1963 *Present;* **Sansoni, J., and H. N. G. Fernando, J.**

BARAMMANA VIPASSI NAYAKE THERO, Appellant, *and* URAPOLA JINARATANA THERO and 3 others, Respondents

S. C. 108/61 (Inty.)—D. C. Kandy, 6112/L

Amendment of pleadings—Scope.

The plaintiff sued to be declared entitled to the right of residence in a certain Vihara and the control and possession of the Vihara and its temporalities. When he was giving evidence on the first date of hearing he made certain admissions in consequence of which he sought, before the next date of hearing, to amend his plaint. The proposed amendments effected a change in the devolution of title, but the cause of action was the same and the parties were the same.

Held, that the amendment should be allowed.

" . . . the object of the rules governing amendments is to obtain a correct issue between the parties, just as the object of litigation is to adjudicate on real and not hypothetical matters in issue. If a mistake has been made in an original pleading, there is no objection to a correction being made in order to achieve these purposes, provided no injustice is done to the other party, who would normally receive adequate compensation in an order for costs."

APPEAL from an order of the District Court, Kandy.

H. W. Jayewardene, Q.C. with *S. S. Basnayake*, for the Plaintiff-Appellant.

Vernon Jonklaas, for the Defendants-Respondents.

Cur. adv. vult.

November 11, 1963. SANSONI, J.—

This is an appeal from an order refusing the plaintiff's application to amend his plaint.

The plaintiff asked to be declared entitled to the right of residence in Kiriwaula Vihara and the control and possession of the Vihara and its temporalities, and that the defendants be ejected from certain lands described in the Schedule to the plaint. He pleaded that Saranankara Maha Thero was the former Viharadhipathi, and that on his death in 1956 the plaintiff as his senior pupil succeeded him. He alleged that the four defendants, who are the pupils of one Sumana Thero who had been placed in possession of the Vihara by Saranankara Maha Thero, were disputing his rights to this Vihara and its temporalities since the death of Sumana Thero in 1959.

The defendants in their answer pleaded that Sumana Thero had been appointed Viharadhipathi in 1922 by the dayakayas, and that on his death in 1959 they appointed the 3rd defendant to succeed him. They also pleaded that the plaintiff's claim was barred by prescription.

When the plaintiff was giving evidence at the commencement of the trial, he said under cross-examination that Weliwita Saranankara Maha Thero (his tutor's tutor) was Viharadhipathi of Gadaladeniya Vihara, Kiriwaula Vihara, and certain other Viharas appurtenant to Gadaladeniya Vihara : that he died in 1893 leaving as his pupils Medankara Thero and Saranankara Maha Thero, both of whom were the plaintiff's tutors ; and that Medankara Thero who was the senior of the two became the Viharadhipathi and officiated as such till his death in 1921.

The plaintiff also said that Medankara and Saranankara had two pupils, Cuda Saranankara Thero and the plaintiff, the former of whom was robed earlier than himself although they were ordained together. Cuda Saranankara, according to the plaintiff, became the Viharadhipathi of Algama Vihara, while the plaintiff claims that he is the Viharadhipathi of Gadaladeniya and Kiriwaula Viharas.

On these admissions it became obvious that Cuda Saranankara as senior pupil of Medankara would be the rightful incumbent of all the temples belonging to this pedigree, unless he had abandoned his rights to any of them. It also became clear that of the plaintiff's two tutors, Medankara and not Saranankara would have been the *de jure* Viharadhipathi of Kiriwaula Vihara ; and that the plaintiff's claim through the latter could not be maintained, since it was the plaintiff's case that the succession from the original Viharadhipathi was according to the rule of Sissiyanu sisiya paramparawa.

Before the next date of hearing, the plaintiff sought to amend his plaint by pleading that of his two tutors, Medankara the senior tutor became the Viharadhipathi, and that although Cuda Saranankara was the senior pupil of Medankara, he abandoned his rights to Gadaladeniya and Kiriwaula Viharas and waived his claim thereto in favour of the plaintiff. He also sought to plead that although he became the lawful Viharadhipathi after the death of Medankara, his tutor priest Saranankara controlled Gadaladeniya and Kiriwaula Viharas with his permission and on his behalf.

The learned District Judge upheld the objections of the defendants to the proposed amendment—

(1) because there was a departure by the plaintiff from the facts pleaded in the original plaint, and

(2) because the application was not made in good faith and was an attempt to bring the pleadings into line with the admissions made in cross-examination.

With respect, I am unable to uphold the learned Judge's order which loses sight of the important principle that the object of the rules governing amendments is to obtain a correct issue between the parties, just as the object of litigation is to adjudicate on real and not hypothetical matters in issue. If a mistake has been made in an original pleading, there is no objection to a correction being made in order to achieve these purposes, provided no injustice is done to the other party, who would normally receive adequate compensation in an order for costs.

The plaintiff's original plea was that his tutor Saranankara was the Viharadhipathi. By his amendment he seeks to plead that Saranankara was only *de facto* Viharadhipathi while Medankara was *de jure* Viharadhipathi. Further, the plaintiff's claim to succeed Medankara can only succeed if he can show that his senior co-pupil Cuda Saranankara waived or abandoned his rights. It is true that the proposed amendments effect a change in the devolution of title pleaded by the plaintiff, but most amendments would have some such effect. The cause of action is the same and the parties are the same. The error as to the correct status of Saranankara may possibly have arisen through a mistake of law, for it was thought at one time that a " controlling Viharadhipathi " need not be the de jure Viharadhipathi. The proposed amendments seek to give the legal explanation of the factual position.

It should be said in the plaintiff's favour that his legal advisors acted promptly to set out what they conceive to be the correct position before the trial proceeded further. If they had delayed to suggest the proposed amendments, there might have been substance in the learned Judge's view that the suggested amendments were not made in good faith. No injustice can be said to be done to the defendants by allowing the amendments, since they continue in possession of the temporalities to which they lay claim, and it cannot be said that their rights as existing at the date of the amendment are prejudiced in any way.

I would therefore allow the appeal and direct that the amended plaint dated 4th October 1961 be accepted. Since the delay in making these amendments has put the defendants to expense which could have been avoided, the plaintiff should pay the costs of the abortive trial within two months of such costs being taxed: if he fails to do so, the amended plaint will be struck out. I make no order as to the costs of the inquiry held on 16th October 1961 or of this appeal.

H. N. G. FERNANDO, J.—I agree.

Appeal allowed.