IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

C.A. Case No. 366/2000 (F)

D.C. Matara Case No. L/5499

Rev. Nakulugamuwe Sumanatissa Thero *(Deceased)*

Chief Incumbent of Bomure Viharaya and Gandara Purana Viharaya,

Bomure Viharaya, Kapugama.

PLAINTIFF

Rev. Kanumuldeniye Upali Thero

Gandara Purana Viharaya, Gandara.

Substituted PLAINTIFF

-Vs-

Rev. Urugamuwe Dhammissara Thero *(Deceased)*

Bomure Viharaya, Kapugama.

DEFENDANT

Rev. Pattiyawala Seevali Thero

Bomune Vihara, Kapugama.

Substituted DEFENDANT

AND

Rev. Pattiyawala Seevali Thero

Bomune Vihara, Kapugama.

Substituted DEFENDANT-APPELLANT

-Vs-

Rev. Kanumuldeniye Upali Thero
Gandara Purana Vihara, Gandara.
Substituted PLAINTIFF-RESPONDENT

BEFORE	:	**A.H.M.D. Nawaz, J.**
COUNSEL	:	S.C.B. Walgampaya, P.C. with Nihal Smarasinghe and Upendra Walgampaya for the Substituted Defendant-Appellant. Champaka Ladduwahetty with Keerthi Sri Gunawardena for the Substituted Plaintiff-Respondent.
Decided on	:	18.01.2019

A.H.M.D. Nawaz, J.

The original Plaintiff Nakulugamuwe Sumanathissa Thero (hereinafter sometimes referred to as "the Plaintiff") instituted this action in the District Court of *Matara* against the ordinary Defendant Urugamuwe Dammissara (hereinafter sometimes referred to as "the Defendant") seeking *inter alia* a declaration that he was the Viharadhipathi of Bomure Vihara-the subject-matter of the action. The plaint was amended three times on 24.08.1982; 16.01.1986 and 25.04.1995 and along with the plaint, the Plaintiff had also filed a pedigree. According to the said pedigree, the Plaintiff described the succession as follows:-

- Heelle Kandugoda Ratnajothi Seelawansa Thero
- Heelle Rewatha Thero

- Kapugama Seelawansa Thero
- Nakulugamuwe Sumanatissa Thero (Plaintiff)

The finally perfected the amended plaint averred that he was the Viharadhipathi of Gandara Vihara, and that Bomure Vihara was an adjunct or appurtenant Vihara of Gandara Vihara and that the Plaintiff in his capacity of Viharadhipathi of Gandara Vihara was also the Viharadhipathi of Bomure Vihara.

The Plaintiff further averred that one Heelle Indrajothi Thero, who was at the relevant time the Viharadhipathi of Bomure Vihara by an *ola* writing dated 21.04.1885 had gifted Bomure Vihara to Heelle Rewatha Thero-the Viharadhipathi of Gandara Vihara at that time and there was also an execution of a Deed bearing No. 9202 and dated 05.05.1885 attested by Symon de Alwis, Notary Public, by which the said Heelle Indrajothi Thero handed over Bomure Vihara along with his two pupils to Gandara Vihara. It is this assertion that gives rise to the claim that Bomure Vihara had since 1885 become the adjunct or appurtenant Vihara of Gandara Vihara. In the end the assertion of the original Plaintiff was that since he had become the Viharadhipathi of Gandara Vihara by virtue of pupillary succession, *ipso facto* he was also the Viharadhipathi of Bomure Vihara because Bomure Vihara was an appurtenant Vihara of Gandara Vihara.

The pupillary succession was pleaded as follows: In the pedigree the Plaintiff cited, one finds Kapugama Seelawansa Thero after Heelle Rewatha Thero. Kapugama Seelawansa Thero was a pupil of Heelle Rewatha Thero and as such he succeeded Heelle Rewatha Thero as the Viharadhipathi of both Gandara and Bomure Vihara. The Plaintiff averred that since taking office, Kapugama Seelawansa Thero functioned as Viharadhipathi of both Viharas for a very long time and after the demise of the said Kapugama Seelawansa Thero, he-the original Plaintiff who was the senior pupil of Kapugama Seelawansa Thero, became his successor as the Viharadhipathi of both Viharas.

As opposed to this version in the finally amended plaint, there emerged a traversal of this claim in the answer and the original Defendant asserted that he was in fact the Viharadhipathi of Bomure Vihara and even if the parchment writing or the *ola* writing and

the Deed bearing No. 9202 dated 02.08.1885 as averred in the Plaint had been executed, they would not have operated as valid conveyances of rights. The original Defendant prayed for a dismissal of the Plaintiff's action and for a declaration that he was the lawful Viharadhipathi of Bomure Vihara.

So much for the pleadings. When the trial began, there were two admissions that were recorded namely the subject-matter Bomure Vihara is exempted from Section 4(1) of the Buddhist Temporalities Ordinance and that the chief incumbency of the subject-matter is decided on the rule of pupillary succession which is premised on *Sisyanu Sisya Paramparawa*.

For the sake of completeness let me advert to the main issues that were raised for determination at the trial. The following issues were formulated on behalf of the Plaintiff.

- Issue No. 1 - Is the Plaintiff the Viharadhipathi of Bomure Vihara?
- Issue No. 2 - Has the Viharadhipathiship devolved on the Plaintiff as pleaded in the Plaint and the pedigree annexed thereto?

The following two issues were suggested by the original Defendant.

- Issue No. 5 - Is the Defendant the Viharadhipathi of Bomure Vihara?
- Issue No. 6 - Has the Viharadhipathiship devolved on the Defendant in the manner pleaded in paragraph 6 of the answer and the pedigree annexed to the answer?

As the testimony began, it was the substituted Plaintiff (hereinafter sometimes referred to as "the Plaintiff" or "substituted Plaintiff-Respondent") and the substituted Defendant (hereinafter sometimes referred to as "the Defendant" or "substituted Defendant-Appellant") who gave evidence and produced documents on behalf of the original Plaintiff and the original Defendant who had since passed away.

By his judgment dated 17.04.2000 the learned District Judge of *Matara* answered the Issues No. 1 and No. 2 in favour of the Plaintiff and No. 5 and No. 6 in the negative thus holding that the Plaintiff was in fact the Viharadhipathi of Gandara Purana Vihara and Bomure Vihara and the temporalities of the Bomure Vihara were in the management of Gandara Purana Vihara. It is against this judgment that the Defendant appealed and when this

matter came up for hearing, the learned President's Counsel for the substituted Defendant-Appellant raised an argument that the Plaintiff not being the most senior pupil of Rev. Kapugama Seelavansa could not succeed the Reverent monk as Viharadhipathi.

Thus the quintessential question that arises before Court is whether the Plaintiff had sufficient *local standi* to institute this action. In other words the question is whether the Plaintiff had a cause of action to have himself declared as the Viharadhipathi of Bomure Vihara. He gets this right indubitably if it is established that Bomure Vihare is appurtenant to Gandara Vihara and that he was indeed the Viharadhipathi of Gandara Vihara. Did the Plaintiff become the Viharadhipathi of Gandara Vihara in the first instance?

A few pronouncements on the office of Viharadhipthi shed light on the importance and significance of the office. Justice Canekaratne in ***Punchibanda v. Dharmananda Thero*** (1948) 48 N.L.R 11 states:-

> *"The Bhikku may be the presiding officer of a Vihare, or a resident priest, or a non-resident priest (agantuge); the presiding priest is known as the Viharadhipati; sometimes he is called the incumbent; the incumbency is called the adhipathikama, in some cases the Adhikari Bhikku".*

Justice Canekaratne further states that, "A Viharadhipati is one who can lawfully claim to be the head of the Vihare; one, generally who can show that *he is the pupil of the last incumbent or that he is in the pupillary succession*". In the Divisional Bench (5 judges) decision in ***Waharaka*** *alias* ***Moratota Sobhita Thero v. Amunugama Ratnapala Thero*** (1981) 1 Sri.LR 201, Chief Justice Neville Samarakoon, while making observations on the rights and duties of an incumbent of a temple and the effect of the Buddhist Temporalities legislation on that office referred to over *thirty six* earlier cases and commented thus:-

> *"The right to an incumbency is a legal right enforceable in law and it is not purely an ecclesiastical matter. When a Viharadhipathi of a temple sues to be declared entitled to the office of Viharadhipathi of a temple and to eject those disputing his rights or to recover possession of the temple and its endowments he is enforcing a right he has in law and any such claim is exempt from*

the provisions of the Prescription Ordinance by virtue of the provisions of s. 34 of the Buddhist Temporalities Ordinance of 1931."

What is then the content and scope of an action to be declared Viharadhipathi of a temple? As Pathirana, J. said in ***Mapalane Dhammadaja Thero v. Rotumba Wimalajothi Thero*** 79 (1) N.L.R 145 at p.163 (a decision of a Divisional Bench of 5 judges), it is in fact and in substance, an action for the Viharadhipathiship of the temple although in form it appears to be an action to be entitled to the status of a Viharadhipathi of the temple.

So a Viharadhipathi is invested with a cause of action to have his status declared in terms of Section 217 (G) of the Civil Procedure Code and in fact one may recall the case of ***Thiagarajah v. Karthigesu*** 69 N.L.R 73 where H.N.G. Fernando, S.P.J (as His Lordship then was, with G.P.A. Silva, J. agreeing) held that the maintainability of an action for a declaration of status is clearly contemplated in the definition of "cause of action" in Section 5 of the Civil Procedure Code, read together with the provisions of Section 217 (G) of the same Code and Section 62 of the Courts Ordinance-*see* comparable dicta to this effect of Dheeraratne, J. in ***Eksith Fernando v. Manawadu and Others*** (2000) 1 Sri.LR 95.

But it would appear that the action for a declaration of status as a Viharadhipathi connotes with it more incidents unfamiliar with a common or garden action for a declaration of status in the sense of ***Thiagarajah v. Karthigesu*** *(supra)*. This was explained in ***Mapalane Dhammadaja Thero v. Rotumba Wimalajothi Thero*** *(supra)*. Pathirana, J. held that an action for a declaration as Viharadhipathi is not merely an action for a declaration of title or status, but in fact it carries with it an assertion to the title of the movable and immovable property belonging to the Vihara. It is very clear from the provisions of Sections 4(2), 18, 20 and 22 of Buddhist Temporalities Ordinance of 1931, and the views of Sansoni, J. in ***Pemananda Thero v. Thomas Perera*** (1955) 56 N.L.R 413 and of Pathirana, J. in ***Dhammadaja Thero v. Wimalajothi Thero*** (1977) 79(1) N.L.R 145 that it is only a controlling Viharadhipathi who has the rights and powers in regard to a temple exempted from the operation of Section 4(1) of the Buddhist Temporalities Ordinance.

So a Viharadhipathi enjoys *locus standi* to institute an action for a declaration but did the Plaintiff in this case have that right invested in him? This issue has to be necessarily resolved having regard to the admission recorded at the trial namely the chief incumbency of the subject-matter is decided on the rule of pupillary succession based on *Sisyanu Sisya Paramparawa.* What are the rules of *Sisyanu Sisya Paramparawa* that govern incumbency?

The learned President's Counsel Mr. S.C.B. Walgampaya for the Defendant contended that as the Plaintiff was not the senior pupil of Rev. Kapugama Seelawansa, no right inhered in him to seek a declaration as the Viharadhipathi of the Bomure Vihara. On the other hand Mr. Champaka Ladduwahetty countered this contention by putting forward the stance that it is sufficient for the Plaintiff to have been a pupil of the previous incumbent. His argument was that the Plaintiff himself did not claim that he was the senior most pupil of Rev. Kapugama Seelawansa. A reference was made to paragraph 4 of the amended Plaint wherein the Plaintiff had not asserted such seniority. Mr. Ladduwahetty argued that the original Plaintiff was a pupil of Rev. Kapugama Seelawansa Thero and he thereafter succeeded to the Viharadhipathiship after the demise of the then incumbent Kapugama Seelawansa.

If one goes back to paragraph 4 of the plaint again, there is an averment which states that the Plaintiff continued to date to hold the office of Viharadhipathiship, which gave him sufficient *locus standi* to institute the action. This was the answer that was proffered to this Court when the President's Counsel raised the incapacity of the Plaintiff to institute this action on the basis that the Plaintiff was not the oldest pupil of Kapugama Seelawansa Thero. Though Mr. Ladduwahetty argued that the incapacity or lack of *locus standi* of the Plaintiff was not raised in the issues, Issue No. 2 which was raised by the Plaintiff himself engages the same question namely: "*Has the Viharadhiapthiship devolved on the Plaintiff as pleaded in the plaint and the pedigree annexed thereto*?" This question has been answered by the learned District Judge in the affirmative.

The answer to that question, as I pointed out before, depends on whether the Plaintiff has established that he succeeded to the Viharadhipathiship of Bomure Viharya according to

Sisyanu Sisya Paramparawa Rules. As I said before, the Viharadhpathi of Gandara Purana Viharaya could become the Viharadhipathi of Bomure Viharya only if Bomure Viharaya has become appurtenant or adjunct to Gandara Viharaya. This case raises both questions namely: Did the Plaintiff succeed as *Viharadhiapthi* according to *Sisyanu Sisya Paramparawa* Rules? Secondly has the Bomure Vihara become an appurtenant Vihara of Gandara Viharaya?

Firstly I would deal with the question-Did the original Plaintiff succeed Kapugama Seelawansa Thero by way of **Sisyanu Sisya Paramparawa Rule?**

Judicial Interpretation of "Sisyanu Sisya"

The Supreme Court of this country has consistently interpreted the term *"Sisyanu Sisya"* to mean from pupil to pupil. That is to say, on the death of the first Viharadhipathi, he is succeeded by his senior pupil who in turn is succeeded by his own senior pupil and the succession continues in that manner as long as each succeeding Viharadhpathi leaves a pupil or pupils. In the Supreme Court decision in ***Dhammajoti Unnanse v. Paranatale*** (1881) 4 SCC 121, Justice Harry Dias said:-

> *"Sisyanu Sisya Paramparawa 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 limit the succession to the descending line to the exclusion of both the ascending and the collateral lines. We see that, according to the strict grammatical meaning of the words Sisyanu Sisya Paramparawa, the line of succession is limited to pupils of the descending line".*

In ***Gunananda Unnanse v. Dewarakkita Unnanse*** (1924) 26 NLR 257, Justice A. St. V. Jayawardene said: *"This rule requiring the transmission of an incumbency from senior pupil to senior pupil produces certainty and creates a sort of "primogeniture" which is easily understood and applied".*

Several judgments of our Supreme Court have clearly recognized this rule of succession and it is now so well established that an incumbent cannot invalidate it by nominating one of his *co-pupils* to succeed him-*see* ***Gunananda Unnanse v. Dewarakkita Unnanse*** (1924) 26 N.L.R 257; ***Amaraseela Thero v. Sasanatillake Thero*** (1957) 59 N.L.R 289.

The fact that incumbency has to revolve around pupils of an incumbent is illustrated by another rule.

A Stranger cannot be Appointed as Successor to the Exclusion of the Pupils

The decision in ***Terunnanse v. Terunnanse*** (1929) 31 N.L.R 161 at 163 is that an incumbent's choice of a successor is limited to his pupils. He cannot transfer his right to the incumbency to a stranger to the exclusion of his pupils.

Presumption in favour of Sisyanu Sisya Paramparawa

It must always be remembered that the general rule of succession is the *Sisyanu Sisya Paramparawa.* Accordingly, in any case where the incumbency of a temple is in question, in the absence of evidence to the contrary, it must be presumed that the incumbency is subject to the *Sisyanu Sisya Paramparawa* Rule of succession-*see* ***Ratnapala Unnanse v. Kevitiagala Unnanse*** (1890) 2 SCC 26; ***Unnanse v. Unnanse*** (1921) 22 NLR 323; ***Gunaratna Unnanse v. Dhammananda*** (1921) 22 NLR 276. As remarked by Justice T.S. Fernando in 69 N.L.R 412, *"it has been so laid down by our Supreme Court in unmistakable terms".*

Departure from the Rule of Seniority

Could there be a departure from this rule of seniority? It is apposite to bear in mind what G.P.A. Silva, J. said in 1971 in the case of ***Easwatte Dhammarakitta Thero v. Dompe Dharmaratne Thero*** (1971) 76 N.L.R 73 namely it was only from about 1920 onwards that the rule of pupillary succession to incumbencies of Buddhist temples was properly developed by our courts. To cite the learned Judge verbatim:-

> *"The strict rule of Sisyanu Sisya Paramparawa as we understand today, came to be accepted with greater rigidity only after the rule was judicially interpreted in the second and third decades of this century. It will not be correct to say that there was inflexible adherence to this rule prior to this interpretation and we might misread ourselves if we apply the rule as interpreted without exception to the past, not taking into account the facts and circumstances of each case. One might say that,*

even after such a judicial interpretation, instances of a departure from the ordinary rule are found occasionally in respect of certain temples".

The above statement quite clearly shows that the rule has been departed from without doing violence to its sanctity. It is for this reason that the practice grew that an incumbent of a temple can appoint or nominate any one of his pupils to succeed him and the pupil so appointed or nominated, even if such pupil was a junior, succeeds to the exclusion of the senior pupil of that incumbent-*see* ***Gunananda Unnanse v. Dewarakkita Unnanse*** (1924) 26 N.L.R 257. As Justice De Krester said in ***Piyatissa Terunnanse v. Saranapala Terunnanse*** (1938) 40 N.L.R 262 at 263, "as I understand the law a priest always has the right to nominate his successor from among his pupils. I need hardly quote all the cases on this point". The earlier cases cited in this case were the following. ***Henepolle Unnanse v. Subita Unnanse*** 5 SCC 235; ***Terunnanse v. Terunnanse*** (1905) Matara Cases 236; ***Gunananda Unnanse v. Dewarakkita Unnanse*** 26 N.L.R 257 and ***Rewata Unnanse v. Ratnajoti Unnanse*** (1916) 3 CWR 193.

Thus it is open to an incumbent to appoint, by deed or last will, any particular pupil as his successor even bypassing his senior pupil-*vide* ***Sumangala Unnanse v. Sobita Unnanse*** (1835) 5 SCC 235; ***Dhammajoti Thero v. Sobita Thero*** (1913) 16 N.L.R 408; ***Saranankara Unnanse v. Indajoti Unnanse*** (1918) 20 N.L.R 385 at 400; ***Jinaratana Thero v. Somaratana Thero*** (1946) 47 N.L.R 228; ***Piyatissa Terunnanse v. Saranapala Terunnanse*** (1938) 40 N.L.R 262; ***Buddharakkita Thero v. The Public Trustee*** (1948) 44 N.L.R 325. For a recent (1991) Supreme Court case of Three Judges where this rule was recognized, see ***Basnagoda Hemaloka v. Sandanangama Attadassi*** (1991) 2 Sri.LR p.228 where it was said: *"an incumbent of a Buddhist temple is entitled to appoint any particular pupil as his successor"*.

There was no such appointment here. Can then a pupil *qua* the Plaintiff in the case claim that he could succeed to the incumbency notwithstanding the fact that he was not the most senior pupil of Rev. Kapugama Seelawansa? From the foregoing I arrive at the

opinion that departures have indeed been permitted having regard to the facts and circumstances of a particular case.

Are there facts and circumstances in this case that warrant such a departure in the case? The Plaintiff himself conceded under cross-examination that his tutor was Rev. Kapugama Seelawansa Thero. The tutor had three pupils. One was Kebaliyapola Somaratna Thero who was residing at Kadawedduwa Thun Bodhi Vihara. The other pupil was Kadawedduwa Premaratna Thero and the third pupil was the Plaintiff. In the course of further cross-examination the Plaintiff also admitted that Kapugama Seelawansa Thero had other pupils as well; that the 1st pupil was Wehelle Indratna, Kebaliyagama Somaratna was the 2nd pupil, Lunama Nandasara Thero was the 3rd pupil and the Plaintiff was the 5th pupil. It was the argument of the Defendant that when two pupils senior to the Plaintiff were alive, he could not have succeeded Kapugama Seelawansa Thero in the absence of an appointment by the tutor.

But it is noteworthy that none of the other pupils have claimed the Viharadhipathiship by virtue of succession on seniority. No one ever contested the Plaintiff in the matter of succession. No other pupil has come forward to vindicate Viharadhipathiship. In such a situation an outsider such as the Defendant cannot set up seniority in appeal when a situation of this nature is catered to where the Buddhist Ecclesiastical Law quite clearly permits a junior pupil to succeed to Viharadhipathiship in special circumstances. One cannot go searching for senior pupils when their exact whereabouts and even their identities have not been established with certainty. No doubt the rule that a senior pupil must succeed his tutor enjoys its eternal value but it is not inflexible as to prevent somebody such as the Plaintiff from succession when no senior pupil has come forward. In the circumstances I see no reason to disturb the conclusion reached by the learned District Judge that the incumbency of Gandara Vihara had devolved on the Plaintiff.

The next question to be answered is whether the Bomure Vihara has become an appurtenant Vihara to Gandara Vihara and as such the Plaintiff had also become the incumbent of the Bomure Viharaya.

Deed No. 9202 dated 02.05.1885 attested by Symon de Alwis Notary Public?

By Deed No. 9202 dated 02.05.1885 and attested by Symon de Alwis Notary Public Heelle Indrajothi Thero of Bomure Vihara handed over his rights to his brother monk Heelle Rewatha Thero, who was the Viharadhipathi of the Gandara Purana Viharaya.

The Defendant took up the position that this transfer is not valid in law. This deed was *though* produced marked **P1** at the trial without any opposition or objection.

A careful perusal of this Deed which was executed 100 years ago by Symon de Alwis Notary Public shows that the deed, (බාරදීම පනුය) in fact handed over the rights of Heelle Indrajothi Thero with a duty cast upon the person who got the rights namely Heelle Rewatha Thero to take care of three pupils of Heelle Indrajothi Thero, the executants of the deed.

It has been argued that in 1885 there was no prohibition against the transfer of rights in this manner. In fact, the prohibition of transferring *Shangika* property came into operation only in terms of the Buddhist Temporalities Ordinance No. 31 of 1931 in the year of 1931.

In fact Section 34 of this Ordinance specifically lays down that the rights acquired prior to the commencement of the operation of the Ordinance which came into effect on 01.11.1931 would not be affected by the Ordinance. This position, advanced by the Plaintiff is incontrovertible and I proceed to hold that the conveyance dated 02.05.1885 is valid in law and the rights over Bomure Viharaya vested in Heelle Rewatha Thero-the predecessor of Kapugama Seelawansa. This raises another important question.

Has Heellee Indrajothi Thero 'abandoned' and 'renounced' his rights in favour of Heelle Rewatha Thero?

A careful perusal of the Deed No. 9202 **(P1)** clearly shows that Heelle Indrajothi Thero clearly intended to abandon his rights to the Bomure Viharaya and renounced the same in favour of his brother pupil Heelle Rewatha Thero.

The following wording in the said deed, is indeed significant:-

"ඉන් නිසා මෙම බාර දීමනාව ගැන මට ඇතිව තිබෙන සෑම බලේ සහ ඵෙතිකමුත් මෙයින් සුන්කර ඉහත හිල්ලේ රේවත තෙරුන්නාන්සේට මෙයින් පවරා බාර දෙන්නට යෙදුනේ වරුස 1885 මැයි මස 02 දාය."

This clearly manifests Heelle Indrajothi's intention to renounce and abandon his rights in favour of Heelle Rewatha of the Bomure Purana Viharaya. There is a clear stipulation that the transferee Heelle Rewatha should take over and nurture not only the physical temporalities of the Bomure Viharaya but also the Heelle Indrajothi Thero's three young pupils namely Kanampitiye Indragupta, Kirinde Rewatha and Kapugama Seelawansa.

These were the submissions made by Mr. Champaka Ladduwahetty for the Plaintiff and the case law on abandonment makes it crystal clear that the act of Heelle Indrajothi Thero in executing the deed manifested a clear intention to renounce his rights over Bomure Viharaya. Soon after executing the deed **P1**, Heelle Indrajothi disrobed and became a layman. This voluntary disrobing strengthens the evidence that the execution of the Deed **P1** was nothing but a renunciation and abandonment of his rights.

This act eventuates in the consequence that his line of succession to the Bomure Viharaya came to an end. The Supreme Court laid down in ***Punnananda v. Weliwitiya Soratha*** 51 N.L.R 372 that: *"the abandonment of an incumbency by a priest operates to deprive his pupils of their rights of pupillary succession"*.

In *Punnananda Thero's* case, decided in 1950 Justice Windham observed that the effect of abandonment depriving a pupil to succeed to the incumbency had not been previously covered by any authority. To quote Justice Windham's exact words:-

> "With regard to the question whether such an abandonment by Sumangala operated to deprive his pupils of such rights to the incumbency as they might otherwise have claimed, I think the learned District Judge was right in holding that it did so operate. *The question appears not to be covered by authority*. It has been held in ***Dammaratna Unnanse v. Sumangala Unnanse*** 14 NLR 400 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 rights 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 there. 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 pupil's rights 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 to succession are dependent. There accordingly remain no rights for the pupil to inherit.*"

The Supreme Court decision in ***Punnananda v. Welivitiye Soratha*** (1950) 51 NLR 372 is therefore an important decision of Justice Windham and Gunasekera. The case can be cited for the following four propositions of Buddhist Ecclesiastical law, namely;

i. It is well settled law that under the ecclesiastical law observed by the Buddhists in Ceylon, there are only two forms of pupilage which will confer rights of pupillary succession namely, pupilage by robbing and pupilage by ordination.

ii. Our law does not recognize *pupilage by adoption* as conferring rights of succession.

iii. The abandonment of an incumbency by a monk, who continues to remain in robes thereafter deprives his pupils of their right to succeed to such incumbency.

iv. Such abandonment does not require any notarial deed or other prescribed formality, but it is a question of fact, and the intention to abandon may be inferred from circumstances.

There is an abundance of evidence led at the trial to show that after the execution of Deed No. 9202 **P1** all parties associated with these temples acted in accordance with the said abandonment and renunciation by Heelle Indrajothi. It has to be pointed out that Kirinde Rewatha whom the Defendant has called his predecessor in title has accepted and acknowledged the rights of the original Plaintiff with regard to the Bomure Viharaya by

document **P4**. In the circumstances I hold that the original Plaintiff has very clearly established his right to be the "Viharadhipathi" of the Bomure Viharaya.

I proceed to affirm the judgment of the learned District Judge of *Matara* dated 17.04.2000 and dismiss the appeal.

JUDGE OF THE COURT OF APPEAL