

1966 *Present*: Sri Skanda Rajah, J., and Siva Supramaniam, J.

R. M. M. SHERIFF, Appellant, and S. B. B. BEEBI and others,
Respondents

S. C. 69/65—D. C. Ratnapura, 4806/L

Civil Procedure Code—Section 404—Action instituted by trustee of a mosque—Death of plaintiff pending action—Right of succeeding trustee to be substituted as plaintiff—Muslim Mosques and Charitable Wakfs Act, No. 51 of 1956.

Where, pending an action filed by the trustee of a mosque, the trustee dies, the person who is subsequently appointed trustee under the Muslim Mosques and Charitable Wakfs Act, No. 51 of 1956, is entitled to be substituted in place of the deceased plaintiff under section 404 of the Civil Procedure Code.

APPEAL from a judgment of the District Court, Ratnapura.

S. Sharvananda, for substituted Plaintiff-Appellant.

L. C. Seneviratne, for Defendant-Respondent.

November 7, 1966. SRI SKANDA RAJAH, J.—

This action was filed by the trustee of a mosque. While the trial was proceeding, he died. Thereafter, the present appellant was appointed trustee under the Muslim Mosques and Charitable Wakfs Act, No. 51 of 1956.

¹ (1909) 12 N. L. R. 74.

On 25.6.64 order was made to substitute him in place of the deceased and to amend the caption accordingly. But later when the trial was proceeding, objection was raised to his substitution and the learned Judge held that Section 404 of the Civil Procedure Code had no application and dismissed the action. Section 404 of the Civil Procedure Code runs thus :—

“ In other cases of assignment, creation or devolution of any interest pending the action, the action may, with the leave of the Court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections, if any, be continued by or against the person to whom such interest has come, either in addition to or in substitution for the person from whom it has passed, as the case may require.”

In our view, the trust property would vest in the newly appointed trustee, namely, the substituted Plaintiff-Appellant. It can be regarded as devolution of interest pending the action. Our attention has been drawn to two cases one of which is *Pagnananda Thera v. Sumangala*¹. There it was held that, where a plaintiff who sues for declaration that he is the lawful Viharadhipathi of the Vihara, and entitled to possess the temporalities thereof, dies during the pendency of the action, a person who can establish that under the Buddhist Ecclesiastical Law, he would be the successor-in-title to the incumbency upon the assumption that the plaintiff himself had been the incumbent is entitled to substitution under Section 404 of the Civil Procedure Code.

In the case of *Morontuduwe Sri Gnaneswara Dharmananda Nayake Thera v. Baddegama Piyaratne Nayake Thera*², the following passage which appears at page 280 correctly sets down the law :—

“ There can be no question that on the death of a sole trustee who has filed such an action, the right to sue on the cause of action would survive to his successor in the office of trustee.”

In our view, this appeal should be allowed. The appeal is allowed with costs and the case sent back for re-trial. The substituted Plaintiff-Appellant will also have costs of the trial.

SIVA SUPRAMANIAM, J.—I agree.

Appeal allowed.

¹ (1965) 68 N. L. R. 367.

² (1960) 63 N. L. R. 278.