

In the Court of Appeal of the Democratic  
Socialist Republic of Sri Lanka

Lanka Orix Leasing Co., Ltd.,  
521, Galle Road,  
Colombo 3.  
(Presently of No.100/1, 1/1,  
Sri Jayawardenapura Mawatha,  
Rajagiriya.  
**Plaintiff**

Vs

1. ABBAMOHAMED  
TAYOOB  
Carrying on business under the  
name style and firm of ASGAR  
BROTHERS of No. 73,  
Jayantha Weerasekera Mawatha,  
Colombo 10.

2. ASGER ABDUL HUSSAIN  
JAFFERJEE  
No. 51/1, D.S. Fonseka Road,  
Havelock Town, Colombo 05.  
**Defendants**

AND NOW

Lanka Orix Leasing Company  
Limited,  
Presently of No.100/1, 1/1, Sri  
Jayawardenapura Mawatha,  
Rajagiriya.  
(Formerly of 321, Galle Road,  
Colombo 3).  
**Plaintiff-Appellant**

VS.

1. ABBAMOHAMED TAYOOB  
Carrying on business under the  
name style and firm of ASGAR  
BROTHERS  
No. 73,  
Jayantha Weerasekera Mawatha,

Colombo 10.  
2. ASGER ABDUL HUSSAIN  
JAFFERJEE  
No. 51/1, D.S. Fonseka Road,  
Havelock Town, Colombo 05.

**Defendant-Respondent**

Before: A W A Salam, J  
Counsel: M K Sooriyarachchi for the plaintiff-appellant and C R Mithrkrishnanan  
for the 3<sup>rd</sup> respondent.  
Written submissions tendered on: 05.10.2011..  
Decided on: 02.02.2011.

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A W Abdus Salam, J

The plaintiff-appellant has filed this appeal against the judgment of the learned district judge dated 1 July 1996. On a reading of the caption, it appears that the 1<sup>st</sup> defendant is Asgar Brothers carrying on business at 73, Jayantha Weerasekara Mawatha, Colombo 10. The action relates to a lease agreement. In addition to the 1<sup>st</sup> defendant, the plaintiff has named two other parties as defendants in the case.

Even in the lease agreement the party who has taken the vehicle in question on lease from the plaintiff is mentioned as Abba Mohamed Thyoob carrying on business in partnership as ASGAR BROTHERS.

Upon the demise of the aforesaid Abba Mohamed Thyoob the plaintiff-appellant has now made an application to substitute the 3<sup>rd</sup> defendant-respondent Akbar Abba Mohamed in place of the deceased Abba Mohamed Thyoob. The application of the plaintiff-appellant has been vehemently opposed by the 3<sup>rd</sup> defendant-respondent on the basis that he is not a partner of ASGAR BROTHERS. The plaintiff-appellant is seeking to substitute the 3<sup>rd</sup> defendant-respondent in place of the deceased

Abba Mohamed Thyoob based on the ground that he is a son of the deceased.

The action in the district court has been filed against the 1<sup>st</sup> defendant-respondent not in his personal capacity but as a partner of the partnership carrying on business under the name ASGAR BROTHERS. In circumstances, the substitution sought by the plaintiff-appellant does not appeal to the proper in law. As such, the application to substitute the 3<sup>rd</sup> defendant-respondent in place of the Abba Mohamed Thyoob is rejected subject to the right to substitute the proper person as the legal representative of the 1<sup>st</sup> defendant-respondent.

There shall be no costs.

Judge of the Court of Appeal