

1941

Present : Keuneman J.

PARSONS v. ABDUL CADER

59—C. R. Colombo, 54,954

Amendment of caption of plaint—Judgment entered against person under wrong name—Substitution of right name—Civil Procedure Code, ss. 189 and 839.

Where judgment is entered in a case against a person under a wrong name, the Court has inherent power to substitute the right name in the caption of a plaint even after the decree.

APPEAL from a judgment of the Commissioner of Requests, Colombo.

A. C. Nadarajah, for petitioner, appellant.

N. Nadarajah (with him M. Tiruchelvam), for plaintiffs, respondents.

Cur. adv. vult.

¹ 1 Matara Cases.

² 19 C. D. 375.

June 19, 1941. KEUNEMAN J.—

In this case action was brought and decree was entered against the defendant in the name of M. K. S. Lebbe. In the course of certain proceedings after decree, it was discovered by the plaintiffs that the true name of the person sued was P. M. K. M. Omar Abdul Cader, who was said to have an undisclosed principal in India bearing the name of M. K. S. Lebbe. The plaintiffs led evidence to show that the present appellant was the person with whom they dealt and whom they sued. The appellant had described himself to the plaintiffs as M. K. S. Lebbe, and even signed documents under that name. The appellant had also been served with summons and with notice under section 219, Civil Procedure Code, under that name, and had not on those occasions taken up the position that he was not M. K. S. Lebbe. In view of the discovery of the real name of the appellant, the plaintiffs moved to have the caption amended by inserting the words "M. K. S. Lebbe *alias* P. M. K. M. Omar Abdul Cader". After inquiry the Commissioner allowed this amendment and the appeal is from that order.

There is also an application for leave to appeal on the facts. The decision of the Commissioner is based on overwhelming evidence led for the plaintiffs and the application must be refused.

On the law, the appellant contends that there is no power in the Court to amend the pleadings except, before final judgment (vide section 93, Civil Procedure Code), or to amend the decree, except in accordance with section 189, Civil Procedure Code.

It has however to be remembered that what is sought to be done by the plaintiffs is not to substitute a new defendant, or to alter in any way the existing rights and obligations under the decree, but to clarify a latent ambiguity, arising from the fact that the defendant had described himself, and held himself out, as another person. There is the probability of some confusion arising for example in the execution of the decree.

The Commissioner was of opinion that he was entitled to act under section 839, Civil Procedure Code, and invoke the inherent power of the Court to make such orders as may be necessary "for the ends of justice or to prevent abuse of the process of the Court".

I think the Commissioner was right in invoking this inherent power in this case, and that his order is justified. To use the language of P.C. Mogha in *The Law of Pleadings in British India* (6th ed.) p. 182. "Names are used only to designate persons, and the suit is not against names but against persons designated thereby". In this passage the author was dealing with the specific case of the effect of a decree entered in default against a person under a wrong name, and the right to have the correct name substituted after decree. I do not think this is the kind of amendment contemplated by section 189, and I am of the opinion that the Court has inherent power to make such a correction.

The appeal is dismissed with costs.

Appeal dismissed.