

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

Ven. Gatamanne Sasanaratana
Thero,
Siri Sunanda Maha Viharaya,
Beliatta.
Defendant-Appellant-Appellant

SC/APPEAL/171/2014
SP/HCCA/TA/01/2005/F
DC TANGALLE 2553/L

Vs.

Ven. Gatamanne Dhammalankara
Thero,
Siri Sunanda Maha Viharaya,
Beliatta.
Presently at:
Sri Vivekaramaya,
Lalpe, Hakmana.
Plaintiff-Respondent-Respondent

Before: Hon. Chief Justice Jayantha Jayasuriya, P.C.
Hon. Justice Yasantha Kodagoda, P.C.
Hon. Justice Mahinda Samayawardhena

Counsel: Manohara De Silva, P.C. with Hirosha Munasinghe for the
Defendant-Appellant-Appellant.

Rohan Sahabandu, P.C. with Chathurika Elvitigala for the
Plaintiff-Respondent-Respondent.

Argued on: 01.10.2024

Written Submissions on:

By the Appellant on 24.10.2024

By the Respondent on 16.10.2024

Decided on: 12.11.2024

Samayawardhena, J.

The plaintiff, Gatamanne Dhammalankara Thero, instituted this action in the District Court of Tangalle against the defendant, Gatamanne Sasanaratana Thero, seeking a declaration that he is the controlling Viharadhipathi of Siri Sunanda Maha Viharaya of Beliatta, the ejection of the defendant, and damages. The defendant countersued for Viharadhipathiship of the said temple. After trial, the District Court entered judgment for the plaintiff, which was affirmed by the High Court of Civil Appeal of Tangalle. Hence this appeal by the defendant to this Court.

The plaintiff in his evidence accepted that Hakmana Gunananda Thero died in 1956 leaving three pupils: Kakunewala Indagutta Thero (the most senior pupil), Tharaperiye Buddhasoma Thero (the second most senior pupil) and Walakande Dhammawasa Thero (the third most senior pupil). Dhammawasa Thero died in 1968, Indagutta Thero died in 1969, and Buddhasoma Thero died in 1972.

The plaintiff's position is that Indagutta Thero and Buddhasoma Thero forfeited their rights to Viharadhipathiship by abandonment, and therefore, after the death of Gunananda Thero, Dhammawasa Thero became the Viharadhipathi by operation of the rule of pupillary succession. According to the Upasampada Declaration marked P5, the plaintiff is a pupil of Dhammawasa Thero. Consequently, the plaintiff

claims that he is entitled to the Viharadhipathiship following the death of Dhammawasa Thero.

The defendant denies that Indagutta Thero and Buddhasoma Thero forfeited their rights to Viharadhipathiship by abandonment. He asserts that Dhammawasa Thero was only the *de facto* Viharadhipathi of the temple, whereas the *de jure* Viharadhipathi was Indagutta Thero. He further states that the two pupils of Indagutta Thero (whose Upasampada Declarations were marked P11 and P12) disrobed after the death of Indagutta Thero, and therefore, upon the death of Dhammawasa Thero, Owilane Dhammaransi Thero who was a pupil of Buddhasoma Thero was appointed as the Viharadhipathi, as evidenced by P9.

The Upasampada Declaration of Dhammaransi Thero marked V1 shows that, Dhammaransi Thero was a pupil of Buddhasoma Thero. The Upasampada Declaration of the defendant marked P7 shows that, the defendant is a pupil of Dhammaransi Thero. Consequently, the defendant claims that he is entitled to the Viharadhipathiship following the death of Dhammaransi Thero in 1984.

The crux of the matter is whether Indagutta Thero and Buddhasoma Thero, the first and second most senior pupils of Gunananda Thero, forfeited their rights to Viharadhipathiship by abandonment. If they did, the plaintiff must succeed, and if they did not, the defendant must succeed.

Both parties accept that the succession to the Viharadhipathiship of this temple is governed by the rule of pupillary succession (ශිෂ්‍යානු ශිෂ්‍ය භරණිභරාව). The rule of pupillary succession entails succession from pupil to pupil in order of seniority, not from pupil to co-pupil/fellow-pupil/collateral-pupil, notwithstanding that the co-pupil is more senior than the pupil who is in the direct line of succession. This ensures

succession by the most senior pupil to his tutor. If B and C are pupils of A, after the death of A as Viharadhipathi, B succeeds to the Viharadhipathiship as the senior pupil of A. After the death of B, the Viharadhipathiship passes to the senior pupil of B, not to the fellow-pupil C.

In *Parusselle Dhammejoty Unnanse v. Tikiri Banda Parenatale and Others* (1881) 4 SCC 121 at 123, Dias J. stated:

[T]he well-known tenure of Sisyanu Sisiya Parampararve, which means 'pupillary succession' or 'succession from pupil to pupil'. The second word 'anu' means 'each by each' or 'orderly', and the effect of that word seems to me to limit the succession to the descending line, to the exclusion of both the ascending and the collateral lines. Thus we see that, according to the strict grammatical meaning of the words Sisyanu Sisiya Parampararve, the line of succession is limited to pupils of the descending line.

It is against the rule of pupillary succession for a Viharadhipathi to appoint a co-pupil to the Viharadhipathiship over his own pupils. (*Gunananda Unnanse v. Dewarakita Unnanse* (1924) 26 NLR 257, *Warakapitiya Sangananda Terunnanse v. Meeruppe Sumanatissa Terunnanse* (1963) 66 NLR 394) However, it is open to a Viharadhipathi to appoint any particular pupil as his successor for different reasons. (*Dhammajothi v. Sobita* (1913) 16 NLR 408 at 409, *Jinaratna Thero v. Somaratana Thero* (1946) 47 NLR 228, *Basnagoda Hemaloka v. Sasnagoda Hemaloka* [1991] 2 Sri LR 224 at 229-230, *Pannaloka Thero v. Sangananda Thero* [1991] 2 Sri LR 230 at 243-244) Such an appointment need not necessarily be in writing but must be clear and unambiguous. (*Sirinivasa Thero v. Wimaladhamma Thero* [1985] 2 Sri LR 40, *Thalawatugoda Siriratna Thero v. Veherewatte Ariyawansa Thero* [1995] 2 Sri LR 139)

Abandonment of Viharadhipathiship constitutes total severance, both physically and mentally, of association with the temple to which the priest has the legal right to Viharadhipathiship. It needs to be done by the priest consciously and deliberately. There is no presumption in favour of abandonment, but rather the presumption is against it. One reason for such scrutiny is that abandonment affects not only the rights of the relevant priest but also the rights of his pupils. In other words, if the tutor is proved to have abandoned his right to Viharadhipathiship, it affects the pupillary succession. The priest alleging abandonment of lawful rights to the Viharadhipathiship of another priest must prove this claim strictly by cogent evidence, not by conjectures. No hard and fast rules can be laid down to prove abandonment. It is a question of fact that should be decided on the unique facts and circumstances of each case.

There is no requirement that the Viharadhipathi must take residence in the temple of which he is the Viharadhipathi or claiming to be the Viharadhipathi for him to keep that right alive. In terms of section 2 of the Buddhist Temporalities Ordinance, No. 19 of 1931, as amended, Viharadhipathi means “*the principal bhikkhu of a temple other than a dewale or kovila, whether resident or not.*” The presiding priest, not necessarily the residing priest, is considered the Viharadhipathi of the temple. According to the Buddhist Temporalities Ordinance, the principal bhikkhu or the presiding bhikkhu is the “controlling Viharadhipathi”, who controls and administers the temple and provides leadership. He is the *de jure* Viharadhipathi. It is the *de jure* Viharadhipathi, not the *de facto* Viharadhipathi, who is entitled to the protection of the Buddhist Temporalities Ordinance. (*Dhammadaja Thero v. Wimalajothi Thero* (1977) 79(1) NLR 145 at 160-162, *Amarawansa Thero v. Panditha Galwehera Amaragnana Thero* [1985] 2 Sri LR 275) The *de jure* Viharadhipathi is typically a senior and elderly priest who holds the Viharadhipathiship of several temples. He takes residence in one of his

temples based on his convenience. He is unable to control and administer the temples by himself but does so through other priests who reside in the temples. These other priests act as *de facto* Viharadhipathis. However, based on their control and administration of the affairs of the temple under the *de jure* Viharadhipathi, these other priests cannot claim Viharadhipathiship outside the rule of pupillary succession.

Warakapitiya Sangananda Terunnanse v. Meeruppe Sumanatissa Terunnanse (1963) 66 NLR 394 at 396, Sansoni J. (as he then was) declared:

It is quite usual for a monk who is the Viharadhipathi of several temples to give charge of one or more of those temples to other monks, who would normally reside in and look after those temples and their temporalities. It is not always convenient for a Viharadhipathi to look after temples which are situated some distance away from the temple in which he resides, and he may appoint managers or deputies for this reason. Any acts of possession or management by such appointees are referable to that appointment; they would all be on behalf of the lawful Viharadhipathi and would not give the appointee any claim to that title.

In *Jinaratana Thero v. Dhammaratana Thero* (1955) 57 NLR 372 at 374, Basnayake A.C.J. (as he then was) stated:

The office of Viharadhipati is not one that can be abandoned by mere residence in another place. There is nothing in the Vinaya or the decisions of this Court which requires a Viharadhipati to reside in the temple of which he is Viharadhipati. A bhikkhu who is Viharadhipati of more than one temple must of necessity reside in one place at a time and the mere fact that he makes one of the

temples his permanent residence does not operate as a renunciation of his right to the others.

Basnayake A.C.J. in *Dhammavisuddhi Thero v. Dhammadassi Thero* (1955) 57 NLR 469 at 472 made it clear that residence in a temple, along with the management of its day-to-day affairs for any length of time, does not confer upon a priest the right to claim Viharadhipathiship of that temple:

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 vihare 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.

The same was emphasized by Basnayake C.J. in *Panditha Watugedera Amaraseeha Thero v. Tittagalle Sasanatilake Thero* (1957) 59 NLR 289 at 290-291:

The fact that a bhikkhu takes an active interest in the religious and other activities of a temple gives him no right to be viharadhipati even if his activities extend over a long period of time, nor is he entitled in law to base a claim to the temple on the ground that he has helped to improve it. A de jure viharadhipati does not lose his rights merely because he has expressly or impliedly permitted another to occupy his temple and take an active interest in its maintenance and improvement.

As I stated previously, proof of abandonment requires both a physical and a mental element. It must be proved that staying away from the temple was done with the conscious intention of severing the relationship with the temple. It is not always possible to prove intention by direct evidence. Intention can be inferred from the facts and circumstances of the case. However, such inferences can only be drawn when there is clear and unambiguous evidence to support them. Basnayake A.C.J. in *Panditha Watugedera Amaraseeha Thero's* case remarked at page 374 that “*an intention to renounce will not be inferred unless that intention clearly appears therefrom upon a strict interpretation of the facts and circumstances of the case. If the facts and circumstances leave the matter in doubt then the inference to be drawn is that there is no renunciation.*”

In *Welakanda Dhammasiddi v. Kamburupitiye Somaloka Thero* [1990] 1 Sri LR 234 at 243, Ranasinghe C.J. put this in clearer terms:

[A]bandonment connotes both a physical and a mental element: it means and requires both a giving-up of or going away from the temple, coupled with a clear manifestation of a decision not to attend to the functions and duties which are traditionally associated with and are expected to be performed by one who holds such office: whether a person, who was, in law, entitled to succeed to the incumbency, has so conducted himself is a question of fact: that such

conduct must be conscious, deliberate, and must be clearly established and should not be left in doubt.

In *Welakanda Dhammasiddi's* case, following the death of the previous incumbent, a meeting was convened to appoint a Viharadhipathi, presided over by the Chief Sanga Nayake of the District. The defendant's name was proposed, and the plaintiff seconded this proposal on the basis that he was residing in one of the temples of the *paramparawa* and had accepted an appointment as a teacher in the Education Department. This Court held that such secondment does not constitute abandonment of the rights to Viharadhipathiship of that temple.

In *Kalegama Ananda Thero v. Makkuddala Gnanissara Thero* [1999] 2 Sri LR 218 at 222, G.P.S. de Silva C.J. stated that "*In Buddhist Ecclesiastical Law there is a strong presumption against the abandonment of the legal right of the lawful Viharadhipathi to function as the Viharadhipathi of the Vihare.*" In that case, the main item of evidence relied upon by the defendant to prove abandonment on the part of the plaintiff's tutor was an admission made in a previous case filed by the defendant's tutor to eject a trespasser from the temple land. In that instance, the plaintiff's tutor, when called as a witness had stated that the defendant's tutor (the plaintiff in that case) was the rightful Viharadhipathi of the temple and that he makes no claim to the Viharadhipathiship of that temple. Chief Justice G.P.S. de Silva stated that the abandonment could not be proved on that evidence where the intention of both priests was to protect the temple property from the trespasser. This underscores that no strict rules can be formulated to decide on abandonment and even admissions made in judicial proceedings in a different context are not decisive in proving such a claim.

In *Dhammadaja Thero v. Wimalajothi Thero* (1977) 79(1) NLR 145, the plaintiff's tutor appointed the defendant who was a co-pupil of his as his

successor to the Viharadhipathiship by a Deed. All of the tutor's pupils including the plaintiff who was his most senior pupil signed the Deed expressing their consent to that appointment. On the question of abandonment, it was held that the said consent given by the plaintiff to please his tutor was not decisive to hold that the plaintiff forfeited his rights to Viharadhipathiship by abandonment. Gunasekera J. at page 193 went so far as to state *inter alia* that “*the Buddhist Ecclesiastical Law does not recognize such a renunciation of the right to function as Viharadhipathi. The office of Viharadhipathi is inalienable and a priest on whom this office has devolved according to the sisyanu sisya paramparawa rule of succession only holds it in his life time to pass it on according to law, to his senior pupil or such other pupil as he may select.*”

The plaintiff's own evidence in the instant case proves that Indagutta Thero and Buddhasoma Thero did not completely sever their relationship with the temple so as to arrive at a finding against them on abandonment. They resided in different temples. However, according to the evidence of the plaintiff and his witness Edwin, Indagutta Thero and Buddhasoma Thero participated in various significant ceremonies at the temple, including robing (මහන) ceremonies, Upasampada (උපසම්පදා) ceremonies, and Maha Pinkamas (මහ පිංකම්). Notably, Buddhasoma Thero passed away in the temple in question. It is unnecessary for me to quote the evidence verbatim. There is no cogent evidence to establish that Indagutta Thero and Buddhasoma Thero completely severed their ties with the temple.

The Civil Appellate High Court held that Indagutta Thero and Buddhasoma Thero did not completely sever the relationship with the temple. The High Court accepted that both Indagutta Thero and Buddhasoma Thero participated in the important events of the temple but concluded that there was no evidence indicating their involvement in

the specific duties assigned to a Viharadhipathi during these events. Notably, the High Court did not describe the duties of a Viharadhipathi, nor did it specify the particular responsibilities that Indagutta Thero and Buddhasoma Thero allegedly failed to fulfil. The High Court articulated its position as follows:

ඉන්ද්‍රගුප්ත හිමියන් ද, බුද්ධිසෝම හිමියන් ද, ප්‍රශ්නගත විහාරස්ථානයට ආගිය බව පැමිණිලිකරු විසින් පිළිගෙන ඇත. එම හික්ෂුන් වහන්සේලා දෙනම අවස්ථා කිහිපයකදී මෙම පන්සලට පැමිණි බව පැමිණිලිකරු විසින් පිළිගෙන ඇත. පන්සලේ මහ පින්කමට බුද්ධිසෝම හිමියන් පැමිණි බව පැමිණිලිකරු විසින් පිළිගෙන ඇත. එමෙන්ම ඉන්ද්‍රගුප්ත හිමියන්ද ප්‍රශ්නගත පන්සලට වරින්වර පැමිණි බව පැමිණිලිකරු විසින් පිළිගෙන ඇත. ධම්මාවාස හිමියන්ගේ ආදාහනයට ඉන්ද්‍රගුප්ත හිමියන් පැමිණි බවත් පැමිණිලිකාර ස්වාමීන්වහන්සේ පැවිදි වූ දිනයේදී උපසම්පදා වූ දිනයේදී ද ඉන්ද්‍රගුප්ත හිමියන් ප්‍රශ්නගත විහාරස්ථානයට පැමිණි බවත් පැමිණිලිකරු විසින් පිළිගෙන ඇත. ඒ අනුව ඉන්ද්‍රගුප්ත හිමියන් සහ බුද්ධිසෝම හිමියන් වරින්වර ප්‍රශ්නගත පන්සලට පැමිණි බව නිගමනය කල හැකිය. වැදගත් අවස්ථාවල එසේ පැමිණි බව නිගමනය කල හැකිය. කෙසේ වෙතත් ඉන්ද්‍රගුප්ත හිමියන් සහ බුද්ධිසෝම හිමියන් ප්‍රශ්න ගත විහාරයේ විහාරාධිපති ධුරයට ආනුසංගික කටයුතුවල නිරත වූ බවට කිසිම සාක්ෂියක් නඩු විභාගයේදී ඉදිරිපත් වී නැත. එම ස්වාමීන්වහන්සේලා දෙනම විහාරස්ථානයේ වැදගත් උත්සව අවස්ථාවල එම විහාරස්ථානයේ විහාරාධිපති ධුරයට සම්බන්ධ කටයුතු වල නිරත වූ බවට කිසිම සාක්ෂියක් ඉදිරිපත් වී නැත.

In *Dhammavisuddhi Thero v. Dhammadassi Thero* (1955) 57 NLR 469 at 472, Basnayake A.C.J. observed that “*There [are] no particular duties, spiritual or temporal, which a viharadhipati need perform for the purpose of keeping alive his rights*”. However, according to the Buddhist Temporalities Ordinance, there are specific rights and duties associated with the role of the controlling Viharadhipathi. Section 4(2) of the Ordinance states “*The management of the property belonging to every temple exempted from the operation of the last preceding subsection but not exempted from the operation of the entire Ordinance shall be vested in the viharadhipati of such temple, hereinafter referred to as the ‘controlling*

viharadhipati’.” However, as I explained previously, this does not mean that the *de jure* Viharadhipathi must personally discharge those duties by himself.

It is clear that P9 dated 25.10.1968 is the central document in the case. Although P9 was marked by the plaintiff, both parties heavily rely upon it. As the document itself expressly indicates, it relates to the appointment of the Viharadhipathi of the temple in question following the death of the then Viharadhipathi, Dhammawasa Thero, whom the defendant states was the *de facto* Viharadhipathi. The High Court regarded P9 as decisive evidence in support of the claim of abandonment:

මෙහිදී විශේෂයෙන් සැලකිල්ලට ගත යුතු කාරණයක් වන්නේ හක්මන ගුනානන්ද හිමියන්ගේ ජ්‍යෙෂ්ඨ ශිෂ්‍යයින් දෙදෙනා වන ඉන්ද්‍රගුප්ත හිමියන් සහ බුද්ධිසෝම හිමියන් යන දෙදෙනා විසින් ද පැ.9 ලේඛනයට අත්සන් තබා ඇති බවය. එයින් පෙනී යන්නේ එම දෙදෙනාට වඩා කනිෂ්ඨ ශිෂ්‍යයකු වූ වලකන්දේ ධම්මාවාස හිමියන් විසින් ප්‍රශ්නගත විහාරස්ථානයේ විහාරාධිපති ධුරය හෙබවූ බව ඉන්ද්‍රගුප්ත හිමියන් විසින් මෙන්ම බුද්ධිසෝම හිමියන් විසින් ද පිළිගෙන ඇති බවය. වලකන්දේ ධම්මාවාස හිමියන් විසින් ප්‍රශ්නගත විහාරස්ථානයේ විහාරාධිපති ධුරය දැරූ බව ඉන්ද්‍රගුප්ත හිමියන් විසින් හා බුද්ධිසෝම හිමියන් විසින් එම ලේඛනයට අත්සන් තැබීමෙන් පිළිගෙන ඇතිවා පමණක් නොව ඒ අවස්ථාවේ හිස් වූ විහාරාධිපති ධුරයට හිමිකම් කීම සඳහා ඉන්ද්‍රගුප්ත හිමියන් විසින් සහ බුද්ධිසෝම හිමියන් විසින් ඉදිරිපත්වී නොමැති බවද පෙනේ. එයින් පැහැදිලිව පෙනී යන්නේ ඉන්ද්‍රගුප්ත හිමියන් විසින් සහ බුද්ධිසෝම හිමියන් විසින් ප්‍රශ්නගත විහාරස්ථානයේ විහාරාධිපති ධුරයට ඇති අයිතිවාසිකම අත්හැර දමා තිබූ බවයි. පැමිණිල්ලේ නඩුව වෙනුවෙන් සාක්ෂි දී ඇති එඩ්වින් වර්ණකුලසූරිය සාක්ෂිකරු විසින් දී ඇති සාක්ෂිය සැලකිල්ලට ගත යුතු වන්නේ ඉහත සඳහන් කරුණු පසුබිමෙහි තබා ගෙනය.

The death of Dhammawasa Thero on 20.10.1968 was undoubtedly a significant event. There is no dispute that both Indagutta Thero and Buddhasoma Thero attended the funeral. The date on which the cremation took place is not clear. As the High Court admits, they

attended main events of the temple. Following the funeral rituals, a solemn assembly of senior and junior monks related to the temple convened on 25.10.1968, as per P9, to appoint a succeeding Viharadhipathi. Both Indagutta Thero and Buddhasoma Thero participated in the meeting. Had there had been a total severance of their association with the temple, they would not have taken part in this important event. According to P9, the meeting was chaired by none other than Indagutta Thero. This goes to indicate that he was the *de jure* Viharadhipathi of the temple. At that time, Indagutta Thero and Buddhasoma Thero were elderly monks.

The unanimous decision of the clergy, as recorded in P9, was to appoint Owilane Dhammaransi Thero as the permanent Viharadhipathi. All senior priests, including Indagutta Thero and Buddhasoma Thero, signed the document. It appears that the plaintiff also attended this meeting, as he stated in his evidence that P9 was handed over to him for safekeeping. P9 is a two-page document containing names and signatures, among other details. Let me quote only the first paragraph of P9 to provide some insight into the document:

බෙලිඅත්තේ සිරිසුනන්ද විහාරස්ථානයේ විහාරාධිපති ධූරය

මෙම විහාරාධිපති ධූරය දැරූ වලකන්දේ ධම්මාවාස මහා ස්ථවිරයන් වහන්සේගේ අභාවය 1968.10.25 දින සිදු වූයෙන් එම ආදාහන උත්සවයට 1968.10.25 දින රැස් වූ ගරුතර කැකුණේවෙල ඉන්ද්‍රගුත්ත මහා ස්ථවිරයන් වහන්සේ ප්‍රමුඛ මහා සංඝයා විසින්, හිස් වූ බෙලිඅත්තේ සිරිසුනන්ද මහා විහාර ස්ථානයේ අධිපති ධූරයට පණිවිත ඔව්ලානේ ධම්මරංසි මහා ස්ථවිරයන් වහන්සේ ස්ථිරව පත් කරන ලද බව මෙයින් ප්‍රකාශ කරමු.

P9 was marked by the plaintiff at the trial to establish two key matters:
 (a) that at the time of the demise of Dhammawasa Thero, Dhammawasa Thero held the position of Viharadhipathi of the temple in question, and

(b) that, in terms of seniority, the plaintiff is recognized as the first pupil and the defendant as the sixth pupil of Dhammawasa Thero.

According to the Upasampada Declaration of Dhammaransi Thero marked V1, he is the pupil of Buddhasoma Thero, and according to the Upasampada Declaration of the defendant marked V2, he is the pupil of Dhammaransi Thero, not Dhammawasa Thero, as indicated in P9. The evidence of Edwin proves that the relationship between Buddhasoma Thero (tutor) and Dhammaransi Thero (pupil) was close and warm. He stated that when Buddhasoma Thero was in his last stage of his life, Dhammaransi Thero brought him to the temple in question and looked after him. I have already stated that Buddhasoma Thero passed away in this temple.

When inconsistencies arise regarding details of priesthood among various documents, the details contained in the Upasampada Declaration should take precedence. The Upasampada ceremony is conducted with the utmost solemnity and adheres to the highest traditions and responsibilities, as affirmed in *Rev. Dharmatilleke Thero v. Rev. Buddharakkita Thero* [1993] 1 Sri LR 405. Therefore, in assessing the details recorded in the Upasampada Declaration V2 and the minutes of the meeting recorded in P9, the Court should regard the information in V2 as accurate. V2 has been signed by the defendant, Dhammaransi Thero, and the Mahanayaka Thero.

If Dhammawasa Thero was the *de jure* Viharadhipathi and the plaintiff was the most senior pupil of Dhammawasa Thero, it remains unclear why the plaintiff was not appointed as the Viharadhipathi of the temple. At that time, the plaintiff was not a Samanera Bhikku but an Upasampada Bhikku. The plaintiff asserts in his evidence that, being only 21 years old at that time, Dhammaransi Thero was appointed as the Viharadhipathi

as a temporary measure. However, there is no impediment to appointing a 21-year-old Upasampada Bhikku as the Viharadhipathi.

The appointment of Dhammaransi Thero as the Viharadhipathi was not, according to P9, a temporary arrangement until the plaintiff became a more senior priest. It was a permanent appointment (හිස් වූ බෙලිඅත්තේ සිරිසුනන්ද මහා විහාර ස්ථානයේ අධිපති ධුරයට පත්වූ ඔව්ලාන් ධම්මරංසි මහා ස්ථවිරයන් වහන්සේ ස්ථිරව පත් කරන ලද බව මෙයින් ප්‍රකාශ කරමු.). The plaintiff has not raised any objections to this appointment for 16 years, whether expressly or impliedly, to the senior priests, the office of the Commissioner of Buddhist Affairs, or any other official until after the death of the appointee, Dhammaransi Thero, in 1984.

After the death of Dhammaransi Thero in 1984, the plaintiff waited another 12 years to institute this action in 1996 to claim for Viharadhipathiship. The plaintiff states that he attempted to settle the dispute thorough *Nikaya*. However, his counsel in the District Court has conceded that when the rule of pupillary succession applies, *Nikaya* cannot decide on Viharadhipathiship.

In explaining the reason for abandonment by Buddhasoma Thero, the plaintiff and witness Edwin state that Buddhasoma Thero was accused of immoral conduct and therefore he left the temple. There is no credible evidence to substantiate this. The plaintiff and witness Edwin also do not give affirmative evidence on that matter. They, in my view, stated it in passing. If that allegation is correct, I fail to understand how Buddhasoma Thero participated in the important events of the temple including the decisive meeting to select a Viharadhipathi after the demise of Dhammawasa Thero. His involvement in such critical affairs suggests a close association with the temple, contradicting the assertion of abandonment.

Edwin in his evidence also stated that, after the death of Dhammawasa Thero, he along with several other members of the Dayaka Sabhawa visited Buddhasoma Thero at a different temple where he resided to invite him to accept the Viharadhipathiship of the temple in question, which he declined. This evidence was given to prove abandonment of Viharadhipathiship but it also supports the contrary. If Buddhasoma Thero was forced to leave the temple on an allegation of immoral conduct, I cannot understand how the Dayaka Sabhawa members invited him to accept the Viharadhipathiship.

Assuming without conceding that the said allegation is correct, according to Buddhist Ecclesiastical Law, it does not affect the defendant's right to claim Viharadhipathiship under pupillary succession. The pupillary right of succession remains intact regardless of any alleged wrongdoing by the tutor. It was held in *Dammaratna Unnanse v. Sumangala Unnanse* (1910) 14 NLR 400: "*The fact that a tutor disrobes himself for immorality or other reason does not affect the pupil's status as regards the right of pupillary succession.*"

However, the abandonment of rights to the Viharadhipathiship by the tutor does affect the rights of the pupil to the Viharadhipathiship, as the rights of the latter are contingent upon those of the former. Thus, any determination regarding the abandonment of rights by the tutor must be carefully considered, as it directly impacts the pupil's entitlement to the Viharadhipathiship.

Ranasinghe C.J. in *Welakanda Dhammasiddi v. Kamburupitiya Somaloka Thero* [1990] 1 Sri LR 234 at 239 explained this in the following manner:

It has been held in Dammaratna Unnanse v. Sumangala Unnanse (supra) that when a tutor disrobes himself for immorality, this does not deprive his pupils of their rights of pupillary succession. But I

think the case is different where the tutor abandons his right to an incumbency. Disrobing, with the intention of giving up the priesthood, is the equivalent, ecclesiastically, of personal demise, and it does not entail, any more than death entails, an abandonment of rights, but merely a personal incapacity to exercise them. These rights can accordingly descend to a pupillary successor. The abandonment of an incumbency by a priest, on the other hand, constitutes the forfeiture of that to which his pupils' right of succession are attached, namely the incumbency itself. The priest remains a priest, but abandons his rights to the incumbency, upon which the pupillary rights of succession are dependent. There accordingly remain no rights for the pupil to inherit.

At the argument before this Court, learned President's Counsel for both parties accepted that the main questions of law to be decided by this Court are:

- (a) Did the High Court of Civil Appeal err in law when it decided that Indagutta Thero and Buddhasoma Thero abandoned the rights to the Viharadhipathiship of the temple in question?
- (b) Did the High Court of Civil Appeal fail to analyze P9 in its proper perspective?

On the facts and circumstances of this case, I hold that:

- (a) In the order of seniority, Indagutta Thero, Buddhasoma Thero and Dhammawasa Thero are pupils of Hakmana Gunananda Thero;
- (b) The plaintiff has failed to prove that Indagutta Thero and Buddhasoma Thero forfeited their rights to Viharadhipathiship by abandonment;
- (c) Dhammawasa Thero was only the *de facto* Viharadhipathi of the temple in charge of its affairs;

- (d) After the death of Dhammawasa Thero, Dhammaransi Thero became the *de jure* Viharadhipathi of the temple as the pupil of Buddhasoma Thero;
- (e) After the death of Dhammaransi Thero, the defendant became the *de jure* Viharadhipathi of the temple as the pupil of Dhammaransi Thero.

I answer both questions of law in the affirmative. The judgments of the District Court and the High Court of Civil Appeal are set aside and the appeal is allowed. The plaintiff's action of the District Court shall stand dismissed. The District Court is directed to enter judgment as prayed for in paragraph (iii) of the amended answer dated 22.03.1999 declaring that the defendant is the lawful Viharadhipathi of the temple in question. Let the parties bear their own costs.

Judge of the Supreme Court

Chief Justice Jayantha Jayasuriya, P.C.

I agree.

Chief Justice

Justice Yasantha Kodagoda, P.C.

I agree.

Judge of the Supreme Court