

1962

Present : Sansoni, J., and G. P. A. Silva, J.

G. J. SIRIWARDANE, Appellant, and AMUNUGAMA
GUNARATHANA THERO, Respondent

S. C. 24/1961—D. C. Kandy, 5103/L

Substituted and added plaintiffs—Scope of s. 13 of Civil Procedure Code.

Section 13 of the Civil Procedure Code which authorises the court to permit a person to be substituted or added as plaintiff in specified circumstances cannot be employed to introduce a new "matter in dispute" involving an entirely new cause of action which is inconsistent with the cause of action which was pleaded between the original plaintiff and the defendant.

APPPEAL from an order of the District Court, Kandy.

T. B. Dissanayake, for Defendant-Appellant.

No appearance for Plaintiff-Respondent.

Cur. adv. vult.

December 14, 1962. SANSONI, J.—

This is an action filed by a Plaintiff to have himself declared entitled, as Adhikari Bhikkshu of Vivekaramaya in Dodanwala, to a certain land, and to have the Defendant ejected therefrom, and for damages.

According to the plaint, one Arnolishamy was the former owner of the land and he donated it to the Plaintiff to be held and possessed by the latter as Adhikari Bhikkshu of Vivekaramaya. No deed of donation was executed. After Arnolishamy's death, his widow as Executrix of his estate donated the land to the Plaintiff as Adhikari Bhikkshu of the said Vivekaramaya. The Defendant is said to have disputed the Plaintiff's title to a portion of the land, and to be in wrongful possession of that portion. The Plaintiff accordingly claimed a declaration of title in his favour.

The Defendant denied the averments in the plaint and the title pleaded by the Plaintiff, and claimed that he was entitled to an undivided 1/3 share of a land which he described in his answer; the land referred to in the answer is probably the same land as is described in the plaint.

The case went to trial, and in the course of giving evidence the Plaintiff made out what I can only term an entirely new case. In his evidence he stated that the land which he claimed had been dedicated by Arnolishamy to the Sri Paramananda Maha Vihara in Galle. He further stated that the present Viharadhipathy of that Vihara is Kamburugama Kusalagnana

Nayake Thero, and that the land in dispute is a temporality of the Maha Vihara. The effect of these admissions made by him was that, if they were true, the Plaintiff's action to be declared entitled to the land would fail.

The next development in the case was an application by the Plaintiff to add Kusalagnana Nayake Thero of Maha Vihara, Galle, as a co-Plaintiff. The Defendant objected on the ground that the issue of prescription raised by him would be prejudiced, and also because Section 13 of the Civil Procedure Code has no application to the facts of the case. Section 13 would apply only if it is necessary "for the determination of the real matter in dispute" that another Plaintiff should be added; the Plaintiff would also have to show that the action was brought by him alone through a bona fide mistake. The learned District Judge allowed the application of the Plaintiff but in my view this order cannot be upheld.

If the new party were allowed to be added as a Plaintiff, an entirely new case will come into being; the original Plaintiff would in effect drop out on the ground that he has no right or title to the land, and a new "matter in dispute" would arise between the Viharadhipathy of the Maha Vihara and the Defendant. The new dispute will involve an entirely new cause of action which is inconsistent with the old cause of action which was pleaded between the original Plaintiff and the Defendant. The Defendant would have to fight a case based on a completely new title put forward by the added Plaintiff.

On the original plaint, the only person who could have sued on the cause of action pleaded and the title set out was the Plaintiff himself. The party proposed to be added "is not necessary to supplement and complete the right of the Plaintiff to sue in respect of the cause of action averred, nor is he necessary for the final determination of any of the matters in dispute between him and the defendant", if I may quote from the judgment of Garvin J. in *Raman Chetty v. Shawe*¹. If the new Plaintiff were to be added, the matter in dispute becomes an entirely new one. Instead of a donation to the Plaintiff being the matter to be established, it will be whether there was a dedication to the Maha Vihara. Section 13 was never intended to be used in this way.

I would therefore allow the appeal and direct that the action as originally framed should proceed. The Defendant-Appellant will be entitled to the costs of the inquiry in the Court below and of this appeal.

SILVA, J.—I agree.

Appeal allowed.

¹ (1931) 33 N. L. R. 16 at 18.