

1951

Present: Dias S.P.J. and Gunasekara J.

SAMARASINGHE, Appellant, and PANNASARA THERO
et al., Respondents

S. C. 70—D. C. Colombo, 4,476/L

Pleadings—Amendment—Scope of.

The two plaintiffs, who were Buddhist monks, sought to vindicate title to a land in their personal capacity on the footing that it was their private *pudgalika* property. During the trial, however, it appeared that the land in question was the *Sanghika* property of a Vihare. The 2nd plaintiff, thereupon, claimed to vindicate title to the land, not in his personal capacity as owner, but on behalf of the temple.

Held, that it would be improper to permit the whole nature and scope of the action to be altered.

APPEAL from a judgment of the District Court, Colombo.

H. V. Perera, K.C., with *C. V. Ranawake*, for the defendant appellant.

E. B. Wikramanayake, K.C., with *M. D. H. Jayawardene* and *J. W. Subasinghe*, for the plaintiffs respondents.

Cur. adv. vult.

August 30, 1951. DIAS S.P.J.—

The two plaintiffs, who are Buddhist monks, seek to vindicate title to a land called Elamoderawatta. The action is brought in their personal capacity on the footing that the land in question is their private *pudgalika* property. They seek to eject the defendant who is alleged to be in unlawful possession of the land.

During the trial, however, it appeared that the land in question is the *sanghika* property of the Galwana Vihare, and that the 2nd plaintiff, who alleges that he is the *adhikari bikshu* of that Temple, is claiming to vindicate title to that land, not in his personal capacity as owner, but on behalf of the Temple.

Learned counsel for the plaintiffs had to concede that in these circumstances the 1st plaintiff has no status to join in this action at all. He, however, argued that the documents P11 and P12 prove that Galwana Vihare has been exempted from the provisions of s. 4 (1) of the Buddhist Temporalities Ordinance (Chapter 222), and that, therefore, the 2nd plaintiff as the *viharadhipati* of the Temple is vested with the temporalities, and has status to maintain this action.

The answer to this contention is that this is not an action instituted in terms of s. 18 of the Ordinance by the "Controlling *Viharadhipati*" who is suing under the name and style of "The Trustee" of the Temple to recover property vested in him in that capacity. It is only such a person who can vindicate title to a land which belongs or is appurtenant to a Buddhist Temple. This action as framed is one by two monks suing in their personal capacity to vindicate title to a land which the plaintiff asserts belong to them. That was the case which the defendant had to meet.

It was held in *Dambadeniya v. Vidane Henaya*¹ that under the provisions of the Civil Procedure Code such an amendment of pleadings as would completely alter the nature and scope of an action should not be allowed. *A fortiori*, therefore, in a case like the present where no application to amend the pleadings was at any stage made, it would be improper to alter the whole nature and scope of the action either during the trial or when the case has come up in appeal. To do so in this case would mean: (a) that the 1st plaintiff would have to be dropped from the case; (b) the 2nd plaintiff who sued as owner would change his personality and emerge as a new *persona*, viz., the trustee of the Galwana Vihare; (c) the whole nature and scope of the action would be changed; and (d) the defendant would be called upon to meet a new case to which he has not pleaded. He may have new issues to raise. In fact this is an impossible situation.

I, therefore, set aside the judgment and decree appealed against and dismiss the plaintiffs' action with costs both here and below. This order will not preclude the proper person from instituting a fresh action to vindicate title to this land which is alleged to be part of the temporalities of the Galwana Vihare.

GUNASEKARA J.—I agree.

Appeal allowed.

¹ (1921) 3 C. L. Rec. 87.