

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

SC. Appeal No. 177/2010

In the matter of an application for Leave to Appeal under Section 5 C of the High Court of the Provinces (Special Provisions) Act No. 54 of 2006.

SC.HC.CA.LA. Application No.

125/2010

Yatawatte Dhammananda Thero

CP/HCCA/738/2005

Sri Maha Bodhi Maha Vihara,

D.C. Kandy Case No. **X11946**

Bahirawakanda,

Kandy.

**Plaintiff-Respondent-Petitioner-Appellant**

**Vs.**

Bahirawakande Dhammawansa Thero,

Sri Maha Bodhi Vihara,

Bahirawakanda,

Kandy.

**Defendant-Appellant-Respondent-Respondent**

BEFORE : SISIRA J. DE ABREW, J.

K.T. CHITRASIRI, J. &

PRASANNA S. JAYAWARDENA, PC J.

COUNSEL : Manohara de Silva, PC for  
the Plaintiff-Respondent-Petitioner-Appellant

Kumar Arulanantham PC with Ms. Devika Panagoda for the  
Defendant-Appellant-Respondent-Respondent

ARGUED ON : 22.07.2016

WRITTEN SUBMISSION

TENDERED ON : 31.1.2011 by the Appellant  
25.7.2011, 23.1.2012, 1.8.2016 and 16.8.2016  
by the Respondent

DECIDED ON : 23.11.2016

SISIRA J. DE ABREW J.

This is an appeal by the Plaintiff-Respondent-Petitioner-Appellant (hereinafter referred to as the Plaintiff-Appellant) against the judgment of the Civil Appellate High Court dated 24.3.2010 wherein it set aside the judgment of the learned District Judge who held in favour of the Plaintiff-Appellant.

The Plaintiff-Appellant, by his plaint, inter alia, prayed for a declaration that he is the lawful Viharadhipathi of the temple described in the plaint. The learned District Judge held in favour of the Plaintiff-Appellant. Being aggrieved by the said judgment of the learned District Judge, the Defendant-Appellant-Respondent-Respondent (hereinafter referred to as the Defendant-Respondent) appealed to the

Civil Appellate High Court (hereinafter referred to as the High Court). The said High Court set aside the judgment of the learned District Judge. Being aggrieved by the said the judgment of the High Court, the Plaintiff-Appellant has appealed to this court. This court, by its order dated 10.12.2010, granted leave to appeal on the questions of law set out in paragraphs 11A to 11J of the petition of the Plaintiff-Appellant dated 4.5.2010 which are set out below.

- a) The said judgment is contrary to law and against the weight of evidence;
- b) The learned Judges of the High Court failed to consider that an appointment as the Viharadhipathiship of the aforesaid Vihara is governed by the rules of pupillary succession and that the Plaintiff, being the senior most pupil of the original Viharadhipathi, was entitled to be appointed as Viharadhipathi of the said Vihara;
- c) The High Court erred in law in holding that the appointment of Jinawansa Thero who was not a pupil of the deceased original Viharadhipathi, was legal. Where rules of pupillary succession applies, only a pupil can be appointed and not any other Bhikku who is not a pupil;
- d) The High Court failed to consider that in any event, the pupillary succession of the original Viharadhipathi did not fail and therefore the purported appointment of Jinawansa Thero was bad in law;
- e) The High Court erred in holding that another Bhikku could have been appointed notwithstanding the existence of a senior pupil. This conclusion was erroneous for the reason that even in the Kathikawatha and Chapter of

the Amarapura Maha Nikaya, if the senior pupil is overlooked, only another pupil of the Viharadhipathi can be considered and not any other Bhikku;

- f) The High Court erred in holding that the deviation from the rules of pupillary succession and the appointment of Jinawansa Thero under clause (d) of Schedule 2 of P7 is legal;
  
- g) The High Court failed to consider the overwhelming evidence in support of the fact that the Plaintiff is the senior most pupil of the original Viharadhipathi and is senior to the Defendant in being ordained and receiving Upasampada and that upon the death of the original Viharadhipathi, the Plaintiff has duly been appointed as Viharadhipathi of the said Vihara and administration of the said Vihara has been handed over to the Plaintiff by documents marked P1 and P2;
  
- h) The High Court failed to consider that as at the date of instituting this action, the Plaintiff has been lawfully and rightfully appointed as Viharadhipathi of the said Vihara that Jinawansa Thero and/or the Defendant's appointment as the Viharadhipathi are dated subsequent to the filing of this action;
  
- i) The High Court erred in failing to consider the admission by Kandegedara Sri Sumanawansa Thero who is the Mahanayake of Udarata Amarapura Chapter that the reason to cancel the Plaintiff's appointment as Viharadhipathi and to appoint Jinawansa Thero was due to the fact that Jinawansa Thero was sick and did not have a place to reside and expressed willingness to hold the Viharadhipathiship of the said temple and that

subsequently the Defendant was appointed as Viharadhipathi by Jinawansa Thero (vide pages 153 and 160);

- j) The High Court erred in holding that the relief prayed for in the prayer to the plaint cannot be granted;

The Defendant-Respondent was robed in 1977 and the Plaintiff-Appellant was robed in 1979. The position of the Plaintiff-Appellant was that the Defendant-Respondent lost his seniority due to disrobing in 1981. Learned President's Counsel (PC) for the Plaintiff-Appellant submitted that both the Plaintiff-Appellant and the Defendant-Respondent are pupils of Ampitige Dhammarama Thero who was the Viharadhipathi of the temple described in the plaint and that the said Rev. Thero died on 26.11.1993. He further submitted that although the Defendant-Respondent was robed in 1977, he lost his seniority as he disrobed himself in 1981. He therefore submitted that the Plaintiff-Appellant is entitled to the Viharadhipathiship of the temple. The Plaintiff-Appellant himself, in his evidence, admits that the Defendant-Respondent was robed again in four days time. When I consider the above facts, the most important question that must be decided is whether or not the Defendant-Respondent has disrobed himself in 1981.

Rev.Sumanawansa who was the Mahanayaka Thero of Udarata Amarapura Chapter stated, in his evidence, that the Defendant-Respondent lost his seniority as he disrobed himself. The Plaintiff-Appellant mainly relied on the evidence of Sugathadasa who was a taxi driver to prove the fact that the Defendant-Respondent disrobed himself. According to his evidence, he with the Chief Priest of the Defendant-Respondent went in his taxi near the Kandy Lake; spotted the Defendant-Respondent who was wearing a T shirt and a trouser; on the invitation of the Chief Priest, he (the Defendant-Respondent) went to the temple

with the Chief Priest; and robed himself. According to the evidence of the Plaintiff-Appellant, the Defendant-Respondent was without robes only for four days. The Defendant-Respondent, in his evidence vehemently denied the fact that he disrobed himself and stated that that he is a Buddhist Priest from the day that he was robed. Under these circumstances the most important matter that must be decided is whether evidence of Sugathadasa, the taxi driver, could be accepted against the evidence of the Defendant-Respondent. I now advert to this question. Sugathadasa, in his evidence, admitted that he with the Plaintiff-Appellant came to court to give evidence without summons and he was closely associating with the Plaintiff-Appellant than the Defendant-Respondent. He also, in his evidence, admits that he used to take 1/4<sup>th</sup> of a bottle of liquor in the evening. The Defendant-Respondent, in his evidence, says that he as a Buddhist Priest speaks the truth and that he never disrobed himself. When I consider the above evidence, I prefer to place more reliance on the evidence of the Defendant-Respondent than the evidence of Sugathadasa. Assuming without conceding that what Sugathadasa says is correct, the next question that must be considered is whether the Defendant-Respondent intentionally disrobed himself? Was there an intention on the part of the Defendant-Respondent to renounce the priesthood? If the Defendant-Respondent had had an intention to renounce the priesthood, why did he go to the temple with the Chief Priest when he was invited to come to the temple near the Kandy Lake and robed himself at the temple? If he had an intention to renounce the priesthood, he would have refused the invitation of the Chief Priest. Further according to the evidence of Sugathadasa, when Defendant-Respondent went to the temple, he wore the robes again at the temple. These facts demonstrate that he had not had an intention of renouncing the priesthood. It appears from the above facts that the act of disrobing was only a temporary one. If the Defendant-Respondent

did not have an intention to renounce the priesthood, can it be said that he renounced the priesthood when he disrobed himself for a period of four days? In this connection it is relevant to consider the judicial decision in the case of Somaratne Vs Jinaratne 42 NLR 361. In the said case the defendant, a Buddhist Priest, disrobed himself in order to obtain medical treatment and nursing treatment. The question was whether the defendant lost his seniority when he disrobed himself for the above purpose. Court held thus: “Temporary disrobing in an emergency of a grave illness does not involve the forfeiture of rights.” According to the judicial decision in the above case the defendant did not lose his seniority. It is relevant to state the following passage of the judgment of Soertsz J in the above case at page 363. His Lordship observed thus:

*“It is conceded that on recovering from his illness, the defendant resumed his robes, but it is urged that this resumption had no retrospective force and must be postponed to the plaintiff’s ordination. I cannot accept that submission. Not only does it seem wrong, but it is also contrary to the view taken by Bonser C.J. and Withers J. in the case of Gooneratne Terunanse v. Ratnapala Terunanse. [Matara Cases 227.] In that case it was held that for disrobing to produce such a result as is here claimed, it must be voluntary and with a clear intention to renounce the priesthood.”*

Applying the principles laid down in the above legal literature and considering the facts of this case, I hold that the Defendant-Respondent had not renounced the priesthood when he disrobed himself for a period of four days and that therefore he had not lost his seniority. I have stated the above contention assuming without conceding that the evidence of Sugathadasa, the taxi driver, is true. After considering the facts of this case, I hold that among the Plaintiff-

Appellant and the Defendant-Respondent, the senior pupil is the Defendant-Respondent and that the Defendant-Respondent, after the death of Ampitiya Dhammarama Thero, is entitled to the Viharadhapathiship of the temple described in the plicant.

In view of the above conclusion reached by me, I answer the questions of law set out in paragraphs 11(a),(b),(g) and (j) in the negative. The questions of law set out in paragraphs 11(c), (d),(e),(f),(h) and (i) do not arise for consideration.

For the aforementioned reasons, I dismiss the appeal. In all the circumstances of the case, I do not make an order for costs.

*Appeal dismissed.*

Judge of the Supreme Court.

KT Chitrasiri J

I agree.

Judge of the Supreme Court.

Prasanna Jayawardena PC J

I agree.

Judge of the Supreme Court.