

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA

In the matter of an Application for Leave to Appeal under Section 5C of the High Court of the Provinces (Special Provisions) Act No. 54 of 2006.

AND NOW

SC/Appeal/ 144/2019

SC (HCCA) LA/58/2019

Civil Appellate High Court No:
EP/HCCA/TCO/FA208/17

Leave to Appeal Application No:
EP/HCCA/LA/39/16

DC Muttur Case No:
DC SPL/138/16

In the matter of an application for substitution
in the place of deceased 4th Defendant-
Respondent-Respondent

Ven. Aludeniye Subodhi Thero,
Chief Incumbent,
Seruwila Mangala Raja Maha Viharaya,
Sewuwila.

Party sought to be substituted in place of the
deceased 4th Defendant-Respondent-
Respondent Ven. Munhene Meththarama
Thero.

PETITIONER

Vs.

1. Ven. Kotapola Amarakhithi Thero,
Sewuwila Buddhist Center,
Shanthi Foundation, Bauddhaloka Mw,
Colombo 07.

**1st DEFENDANT-PETITIONER-
APPELLANT-RESPONDENT**

2. R.P. Sooriyapperuma,
Chairman,
Seruwila Mangala Maha
Chaithyawardena Samithiya,
Sruwila
And
No. 318/8, Shanthiwatta, Siyambalape.

3. G.P. Mataraarachchi,
Secretary,
Seruwila Mangala Maha
Chaithyawardena Samithiya,
Sruwila
And
No. 46, Madigodallawatta, Ruwanwella.

4. Liyanage Jayathunge Perera,
Co-Secretary,
Seruwila Mangala Maha
Chaithyawardena Samithiya,
Sruwila
And
No 330/30, Pulliadi, Trincomalee.

PLAINTIFF-RESPONDENT-
RESPONDENT-RESPONDENTS

1. Kapugollewe Anandakiththi Thero,
Seruwila Mangala Raja Maha Viharaya,
Sruwila
And

Jayasumanaramaya, Trincomalee.

2. Kithalagama Dhammalankara Thero,
Seruwila Mangala Raja Maha Viharaya,
Sewuwila
And
Sewuwila Buddhist Center,
Shanthi Foundation, Bauddhaloka Mw,
Colombo 07.

2nd and 3rd DEFENDANT~
PETITIONER~ RESPONDENT ~
RESPONDENTS

Before: Buwaneka Aluwihare PC J
Vijith K. Malalgoda PC J
Mahinda Samayawardhena J

Counsel: Manohara de Silva PC with Harithriya Kumarage and Kaveesha Gamage instructed by Anusha Perusinghe for the 1st Defendant-Petitioner-Petitioner.
Sanjeewa Jayawardena PC instructed by Amila Kumara for the Plaintiff-Respondent-Respondent.
Chathura Galhena with Dharani Weerasinghe instructed by Continental Law Associates for the 2nd and 3rd Defendant-Petitioner-Respondents.
Palitha Kumarasinghe PC with Sanjeewa Dasanayake for the party sought to be substituted in place of the deceased 4th Defendant-Respondent-Respondent.

Written Submissions: Written submissions of the Plaintiff-Respondent-Respondents on 03.01.2023.

Written submissions of the 1st Defendant-Petitioner-Appellant-Petitioner on 16.12.2022.

Written Submissions of the Petitioner sought to be substituted in place of the deceased 4th Defendant-Respondent-Respondent on 15.12.2022.

Considered on: 09.01.2023

Decided on: 31.10.2023

ORDER

Aluwihare PC. J,

The present order is concerned with whether the Petitioner, Ven. Aludeniye Subodhi Thero can be substituted in the room and place of the deceased 4th Defendant-Respondent-Respondent, Ven. Munhene Meththarama Thero (hereinafter referred to as the 4th Defendant) in the instant case. The 4th Defendant was the Viharadhipathi (Chief Incumbent) of the Seruwila Mangala Raja Maha Viharaya in Trincomalee until his expiration on 11th May 2021.

The Petitioner is purporting to be the 4th Defendant's successor as the Viharadhipathi, having been appointed by a group of laymen representing the Seruwila Mangala Maha Chaithyawardena Society (hereinafter the 'Chaithyawardena Society'). Whereas the 1st Defendant-Petitioner-Appellant-Respondent (hereinafter the 1st Respondent) claims that he was appointed as the Viharadhipathi by the Chief Prelate of the Kalyanawansa Sect of the Amarapura Chapter as per the powers vested on the

Chief Prelate in terms of the Constitution of the Kalyanawansa Sect (as supported by letter of the Commissioner General of Buddhist Affairs marked 'D2A' which states that the appointment of the 1st Respondent was accepted by the Commissioner General).

The main application of the instant matter arises from the following events. When Ven. Seruwila Saranakiththi Thero, in the role of Viharadhipathi, was ill and hospitalized for treatment, the 1st Respondent along with the 2nd and 3rd Defendant-Petitioner-Respondents (hereinafter the 2nd and 3rd Defendants) attempted to interfere in the administration of the Seruwila Mangala Raja Maha Viharaya without a proper appointment to the said Chief Incumbency and regardless of the fact that the Viharadhipathi was alive.

In order to maintain peace within the temple, three key office bearers of the Chaithyawardena Society instituted an action bearing No. SPL/138/16 in the District Court of Muttur praying for permanent injunction, interim injunction and enjoining order. The 1st to 4th Defendants named in the said application were the pupils of Ven. Seruwila Saranakiththi Thero. The now deceased Ven. Munhene Meththarama Thero was named as the 4th Defendant while Ven. Seruwila Saranakiththi Thero was named as the 5th Defendant.

In the said action, the District Court of Muttur issued an enjoining order against the 1st to 4th Defendants restraining them from interfering in the administrative affairs of the Seruwila Mangala Raja Maha Viharaya. Before summons could be served, the Viharadhipathi, Ven. Seruwila Saranakiththi Thero [who was cited as the 5th Defendant] passed away on or about 02nd May 2016 and the Chaithyawardena Society consisting of the 1st and 2nd Plaintiffs appointed the 4th Defendant as the Viharadhipathi and communicated the fact of the appointment to the Chief Prelate of the Kalyanawansa Sect. Although the Plaintiffs had originally sought relief against the 4th Defendant, the Plaintiffs moved to withdraw the enjoining order against the 4th Defendant, facilitating such appointment. The matter proceeded against the rest of the Defendants and an interim injunction was issued against the 1st to 3rd Defendants on 19th October 2016.

Challenging the aforementioned order of the District Court of Muttur, the 1st to 3rd Defendants filed a leave to appeal application in the Civil Appellate High Court of the Eastern Province holden in Trincomalee. The Civil Appellate High Court in turn, affirmed the interim order of the District Court. Being aggrieved thereby, the 1st Respondent filed a leave to appeal application before the Supreme Court. Leave to appeal being granted, the appeal was fixed for hearing. While the appeal was pending the 4th Defendant passed away on or about 11th May 2021 and the current Petitioner, Ven. Aludeniye Subodhi Thero sought to be substituted in the place of the deceased 4th Defendant.

At the time of the delivery of the High Court of Civil Appeal decision on 11th January 2019 the 4th Defendant had acceded to the role of the Viharadhipathi having been appointed in that role by the previous Viharadhipathi, 5th Defendant by virtue of Deed No. 3011 dated 11th September 2006. His appointment as the Viharadhipathi, however, had been subsequently cancelled. Challenging the cancellation, the 4th Defendant had filed action in the District Court of Colombo against the 5th Defendant. (An interim injunction had been issued against the cancellation by the District Court of Colombo.

The substitution of the Petitioner in the room and place of the deceased 4th Defendant in the present matter was objected to by the Respondents alleging that the Petitioner, Ven. Aludeniye Subodhi Thero was attempting to get undue recognition of the Supreme Court as the Viharadhipathi of the Seruwila Mangala Raja Maha Viharaya. The substance of the objections was mainly that there is no need for the substitution of the Petitioner as his appointment as Viharadhipathi is unacceptable being contrary to the existing procedure and, that the Petitioner is not a party that stands to be affected by the interim injunction issued by the District Court of Muttur.

The 1st Respondent stated that the three appointments of Viharadhipathi made in the years 1984, 2016 and 2021 were effected either through a Deed of Appointment or by resorting to the procedure set out in the relevant provisions of the Constitution of the Amarapura Chapter. The 1st Respondent contends that as per the Constitution of

the Amarapura Chapter the Chaithyawardena society is merely empowered to make a recommendation to the Chief Prelate of the Kalyanawansa Sect, which can then be considered or disregarded at the discretion of the Chief Prelate. The appointment is at the sole discretion of the Chief Prelate. The 1st Respondent further stated that the purported appointment of the Petitioner has received neither the required administrative recognition nor recognition by the *Maha Sangha*.

Furthermore, the 1st Respondent submitted that the interim injunctions which are the subject matter of the present appeal were issued against the 1st to 3rd Defendants and that the deceased 4th Defendant has never been a party affected or benefitted by the said order. It was further contended that the 4th Defendant was named in the personal capacity in the actions before the District Court of Muttur and not in the capacity of the Viharadhipathi of the Seruwila Mangala Maha Viharaya and therefore any successor to the office of the Viharadhipathi of the said Viharaya has no right to be substituted.

The Petitioner, on the contrary, stated that he was appointed by the Chaithyawardena Society in accordance with the temple tradition and/or custom of appointing the Viharadhipathi of the Seruwila Mangala Raja Maha Viharaya. The claim of the Petitioner is that the relevant provisions of the Constitution of the Kalyanawansa Sect are such as to allow the Chaithyawardena Society to appoint a Viharadhipathi of their choice.

Furthermore, the Petitioner submitted that as the District Court application principally related to the management, control and decision making of the Chaithyawardena Society in respect of the Seruwila Mangala Raja Maha Viharaya and since the deceased 4th Defendant was the then Viharadhipathi, it is necessary to substitute his successor in office i.e. the Petitioner, as the present Viharadhipathi, for the purpose of prosecuting the present appeal as well as in the interests of justice.

It was further submitted that any order made by the Supreme Court substituting the Petitioner can no way be construed as a judicial pronouncement of the Viharadhipathiship as alleged by the 1st Respondent and that the said question is a

different cause of action for a different application. The Petitioner brought to the notice of this court that in fact such an application, bearing no. DSP 145/2021, has been instituted in the District Court of Colombo by the Petitioner. It was emphasized that the present substitution is intended for the limited purpose of prosecuting the appeal.

The context of the matter and the contentions of the parties are such, and what remains to be seen is whether the substitution sought by the Petitioner can be allowed. Section 760A of the Civil Procedure Code read with Rule 38 of the Supreme Court Rules 1990 makes provision for the substitution of parties in appeals in civil matters.

Section 760A of the Civil Procedure Code states that “*Where at any time after the lodging of an appeal in any civil action, proceeding or matter, the record becomes defective, by reason of the death or change of status of a party to the appeal, the Court of Appeal may in the manner provided in the rules made by the Supreme Court for that purpose, determine who, in the opinion of the court is the proper person to be substituted or entered on the record in the place of, or in addition to, the party who had died or undergone a change of status, and the name of such person shall thereupon be deemed to be substituted or entered on record as aforesaid.*”

Rule 38 of the Supreme Court rules states that “*The Supreme Court may, on application in that behalf made by any person interested, or ex mero motu, require such applicant or the petitioner or appellant, as the case may be, to place before the Court sufficient materials to establish who is the proper person to be substituted or entered on the record in place of, or in addition to the party who had died or undergone a change of status;...*”

Upon a plain reading of Rule 38, it is evident that any person interested can make an application to be substituted in the place of the person who has died, and that determining who the proper person to be substituted is at the discretion of the court. As reiterated in *Chandana Hewavitharane v. Urban Development Authority (2005) 2 SLR 107* at page 110, by Rule 38, the court is given the discretion to determine who the proper person to be substituted is. There is no requirement for a person making

such application to be a legal heir, administrator, or executor, as the section envisages applications “*by any person interested*.”

Furthermore, substitution is in the interests of the continuation of the case and plays no role in deciding the rights of the parties. In the Court of Appeal decisions of *Kusumawathie v. Kanthi* (2004) 1 SLR 350, at page 354, and *Careem v. Sivasubramaniam and Another* (2003) (2) SLR 197 which are relevant to the case at hand, it was observed that substitution is solely for the purpose of ensuring the continuation of the appeal after the change of status and not to decide the rights of the parties. It was submitted on behalf of the 1st Respondent that where there are more Defendants than one and one of them dies and if the cause of action survives against the other Defendants alone, the Plaintiff can continue the action without bringing in the legal representative (*vide Duhilanomal and Others v. Mahakanda Housing Company Limited* (1982) 2 SLR 504).

In the present case, the 1st Respondent avers that Rule 38 cannot be applied to make a mandatory substitution since the case record will not become defective by the demise of the 4th Defendant who has been named as a party for the reason of notice, who is neither a beneficiary nor an affected party by the interim injunctions canvassed before the Supreme Court. However, even though the case record does not become defective by the demise of the 4th Defendant it is necessary to consider other reasons that warrant the substitution of the Petitioner in place of the deceased 4th Defendant.

The 1st Respondent submitted that in an action filed in the personal capacity the successor to such person’s office need not be substituted. It is pertinent to note, however, that after the death of the 5th Defendant Viharadhipathi Thero, the 4th Defendant has, in fact, been considered in the capacity of the Viharadhipathi rather than in his personal capacity before the District Court. This was indicated by the Motion dated 15th May 2016 by which the Plaintiffs had informed the District Court that they will not proceed against the 4th Defendant as he had become the Viharadhipathi. Therefore, the Plaintiffs considering it necessary to make the

incumbent Viharadhipathi a party to the action, following his demise there is no impediment for his successor to be substituted in the capacity of the Viharadhipathi.

The District Court case DC SPL/138/16 sought to be appealed against, principally relates to the interference in the management and the affairs of the Seruwila Mangala Maha Viharaya. In *Dheerananda Thero v. Ratnasara Thero* 60 NLR 7 at page 9, it was observed that “*the temple and the temporalities,... by operation of law, belong to the Viharadipathi of the temple.*” As the management, control and administration of the Seruwila Mangala Raja Maha Viharaya and its temporalities vests with the Viharadhipathi, an action relating to the interference with the management and affairs of the temple can hardly be said not to have an impact on the Viharadhipathi in his official capacity.

We are inclined to override the contention of the 1st Respondent that the 4th Defendant has never been a party affected or benefited by the issuance of the interim injunctions against the 1st to 3rd Defendants. For the limited purpose of substitution, we take heed of the fact that, on the face of it, it seems that the Petitioner has *de facto* discharged certain functions of the Viharadhipathi, following the demise of the 4th Defendant (as per the souvenir issued for the *Katina Pinkama* 2021 marked ‘X1’). The present matter, arising from the said District Court of Muttur cases, will have an impact on the management and the affairs of the Seruwila Mangala Maha Viharaya. Therefore, as the outcome of the appeal before the Supreme Court will affect the Petitioner in the role of purported Viharadhipathi succeeding the 4th Defendant, and in light of the application for substitution made by the Petitioner it will serve the interests of justice to allow the Petitioner to represent his interest in the matter.

While it is not mandatory to make a substitution, whether to make a substitution or not is at the discretion of the court. This is either *ex mero motu* or by consideration of an application for substitution made by any person interested (*vide* Rule 38 of the Supreme Court Rules) As set out in *Chandana Hewavitharane v. Urban Development Authority (supra)* Rule 38 confers on the Court the discretion to determine who the proper person to be substituted is. As there is no identifiable impediment to the

continuation of the matter by the impugned substitution, and in view of the application to be substituted made by the Petitioner, it is in the interests of justice to substitute the Petitioner in the place of the deceased 4th Defendant.

It is to be noted that the substitution of the present Petitioner is not in any way a judicial pronouncement on the legality or otherwise of the appointment to Viharadhipathiship of the Petitioner, Ven. Aludeniye Subodhi Thero.

Accordingly, the application for substitution as pleaded in the instant application is allowed and the Petitioner is directed to file an amended caption within 3 weeks from today, with notice to other parties.

JUDGE OF THE SUPREME COURT

Vijith K. Malalgoda PC

I agree.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena J

I agree.

JUDGE OF THE SUPREME COURT