

1963 *Present : L. B. de Silva, J., and Abeyesundere, J.*

T. ARUMAITHURAI and others, Appellants, *and*
V. ARUDCHELVANAYAGAM, Respondent

S. C. 257—D. C. Point Pedro, 49/TR

Hindu temple—Action for settling a scheme of management—Withdrawal thereof on account of defect in Government Agent's certificate—Second action instituted in respect of same subject matter—Procedure—Trusts Ordinance, s. 102(3).

In an action instituted under section 102 of the Trusts Ordinance to obtain a decree settling a scheme of management for a Hindu temple, there was a formal defect in the certificate which the Government Agent had purported to issue in terms of sub-section (3) of section 102 of the Trusts Ordinance. The action was therefore withdrawn with liberty to file a fresh action on the same cause of action. Thereafter, the present action was instituted with a proper certificate from the Government Agent, but for the purpose of the present action no separate application had been made by the plaintiff to the Government Agent nor had any fresh inquiry been held by the Commissioner with respect to that matter.

Held, that it was not necessary to make a separate application to the Government Agent regarding the second plaint which the plaintiffs proposed to file on the same subject-matter.

APPEAL from an order of the District Court, Point Pedro.

C. Ranganathan, for Plaintiff^s-Appellants.

S. Sharvananda, for Defendant-Respondent.

October 31, 1963. L. B. DE SILVA, J.—

The plaintiffs filed an action under Section 102 of the Trusts Ordinance praying that a scheme of management for a Hindu Temple be settled by Court for vesting the temple and the temporalities on Trustees, that the defendant be ordered to render an account of the income for the last six years, and for damages in Rs. 3,000. Thesesame plaintiffs had previously filed an action on the same cause of action in TR 47 of the District Court of Point Pedro. That plaint had been filed on the 13th September 1958. Before filing that action, these plaintiffs had made an application to the Govt. Agent under sub-section 3 of Section 102 setting out the subject matter of the plaint which they proposed to file. This matter was duly referred by the Govt. Agent to a Commissioner who inquired into that dispute and the Govt. Agent had issued a certificate in terms of the sub-section. However, there was a formal defect in the certificate that the Govt. Agent had issued in that he had failed to certify that the Commissioner had reported that the subject matter of the plaint was one that called for the consideration of the Court and that it had not proved possible to bring about an amicable settlement of the questions involved. In that certificate, the Govt. Agent himself had certified on these matters. In view of the objection taken to the validity of the certificate the previous action was withdrawn with liberty to file a fresh action on the same cause of action. Thereafter, the present action has been filed with a certificate from the Govt. Agent complying with the provisions of sub-section 3 of Section 102 upon the same cause of action, but for the purpose of the present action, no separate application had been made by the plaintiffs to the Govt. Agent nor had any fresh inquiry been held by the Commissioner with respect to that matter.

The question for decision in this appeal is whether on the original petition which the plaintiffs had filed under sub-section 3 and upon the inquiry by the Commissioner and the certificate given by the Govt. Agent the present action could have been filed in terms of sub-section 3 or whether the effect of the earlier application and proceedings were exhausted by the fact that the previous action was filed and was dismissed as stated earlier. The learned District Judge upheld the objection by the defendant and dismissed the plaintiff's action on this preliminary issue which was argued before him.

We, however, are of the view that it was not necessary to make a separate application to the Govt. Agent with respect to each plaint that the plaintiffs proposed to file on the same subject matter. In this instance, there was a compliance with the provisions of sub-section 3 because an application had been made to the Govt. Agent setting out the subject matter of the action which the plaintiffs proposed to file. In fact a copy of the proposed plaint was submitted to him and the plaints in the first action and in the second action were the same. The Commissioner had inquired into that matter and made a report to the Govt. Agent and the Govt. Agent has given the certificate as contemplated in this sub-section. A similar objection, but under Section 461 of the Civil Procedure Code was

taken in S. C. 649/EO(F) D. C. Trincomalee 6131 and this Court has held in that case that a separate notice under that Section was not required in respect of every plaint filed upon the same cause of action. The finding in that case will be applicable to a construction of the provisions of subsection 3 of Section 102 of the Trusts Ordinance so far as the present objection of the defendant is concerned.

We, therefore, set aside the order made by the learned District Judge upholding the objection of the defendant and dismissing plaintiff's action with costs and send this case back for trial on the remaining issues. Issues 9 and 10 are answered in favour of the plaintiff. The plaintiff is entitled to the costs of the proceedings in the District Court on 25.5.61 and costs of this appeal.

ABEYESUNDERE, J.—I agree.

Order set aside.

