

1955

Present : Basnayake, A.C.J., and Pulle, J.

DHAMMAVISUDDHI THERO *et al.*, Appellants, and
DHAMMADASSI THERO, Respondent

S. C. 348—D. C. Colombo, 5,517/L.

Buddhist Ecclesiastical Law—Dedication of temple—Viharadhipati—Appointments need not be in writing—Bhikkhu—Residence in temple—Right to claim incumbency thereby.

When a Buddhist temple is built for the first time by laymen and offered to the Sangha, there is no requirement of law or custom that the viharadhipati should be appointed by a written document.

Where a bhikkhu who is a viharadhipati of more than one temple places bhikkhus in whom he has confidence, not necessarily his pupils, in charge of the different temples of which he is viharadhipati, while adopting for his usual residence only one of them, the performance of their duties by the bhikkhus so appointed does not have the effect of making them viharadhipatis of the respective temples. There being no particular duties, spiritual or temporal, which a viharadhipati need perform for the purpose of keeping alive his rights, such rights cannot be said to be lost because another bhikkhu who is actually residing in the temple manages its affairs and prevents the temple from falling into decay.

A bhikkhu residing at a Sanghika temple who, by virtue of his residence therein, asserts in a Court of Law the right of the temple to its property does not thereby acquire a right to be its viharadhipati.

APPPEAL from a judgment of the District Court, Colombo.

H. V. Perera, Q.C., with *H. A. Kotlegoda*, for Defendants-Appellants.

H. W. Jayewardene, Q.C., with *Daya Perera*, for Plaintiff-Respondent.

Cur. adv. vult.

October 28, 1955. BASNAYAKE, A.C.J.—

This appeal has had an unusual course. It was first argued before a Bench consisting of my brothers Gratien and Fernando. At that hearing on 12th and 13th July, 1954, the plaintiff-respondent, Kalawane Dhammadassi Thero (hereinafter referred to as the respondent), was unrepresented. After the arguments of Counsel for the defendants-appellants, Mawella Dhammavisuddhi Thero and Tissamaharama Gunaruchi (hereinafter referred to as the first appellant and the second appellant respectively and collectively as the appellants), the Court made order allowing the appeal and dismissing the respondent's action with costs in both Courts; but reserving the reasons to be delivered on a later date. Thereafter on 19th July, 1954, the reasons were delivered.¹

On 2nd June, 1955, an application for *Restitutio in Integrum* made by the respondent to this Court was entertained by the very Judges that heard the appeal.

It would appear that the respondent had as his Proctors a firm carrying on business under the name of "Perera and Senaratne" to whom he gave a joint proxy appointing them to represent him at the trial and also in the appeal. In October and November, 1952, at Mr. Senaratne's request, he paid sums aggregating to Rs. 735 to Mr. Senaratne as fees for senior and junior Counsel. The respondent was later informed by Mr. Senaratne that the advocates concerned had been duly briefed, and he assumed that he would be represented at the hearing.

After the appeal had been disposed of, the respondent became aware that Counsel had not appeared for him at the argument as their fees had not been paid by Mr. Senaratne. He also discovered that Mr. Senaratne had, in terms of an order of the Supreme Court dated 23rd October 1953, been suspended from the practice of his profession for a period of three years on the ground of misconduct.

The Court was satisfied that, in the circumstances, the proper course to take was to order a re-hearing under section 771 of the Civil Procedure Code and accordingly on 7th June 1955 vacated the judgment of the Court dated 19th July 1954, and directed that the appeal be re-heard before another Bench. It was also ordered that the costs of the application for *Restitutio in Integrum* be costs in the cause.

The appeal has accordingly come up for hearing before us. The main question that arises for decision is whether the late Kodagoda Upasena Thero (hereinafter referred to as Upasena), a member of the Ramanua Nikaya who later became its head, was, at all material times, viharadhipati of the temple known as Raja Pushparama Vihare also known as Malwatte Temple at Mount Lavinia (hereinafter referred to as the Temple).

In my opinion, the evidence clearly establishes that Upasena was the viharadhipati of the Temple from its inception till his death in 1939, and that the respondent, as his pupil, has succeeded to that office and is entitled to hold it. The absence of a deed gifting the Temple to Upasena does not matter, as it has been established by other evidence, that, in fact, he was viharadhipati.

Before stating the reasons which have led to the above decision, it would be useful to state briefly the relevant facts. According to the evidence of the respondent, who was at the date of the trial 77 years and is now past 81, the Temple in dispute was built by a group of Buddhist laymen, chief of whom was Margiris Fernando. They built a shrine room, a preaching hall, a dining hall, and an avasa. Upasena, who lived at a temple in Walpola in Panadura, was invited by Margiris Fernando and other dayakayas to perform religious ceremonies at this Temple. On those occasions, the respondent was in the habit of accompanying his teacher, Upasena.

The date on which the Temple came into existence does not transpire but it was not till 1904 that it was offered to the Sangha. In that year at a formal ceremony, the Temple was offered to the Sangha under the presidency of Matara Gnaniinda Sabha, the most senior of the bhikkhus present.

The evidence indicates that even before the Temple was made Sanghika, Upasena was regarded as the viharadhipati. After the Sanghika ceremony he appears to have continued in that office, a fact which appears to have been recognised by both the Sangha and the laity not only on the day of the ceremony but ever afterwards till Upasena's death.

When a temple is built for the first time by devout laymen and offered to the Sangha, there is no requirement of law or custom that the viharadhipati should be appointed by a written document. In the instant case,

it would appear that the laymen concerned, inspired by their religious zeal, built a temple with all the buildings that are associated with a Buddhist place of worship and invited Upasena to assume charge of it.

As Upasena was already viharadhipati of a temple at Walpola in Panadura, where he conducted a *pirivena*, he entrusted the care of the Temple to the respondent and Matara Ananda (hereinafter referred to as Ananda). The latter, though not a pupil of Upasena by robing, was a pupil in the sense that he obtained instructions from him at the *pirivena* at Walpola. He lived in the Temple till 1934 when he died; but the respondent appears to have lived for the most part in a temple at Kandy.

It is not uncommon in this country for a bhikkhu to be viharadhipati of more than one temple, as in this instance. Such a viharadhipati usually places bhikkhus in whom he has confidence, not necessarily his pupils, in charge of the different temples of which he is viharadhipati while adopting for his usual residence only one of them. Such a charge was Ananda's. It has not the effect of making him viharadhipati.

It was not till 1939 when Upasena died, that the respondent became entitled to the office of viharadhipati as pupil of Upasena both by succession and nomination. The fact that Ananda and after him Dhammaruchi always resided in this Temple gave neither of them any right to be viharadhipati. The residence of a bhikkhu for whatever length of time in a Sanghika temple gives him no right to be viharadhipati; for every bhikkhu is entitled, as a member of the Sangha, to reside and participate in the religious activities of a temple subject to the consent express or implied of the viharadhipati. The right to an incumbency cannot be acquired by residence merely because the rightful incumbent does not visit the temple often enough or resides elsewhere for the most part. There being no particular duties, spiritual or temporal, which a viharadhipati need perform for the purpose of keeping alive his rights, it cannot be said to be lost because another bhikkhu who is actually residing in the temple manages its affairs and prevents the temple from falling into decay. Those are obligations which any bhikkhu resident in a vihara may properly perform for the sake of preserving the property of the Sangha. It will be contrary to the Vinaya to hold that the performance of such duties gives to the performer rights in the temple and is prejudicial to the rights of the lawful viharadhipati.

It is clear from the documents produced by the respondent that Ananda resided at the Temple only as Upasena's agent. In his letters to Upasena, Ananda unreservedly recognised Upasena as the adhipati of the Temple. The relevant portions of some of the documents produced at the trial are reproduced below:—

In the first of these documents written on 18th March, 1905, and marked P1, Ananda says :

“This Galkissa property is not one that should be abandoned. Even according to the shaping of things it is imperative that the place should be accrued (preserved) with every possible effort. Agonis here also went away displeased with the Upasakamma. If there is any

තැපැල් සලකුණ 1905 මාර්තු මස
24 වෙනි දින.

වලපොල සබ්මෝදය පිරිවෙනායිපති
ආචාර්ය කෝදගොඩ උපයේන සාමානි
වහන්සේ වෙතට ඔප්පු කරන පිණිසයි,
පාන්දුර තැපැල්.

23 වෙනි දිනදීය

ගෞරව නමස්කාර පෙරවුව සැල කරමි. අවසර කියා තිබුන අන්දමට ඒ පිරිස රැස් කිරීම මට අමාරුයි. සාමානි වහන්සේට හැකිනම් ඒ දෙදෙනාට ලියුක් යවා පැමිණෙන දිනක් නියම කර ගෙන පැමිණෙනවා හොදයි. අනික් පිරිස කොයි වෙලේත් පුළුවනි. සාමානි වහන්සේගේ මෙහි වැඩි බලවැඩියි උන්නාන්සේ ආචාර්ය පුළුවනි. පසුදු ලංකා උන්නාන්සේත් මෙහි වැඩ පිටි. නියම කර තිබෙන අන්දමට ඒ අයට දැන්වීමට කල් මදි බව දැන වදළ මැනව.

මේවගට,

ශ්‍රී ඡය ආනන්ද.

In the third, marked P3, sent from Kandy where he had gone for treatment for his eye, after referring to his eye trouble and his difficulty of getting on at the Galkissa, he says :

“How am I to get on at Galkissa if even a single dayaka pays no attention.” I have not even the railway fare to come. Dhammadassi Unnanse came to Udawatte yesterday”.

තැපැල් සලකුණ 1906 අප්‍රේල්
11 වෙනි දින.

වලපොල සබ්මෝදය පිරිවෙනායිපති
ආචාර්ය කෝදගොඩ උපයේන සාමානි
වහන්සේ වෙතට, පාන්දුර තැපැල්.

10 වෙනි දින.

ගල්කිස්සේ කිසිම දයකයෙක් නොසලකනවානම් වැඩ කරන්නන් කොහොදිද. මට ඒමට රේල් ගාස්තුවක් නැත. බම්මදස්සි උන්නාන්සේ උඩවත්තට රියේ ආවය.

ශ්‍රී ඡය, ආනන්ද.

In the fourth, marked P4 and dated 23rd May, 1907, he says :

“As directed I informed the dayakas that you will be coming for the Bana on Monday by the 3 o'clock train. They are very much pleased. Again I beg that you should come by that train without fail”.

නැපැල් සලකුණ 1907 මැයි මස
24 වෙනි දින

විලසොල සඛචේදය පිරිවෙනාධිපති
ගෞරවනීය ආචාර්ය උපසේන සාමිනි
වහන්සේ වෙත ලැබේවා,
පානදුර නැපැල්.

මැයි මස 23 වෙනි දිනදීය.

ගෞරව නමස්කාරයෙන් සැලකරමි. අවසර. සාමිනිවහන්සේගෙන් අවසර
ලැබුණ දැන්දමට සඳුද 3 නේ රේල්ලෙන් ධර්මදෙසනාවට මෙහි වැඩවෙන බව
දැනගන්නට දැන්වීමි. ඒ අය ඉතාමත් ප්‍රීති උනෝය. සාමිනිවහන්සේ එකී
පේලුවෙන් තොවරුවාමි විඩවෙන ලෙසට නැවතත් සැලකරමි.

මේවගට, ශිෂ්‍ය

ආනන්ද වන මිමිය.

In the fifth, marked P5 and dated 26th March, 1908, he says :

“Worshipfully submitted. By your leave. Sugunapala Unnanse is
said to be going shortly as incumbent of Udukawa. *When he goes I
shall be alone here. Some priest must be sent here. Please note that if a
priest is not sent I cannot stay alone. Again I beg that a priest should be
sent.* Please remember to send here two priests of some consequence for
the forthcoming vas season.

නැපැල් සලකුණ 1908 මාර්තු මස
30 වෙනි දින.

විලසොල සඛචේදය පිරිවෙනාධිපති
අභාවාසී ගෞරවනීය උපසේන සාමිනි
වහන්සේ වෙත ඔප්පු වේවා,
පානදුර නැපැල්.

මාර්තු මස 26 වෙනි දින හල්කිස්සේදීය.

නමස්කාර පෙරවුව සැලකරන වගනමි. අවසර. සුභනපාල උන්නාන්සේ
උඩුකාවේ අධිපති කමට මේ ලහදී යනවා. ඒ උන්නාන්සේ ගියාම මෙහි
මම පමණයි. කවුරු හරි උන්නාන්සේ නමක් මෙහි එවන්ට ඕනෑය. එසේ
තනිවුවහොත් මට පමණක් මෙහි සිටින්නට බැරි බව දැන වදල මැනවි. උන්නාන්සේ
නමක් එවන්ට ඕනෑ බව නැවතත් දැන වදරණයක්වො. මේ ලබන වස් කාලේ
මෙහි වසට එක විධියක යන්සයාවහන්සේලා දෙනමක් එවන්ට කල්පනාවට
ගත වැනවි.

මේ, ශිෂ්‍ය

ආනන්ද.

About 1909, there appears to have been some litigation affecting the Temple. In that connexion Ananda wrote as follows on 10th June, 1909, to Kodagoda Upasena :—

“ Proctor Munasinghe of Kollupitiya has sent a message requesting you to come up without delay and he has asked me also to come. What am I for without you. You must come pretty soon (to-day or tomorrow). No news about the case as yet. That the victory is for the temple is all that is learnt. The teacher priest also visited us here recently ”.

තැපැල් සලකුණ ජූනි 10 වෙනි දින, 1909.

විලසොල සබ්මේදය පිරිවෙනාධිපති
අපාචායඪි උපසේක සාමාජිකවහන්සේ
වෙත ලැබේවා.
සාන්දර තැපැල්.

ජූනි මස 10 වෙනි දින ගල්කිස්සේදිය.

ආගාරව නමස්සාර පෙරටුව යැලකරමි. අවසර. කොල්ලුපිටියේ මුනසිංහ පෙරකදේරු මහතා සාමාජිකවහන්සේට වැඩමවන්න කියා පණිවිඩයක් එවා තිබේ. ප්‍රමාද නැතුව යන්ට කියාය. මරන් යන්ට කියා තිබේ. සාමාජික වහන්සේ නැතුව මම කුමටද ? සාමාජිකවහන්සේ අදින් හෙටින්ම මෙහි වැඩමවන්න ඕනැය. නවුව ගැන විස්තරයක් තවම දැනගන්ට නොලැබුනේය. පත්සලට ජය බව පමණක් ආසාවෙන් අසන්ට ලැබුනේය. ආචාරිකවහන්සේන් මේ ලහදී මෙහි වැඩමවා ගියේය.

මේවට, ගිණ

ආනන්ද.

After the case had been concluded he wrote on September 2, 1910, as follows :—

“ The judgment of the case relating to this temple was delivered yesterday. The essence of the judgment is that land should go to the relations. The remaining cash should go to the temple: The trustees are attempting to get the money into their hands because we are lying low. If that happens there will be no benefit to the temple. Their trusteeship is also not a permanent one. *I think it would be advisable if you would come here even on a Sunday, call up the dayakayas and apply for the money through even a petition.* Haramanis Appu's idea is ' let anything happen that may '. Davith Singho Gurunanse's idea is the same. Both of them are ill-disposed towards you and me. Gure is always on the side of Haramanis. All that Gure wants is to put the money into the hands of Haramanis. It is hard to rule in that way. It must be noted, that Gure's former qualities are now absent. Haramanis' present idea is to deposit the money in Court, show accounts and go to his village. *You must come here even on a Sunday, call up Ralahamy and other dayakayas. Yes and decide on a satisfactory course of action ”.*

තැපැල් සලකුණ 1910 සැප්තැම්බර් මස
2 වෙනි දින.

වලපොල සබමෝදය පිරිවෙනාධිපති
ගෞරවනීය අපාචායකීයන් වන උපසේන
සාමිකත්වහන්සේ වෙතට ලැබේවා.
හතරුරු තැපැල්.

සැප්තැම්බර් මස 2 වෙනි දින ගල්කිස්සේදිය.

ගෞරව නමස්කාරයෙන් සැලකරමි. අවසර. මේ සානේ පිළිබඳ නඩුවේ
නින්දාව රියේ දෙනලදී. එහි නියම නින්දාව ඉබන් දැනිනට වීමයි. ඉතිරි මුදල
පත්සලට නියම වීමයි. දැනට අපි කරබාගෙන සිටීමෙන් මුදල බාරකාරයෝ
අනට ලබාගන්න උත්සාහ කරති. එසේ උනිනම් සානේට ප්‍රයෝජනයක්
නැතිව යයි. ඒ භාරකාරයින්ගේ භාරකාරකමක් ස්ථිර එකක් නොවෙයි. ඉරිද
දවසකවත් සාමිකත්වහන්සේ මෙහි පැමිණිලා දයකයෝ මෙහි ගන්නලා පෙන්
සමකින්නට ඒ මුදල ඉල්ලා සිටිනවා නම් හොඳෙයි කියා මම සිතමි. හරමානිය
අස්පුගේ කල්පනාව ඒ මුදල ඕනෑ එකක් වී ගියාවෙ කියයි. දවත් සිංඤ්ඤා ගුරුගේ
දදහසත් එලෙසමයි. ඔය දෙදෙනාම සාමිකත්වහන්සේත් මාත් සමග නොම
නාපය. ගුරුමානි හරමානිය පැත්තටමයි. මුදල හරුමානියේ අතර ලබා දුන්
නොත් ගුරුමානි එපමණයි. ඒ අන්දමේ මට වැඩ කරන්නට අමාරුයි. ගුරුගේ
පෙර ගති දැනට නැති බව සැලකිය යුතුයි. දැනට හරුමානියගේ කල්පනාව
මුදල උසාවියේ බැඳලා ගනන් පෙන්නලා ගමට යාමයි. සාමිකත්වහන්සේ
ඉරිද දිනකවත් මෙහි පැමිණිලා රාලහාමි ආදී දයකයෝ ගන්නා සැහෙන අන්දමක්
කරා නොට තෙරිමයි.

මේවගට, ශිෂ්‍ය

ආනන්ද.

It is not necessary to quote the contents of the post card P10 of 11th July, 1912, in which Ananda described the disputes between the dayakayas and the trustees. In the post card of 15th September, 1921, P11, he wrote—

“ For my illness I took several decoctions and am taking a medicine prepared at great expense. By this I have lost the previous improvements I have had. Present illness in my body are slight cough, upset phlegm, want of sleep through loss of appetite and exhaustion. It is not advisable to wait. The vedaralas are also of the opinion that I am getting worse. As it is inconvenient to get things done here, let me have your permission to go to a suitable place and get treatment. Of the two priests now here one is leaving to his own place. The other goes to Maliyakkanda at 6 a.m. and returns at 6 p.m. If you want this place send somebody to stay ”.

තැපැල් සලකුණ 1921 සැප්තැම්බර් මස
16 වෙනි දින.

වලපොල සබමෝදය පිරිවෙනාධිපති
අපාචායකී උපසේන සාමිකාදේවත
මයාණන්වහන්සේ වෙත පිළිගැන්වීමටයි,
හතරුරු තැපැල්.

වම් 1921 සැප්තැම්බර් මස 15 වෙනි දින ගල්කිස්සේදිය.

ගෞරව නමස්කාර පෙරටුව ලියා සැලකරමි. අවසර. මට සෑදී තිබෙන
රෝගය ගැන කියා වඩි කිපයක් බි විශාල ගනනක් වියදම් කර බෙනක් සෑදවා
වළදිමි. එයින් පෙර නිවුණ ගුණගතිය දැනට දෙන්නෝය. දැනට මගේ ශරීරය

තුල පවතින ලෙසටනම්, හින් කැස්ස, සෙම් කෝපය, වැළඳීම රුචි නැතිකම, නින්ද නොයාම, ක්ලාන්ත ගතිය යන මේවාය. දැනට මේ ගැන බලා සිටීම නුවනට හුරු නොවේ. වේදවරුන්ගේ මනත් අමාරු තැනට පැමිණිගත යන බවයි. මෙහි සිට ලෙසට කටයුතු කරගැනීම අපහසු බැවින් සුදුසු පලාතකට පැමිණ ප්‍රතිකාර කරවා ගැනීමට අවසර දුන මැනව. දැනට මෙහි සිටින දෙනට අතරෙන් එක නමක් විසිවෙතිද යනකීය පලාතට යනවාය. අනික් නම උදේ 6 ට මාලිගාවන්තට ගියාම සවස 6 ට එනවාය. යානායු උවමනා නම් මෙහි නැවතීමට කෙනෙක් එවනු මැනවී.

මීට, ආනන්ද

The fact that Upasena, though not actually resident in the Temple, was the viharadhipati and that Ananda was a mere *locum tenens* placed in charge of the place by him, gains support from a letter sent by 22 dayakayas of the Temple to Upasena in September, 1935, in which they say—

“Malwatte Rajapushparama vihare of Galkissa which was dedicated to the Maha Sangha of the Ramanna Sect by Upasakas and Upasikas of the neighbouring villages with Muhandiram M. Margiris Fernando as chief and the incumbency whereof was conferred on your Honoured Self on the day of the dedication and managed since the demise of the late Reverend Ananda by Hakmana Gunananda Thero Principal of Sri Sunanda Pirivena of Beliatta is left without any improvement.

We therefore hereby write to you, honoured Nayaka Thero, to sympathise with us and restore the Arama into an improved state so that we neighbours could hear bana and do meritorious acts”.

පානදුරේ වලපළ ශ්‍රී සධමෝදය පිරිවෙණායිපති ගරුතර රාමඤ්ඤ නිකායේ අධිකරණ නායක සාමාජිකයන් වහන්සේ වෙත වැද නමස් කාරයෙන් ලියා සැල කරන වගනම,

ගරු නායක සාමාජිකයන් වහන්ස,

ඇම්. මාත්‍රීස් ප්‍රනාන්දු මුහන්දිරම් මහන්මයා ප්‍රධාන අසල් ගම් වැසි උපායක උපාසිකා දන් විසින් රාමඤ්ඤ නිකායික මහා සංඝයා වහන්සේ වෙත පුජාකරන ලද්දවුද, සංඝික කොට පුජාකළ දිනයේදීම පුජා ලැබූ සංඝයා විසින් ගරුනායක සාමාජික වහන්සේ වෙත ආරාමයෙහි අධිපතිකම පවරණ ලද්දවුද ආනන්ද සචරියන් වහන්සේගේ අභාවයෙන් පසු බෙලිඅත්තේ සිරි සුනන්ද පරිවෙණායිපති හක්මණ ඉණානන්ද සචරියන්වහන්සේගේ පාළනයෙන් පවත්නාවුද ගල්කියේ මල්වත්තේ රාජපුජපාරාම විහාරස්ථානය මේ කාලයෙහි කිසිත් දියුණුවක් නැතුව පවත්නා බැවින් ගරු කටයුතු නායක සාමාජික වහන්සේ අප කෙරෙහි අනුකම්පා කිරීමෙන් යථෝක්ත ස්ථානයට පැමිණ අසල්වාසි අපට පින්දහම් කර ගැනීමට, බණ දහම් ඇසීමට ආරාමය දියුණු තත්වයකට පත් කර දෙනමෙන් මෙයින් ආරාධනා කුර සිටීමහ.

The appellants' case is that Ananda was the first viharadhipati of the Temple, that it was offered to him in 1904, and that on the death of Ananda in December 1934, Talgaspitiya Dhammaruchi (hereinafter referred to as Dhammaruchi), his pupil, succeeded him. Dhammaruchi, having been viharadhipati till 29th June 1948, disrobed on that day. Before disrobing, he appointed the first appellant to be the guardian of his pupil, the second appellant, who was a samanera and a minor.

The appellants rely almost entirely on a petition ID1, presented by Dhammaruchi, in March, 1935, in a partition action filed by Ananda praying that he be substituted in place of the plaintiff, Ananda, who had died intestate while the action was pending.

That document lends no support to his claim. There is no evidence that Ananda claimed the land to be partitioned *qua* viharadhipati of the Temple, nor does anything said or done by Ananda support the claim that he was viharadhipati.

In those proceedings Ananda is described as "Rev. Matara Ananda Thero of Mount Lavinia" and not as viharadhipati of the Temple. After investigating the petition of Dhammaruchi for substitution, the District Judge held (ID7) that Ananda's interests in the land sought to be partitioned accrued to the Temple by virtue of section 23 of the Buddhist Temporalities Ordinance, as Ananda had lived in the Temple for a long time. The learned District Judge construed the words "the Temple to which such bhikkhu belonged", in that section, as meaning the Temple in which the bhikkhu was robed or ordained, or the Temple which the priest had made his own as it were by residing for a long time.

Applying the latter test he concluded as follows:—

"The priest, Matara Ananda belonged, in one sense, to the Rajapushparamaya as even according to Manana Dhewa he had been dwelling there for more than 15 years".

The District Judge did say—

"The only priest who seems to be residing in the Temple is the priest Dhammaruchi who claims to be the pupil of Matara Ananda and to be the incumbent of that Temple".

But those words cannot have the effect of making Dhammaruchi the viharadhipati having regard to the circumstances in which they were used. In the partition action, the question of who was the rightful viharadhipati was not in issue, as the action was instituted by Ananda in his individual capacity in respect of his private interests in the land and not *qua* viharadhipati.

It is common ground that Dhammaruchi was a pupil of Ananda and that he was in the Temple at the time of Ananda's death. Dhammaruchi, as Ananda's pupil, cannot have greater rights than Ananda himself who was never viharadhipati of the Temple. The fact that the District Judge allowed Dhammaruchi's application to represent the Temple to which

Ananda's interests in the partition action had accrued by virtue of section 23 of the Buddhist Temporalities Ordinance cannot have the effect of conferring on him the viharadhipatiship of the Temple.

A bhikkhu residing at a Sanghika temple who, by virtue of his residence therein, asserts the right of the temple to its property, does not thereby acquire a right to be its viharadhipati.

It would be contrary to Buddhist Ecclesiastical Law by which all bhikkhus are governed to recognise such a right.

The Secular Courts when dealing with problems affecting the Sangha should view them against the background of the Vinaya and should be cautious in applying to the Sangha the rules that govern relations and transactions between laymen. This approach to problems of Buddhist Ecclesiastical Law was laid down by Sir Anton Bertram over a quarter of a century ago, and bears repetition¹. He said :

“ But when we are dealing with ecclesiastical property, a region in which we are enforcing simply the ecclesiastical law based upon the original authoritative texts developed by religious customs, we ought not to recognize claims and transactions which are in their terms or in their nature inconsistent with the fundamental principles of those texts and those customs ”.

For the above reasons, we dismiss the appeal with costs in both Courts. For the purpose of dispelling any doubts, we repeat that the respondent would, in terms of the order in the proceedings for *Restitutio in Integrum*, be entitled to the costs of those proceedings as well.

PULLE, J.—

I agree.

Appeal dismissed.

¹ *Saranankara Unnanse v. Indajoti Unnanse*, 20 N. L. R. 385.