

1963

Present : Sansoni, J., and L. B. de Silva, J.

G. L. KARUNAWATHIE, Appellant, and A. K. WILISINDAHAMY
and others, Respondents

S. C. 62/1962—D. C. (Inty.) Galle, 6,360/L

*Administration of estates—Actio rei vindicatio brought by widow of a deceased person—
Letters of administration obtained by her during pendency of action—Maintain-
ability of action.*

Plaintiff instituted a *rei vindicatio* action describing herself in the caption of the plaint as administratrix de son tort of the estate of her deceased husband. In the body of the plaint she described herself as the widow of the deceased. The defendants pleaded that plaintiff could not maintain the action since she had not obtained letters of administration. Subsequently, however, plaintiff obtained letters of administration and she then moved that the caption of the plaint be amended by deleting the words “ de son tort ”.

Held, that, in the circumstances, plaintiff was entitled to have herself added in her representative capacity as an added plaintiff, but not to be substituted.

APPEAL from an order of the District Court, Galle.

C. Ranganathan, with M. T. M. Sivardeen, for the 1st Defendant-Appellant.

G. P. J. Kurukulasooriya, for the Plaintiff-Respondent.

M. T. M. Sivardeen, for the 2-11th Defendants-Respondents.

March 15, 1963. SANSONI, J.—

The plaintiff came into Court in this case asking for a declaration of title to a land and for ejection of the defendants and damages, describing herself in the plaint as administratrix de son tort of the estate of her deceased husband. In paragraph 6 of the plaint she averred that her

husband's estate is being administered by her, she being his widow, in certain testamentary proceedings. The defendants filed answer denying that the plaintiff could maintain the action in her capacity as administratrix de son tort. They also denied that she could maintain the action since she had not obtained letters of administration even at the time the answer was filed. Subsequently, however, letters of administration seem to have been issued to the plaintiff and she then moved that the caption of the plaint be amended by deleting the words "de son tort". The result of this motion being allowed would have been that the plaintiff would have been allowed to commence and continue the action as administratrix. The motion was objected to by the defendants. After inquiry, the learned District Judge allowed the caption to be amended by deleting the words "de son tort". The defendants have appealed.

Mr. Ranganathan submitted that this was an action brought by the plaintiff in a representative capacity and that since she did not have letters of administration when she filed the action, the action was bad and should be dismissed. We have, however, to consider the effect of the decision in *Alagakawandi v. Muttumal*¹, which was a very similar case. There, too, the widow of one Pena Selembram Kangany sued a defendant, claiming possession of certain property and describing herself in the caption of the plaint as the administratrix of the estate of the deceased, but this Court held that, in spite of that, she, having described herself in the body of the plaint as the widow of the deceased, should be allowed to maintain the action as widow. Similarly here we find that the plaintiff described herself in the body of the plaint as the widow of the deceased, Francis Jayawickrema Goonewardene, who she said was the owner of the property. In these circumstances, following the decision I have referred to, we think that there is some doubt about the position maintained by Mr. Ranganathan. We think that it is possibly a case where the plaintiff sued as widow in spite of the description given in the caption of the plaint, and as widow she was entitled to ask for a declaration of title and ejectment in respect of the widow's share. The action cannot therefore be said to have been bad at its inception. Now that letters of administration have issued to her, we think that she is entitled to have herself added in that representative capacity as an added plaintiff, but not to be substituted. The caption of the plaint will stand as originally worded. As to what the position will be after this addition has taken place, either with regard to the property that is being claimed, or what claims she can make in her personal and in her representative capacity respectively, we express no opinion here. It will be open to the defendants to raise all objections they may be advised to raise once the addition has taken place.

We order that the costs of the inquiry and the costs of this appeal be borne by the respective parties.

L. B. DE SILVA, J.—I agree.

Order varied.

¹ (1920) 22 N. L. R. 111.