

**W. M. MENDIS & CO.**  
**v.**  
**EXCISE COMMISSIONER**

COURT OF APPEAL  
DE SILVA, J.,  
WEERASURIYA, J.  
C.A. NO. 285/98 (REV)  
D.C. COLOMBO NO. 16919/MR  
MARCH 29, 1999

*Amendment in caption of the plaint – Juristic person – Natural person – New defendant – Technical objections – Interest of justice – Falsa Demonstratio non nocet cum de corpore vel persona constat – Falsa demonstratio non nocet cum de corpore rel persona constat.*

The plaintiff-petitioner instituted action against the defendant-respondent to recover a certain sum of money, the plaintiff claimed that this sum of money had been wrongfully levied by the defendant – the Excise Commissioner. The Attorney-at-law for the defendant filed the proxy of the defendant and the said proxy was signed as W. N. F. Chandraratne, the answer filed by the defendant on 2.8.96 stated that the defendant named therein is neither a natural person nor a juristic person and pleaded that the plaintiff cannot maintain the action. Trial was fixed for 4.12.96, after the trial date was fixed the plaintiff filed a motion seeking permission to amend the plaint to read as W. N. F. Chandraratne, Excise Commissioner, now known and designated as "Commissioner-General of Excise". The defendant objected to the amendment, and the Court upheld same.

**Held:**

*Per De Silva, J.*

"In considering the correctness of the decision one has to be alive to the often quoted maxims – false description does not harm if there be sufficient certainty as to the subject-matter or the person and any inaccuracy in description is to be overlooked if the subject matter or person is well-known."

1. W. N. F. Chandraratne filed his proxy and answer, if as pleaded the defendant named is neither a natural nor a juristic person, no proxy or answer could have been filed on behalf of the defendant. Having filed the proxy and the answer the defendant at this stage is not entitled to raise the objection that the plaint is defective.

"Names in the caption of a plaint are used only to designate persons but an action is not instituted against names but against persons designated thereby."

"Supreme Court – is a Court of law which should not be trammelled by technical objections and that it is not an academy of law" – *Per Chief Justice Abrahams*<sup>(9)</sup>.

"The object of rules of procedure is to decide the rights of the parties and not to punish them for their mistakes or shortcomings. A party cannot be refused just relief merely because of some mistake, negligence or inadvertence."

**APPLICATION** in Revision from the Order of the District Court of Colombo.

**Cases referred to:**

1. *Land Commissioner v. Ladamuttu Pillai* – 62 NLR 169.
2. *The Secretary to the Treasury v. Mediwake* – 74 NLR 503.
3. *Singho Mahattaya v. Land Commissioner* – 66 NLR 94.
4. *C. A. Odiris Silva and Sons Ltd. v. Jayawardena* – 55 NLR 335.
5. *Velupillai v. Chairman, Urban Council, Jaffna* – 39 NLR 464.
6. *Bank of Ceylon v. Ramasamy* – 1986 1 CALR 481.
7. *Parsons v. Abdul Cader* – 42 NLR 383.
8. *Mackinnon Mackenzie & Co., Ltd. v. Grindlays Bank Ltd.* – 1986 2 SLR 272.

*K. Kanag-Iswaran, PC with Kushan de Alwis and Ms. Vindya Weerasekera* for plaintiff-petitioner.

*Y. Wijetilleke, DSG* for defendant-respondent.

*Cur. adv. vult.*

May 07, 1999.

**DE SILVA, J.**

The plaintiff-petitioner (hereinafter referred to as the plaintiff) instituted action against the defendant-respondent (hereinafter referred to as defendant) by a plaint dated 11th September, 1995, to recover a sum of Rs. 45,998,113.91 with legal interest. The plaintiff claimed that this amount of money had been wrongfully levied by the defendant and he is entitled to recover the excess excise duty paid by him in terms of the Provisions of the Excise Ordinance.

The defendant is named in the plaint as the "Excise Commissioner". The attorney-at-law for the defendant filed the proxy of the defendant and the said proxy was signed by "W. N. F. Chandraratna". His answer was filed by the defendant on the 2nd of August, 1996, objecting to the plaint on the basis that the defendant named therein is neither a natural person nor a juristic person and pleaded that for the aforesaid reason the plaintiff cannot maintain the action. The trial in case was fixed for the 4th December, 1996. After the trial date was fixed the plaintiff by filing a motion sought permission of Court to amend the plaint. The plaintiff attempted to amend the manner in which the defendant was described from "Excise Commissioner" to W. N. F. Chandraratna, Excise Commissioner, now known and designated as "Commissioner-General of Excise". The defendant objected to the proposed amendment on the following grounds. :

1. That the amendment would convert an action that is null and void into an action that is valid in law by the process of converting an action instituted against a person who is neither a natural nor a juristic person into a valid action against a natural person.
2. The amendment if permitted would change the scope of the action in that a "new defendant" will be brought in to the case and that some of the causes of action pleaded in the plaint against the new defendant are prescribed and accordingly grave

and irreparable loss and damage would be caused to the new defendant by defeating his plea of prescription.

After hearing both parties the learned District Judge by his order dated 10.03.1998 refused permission to amend the caption as prayed for.

The present application is to revise the said order of the learned District Judge.

The learned Deputy Solicitor-General submitted that only natural or juristic persons can be parties to an action and therefore the action filed against the Commissioner of Excise is a nullity. He relied on the decisions of *Land Commissioner v. Ladamuttu Pilla<sup>(1)</sup>*, *The Secretary to the Treasury v. Mediwake<sup>(2)</sup>* and *Singho Mahattaya v. Land Commissioner<sup>(3)</sup>*. I do not doubt the correctness of the above decisions. However, it is to be stressed that in the aforesaid decisions the issue of an amendment of the pleadings was not adverted to and considered.

I wish to refer to certain decisions of the Supreme Court where more serious and grave misdescription and errors in regard to the enumeration of names of parties have been amended lawfully by the Courts. In *C. A. Odiris Silva and Sons Ltd. v. Jayawardena<sup>(4)</sup>* the misdescription in the plaint and a continuing error as to the name of the defendant was held to have been lawfully rectified.

The plaintiff in that action mistakenly named in the caption the defendant as Odiris Silva and Sons when in fact the defendant was an incorporated body designated as Odiris Silva and Sons Ltd. The amendment which was effected in the lower court, amidst strenuous objections, was upheld as a correct and lawful order by the Supreme Court.

In *Velupillai v. The Chairman, Urban Council Jaffna<sup>(5)</sup>*, Chief Justice Abrahams, in upholding the amendment in that case, *Stressed that*

*the Supreme Court is a Court of law which should not be trammelled by technical objections and that it is not an academy of law.* In that case the plaintiff who had a valid cause of action against the Urban Council, Jaffna, which was an incorporated body and hence a juristic person, named as the defendant, the Chairman of that council who was neither a natural person or juristic person. When the case came up for trial a preliminary issue was raised on behalf of the defendant that the action was not properly constituted. The learned District Judge allowed the said issue and refused the application of the plaintiff to amend the caption on the ground that the amendment of the caption would not remedy the situation.

On an appeal to the Supreme Court, Chief Justice Abraham remarked that the plaintiff always intended to sue the Urban Council but due to a misconception on the part of the plaintiff's lawyer that the council could not be sued, the Chairman was made a defendant. The learned Judge emphasized : "I think if we do not allow the amendment in this case we should be doing a very grave injustice to the plaintiff. It would appear as if the shortcoming of his legal advisor, the peculiarities of law and procedure and the congestion of Court have all combined to deprive him of his cause of action. I, for one, refuse to be a party to such outrage upon justice." It is to be noted that in this case the amendment was allowed despite that it defeated plea of prescription of the "new defendant".

The judgment in *Velupillai v. Chairman Urban Council, Jaffna*, (*supra*) was followed in the case of *Bank of Ceylon v. Ramasamy*<sup>(6)</sup>. The Court held that "The description given to the defendant could only refer to the Bank of Ceylon and that the insertion in the plaint of the Manager, Bank of Ceylon as defendant was a misnomer which could be corrected.

In the instant application, the original plaint filed in Sinhala language names the defendant as "Commissioner of Excise". Counsel for the plaintiff submitted that through inadvertence it had failed to name the holder of the office of Excise Commissioner who was

W. N. F. Chandraratna and that no amendments were sought to be made in respect of any of the averments in the plaint relating to the merits of the plaintiff's action and/or any of the causes of action pleaded in the original plaint. Counsel further submitted that the objections raised by the defendant were founded not on substance but on pure technicality.

An examination of the English copy of the plaint which is filed of record shows that there are two dotted lines above the words "Excise Commissioner". One could reasonably infer that the plaintiff intended to include further particulars in the caption but had not done so due to inadvertence.

In considering the correctness of the decision of the learned District Judge one has to be alive to the often quoted legal maxims, namely *Falsa demonstratio non nocet cum de corpore vel persona constat* (a false description does not harm if there be sufficient certainty as to the subject-matter or the person) and *Falsa demonstratio non nocet cum de corpore vel persona constat* (any inaccuracy in description is to be over looked if the subject-matter or person is well-known).

In the instant case W. N. F. Chandraratna filed his proxy and answer. If as pleaded in the answer the defendant named in the plaint is neither a natural nor a juristic person, no proxy, or answer could have been filed on behalf of the defendant in the case. I am of the view that having filed the proxy and the answer the defendant at this stage is not entitled to raise the objection that the plaint was defective. The proper course of action would have been for the Attorney-General on behalf of the Commissioner-General of Excise to file a motion and invite the Court to either reject the plaint or to return the plaint to the plaintiff as the plaint is defective. Since the proxy, and answer of W. N. F. Chandraratna have been filed one cannot say that the defendant named in the plaint was not "non existent" but if referred to a natural person who was inaccurately described. As Justice Keuneman remarked in *Parsons v. Abdul Cader*<sup>(7)</sup> : "names in the caption of a plaint are used only

to designate persons but an action is not instituted against names but against persons designated thereby".

It is also pertinent to re-echo the observations of Chief Justice Sharvananda in *Mackinnon Mackenzie & Co., Ltd. v. Grindlays Bank Ltd.*<sup>(6)</sup> : "Provisions of the amendment of pleadings are intended for promoting the ends of justice and not for defeating them. The object of rules of procedure is to decide the rights of the parties and not to punish them for their mistakes or shortcomings. A party cannot be refused just relief merely because of some mistake negligence or inadvertence".

In the attendant circumstances of this case I hold that the order dated 10.03.1998 of the learned District Judge is erroneous and illegal. I set aside the order and direct that the amendment of the caption as prayed for, be allowed. I also direct that the defendant should be *granted an opportunity to file a fresh answer* if he so desires. With regard to costs I make no order.

**WEERASURIYA, J. – I agree.**

*Application allowed.*