the trial the plaintiff's counsel raised issue 2 "Is the plaintiff the controlling Viharadhipathi of the said temple?" and the defendant's counsel raised issue No. 12 "In any event is the plaintiff entitled to maintain this action?". It is clear on the evidence that this is not an exempted temple, and it follows that the plaintiff was not entitled to sue as controlling Viharadhipathi, because the management of the temple property did not vest in him but in a person duly appointed trustee under the ordinance. At a very early stage of the plaintiff's cross-examination it transpired that the Public Trustee was in fact controlling this temple from 1948, and the plaintiff produced what he called his appointment as its trustee, viz. P2 dated 29th December, 1959.

The production of P2 if it did anything, disproved the title under which the plaintiff claimed to bring this action. But he did not sue as trustee, so that whether P2 was valid or not really did not affect the question.

The defendant's counsel raised a further issue No. 13 "Can the plaintiff maintain this action in view of his own evidence that since 1948 the Public Trustee has taken over the management of the temporalities of this Viharaya?". At that stage it should have become clear to the counsel for the plaintiff at the trial that the capacity in which the plaintiff brought the action was defective, and he might seriously have considered whether he should withdraw the action with liberty to file a fresh action. But he chose to continue with the action.

P2 does not help the plaintiff, because it recites that the plaintiff was appointed trustee after he had nominated himself in his capacity as Viharadhipathi. In fact at that date it was the plaintiff's tutor who was the Viharadhipathi, and he died only on the 4th of November, 1960. Under Section 10 (1) it is the Viharadhipathi who must nominate to the Public Trustee whom the latter has to appoint a trustee.

It is therefore clear that plaintiff cannot sue for a declaration of title either as controlling Viharadhipathi or as trustee, and it is too late now for the plaintiff in this action to remedy these defects. No appointment made at this stage will help the plaintiff to maintain this action. The plaintiff's action must therefore fail and it should have been dismissed. Since the plaintiff's action fails because he had no cause of action inasmuch as his title was defective, it seems to us that the only remedy for him is to file a fresh action. The appeal is allowed. In the circumstances of this case, we make no order as to costs in either Court.

SIRIMANE, J.—I agree.