

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

In the matter of an Appeal to the Supreme Court against the Judgment of the Provincial High Court of Civil Appeal holden in Kandy in case No CP/HCCA/KAN/12/2011.

**SC APPEAL 119/2014  
SC/HCCA/LA 518/2013  
CP/HCCA/Kandy 12/2011[F]  
DC Matale 2136/P**

Ampitiye Wimalagnana Thero,  
Viharadhipathi,  
Koombiyangoda Vihara,  
Matale.  
(Deceased)

**Plaintiff**

Ampitiye Siriwimala Thero  
Viharadhipathi,  
Koombiyangoda Vihara,  
Matale.

**Substituted-Plaintiff**

**Vs**

1. Kader Mohideen  
(Son of Meera Saibo)  
No. 20/1.  
Koombiyangoda,  
Matale.  
(Deceased).

1A. Karder Mohideen Abdul Jabar,  
No.20/1,

Koombiyangoda,  
Matale.

2. K.M Farook,  
No.16,  
Koombiyangoda,  
Matale.
3. Mohamad Mujahideen,  
(Appearing by his guardian  
Idroos Lebbe Zaheera Bebe)  
No.16,  
Koombiyangoda,  
Matale.

**Defendants**

**AND BETWEEN**

Ampitiye Siriwimala Thero  
Viharadhipathi,  
Koombiyangoda Vihara,  
Matale.

**Substituted Plaintiff-  
Appellant**

**Vs**

- 1A. Karder Mohideen Abdul  
Jabar,  
No. 20/1,  
Koombiyangoda,  
Matale.
2. K.M Farook,  
No.16,  
Koombiyangoda,  
Matale.

3. Mohamad Mujahideen  
(Appearing by his guardian  
Idroos Lebbe Zaheera Bebe)  
No.16,  
Koombiyangoda,  
Matale.

**Defendants-Respondents**

**AND NOW BETWEEN**

2. K.M. Farook  
No.16,  
Koombiyangoda,  
Matale.

**2<sup>nd</sup>-Defendant-Respondent-  
Appellant**

**Vs.**

Thalathuoye Samiddhi Siri Thero,  
Viharadhipathi,  
Koombiyangoda Vihara,  
Matale.

**Substituted Plaintiff-Appellant-  
Respondent**

- 1A. Karder Mohideen Abdul  
Jabar,  
No. 20/1,  
Koombiyangoda,  
Matale.
3. Mohamed Mujahideen,  
(Appearing by his guardian Idroos  
Lebbe Zaheera Bebe)

No. 16,  
Koombiyangoda,  
Matale.

**1A and 3rd Defendants-Respondents-  
Respondents**

**Before** : **A. H. M. D. Nawaz, J.  
Arjuna Obeyesekere, J.  
K. Priyantha Fernando, J.**

**Counsel** : S.K Sangakkara with W.D Weeraratna and Ms.  
Hemamala Kumari for the 2<sup>nd</sup> Defendant-Respondent-  
Appellant.

Harsha Soza, PC, with Upendra Walgampaya instructed  
by Srihan Samaranayake for the Substituted Plaintiff-  
Appellant-Respondent.

**Argued on** : 25.07.2024

**Decided on** : 05.08.2024

**K. PRIYANTHA FERNANDO, J**

1. The Plaintiff-Appellant-Respondent (hereinafter referred to as the plaintiff) instituted an action for the partition of the lands described in the schedules to the plaint named in the District Court of *Matale*.

2. After trial, the learned District Judge dismissed the plaintiff's action on the basis that the plaintiff is not entitled to any undivided share in terms of the law.
3. Being aggrieved by the said judgment of the learned District Judge, the plaintiff preferred an appeal to the Civil Appellate High Court of the Central Province holden in *Kandy*, bearing No. CP/HCCA/Kandy No.12/2011[F].
4. Upon hearing of the said appeal, the learned Judges of the Civil Appellate High Court allowing the appeal, set aside the judgement of the District Court and directed the Court record to be sent back to the District Court to decide on the question of title.
5. The learned Judges of the Civil Appellate High Court held that, the *Koombiyangoda Viharaya* having the status of a corporate body could acquire and hold immovable property.
6. The instant appeal was preferred to this Court by the Defendant-Respondent-Appellant (hereinafter referred to as the defendant) against the said judgement of the Civil Appellate High Court and leave to appeal was granted by this Court on the following questions of law:
  1. *Will it be rational to consider a vihare as a legal person without amending the definition of a Buddhist temple in section 2 of the Buddhist Temporalities Ordinance?*
  2. *In any event is it a matter of great public importance for a fuller Bench of the Supreme Court to review the case of Ven. Dhammapalathero V Rajapkshage Pieris 2004 1 SLR 1 in view of the Privy Council decision Buddharakkita vs. Wijewardena 62 NLR page 49 on the question whether a Buddhist temple defined in section 2 of the Buddhist Temporalities Ordinance is a juristic person or not?*

3. *Whether the Buddhist Temple mentioned in Section 2 of the Buddhist Temporalities Ordinance is a juristic person to own land which is provided by a will.*
  4. *Can a Buddhist Vihara or Temple be considered to be an institution sui-generis which is capable in law of holding property.*
  5. *Can a Buddhist Temple or Vihara be considered to be an institution with the attributes of a corporation for the purpose of acquiring and holding property, both movable and immovable.*
7. Although, initially this Court granted leave to appeal for all of the above questions of law, when this case was taken up for hearing, both Counsel submitted that they would be satisfied if the question of law No.4 would be decided by this Court given that it encapsulated the substantial question to be decided upon.
4. *Can a Buddhist Vihara or Temple be considered to be an institution sui-generis which is capable in law of holding property.*
8. Therefore, the main issue pertaining to the question of law is whether a Buddhist vihara or temple can be considered *sui generis* which is capable of holding property.
9. It was the submission of the learned Counsel for the defendant that, the Judges of the Civil Appellate High Court have erroneously interpreted the validity of the last will marked [P-4]. Based on the case of **Rev. Mapitigama Buddhakkita V. D.E. Wijewardena 62 NLR 49**, the learned Counsel for the defendant submitted that, the validity of a bequest by last will is not governed by the provisions of the Buddhist Temporalities Ordinance but by the Wills and Trusts

Ordinance. The learned Counsel for the defendant contends that, if the Buddhist Temporalities Ordinance was to be applied in such a case, then one has to pay attention to the numerous purposes found in Section 25 of the Buddhist Temporalities Ordinance, and that may defeat the sole intention of the testator.

10. The learned Counsel for the defendant further submitted that, even if the Buddhist Temporalities Ordinance was to apply, the temple being a non-juristic person, lacks the capacity to hold property, and so the property will not devolve on the temple.
11. It is the position of the learned Counsel for the plaintiff that, it has been long established in law that a temple or *Vihara* is of the capacity to hold and acquire property. The learned Counsel further submitted that for nearly two hundred years, temples have been considered capable of holding property. The learned Counsel submits that in the case of ***Ven. Omare Dhammapala Thero V. Rajapakshage Pieris and others [2004] 1 SLR 1***, the Supreme Court has already clarified the position with regard to the capacity of a temple to acquire and hold property. The learned Counsel for the plaintiff also refers to the case of ***Charles V Appu 19 N.L.R 242***, where it was found that a temple is in fact a *corporation* that often acquires property by ordinary civil modes of acquisition
12. In case of ***Rev. Mapitigama Buddharakkita V. D.E. Wijewardena (supra)***, the Privy Council affirming the decision of the Supreme Court held that, a Buddhist temple is not a juristic person and cannot therefore receive or hold property. It was further held that the Buddhist Temporalities Ordinance does not give either expressly or by implication, corporate status to a Buddhist temple. Addressing this issue of the capacity of a temple to hold property, *Lord Denning* held;

*“It is not like the deity of a Hindu temple. It is not a corporation. It has no legal personality”*

13. A similar position was taken in the case of ***Pavisthinahamy V. Rev. Akurala Seelawansa Thero*** [1985] 2 SLR 197, where His Lordship G.P.S De Silva J. held,

*“Our law recognizes only two categories of “persons” who are capable of receiving or owning property – natural persons and legal persons. A Buddhist temple has not been incorporated by statute nor have our courts recognized it as a “person” in the eye of law.”*

14. However, in the case of ***Kosgoda Pangnaseela and Another V. Gamage Pavisthinahamy*** [1986] 3 CALR 48, His Lordship Atukorale J. considered the purpose and effect of Section 23 of the Buddhist Temporalities Ordinance which provides that the ‘*pudgalika property*’ of an individual *bhikku* on his death, if unalienated by him during his lifetime, be deemed to belong to his temple to which such *bhikku* belonged, unless such property had been inherited by such *bhikku*.

15. On that basis, His Lordship Atukorale J. held as follows,

*“On a consideration,...there appears to me...that a Buddhist Vihara or temple is an institution sui generis which is capable in law of receiving and holding property. The view I have formed is that in the context of the past legislation the Buddhist Temporalities Ordinance (Cap 318) recognises a Buddhist temple or Vihara as an institution with the attributes of a corporation for the purpose of acquiring and holding property both movable and immovable.”*

16. This issue was considered at length by Her Ladyship Bandaranayake J. in case of ***Ven. Omare Dhammapala Thero V. Rajapakshage Pieris and others (supra)***, where Her Ladyship has considered all of the above mentioned judgements in addressing this issue.

17. Her Ladyship Bandaranayake J. disagreeing with the view taken by the Privy Council in ***Rev. Mapitigama Buddhakkita V. D.E.***



**Wijewardena (supra)** held that, a temple can acquire property otherwise by way of a *sanghika* dedication.

18. Section 23 of the Buddhist Temporalities Ordinance provides;

*“All pudgalika property that is acquired by any individual bhikku for his exclusive personal use, shall, if not alienated by such bhikku during his lifetime, be deemed to be the property of the temple to which such bhikku belonged unless such property has been inherited by such bhikku.”*

19. Considering section 23 of the Buddhist Temporalities Ordinance, Her Ladyship *Bandaranayake J.* in case of **Ven. Omare Dhammapala Thero (supra)**, stated;

*“Furthermore, the Buddhist Temporalities Ordinance provides for situations where an individual bhikku could acquire property for his exclusive personal use. However, as referred to earlier, section 23 of the Ordinance provides that, such pudgalika property if not alienated by such bhikku during his life time be deemed to be the property of the temple to which such bhikku belonged unless such property has been inherited by such bhikku. In terms of section 23 of the Ordinance, in a situation where an individual bhikku departs from this world, without alienating his ‘pudgalika property’ acquired by him during his life time, such property would deem to be the property of the temple even though such property had been acquired without ceremony and dedication in the manner prescribed in the Vinaya. Therefore it is a conclusive surmise that in addition to sanghika and pudgalika property belonging to a temple, there could be other property which belongs to the temple, but acquired without a ceremony and a dedication in the manner prescribed in the vinaya.”*

20. Hence, it is clear that a temple or *vihara* could possess *sanghika* property, *pudgalika* property and property which neither is *sanghika* nor *pudghalika* property but could be treated as temple property and that the present Buddhist Temporalities Ordinance recognizes a Buddhist temple as an institution with the characteristics of corporation which could acquire and hold movable and immovable property by the ordinary civil modes of acquisition.
21. The learned Judges of the Civil Appellate High Court have taken the same view on the same basis. Therefore, for the reasons stated above, the question of law No.4 is answered in the affirmative.
22. Thus, I affirm the decision of the learned Judges of the Civil Appellate High Court of Central Province holden in *Kandy*. The appeal is dismissed with costs.

*The appeal is dismissed with costs.*

**JUDGE OF THE SUPREME COURT**

**JUSTICE A.H.M.D. NAWAZ**

I agree

**JUDGE OF THE SUPREME COURT**

**JUSTICE ARJUNA OBEYESEKERE**

I agree

**JUDGE OF THE SUPREME COURT**