

JAYASINGHE
v.
GNANAWATHIE MENIKE

COURT OF APPEAL.
JAYASURIYA, J.,
C.A. NO. 656/96 (F)
D.C. MARAWILA 714/L
JULY 21, 1997.

Misdescription relating to the designation of the Plaintiff's Name in the caption – Jurisdiction and power of the District Judge to correct clerical error – Falsa demonstratio Non Nocet Cum de Corpore vel persona constat – Nil facit – Error nominis cum de corpore vel persona constat – Praesentia corporis tollit erroneus nominis et veritas nominis tollit errorem demonstrationist – Civil Procedure Code – Sections 50, 93 – Evidence Ordinance – Section 90.

Held:

1. The District Judge is entitled to have effected a correction of the misdescription in one name in the caption of the plaint at the stage that he effected the amendment in the exercise of his inherent powers without waiting for the stage of the trial of the action to exercise powers that were available to him to effect amendments in pleadings in terms of section 93 Civil Procedure Code.

2. It is an old and rational maxim of law that where the party to a transaction or the subject of a transaction is actually and corporeally present, the calling of either by a wrong name is immaterial.

– Names are used only to designate persons and the suit is not against names but against persons designated thereby –

APPEAL from the District Court of Marawila.

Cases referred to:

1. *Parsons v. Abdul Cader* – 42 NLR 383
2. *Odiris Silva and Sons Ltd., v. Jayawardene* 55 NLR 335
3. *Velupillai v. Chairman, Urban District Council* – 39 NLR 464
4. *Gabriel Perera v. Agnes Perera* – 43 CLW 82
5. *Yapa v. Dissanayake Sadera* – 1989 1 SLR 362
6. *James v. Whitebread* 11 CB 406
7. *Rex v. Millor* – 27 LJMC 121

Rohan Sahabandu for defendant-appellant.

V. P. Tillekeratne for plaintiff-respondent.

July 21, 1997.

JAYASURIYA, J.

In the instant action the plaintiff's Attorney-at-law in the **caption** (only) describes the plaintiff designating her name as Adikari Mudiyansele **Gunawathie Menike** of Mahawewa. The proxy signed by the plaintiff as **A. M. Gnanawathie Menike**. In paragraph 2 of the plaint the plaintiff specifically pleaded that she entered into an indenture of lease with the defendant bearing No. 634 dated 09.06.1984 which was attested by the Notary Public, W. A. B. Oscar Fernando and pleaded that lease bond as an integral part of the plaint and annexed a copy of that indenture of lease as a document sued upon in terms of section 50 of the Civil Procedure Code to the plaint. It was averred in paragraph 2 of that lease bond that the defendants entered into a contract of lease with the plaintiff whose name was described as Adikari Mudiyansele **Gnanawathie Menike** in respect of the property which was referred to in the prayer to the plaint and the schedule to the plaint for a period of 10 years from 09.06.1984 till 08.06.1994, on payment of a lease rent of Rs. 20,000/-. The plaintiff averred that the currency of the lease came to an end and a valid and due notice was served on the defendant to vacate the leased premises but that the defendant was wrongfully and unlawfully continuing to further occupy the leased premises after the termination of the lease and the plaintiff prayed for an order of ejectment of the defendant and all those holding under him, from the leased premises which was more fully described in the schedule to the plaint and for damages. In the proxy which was filed on behalf of the plaintiff, the plaintiff has signed the proxy as **A. M. Gnanawathie Menike**.

At the trial, issue No. 10 was raised on behalf of the defendant. Issue 10 reads as follows: "In the summons and **the copy of the plaint** which was **served** on the defendant, has the plaintiff's name been designated as Adikari Mudiyansele **Gunawathie Menike**". Issue 11 reads as follows: "If issue 10 is answered in the affirmative, is the plaintiff entitled to have and maintain the presently constituted action?" Considerable light is shed by the manner in which issue 10 has been framed on behalf of the defendant at the trial. The issue

does not raise the question whether in the original plaint that is filed in the record in D.C. Marawila 714/L that the name of the plaintiff is designated as Adikari Mudiyansele **Gnanawathie Menike** but raises such an issue only in reference to the summons and the **copy of the plaint** that was **served** on the defendant. There is a presumption known to the law that all legal and official acts are correctly and duly performed by the relevant parties concerned. *Omnia praesumuntur rite et solemniter esse acta* (all official acts are presumed to have been done rightly and regularly) which maxim would extend to the acts of officers of court which role is effectively played by members of the legal profession. In the circumstances, this court is entitled to presume that the registered attorney for the defendant perused the original plaint filed of record in this case in accordance with the customary practice and in terms of the reasonable diligence that would be exhibited by any prudent lawyer and thereafter he has advisedly framed issue 10 after such inspection and referred specifically only to the summons and the copy of the plaint that was served on the defendant.

The Additional District Judge of Marawila, in the course of his judgment, has stated that the District Judge, after the plaint was filed in the District Court, has corrected and amended the misdescription relating to the designation of the plaintiff's name in the caption to the plaint and has initialled it. By such correction and amendment he has substituted the name **Gnanawathie** for the designated name of **Gunawathie**. There was no misdescription or error in regard to the Wasagama the 'ge' name and the address of the plaintiff. As Justice Keuneman remarked in *Parsons v. Abdul Cader*⁽¹⁾ "Names in the caption of a plaint are used **only to designate persons** but an action is not instituted **against names** but **against persons designated thereby.**" When the District Judge amended the caption of the plaint substituting the name **Gnanawathie** for the name **Gunawathie**, the District Judge had before him the contents of the entire plaint including the averments in paragraph 2, the contents of the lease bond sued upon which was filed as an annexe to the plaint in terms of the provisions of section 50 of the Civil Procedure Code and signature of the plaintiff on the proxy. It is highly probable that the said District Judge corrected this misdescription and clerical error in

regard to the name of the plaintiff when this record was put up to him for the exercise of judicial mind prior to the making of the order for issue of summons and in terms of the practice that prevails in the District Court with regard to the allocation of work between the District Judge and the Additional District Judge. Thereafter the record has been forwarded to the Additional District Judge's Court for further action. This is the practice that prevails in the several District Courts (in which I have functioned) right through out the Island. In view of this practice, it appears that the District Judge has made this amendment and initialled the amendment before he forwarded the case record to the Additional District Court for further action and trial of the suit. Unfortunately, the District Judge has not inserted the date on which he made the amendment and initialled the amendment. If the amendment was effected at such a point of time the amendment had been effected before the defendant entered an appearance on the service of the summons.

What is the character of the amendment which has been effected by the District Judge of Marawila? It is amendment consisting of the correction of a clerical error appearing only in the caption to the plaint. The plaintiff's Wasagama and address have been correctly stated in the plaint, the averments in paragraph 2 of the plaint and the contents of the annexure to the plaint and the proxy signed by the plaintiff, clearly disclose that the plaintiff in the action is Adikari Mudiyansele **Gnanawathie** Menike of Mahawewa. Did the District Judge have power and jurisdiction at that stage to correct the clerical error appearing in the caption? At all other points in the plaint and in the proxy the correct name has been disclosed as Adikari Mudiyansele **Gnanawathie**. Did he in such attendant circumstances have the power and jurisdiction to correct this clerical error at the stage that he effected the amendment? The answer to that question is obviously in the affirmative.

I wish to refer to certain decisions of the Supreme Court where more serious and graver misdescriptions and errors in regard to the enumeration of names of parties have been effected lawfully by the courts. In the decision in *Odiris Silva and Sons Limited v. Jayawardene*⁽²⁾ a misdescription in the plaint and a continuing error as to the name of the defendant was held to have been lawfully

rectified. The plaintiff in that action mistakenly named in the caption the defendant as Odiris Silva and Sons when in fact, the defendant was an incorporated body designated as Odiris Silva and Sons Ltd. The amendment which was effected in the lower court, amidst strenuous objections, was **upheld** as a correct and lawful order by the Supreme Court which proceeded to hold that for the purpose of reckoning the period of prescription, the action against the incorporated Company must be taken to have been instituted on the date of the original plaint and not upon amendment of the caption of the plaint. Thus, in the teeth of objections founded on prejudice asserted by the incorporated Company, the amendment was sanctioned by the Supreme Court. In the present case there is no occasion whatsoever for the defendant-appellant to complain of either surprise or prejudice inasmuch as a copy of the lease bond was annexed to the plaint as the document sued upon.

In *Velupillai v. Chairman, Urban District Council*⁽³⁾ Chief Justice Abrahams, in upholding the amendment in that case, **stressed that the Supreme Court is a court of law which should not be trammelled by technical objections and that it is not an academy of law.** In that suit, the plaintiff, who had a righteous cause of action against the Urban District Council, by mistake had designated the Chairman of the Council as the defendant and at the trial the issue was raised that the action had not been properly constituted. Chief Justice Abrahams held that the plaintiff should be allowed to amend the caption by substituting the council in place of the Chairman. When it was argued that such an amendment would have the effect of defeating a plea of prescription on the part of the newly substituted defendant, Chief Justice Abraham remarked that the plaintiff always intended to sue the Urban District Council but due to a misconception on the part of the plaintiff's lawyer that the council could not be sued, that the Chairman was made a party defendant. The learned Judge emphasised; "If we do not allow the amendment in this case we would be doing a very grave injustice to the plaintiff because of the shortcoming of his legal advisor, the peculiarities of law and procedure and the congestion of the courts. These factors have all combined to deprive him of his cause of action and I for one refuse to be a party to such an outrage upon justice".

The amendment in the instant case is much more venial in character. It does not have the effect of substituting one party plaintiff for another. The contents of the plaint, the contents of the document sued upon which was annexed to the plaint and the signature on the proxy disclose that the party plaintiff was always Adikari Mudiyansele **Gnanawathie** Menike of Mahawewa. What the District Judge has done is to correct a misdescription and error in one word in the caption and to substitute the name **Gnanawathie** for the name **Gunawathie**. As Justice Keuneman has remarked: "Names only designate persons but a suit is not against names but against persons designated thereby". The learned District Judge has effected a mere correction in one name in the caption acting on the often quoted legal maxim—*Falsa demonstratio non nocet cum de corpore vel persona constat*. (A false description does not harm if there be sufficient certainty as to the object-corpore or person.) A latent ambiguity of this nature can always be corrected by a trial Judge in the exercise of his inherent power to secure the ends of justice. Vide the following decisions where this principle has been applied by the Supreme Court: *Gabriel Perera v. Agnes Perera*⁽⁴⁾; *Yapa v. Dissanayake Sedera*⁽⁵⁾ and vide the provisions of section 95 of the Evidence Ordinance which relates to latent ambiguities and is based on the maxim *Falsa demonstratio non nocet cum de corpore vel persona constat*. (Any inaccuracy in description is to be over-looked if the subject-matter or person is well known). This maxim has often arisen for consideration in connection with the interpretation of wills and devises. But the expression *cum de persona constat* in this maxim signifies that it can arise for application not only in relation to property but equally in regard to persons. In the decision in *James vs. Whitebread*⁽⁶⁾ the court emphasised this aspect by using a slightly different Latin maxim—*Nil facit error nominis cum de corpore vel persona constat*. The fact that this maxim arises for application and consideration not only in civil disputes but even in criminal procedure was well illustrated in the decision in *Rex v. Millor*⁽⁷⁾. In this case the *falsa demonstratio* was clearly in regard to a person. Justice **Byles** adverted to another principle *praesentia corporis tollit erroneus nominis*. In this case, in taking preparatory steps for a trial to be held for the offence of murder the name of a juror A on the panel was called; and B another juror on the same panel appeared and by

mistake answered to the name of A and was sworn as a juror. The accused was convicted. The majority of the judges of the Court of Crown Cases Reserved held that the conviction ought not to be set aside.⁹ Justice Byles rested his judgment on the principle – *Falsa demonstratio non nocet cum de corpore vel persona constat*. His Lordship observed that this mistake is not a mistake of the man but only of his name. The very man who, having being duly qualified looked upon the prisoner and was **corporeally** presented and shown to the prisoner for challenge, was sworn and acted as juryman. At the bottom the objection is but this, that the officer of the court, the juryman being present called and addressed him by a wrong name. Now it is an **old and rational maxim** of law that where the party to a transaction or the subject of a transaction, is actually and corporeally present, the calling of either by a wrong name is immaterial, for *praesentia corporis tollit erroneos nominis, et veritas nominis tollit errorem demonstrationis*. The presence of the parties' before the court. Justice Kenueman in *Parsons v. Abdul Cader (Supra)* at 384 was in effect giving expression to the alternative reasoning and rationale expressed by Justice Byles, namely, that **"names are used only to designate persons and the suit is not against names but against persons designated thereby."**

For the aforesaid reasons I hold that the Additional District Judge of Marawila has correctly answered the issues which were framed in this case. He was entitled to answer issue 10 to the effect that it does not arise, for, even if it was answered in the affirmative, it is wholly irrelevant in view of the reasons which I have adumbrated in this judgment. It is to be noted that under issue 9, two issues have been wrongly combined to render them compound issues and he has answered **one** of them in the affirmative – the first issue. He has answered issue 11 correctly that the plaintiff is entitled to have and maintain the presently constituted action. I hold that the District Judge was perfectly entitled to have effected a correction of the misdescription in one name in the caption of the plaint at the stage that he effected the amendment in the exercise of his inherent powers without waiting for the stage of the trial of the action to exercise powers that were available to him to effect amendments in pleading in terms of section 93 of this Civil Procedure Code. The amendment effected does not fall within the category of the

amendments contemplated in section 93 of the Civil Procedure Code and he was entitled to effect the particular amendment and thereafter transmit the record to the Additional District Judge for the holding of the trial. I hold that there is no merit in this appeal and the solitary matter that was argued before me was the issue which is raised in this judgment. I proceed to dismiss the appeal with costs in a sum of Rs. 2100/- payable by the defendant-appellant to the plaintiff-respondent.

Appeal dismissed.
