

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

Bambaragama Somaratne Thero,

Sri Jinendraramaya,

Bullers Lane,

Colombo 7.

4th Defendant-Petitioner-Appellant

SC/APPEAL/86/2014

WP/HCCA/KAL/54/2012 (LA)

DC HORANA 5538/L

Vs.

Ingiriye Vipulasara Thero,

Sri Bodhiraja Buddhist Centre,

Maha Ingiriya,

Ingiriya.

Plaintiff-Respondent-Respondent

1. Mundukotuwa Shanthasiri Thero,
Deepaloka Viharasthanaya,
Ingiriya.
2. Julampitiye Sudhira Thero,
Sri Devarakshitharama Viharasthanaya,
Wagawatta,
Poruwadhandha.
3. Wadugasthalawe Nanda Thero,
Sri Dharmarama Viharaya,
Dharmarama Road,
Karagampitiya, Dehiwala.

5. Rattiyala Suddasi Thero,
Sri Bodhirukkaramaya,
Idanggoda,
Kiriella.
6. Battaramulle Dharmaratne Thero,
Mahindarama Viharaya,
Nelum Kottuwa,
Kiriella.

1st to 3rd, 5th and 6th Defendants-
Respondents-Respondents

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice K. Priyantha Fernando
Hon. Justice M. Sampath K. B. Wijeratne

Counsel: Chamath Jayasekara and Harish Balakrishnan for the 4th Defendant-Petitioner-Appellant.
Thishya Weragoda with Iresh Senevirathne and Chamodi Wijeweera for the Plaintiff-Respondent-Respondent.
Upendra Walgampaya with Gayal Kalatuwawa for the 1st Defendant-Respondent-Respondent.
Thanuka Nandasiri with Susil Wanigapura for the 3rd Defendant-Respondent-Respondent.

Argued on: 29.09.2025

Written submissions:
By the 4th Defendant-Petitioner-Appellant on 27.10.2025.
By the Plaintiff-Respondent-Respondent on 31.10.2025.

Decided on: 13.01.2026

Samayawardhena, J.

The plaintiff instituted this action against six defendants in the District Court of Horana, seeking a declaration that he is the Viharadhipathi of Deepaloka Viharaya in Ingiriya and the appurtenant temples thereto, ejection of the 1st defendant therefrom, and costs. The 1st, 3rd, and 4th defendants filed separate answers. After replication was filed in respect of the 3rd defendant's answer in open court on 14.10.2011, the case was fixed for trial on 16.02.2012.

Prior to the first date of trial, the Attorneys-at-Law of the 3rd and 4th defendants filed motions dated 02.02.2012, together with amended answers, moving court to call the case in open court on 08.02.2012 in order to support their respective applications for amendment of the answers. The registered postal article receipts in proof of service of copies of the motions and amended answers were annexed thereto. When the case was called in open court on 08.02.2012, the court fixed a date for objections and ordered the case to be taken out of the trial roll fixed for 16.02.2012.

Upon objections being filed by the plaintiff and the 1st defendant, followed by written submissions, the learned District Judge made order refusing the applications to amend the answers. The High Court thereafter refused leave to appeal against that order. Hence this appeal. This court granted leave to appeal on the following two questions of law:

- (a) Did the High Court err in affirming the decision of the District Court that section 93(2) of the Civil Procedure Code was applicable to the case?
- (b) Assuming section 93(1) is applicable, did the High Court err in affirming the decision of the District Court that the discretion of the court should be exercised against the 4th defendant?

It is common ground that the principal provision of the Civil Procedure Code governing the amendment of pleadings is section 93. Section 93(1) applies to applications for amendment made before the day first fixed for trial of the action, while section 93(2) applies to applications for amendment made after the day first fixed for trial of the action. At the time material to this appeal, section 93 read as follows:

93(1) Upon application made to it before the day first fixed for trial of the action, in the presence of, or after reasonable notice to all the parties to the action, the court shall have full power of amending in its discretion, all pleadings in the action, by way of addition, or alteration, or of omission.

(2) On or after the day first fixed for the trial of the action and before final judgement, no application for the amendment of any pleadings shall be allowed unless the court is satisfied, for reasons to be recorded by the court, that grave and irremediable injustice will be caused if such amendment is not permitted, and on no other ground, and that the party so applying has not been guilty of laches.

(3) Any application for amendment of pleadings which may be allowed by the court under subsection (1) or (2) shall be upon such terms as to costs and postponement or otherwise as the court may think fit.

(4) The additions or alterations or omissions shall be clearly made on the face of the pleading affected by the order; or if this cannot conveniently be done, a fair copy of the pleading as altered shall, be appended in the record of the action to the pleading amended. Every such addition or alteration or omission shall be signed by the Judge.

The learned District Judge, citing *Ceylon Insurance Co. Ltd. v. Nanayakkara* [1999] 3 Sri LR 50, took the view that section 93(2) of the Civil Procedure Code was applicable in this instance, on the footing that the phrase “the

day first fixed for trial of the action”, as used in section 93, refers to the date on which the case was called in open court under section 80 of the Code for the purpose of fixing a date for trial. I am unable to agree with that view.

Ceylon Insurance Co. Ltd. v. Nanayakkara turned on a very different factual matrix. There, the trial had already commenced and was part-heard when the learned District Judge was transferred. The successor Judge ordered a trial *de novo* and permitted the filing of an amended plaint. On appeal, Justice Weerasuriya, sitting in the Court of Appeal, set aside that order, holding as follows:

*Learned counsel for the plaintiffs argued that the application for amendment of the plaint would fall within the ambit of section 93(1). He submitted that trial which commenced on 28.07.95, was not continued before the new District Judge and the order was made for a trial *de novo*, on 13.05.97 and therefore the new trial date could be construed as the first date of trial. It is to be observed that section 80 of the Civil Procedure Code provides for fixing the date of trial and such date constitutes, the day first fixed for trial. Section 48 of the Judicature Act provides for continuation of a trial before the Judge who succeeds the Judge before whom trial commenced. The discretion vested in that succeeding Judge either to continue with the trial or to commence proceedings afresh does not affect the nature of the order made in terms of section 80 of the Civil Procedure Code relating to the fixing of the first trial date. Thus, the order made fixing the date of trial in terms of section 80, becomes the “day first fixed for trial” within the meaning of section 93(2) of the Civil Procedure Code. Thus, the order made by the District Judge allowing the amendment of plaint cannot be supported, considering the circumstances of this case.*

The above dicta cannot be interpreted to mean that the date on which a case is called in court for the purpose of fixing a date for trial constitutes

“the day first fixed for trial of the action”. In my view, section 93(1) of the Civil Procedure Code was applicable on the facts of the present case, and the learned District Judge erred in law in holding that section 93(2) was applicable.

The next question is whether the learned District Judge was justified in refusing the application under section 93(1) of the Civil Procedure Code. As I discussed in detail in *Lional Ranjith v. Leelawathi* (SC/APPEAL/100/2020, SC Minutes of 14.05.2025), a court is not bound to allow an amendment merely because it is sought prior to the day first fixed for trial of the action. The court is required to examine the nature and effect of the proposed amendment. One such consideration is whether the amendment would alter the fundamental character of the action and the prejudice caused thereby to the opposite party.

The first proviso to section 46 of the Civil Procedure Code expressly provides that “*no amendment shall be allowed which would have the effect of converting an action of one character into an action of another and inconsistent character.*” Further, amendments that would cause grave prejudice to the opposite party ought not to be permitted. For example, an amendment which seeks to introduce a material factual assertion not pleaded in the original plaint, or to withdraw an important admission already made in the original pleading, thereby causing serious prejudice to the opposing party, cannot be allowed.

The proposed amendments sought by the 4th defendant would alter the character of the action and cause prejudice to the plaintiff for the following reasons:

- (a) In the original answer, the 4th defendant accepted the jurisdiction of the court to hear and determine the action. By the proposed

amendment, he now seeks to plead that he accepts the jurisdiction only partially.

- (b) In paragraph 2 of the plaint, the plaintiff pleaded that Deepaloka Viharaya is an excluded temple within the meaning of section 4(1) of the Buddhist Temporalities Ordinance, but is subject to section 4(2) thereof, and that the incumbent is therefore the Controlling Viharadhipathi. This position was accepted in the original answer. The 4th defendant now seeks to deny it.
- (c) In the original plaint, the plaintiff pleaded, *inter alia*, that Viharadhipathiship is determined according to the rule of pupillary succession. In the original answer, the 4th defendant stated, *inter alia*, that succession is determined by both pupillary succession and brother succession. By the proposed amendment, he now seeks to plead that succession is determined only by brother succession.
- (d) In paragraph 5 of the plaint, the plaintiff pleaded that several temples are appurtenant temples of Deepaloka Viharaya and that Deepaloka Viharaya is the principal temple thereof. This position was accepted in the original answer. The 4th defendant now seeks to deny it.
- (e) In paragraph 6 of the plaint, the plaintiff pleaded that the Viharadhipathi of Deepaloka Viharaya should also be the Viharadhipathi of the appurtenant temples. In the original answer, the 4th defendant pleaded that the Viharadhipathiship of the other temples is determined by the Kotte Sri Kalyani Dharma Maha Sangha Sabha. By the proposed amendment, he now seeks to deny the contents of paragraph 6 of the plaint in their entirety.
- (f) In paragraph 19 of the original answer, the 4th defendant acknowledged, *inter alia*, the existence of appurtenant Viharayas attached to Deepaloka Viharaya. This admission has been omitted in the amended answer.
- (g) By the proposed amendment, the 4th defendant has also introduced a new relief in the prayer to the answer, seeking a declaration that Sri

Jinendrarama Viharaya, where he presently resides, is not an appurtenant Viharaya of Deepaloka Viharaya.

The learned District Judge has correctly observed that permitting the proposed amendments would alter the character of the action. It is more accurate to state that the proposed amendments would alter the character of the 4th defendant's case and, in consequence, have a ripple effect on the plaintiff's case as well. I am unable to accept the submission of learned counsel for the 4th defendant that the amended answer seeks to do no more than clarify the 4th defendant's position. Learned counsel further submits that the proposed amendments were intended to reconcile certain inconsistent averments contained in the original answer. If that be so, such reconciliation can appropriately be addressed at the stage of framing issues, which has not yet been reached.

For the foregoing reasons, I answer the first question of law on which leave was granted in the affirmative and the second in the negative. The conclusion reached by the learned District Judge in the impugned order dated 17.09.2012 is correct.

I accordingly dismiss the appeal but without costs.

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree.

Judge of the Supreme Court

M. Sampath K. B. Wijeratne, J.

I agree.

Judge of the Supreme Court