

1965

Present : Abeyesundere, J., and Sirimane, J.

T. A. DINGIRI APPUHAMY and 5 others, Appellants, and  
TALAKOLAWEWE PANGANANDA THERO and another.  
Respondents

*S. C. 350 of 1962—D. C. Kurunegala, 1184/Spl.*

*Buddhist ecclesiastical law—Action against bhikku on ground of parajika—Misjoinder of defendants and causes of action—Dismissal of action on that ground—Validity of such order—Civil Procedure Code, s. 17.*

There is no provision in the Civil Procedure Code or any other law requiring an action to be dismissed where there is a misjoinder of causes of action. It is, therefore, improper for the Court to dismiss an action on the ground of misjoinder of defendants and causes of action without giving an opportunity to the plaintiff to amend his plaint.

The plaintiffs, who were dayakayas of a Vihare, sued for a declaration that the 1st defendant, who was a bhikku resident in the temple, was guilty of "parajika" and had, therefore, forfeited his right to be a bhikku. They also prayed for an order directing the 2nd defendant, who had jurisdiction over the temple in his capacity as Mahanayake Thero, to take the necessary measures if the 1st defendant was declared to have forfeited his right to be a member of the Sangha.

*Held*, that there was a misjoinder of defendants and causes of action. Inasmuch as, under section 17 of the Civil Procedure Code, no action should be defeated by reason of misjoinder of parties, the plaintiffs should be given an opportunity to amend their plaint so that the action should proceed against the 1st defendant only.

**A**PPEAL from a judgment of the District Court, Kurunegala.

*H. V. Perera, Q.C.*, with *Vernon Jonklaas*, for the Plaintiffs-Appellants.

*E. B. Wikramanayake, Q.C.*, with *P. N. Wikramanayake*, for the 1st Defendant-Respondent.

*George Candappa*, for the substituted 2nd Defendant-Respondent.

January 22, 1965. ABEYESUNDERE, J.—

The plaintiffs are dayakayas of the Sulugal Vihare in the Kurunegala District. The 1st defendant is a bhikku resident in and maintained out of the temporalities of the said Sulugal Vihare. The substituted 2nd defendant is the Mahanayake Thero of the Malwatte Vihare in Kandy. The original 2nd defendant was the predecessor in office of the substituted 2nd defendant.

The plaintiffs alleged that the 1st defendant was convicted of the offence of murder of a bhikku called Seelananda, that he was sentenced to death, that such sentence was commuted to one of imprisonment, that he was imprisoned for about 10 years and that thereafter he was released from prison, and that he was guilty of "parajika" as he had

committed the aforesaid offence of murder. The plaintiffs also alleged that the said Sulugal Vihare was subject to the jurisdiction of the Mahanayake Thero of the Malwatte Vihare, that they made a complaint to the said Mahanayake Thero in regard to the offence committed by the 1st defendant, and that the said Mahanayake Thero had failed and neglected to hold an inquiry into such complaint and make an order thereon.

In the answer filed by the 1st defendant he admitted his conviction of the aforesaid offence of murder and the sentence passed on him. The original 2nd defendant stated in the answer filed by him that "he had considered the matter referred to in the plaint against the 1st defendant and had decided that the 1st defendant had not committed an offence, which would cause his expulsion from the priesthood as contemplated in the Buddhist ecclesiastical law".

The plaintiffs prayed for a declaration that the 1st defendant has forfeited his right to be or to officiate as a bhikku and to be resident in and maintained out of the temporalities of the said Sulugal Vihare. They also prayed for an order directing the 2nd defendant to take such measures as may be necessary if the 1st defendant is declared to have forfeited his right to be a member of the Sangha.

The learned District Judge who tried the action found that there was a misjoinder of defendants and causes of action and on that ground dismissed the action. The plaintiffs have appealed from the judgment and decree of the learned District Judge.

It is clear from the plaint that the relief sought by the plaintiffs from the 1st defendant and the relief sought by them from the 2nd defendant are not in respect of the same cause of action. There is therefore a misjoinder of defendants. The causes of action pleaded in the plaint are not against the two defendants jointly. There is one cause of action against the 1st defendant and another cause of action against the 2nd defendant. There is therefore a misjoinder of causes of action.

Section 17 of the Civil Procedure Code provides that no action shall be defeated by reason of the misjoinder of parties. The action of the plaintiffs should not therefore have been dismissed on the ground of misjoinder of defendants. There is no provision in the Civil Procedure Code or any other law requiring an action to be dismissed where there is a misjoinder of causes of action. It was improper for the learned District Judge to have dismissed the action of the plaintiffs on the ground of misjoinder of defendants and causes of action without giving an opportunity to the plaintiffs to amend their plaint.

I set aside the judgment and decree of the learned District Judge, and I dismiss the action in so far as it is against the 2nd defendant on the ground that there is a misjoinder of causes of action. I direct the District Court of Kurunegala to give the plaintiffs an opportunity to

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amend their plaint so that the action may be against the 1st defendant only. The 1st defendant shall also be allowed to amend his answer if he desires to do so. The issues already framed shall be abandoned and fresh issues shall be framed on the amended pleadings. The trial of the action shall be proceeded with on the basis of the fresh issues.

The 2nd defendant is entitled to the costs of this appeal which shall be paid by the plaintiffs. All costs as between the plaintiffs and the 1st defendant will be costs in the cause.

There are cross-objections to the judgment and decree preferred by the 2nd defendant. It is unnecessary to decide those objections in view of the fact that I dismiss the action in so far as it is against the 2nd defendant.

SIRIMANE, J.—I agree.

*Decree set aside.*

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