

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

**CA REV. Application No.726/2009**  
**Case No. Misc/185**

1. American Ceylon Mission  
Diocesan Office  
Church of South India  
Vaddukoddai, Jaffna.

2. A. Arul Joseph  
Treasurer  
Diocesan Office  
Church of South India  
Vaddukoddai, Jaffna.

**PLAINTIFFS**

**Vs.**

1. Wider Church Ministries  
United Church of Christ  
700, Prospect Avenue  
Cleveland, OH-44115  
United States of America.

2. Rev. John Thomas  
General Minister and President  
Wider Church Ministries  
United Church of Christ  
700, Prospect Avenue  
Cleveland, OH-44115  
United States of America.

3. Cally Rogers-Witte  
Chief Executive  
Wider Church Ministries  
United Church of Christ  
700, Prospect Avenue  
Cleveland, OH-44115  
United States of America.

4. Rev. Dr. Sellathurai Jeyanesan  
St. John's Church, Uranee  
Batticaloa.

5. Rev.Thevasagayam Thevanesan  
Christian Theological Seminary  
Chunnakam.

6. Rev. Milton Solomon  
Christian Theological Seminary  
Chunnakam.

7. Vasanthi Rajaratnam  
96/1, Hampden Lane  
Colombo 00600.

8. Rev. Annappa Jeyakumaran  
College Lane  
Vaddukoddai.
9. Annappa Jeyarajan  
Jaffna College  
Vaddikoddai.
10. Rev. Gunaratnam Dilo Mynaseelan  
C/o. CSI Parsonage  
Atchuvely.
11. Shiranee Mills  
Principal  
Uduvil Girls' College  
Uduvil.
12. Rev.Varathungam Rajkumar  
CSI Programme  
Manipay.
13. Rev. Arulanantham Thevagunanathan  
CSI Parsonage, Navaly.

**DEFENDANTS**

***And now in the matter of an application for  
Revision in the terms of Article 138 of the  
Constitution read with Section 753 of the Civil  
Procedure Code and Section 5D(1) of the High  
Court of the Provinces Act No.19 of 1990***

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Vaddukoddai, Jaffna.
2. A. Arul Joseph  
Treasurer  
Diocesan Office  
Church of South India  
Vaddikoddai, Jaffna.

**PLAINTIFFS-PETITIONERS**

Rev.S.C. Arnold  
Treasurer  
Diocesan Office  
Church of South India  
Vaddukoddai, Jaffna.

**SUBSTITUTED 2<sup>nd</sup> PLAINTIFF-PETITIONER**

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Manipay.
13. Rev. Arulanathan Thevagunanathan  
CSI Parsonage  
Navaly.

**Before:** Janak De Silva J.  
&  
N. Bandula Karunarathna J.

**Counsel:** K. Kanag – Iswaran PC with M.A. Sumanthiram PC , instructed by J. Arulanathan for the Plaintiff- Respondent.  
Harsha Fernando with R. Weerasinghe and Yohan Coorey for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant – Respondent instructed by K. Kaneshayogan.  
Mano Devasagayam with Sujeewa Dahanayake for 7<sup>th</sup> Defendant – Respondent.

**Argued on:** 04/07/2019

**Written Submissions:** By Plaintiffs-Petitioners on 03.09.2019  
By 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendant- Respondents on 28.04.2018  
Additional Written Submissions of the 7<sup>th</sup> Defendant – Respondent on 24.04.2018.

**Judgment on:** 16/11/2020

**N. Bandula Karunarathna J.**

The Plaintiff-Petitioners (hereinafter sometimes referred to as “the Petitioners”) instituted this action in the District Court of Jaffna, against the Defendant-Respondents (hereinafter referred to as “the Defendants”) for: -

- a) A declaration that the persons who constitute the 1<sup>st</sup> Plaintiff, that is "American Illankai Mission" are the Bishop, Secretary and Treasurer respectively of the Jaffna Diocese of the Church of South India.
- b) A declaration that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have no right or authority to appoint or approve the Officers of the 1<sup>st</sup> Plaintiff, that is 'American Illankai Mission'.
- c) An enjoying order, interim injunction and permanent injunction restraining the Defendants their agents or servants from asserting any function or power over the 1<sup>st</sup> Plaintiff and or using the 1<sup>st</sup> Plaintiff's name in any manner whatsoever or howsoever.
- d) A stay order and an enjoying order restraining the Defendants their servants and agents from holding any meetings for and on behalf of the 1<sup>st</sup> Plaintiff as circulated to be held on 4<sup>th</sup> and 5<sup>th</sup> of July 2007, or on any other dates.

The Plaintiffs' position, as stated inter-alia in the Plaint is as follows: -

- a) The 1<sup>st</sup> Plaintiff that is "American Ceylon Mission" is a body incorporated by statute under Ordinance No.4 of 1908.
- b) The 2<sup>nd</sup> Plaintiff is the Treasurer of the 1<sup>st</sup> Plaintiff referred to in Section 6 of the said Ordinance and was appointed to the said post at the 59<sup>th</sup> Annual Session of the Jaffna Diocesan Council of the Church of South India and is vested with authority to authenticate the seal of the 1<sup>st</sup> Plaintiff.
- c) The 1<sup>st</sup> Defendant purports to claim to be the legal successor to the American Board of Commissioners for Foreign Missions referred to in Section 2 of the said Ordinance. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants claim to be the President and Chief Executive of the 1<sup>st</sup> Defendant.
- d) All historic accounts are unanimous in saying that the American Illankai Mission established in 1816 and the Jaffna Diocese of the Church of South India (JDCSI) "merged into one" and the American Ceylon Mission and the JDCSI are now one body.
- e) From 1947 onwards the JDCSI exercised sole control over the 1<sup>st</sup> Plaintiff and appointed the Bishop, Secretary and Treasurer of the JDCSI as the Officers to the post of Chairman, Secretary and Treasurer respectively of the 1<sup>st</sup> Plaintiff at the annual sessions of the JDCSI.
- f) On 21<sup>st</sup> August 2006, the Rt. Rev. Dr. Daniel Thiagarajah was consecrated as the Bishop of the JDCSI in Chennai according to constitutional provisions.

- g) The 3<sup>rd</sup> Defendant as the Chief Executive of the 1<sup>st</sup> Defendant wrote a letter dated 3<sup>rd</sup> July 2007, which was received by e-mail directing that no changes be made to the management structures of the 1<sup>st</sup> Plaintiff and the *status quo ante* to the Bishop taking office should prevail in relation to the assets held by the 1<sup>st</sup> Plaintiff.
- h) The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants have sent out notices of meetings of the 1<sup>st</sup> Plaintiff to be held on the 4<sup>th</sup> and 5<sup>th</sup> of July 2007, at Christian Theological Seminary and Uduvil Girls' College and at Manipay.
- i) The 1<sup>st</sup> to the 3<sup>rd</sup> Defendants have no authority to appoint officers to constitute the 1<sup>st</sup> Plaintiff, "American Illankai Mission" and that even nominations of the names to the American Board of Commissioners to Foreign Missions referred to in Section 2 of the said Ordinance has fallen into desuetude by 1947 and ceased to be of any force or effect.

The Learned District Judge of Jaffna in the above-styled proceedings, where on the date of trial, prior to issues being raised, he dismissed the action of the Plaintiffs – Petitioners on the ground that the Plaint, which was filed on 3<sup>rd</sup> August 2007, gives the name of the 1<sup>st</sup> Plaintiff- Petitioner (herein after sometimes referred to as the 1<sup>st</sup> Petitioner) as "American Ceylon Mission" and not "The American Ceylon Mission". This Order was made subsequent to an enjoining order (which was later converted into as an interim injunction being made in the said District Court action. The Petitioners state that the Learned District Judge erred in dismissing the action of the Plaintiff -Petitioner merely for the reason that the 1<sup>st</sup> Plaintiff- Petitioner was purportedly not properly named as the caption did not have the word, "the".

Therefore, in this application the Plaintiff-Petitioners sought to invoke the extraordinary Jurisdiction of the Court of Appeal to revise, set aside and restore the said action, together with the interim injunction, "restraining the Defendants, their servant or agents or any person claiming under them from asserting in any manner whatsoever any function or power over the 1<sup>st</sup> Plaintiff and using the 1<sup>st</sup> Plaintiff's name in any manner whatsoever or howsoever and not to hold the meetings intended to be held on 4<sup>th</sup> and 5<sup>th</sup> of August 2007 on those days or on any other day", that was operative.

The Petitioners state that the Defendant Respondents are in contravention of Section 22 of the Civil Procedure Code as the objection of the said identity of the 1<sup>st</sup> Petitioner was not raised in any forum till the first day of the Trial.

Section 22 of the Civil Procedure Code which states that;

'All objections for want of parties, or for joinder of parties who have no interest in the action, or for misjoinder as Co-Plaintiffs or co- Defendants, shall be taken at the earliest possible opportunity; and in all cases before the hearing. And any such objection not so taken shall be deemed to have been waived by the Defendant.'

The Petitioners moreover state that the very Act of incorporation of the 1<sup>st</sup> Petitioner (hereinafter sometimes referred to as 'the said Act') itself refers to 'American Ceylon Mission'. The short title to the Ordinance No.4 of 1908 that incorporated the "American Ceylon Mission" in fact refers to the said body corporate as the "American Ceylon Mission Ordinance". Further, sections 3, 4, 5 and 6 of the Ordinance No.4 of 1908 consistently refers to the said body corporate as "American Ceylon Mission" and not as "The "American Ceylon Mission.

The Plaintiff- Petitioner also states that the 1<sup>st</sup> Petitioner has been referred to as 'American Ceylon Mission' in a substantial number of following instances including inter alia, Several Deeds in which the said incorporated body is referred to as "American Ceylon Mission" (annexure "A22" to the Petition dated 19<sup>th</sup> October 2009), several Court records bearing numbers Nos.718/L and 719/L, thus making it clear that it is clearly identified by this name.

Further, the Plaintiff- Petitioner claims that the identity of the 1<sup>st</sup> Plaintiff- Petitioner is undoubtedly clear as the article 'the' makes no difference in meaning in the English language and to the identity of the 1<sup>st</sup> Plaintiff- Petitioner, and as the article 'The' has no equivalent in the Tamil or Sinhala language. The law has recognized that such mis-description must be overlooked if there is sufficient certainty as to the identity of the 1<sup>st</sup> Petitioner. This is clearly recognized by the often quoted legal maxims, namely, "*Falsa demonstratio non nocet cum de corpe vel persona constat*"- ( a false description does not harm if there be sufficient certainty as to the subject- matter or the person), and "*Falsa demonstratio non nocet cum de corpore vel persona constat*" – (any inaccuracy in description is to be over looked if the subject-matter of the person is well- known).

This position is further strengthened by the case of;

\* *Parsons Vs. Abdul Cader* 42 NLR 383;

\* *Vellupillai Vs. Chairman, Urban Council, Jaffna* 39 NLR 464;

\* *Bank of Ceylon Vs. Ramasamy* 1986 (1) CALR 481;

\* *W.M. Mendis and Co. Vs. Excise Commissioner* 1999 (1) SLR 351,

all of which lay down the principle that "names in the caption of a Plaintiff are used only to designate persons"

It is thus submitted by the Petitioner that in light of this, the reference of "*The American Ceylon Mission*" in section 2 of the said Act does not mean that the identity of the 1<sup>st</sup> Plaintiff is solely dependent on the use of "*The*" and that in any event, there are several acts of incorporation of bodies whose names sometimes have the article "The" as prefix, but in all cases the identity of such incorporated body does not depend solely on the use of "The", to their names.

Moreover, on a perusal of the Answer filed by the 1<sup>st</sup> to 3<sup>rd</sup> Defendants dated 28<sup>th</sup> August 2009, and the 4<sup>th</sup> to 13<sup>th</sup> Defendants dated 10<sup>th</sup> December 2007, in the District Court of Jaffna, that it consistently refers to "the American Ceylon Mission" with the word "the" in a lower case, regular font, and the words American Ceylon Mission being in upper case bold faced font. It is thus clear that on their own pleadings, that the Defendant Respondents concede that the definitive article 'the' is not necessary in order to clearly identify the Petitioner.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant Respondents state that, the Learned District Judge dismissed the action of the Plaintiff- Petitioners, which was filed on the 3<sup>rd</sup> August 2007, gives the name "American illankai Mission" instead of "the American Ceylon Mission" which is how the Mission is incorporated in The American Ceylon Mission ordinance No: 4 of 1908.

While emphasizing on the importance of the correct description of the litigant, (exactness in describing parties in adjudication) the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant Respondents also provide a historical background to the American Board of Commissioners for Foreign Missions stating that the American Board of Commissioners for Foreign Missions (hereinafter referred to as ABCFM), was set up in Massachusetts in 1810.

In 1812 the said ABCFM set a group of Missionaries to Jaffna on 15<sup>th</sup> October 1816, where they established the American Ceylon Mission. The abovementioned mission founded 19 churches in Jaffna by the year 1900. The properties belonging to the mission including the churches built by the mission were held on trust by the Treasurer of "the American Ceylon Mission". The American Ceylon Mission was incorporated by Ordinance No. 4 of 1908 (A1a), the reason for such an incorporation was for it to hold property for and on behalf of the churches founded by the Mission.

The Plaintiff-Petitioner further states that, "On a stormy night five young men under a haystack in Massachusetts, a body called the American Board Commission was setup in 1810..." The said Foreign Missions Board sent two missionaries to Jaffna, where they established the American Ceylon Mission. In 1904 the Congregational Council of Ceylon was established. Paragraph 8 of the Original Petition refers to the Act of 1908 No.4 where the



American Ceylon Mission was enacted by the act of Parliament. So, it is clear, from the Petitioner's own Pleadings that there existed two separate institutions.

The 7<sup>th</sup> Defendant – Respondent state that the 2<sup>nd</sup> Plaintiff is not a member of the incorporated "The American Ceylon Mission" and has no right or authority to act on behalf of "The American Ceylon Mission". Therefore the 2<sup>nd</sup> Plaintiff has no right or power to use or authenticate the seal of the incorporated "The American Ceylon Mission" and the incorporated The American Ceylon Mission is therefore not validly before Court. The American Ceylon Mission has been incorporated by Ordinance No.4 of 1908 which has been marked as 'P1(a)' The persons who constitute the body corporate of The American Ceylon Mission are the President, Secretary and Treasurer appointed by the America Board of Commissioners for Foreign Missions (ABCFM) (

It is evident that the first Defendant-Respondent is admittedly the legal successor of this body. The said Ordinance No.4 of 1908 has not been amended or repealed and remains part of the law of this country. The American Ceylon Mission has the right to sue and be sued in that name (section 2), to hold properties both movable and immovable (section 3) and has an official seal which shall be authenticated by the Treasurer (section 6).

An analysis of the facts of this case has revealed to me that the American Ceylon Mission was incorporated in 1908 as "the American Ceylon Mission" and never changed its legal character nor its name. Therefore, the Jaffna Diocese of the Church of South India, who in this action claims to be the "successor" to "the American Ceylon Chamber", in fact, has no connection to "the American Ceylon Mission". The Jaffna Diocese of the church of South India has its origins to Congregational Council of Ceylon (1904) and to the American Madura Mission who amalgamated with the Congregational Council of Ceylon 1905. "The American Ceylon Mission" continued to exist in parallel but as a separate and distinct entity to Jaffna Diocese of the Church of South India.

In my opinion, in this case, the description of the Plaintiff is critical because whether the alleged Plaintiff in fact has legal standing to litigate is based on the correct identification of the party before Court. This is so because based on Petitioner's application (Revision Application dated 19<sup>th</sup> October 2009), the Petitioner attempts to identify and distinguish itself by name from amongst a number of similar entities; i.e. Churches. In such a matter the name, style and firm must conform to the name, style and firm given to them as per their incorporation; in this instance by an Act of Parliament, correct description of the Plaintiff is vital because the Ordinance clearly states the name under which "the American Ceylon Mission" is granted legal status by stating so in the Ordinance in inverted commas to read as "The American Ceylon Mission"; i.e. when the name is put within inverted commas it is clear that Parliament intended a specific name must be used in order to invoke the legal authority that has been bestowed upon that title.

It is by and on behalf of that name alone that legal proceedings can be instituted; i.e. the authority to invoke the jurisdiction of Court on behalf of that name. It is imperative as a preliminary matter to decide whether the proper entity is before Court. This has to be so done even if none of the parties raises a specific objection. It is an inherent duty of Court.

In cases where the entity gets its authority to invoke the jurisdiction of Court by virtue of incorporation through an Act of Parliament (as in this case) the Learned District Judge need not look any further than the Ordinance itself and the Plaintiff (A7a – A7d). The name on the Plaintiff (fact) and the name in Section 4 of the Ordinance (law) is more than sufficient to determine such.

When the Plaintiff himself claims succession to “the American Ceylon Mission” who is not the named Plaintiff, the Learned Judge can only reject the Plaintiff. The Learned District Judge accordingly and correctly determined that “the American Ceylon Mission” incorporated by Ordinance No.4 of 1908 is not before Court, instead a different entity on the mistaken assumption that he is the successor to “the American Ceylon Mission” is before Court.

The Learned Judge looked at the law (i.e. Ordinance No.4 of 1908) and came to the correct determination that “the American Ceylon Mission” has not invoked the jurisdiction of Court by virtue of legal status granted to “the American Ceylon Mission” by an act of Parliament. Where the Parliament itself has given that name, the name given must be used to exclude the possibility of someone else using the same name with one part missing. The inclusion of “the” in a name results in excluding everyone else and granting a distinct status or identity; i.e. that person who can be a common person becomes a specific person when the word “the” is initially before.

“American Ceylon Mission” identified as “the American Ceylon Mission” automatically refers to the only American Mission that has been incorporated under an act of Parliament to which the *de facto* Plaintiff did not succeed to.

In the Plaintiff of the Plaintiff-Petitioner (A7a-A7d), the 1<sup>st</sup> Plaintiff was captioned “American Ilankai Mission”, “Ilankai” is the Tamil translation for the word Ceylon. Thereby the Learned District Judge rightfully held on the ground that “the American Ceylon Mission” was not properly before Court. The accepted practice in these instances is to name the party correctly by using its legal and original title (in this case “the American Ceylon Mission) and then use a translation as an optional addition, preferably within brackets.

Therefore, I am of the view that the Learned District Judge was correct in holding that the Plaintiff is not “the American Ceylon Mission” and rejecting the Plaintiff (A7a-A7d) accordingly.

In addressing the question whether the 1<sup>st</sup> Plaintiff has the Locus Stand to Institute this action in the name of "Illankai American Mission", Section 2 of the American Ceylon Mission Ordinance No.4 of 1908, created as incorporated body under the name and style of "The American Ceylon Mission". The official Tamil Plaint states that a body titled "American Illankai Mission" was created and incorporated by the said Ordinance. Therefore the 1<sup>st</sup> Plaintiff in this action is "American Illankai Mission".

The body corporate created by this Ordinance is "The American Ceylon Mission". This Ordinance has not been amended or replaced. The incorporated name "The American Ceylon Mission" therefore has not been changed. The legislature has not permitted any translation, abbreviation or any other convenient name instead of the incorporated name for the purpose of litigation. Therefore, all action under this Ordinance must be in its corporate name and no other. Hence proceedings instituted under the name of "American Illankai Mission" which is other than the corporate name, is bad in law. The "American Illankai Mission" has therefore no *locus standi* to institute this action.

It is important to note that the impugned order dated 09/10/2009, could be considered as a Final Order as the learned District Judge has dismissed the action *in limine*, as the Plaintiffs have failed to institute this action in accordance with section 2 of the Ordinance No.4 of 1908. Against the said final order the Plaintiffs would have gone for a final appeal, instead of filing Leave to Appeal application.

The Plaintiffs have indicated 4 exceptional circumstances, in this Revision Application under paragraph 40 of the Petition. None of those exceptional circumstances could be considered as real exceptional circumstances to invoke the Revisionary jurisdiction of this court.

It was decided in the case of Australanka Exporters Pvt Ltd Vs Indian Bank 2001(2) SLR 156, if the Petitioner has not urged any valid exceptional circumstances for exercising the discretionary powers of Revision of this court, it is fatal and the Revision application should be dismissed *in limine*.

In the case of Merchant Bank of Sri Lanka Ltd Vs Jatila Punyasiri Wijewardana and others (unreported case) SC App. 81 of 2010, it was decided that in a case where the preliminary objection was raised that, a revision application cannot be maintained, when the right of appeal was available to the Petitioner. The Court held, that the Appellant has failed to exercise the right of appeal and therefore the revision application was dismissed.

Thus, I am of the view that no sufficient reason available to interfere with the findings of the learned District Judge.

Considering the aforesaid, I believe that the Learned Trial Judge was justified in dismissing this action and for the foregoing reasons this Revision application is dismissed. No order for costs.

Both parties agreed that they are bound by the judgement delivered in Revision 726/2009 and it could be applied in Leave to Appeal 04/2009, which was mentioned along with this Revision Application.

**Judge of the Court of Appeal**

**Janak De Silva , J**

**I agree.**

**Judge of the Court of Appeal**