

1898.
August 1.
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IBRAHIM v. MARICAR.

C. R., Galle, 3,401.

Court of Requests—Practice—Competency of party to appeal against order as to jurisdiction before determination of action on the merits.

Where, in an action in the Court of Requests, two issues are framed, one on the question of jurisdiction of the Court and the other on the merits, and the Commissioner finds he has jurisdiction, he should proceed to try the other issue also and deliver one judgment.

When the issue as to jurisdiction is determined in the plaintiff's favour and the case is adjourned for the trial of the issue on the merits, the defendant should not appeal against the order as to jurisdiction, but should wait until final judgment, and then appeal if it be against him, not only on the merits, but also on the ruling as to jurisdiction.

THE defendant having taken the objection that the land in dispute in the case was worth more than the amount set upon it by the plaintiff, and that the Court had no jurisdiction to try the case, the Commissioner settled two issues for trial. The first issue was whether the land was worth over Rs. 100, and the other issue related to the merits of the action. He took evidence on the first issue and decided that jurisdiction to try the case. The trial of the issue on the merits was postponed.

Defendant appealed against the order, which declared that the Court had no jurisdiction to try the case.

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Sampayo, for appellant.

Chapman, for respondent.

1st August, 1898. BONSEB, C.J.—

I think the Commissioner made a mistake here. If he found that he had jurisdiction he should have gone on to try the other issue and delivered one judgment on the whole action. After he had determined the first issue he was called away on some other business, and the trial of the other issue was consequently postponed. Thereupon the defendant at once appealed, and that, I think, was wrong. He ought, in my opinion, to have waited until final judgment had been given and then appealed.

The appeal will therefore be dismissed. This dismissal will not preclude the defendant, if he appeals from the final judgment, from going into the question involved in the present appeal. It will be open to him to question the correctness of that part of the judgment which finds the value of the land.

The respondent will have his costs.

