Present : Sir Charles Peter Layard, Kt., Chief Justice, Mr. Justice Wendt, and Mr. Justice Grenier.

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PONNAMBALAM *v.* PARAMANAYAGAM.

D. C., Kandy, 16,361.

Action under s. 247 of the Civil Code—Test of jurisdiction of Court—Amount of decree—Value of land seized—Courts Ordinance (1) of 1889), s. 74.

The value of the subject matter of an action under section 247 of the Civil Procedure Code must be determined by the amount of the decree or the value of the property seized, whichever happens to be less.

Don Daniel v. Daniel Appu (2 Br. 82) approved and followed.

APPEAL from a judgment of the District Judge of Kandy.

The facts are fully stated in the judgment of Wendt J.

Van Langenberg, A. S.-G., for defendant, appellant.

Dornhorst, K. C., for plaintiff, respondent.

Cur. adv. vult.

26th October, 1905. WENDT J.—

This was an action brought under the provisions of section 247 of the Civil Procedure Code, in which plaintiffs sought to be declared entitled to an undivided half share of certain land and to have it released from a seizure in execution effected by the defendant as holder of a decree for Rs. 200. The half share was valued by plaintiff at Rs. 500. The plaintiff claimed by conveyance from the judgment-debtor, but defendant attacked this conveyance as a fraud upon creditors. The District Judge upheld plaintiff's title, and there is no reason to think that he was wrong. At the trial an issue was framed as to whether the Court had jurisdiction to entertain the action. The objection really was that the action should have been brought in the Court of Requests. There is no doubt the District Court has concurrent jurisdiction with the Court of Requests in all suits cognizable by the latter, and the only consequence of defendant's objection being upheld would be that plaintiff would become liable to be deprived of his costs under section 74 of The Courts Ordinance, and to compensate defendant for the higher expenditure unnecessarily entailed before him in consequence of being sued in the higher Court, *Perera v. Perera* (1). The learned District Judge over-ruled the objection. The case of *Don Daniel v. Daniel Appu* (2) was cited to him, but he followed the later decision

(1) (1900) 4 *N. L. R.* 282. (2) (1901) 2 Browne 82.

in *Urdihamy v. Ranmenika*. In the argument before us all the reported local cases were discussed, and I think that an examination of them can lead to but one conclusion, viz., that the view taken by the District Judge was wrong.

In *Canderperumal v. Sinnatambi* (1), the question related to the taxation of the costs of an unsuccessful claim in the District Court, and Bonser C. J., in determining the value of the subject matter of the claim, said: "The object of the execution-creditor is to have the property which is seized declared liable to him to the amount of the decree. When the amount of the decree exceeds the value of the property the execution-creditor cannot succeed to a greater extent than the amount of the decree. The measure, then, of the value of the subject-matter of such a proceeding as this will be the value of the property or the amount of the decree, whichever is the less. If the rule be as contended by the respondent, it would lead to this anomalous result, that a man whose property is attached by an execution-creditor is to have the valuation of his proceedings to protect his rights determined, not by the value of his property, but by a quite irrelevant consideration, viz., the value of the original cause of action, with which he has nothing whatever to do. So that, if in the execution of a money decree for Rs. 10,000, a house were seized belonging to the judgment-debtor in which was a chair or table worth Rs. 10 belonging to a third person, that person, if he wished to assert his right to that property, must run the risk of having the costs taxed against him on the highest scale if his claim is disallowed." So far as this case goes, the test of value in an action by the creditor is to be the amount of the decree or the value of the property seized, whichever is less, while in the case of the claimant suing the value would be the value of his property, where that is less than the amount of the decree.

In *Mell v. Fernando* (2), Bonser C.J. (Withers J. concurring), applied this test to a creditor's action based on a decree for Rs. 39.95 only, and held that it ought to have been brought in the Court of Requests, although the land seized was worth over Rs. 300.

In *Abdul Cader v. Annamalay* (3), the plantiff was the claimant and no question of jurisdiction was raised, but Bonser C.J., dealing with that point *obiter*, said: "The action under section 247 will not necessarily be brought in the Court which held the claim inquiry for if the value of the property seized does not exceed Rs. 300, it will be brought in a Court of Requests, even though the original action was brought in a District Court." Withers J., who took part in this decision, did not deal with the point in his judgment.

(1) (1895) 1 *N. L. R.* 128. (2) (1896) 2 *N. L. R.* 225.
(3) (1896) 2 *N. L. R.* 166.

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In *Don Daniel v. Daniel Appu* (1) (the claimant was again plaintiff) the decree was for Rs. 93.40 only and the land seized worth over Rs. 300. The action was brought in the District Court and there was no objection taken. In appeal Browne J. laid it down, with the expressed intention of regulating future actions of the kind, that when either the amount to be levied or the subject of the levy was under Rs. 360 the Court of Requests was the proper Court for the action under section 247, and it should be brought in the District Court only when both the decree and the property seized exceeded that value. Bonser C.J. expressly agreed with the principle so enunciated.

Three months later, in June, 1901, the case of *Urdihamy v. Ranmenika* (2) came before Lawrie J., sitting alone, in which the plaintiff had claimed a piece of land worth over Rs. 300 when seized upon decree for Rs. 92, and having been unsuccessful had brought the action in the Court of Requests. The Commissioner, for reasons which are not reported, declined jurisdiction, and Lawrie J. affirmed his decision, saying: "The plaintiff prays that she be declared entitled to the whole land. It is worth more than Rs. 300. The Court of Requests has no jurisdiction." It is this ruling that the learned District Judge has followed in the present case. But, as pointed out by Bonser C.J. in D. C., Chilaw, 1895 (5th February, 1902), the case of *Don Daniel v. Daniel Appu* was not cited to Lawrie J., though exactly in point, and he had only the cases of *Mell v. Fernando* and *Abdul Cader v. Annamalay* before him.

In D. C., Chilaw, 1895, just referred to, which came before Bonser C.J., and myself, the action was by the holder of a decree for Rs. 60 who had seized in execution land worth over Rs. 300. Objection was taken that the plaintiffs should have sued in the Court of Requests, but the District Judge over-ruled it because the land was above the value cognizable by a Court of Requests. In appeal this Court cited and followed the ruling in *Don Daniel v. Daniel Appu*.

The effect of these local cases is that it has been distinctly laid down by Bonser C.J. and Browne J. more than once that, for the purpose of determining the value of the subject matter of the suit, the Court must take the amount of the decree or the value of the property, whichever happens to be less; while the decision of Lawrie J., to the effect that when the claimant is plaintiff the test is the value of the property alone, and that where this is over Rs. 300 the Court of Requests' jurisdiction is ousted, was not only the decision of a single judge, but was pronounced without knowledge or consideration of the case in which the Chief Justice and Browne J. had laid down a principle for the guidance of future litigation.

(1) (1901) 2 *Browne* 82.

(2) (1901) 2 *Browne* 115.

But in addition to these local cases there are decisions of the Indian High Courts *in pari materia*. Our procedure for the investigation of claims in execution and for the trial of actions arising from them is borrowed from the Indian Civil Procedure Code, and we have been accustomed to regard the decisions of the Indian Courts in the interpretation of these provisions as entitled to great weight though not as binding authorities. In India the question has arisen in regard to the jurisdiction of the Munsiff's Courts, which extends to all suits in which "the amount or value of the subject matter in dispute does not exceed (in the case of the Bengal Courts) one thousand rupees." The case of *Gulzari Lal v. Jadaun Rai* (1), was a claimant's action in which he sought to have a quantity of grain belonging to him and worth over Rs. 1,000 released from attachment upon a decree for Rs. 222. He sued in a superior Court capable of trying suits for over Rs. 1,000, but objection was taken that he should have gone to the Munsiff's Court. On special appeal the High Court considered themselves constrained to allow the objection to the jurisdiction. They said: "The claim is to have declared the plaintiff's right to some grain stored in pits, by setting aside an order of the Munsiff for bringing the grain to sale in execution of a decree held by defendant against a third party, his judgment-debtor. A course of decisions of this Court has held that the value of the subject matter in dispute for determining jurisdiction will be in such cases the amount of the decree in satisfaction of which it is sought to bring the property to sale. Special appeal No. 320 of 1876, decided the 16th May, 1876 (1)."

In 1881 the question came before the High Court of Madras in *Krishnama Chariar v. Sirinivasa Ayyanger* (2), which was a decree-holder's action to have certain land declared liable to sale in execution of his decree. The Court said: "The value of the subject matter in suits such as that before us must depend on two considerations, the amount of the charge and the value of the property it is sought to make available for the satisfaction of the charge. If the value of the property is in excess of the charge, the value is the amount of the charge, for the subject of the suit is the right to make the property available for the satisfaction of the whole charge, but where the value of the property is less than the amount of the charge, the subject matter is the right to make the property available for the satisfaction of the charge so far as the property will suffice, and it cannot suffice to satisfy more than a sum proportionate to its value, and consequently in such cases the value of the subject matter is the value of the property."

(1) (1879) *I. L. R.* 2 *All.* 799.

(2) (1882) *I. L. R.* 4 *Mad.* 339.

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In *Durga Prasad v. Rackla Kaur* (1), in which the holder of a decree for Rs. 1,500 sought to render property worth Rs. 400 liable to his execution, the Court distinguished the case of *Gulzari Lal v. Jadaun Rai*, already mentioned, and held that the value of the property determined the jurisdiction. In the former case said Oldfield J.: "The value of the property in suit was higher than the amount of the decree, and the valuation was rightly limited to the amount of the decree, that being all that was recoverable in the event of the plaintiff being unsuccessful." (The report says "successful," but that is obviously a misprint.)

In *Modhusudun Koer v. Rakkal Chunder Roy* (2), the decree-holder was plaintiff. His decree was for Rs. 400 and he had attached property worth over Rs. 1,000, which had been successfully claimed. The Calcutta High Court, expressly following the older decisions in Bombay, Madras, and Allahabad, held that the amount in dispute was the amount which the creditor would recover if successful and not the value of the property attached, and that therefore the Munsiff had jurisdiction [see also *Dwarka Das v. Kamsehar Prasad* (3)].

It was argued before us by the plaintiff that he had to establish his title to the whole land (which was denied), and that therefore the value of the land must be looked to in a question as to the proper Court to sue in. But this point, among others, was so clearly dealt with by Browne J. in *Don Daniel v. Daniel Appu*, that I could not do better than quote his words. He said (p. 85): "As the entire land, and not a sufficient portion of it, was seized to levy this sum, it might be contended that the admeasurement should be by the value of the land seized rather than of the sum to be paid, and that the Court of Requests had no jurisdiction. For although had the suit been by the writ-holder, as in No. 4,732, D. C., Colombo, 2 *N. L. R.* 225, and put in issue his right to levy Rs. 90 off the land, the admeasurement might have been by the value of what was to be enforced by seizure, it might be conversely contended that in this case the admeasurement should be by the value of what is to be protected from seizure. But if the writ be for under Rs. 300 and the holder of the property seized wished to protect it from being sold, he can always do so by paying the writ even after he has failed by claim, and claim action also, to prevent its being held to be exigible. And again when the writ is for over Rs. 300, but the property seized is under that value, there cannot be taken from him by its sale an amount exceeding Rs. 300. Therefore, in either case, when either the amount to be levied or the subject of the levy is under Rs. 300 the money amount at issue between the writ-holder and the

(1) (1887) *I. L. R.* 9 *All.* 140. (2) (1887) *I. L. R.* 15 *Cal.* 104.
(3) (1895) *I. L. R.* 17 *All.* 69.

claimant will be under Rs. 300, and so the Court of Requests will have jurisdiction. But if the amount to be paid and the value of the property, of which it was sought to levy it, severally exceed Rs. 300, then, and then only, will the matter fall to be litigated in a District Court. "

In fact, plaintiff's title to the whole land is not in dispute between the parties, but only the liability of the land to be sold for the claim. The decree-holder is not concerned to deny the claimant's title *quo ad ultra*, although the ground upon which he bases his denial may affect the title in its entirety.

For these reasons I think the action might have been, and therefore ought properly to have been, brought in the Court of Requests. In dismissing the appeal, I would order that plaintiff's costs against defendant be taxed in both Courts as if the action had been brought in a Court of Requests, and that plaintiff do pay to defendant the difference between the costs properly incurred by him in the District Court and such as he would have been put to if sued in the lower Court.

GRENIER, A.J.—

This was an action under section 247 of the Civil Procedure Code for a declaration that certain shares in two lands, more fully described in the schedule attached to the plaint, which were seized in execution under a writ issued in C. R., Matale, 5,244, at the instance of the defendant, who was the decree-holder therein, were not liable to seizure and sale under the said writ. The plaintiff claimed the shares, which he values at Rs. 500, before the Fiscal, but his claim was disallowed by the Court on the 27th January, 1904. The writ under which the shares were seized was for Rs. 75, and the question that was argued before us was whether this action should not have been brought in the Court of Requests instead of in the District Court.

The District Judge held on the authority of a case reported in 2 *Browne* 115-116 that the action was rightly brought in the District Court, and having found that the evidence of the plaintiff's possession was entitled to credit because it was consistent with his title, he gave judgment for the plaintiff with costs. The defendant has appealed, and his counsel contended that as the amount recoverable under the execution issued was less than Rs. 300, the defendant's objection to the jurisdiction of the Court should have been sustained, or rather that plaintiff should not have been given any costs on the ground that the action should have been brought in the Court of Requests. The decision I have referred to in 2 *Browne* 115-116 was by a single judge, and the case is very meagrely reported; but

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Mr. Justice Lawrie appears to have held that as the plaintiff prayed that she be declared entitled to the whole land, which was worth more than Rs. 300, the Court of Requests had no jurisdiction. The judgment of the learned Judge is in a very few words, and it is therefore difficult to say what his reason were for holding that the jurisdiction of the Court in which the action was to be brought should be determined by the value of the property seized. I find that in the course of argument counsel for the respondent cited before Mr. Justice Lawrie the case of *Abdul Cader v. Annamalay*, D. C., Kandy, 7,816, reported in 2 *N. L. R.* 166, in which Chief Justice Bonser held that in an action under section 247 the prayer of a plaintiff therein should be for a declaration that he is entitled to have the property released from seizure and for an order on the Fiscal to release the same accordingly. That is precisely the prayer in this case; but the Chief Justice proceeded further, and said that if the plaintiff proved he was in possession of the property at the time of the seizure, and that therefore the Court ought not to have refused to release the property, he would be entitled to the declaration and order he prayed for, unless the defendant counterclaimed that he was entitled to have the property seized and sold for payment of his judgment-debt and proved that his judgment-debtor was the owner of the property. Mr. Justice Withers, the Bench being composed of two Judges, agreed with Chief Justice Bonser and re-affirmed the opinion he had expressed in *Wijewardane v. Maitland* (1), that under section 247 of the Civil Procedure Code a claimant or objector can only seek to establish in the action thereby permitted to him the very same right in the property under seizure as was the subject of the adverse order within fourteen days of which he is compelled to take the action allowed him. With the greatest deference to the opinion of Chief Justice Bonser and Mr. Justice Withers, I think that section 247 has no reference whatever to the question of possession, which is the only question which the Court has to decide upon what is known as a claim inquiry. The words in section 247, " to establish the right which he claims to the property in dispute or to have the said property rendered liable to be sold under the execution decree in his favour " must not be taken in a limited sense, but, in my humble opinion, give the claimant whose claim has been disallowed the opportunity of proving his title independently of mere physical possession of the property seized in execution. It may be that at the time of seizure the claimant was not in possession, either in his own person or by some other person in trust for him, or that the property was not in the occupancy of a tenant or other person

(1) (1893) 3 *C. L. R.* 7.

paying rent to him. And it can hardly be contended that if his claim were disallowed he should nevertheless prove what is impossible of proof, for that would be the result if in an action under section 247 the claimant is not entitled to prove anything more than that he was in possession. The claimant may be outside the Colony, or he may not be resident on the property seized, and therefore not strictly in possession of it, and the injustice of limiting the words " to establish the right which he claims to the property in dispute " to the question of possession solely becomes at once apparent.

I have expressed my opinion in regard to the scope of section 247 in order to pave the way for the real question which arises for decision in this case. In the case that I have already referred to in 2 *N. L. R.* 166, Chief Justice Bonser held as follows in regard to the Court in which an action under section 247 should be brought: " The action under section 247 will not necessarily be brought in the Court which held the claim inquiry, for if the value of the property seized does not exceed Rs. 300 it will be brought in a Court of Requests, even though the original action was brought in a District Court." This appears to me a clear enunciation of the principle that the value of the property seized must determine the question of jurisdiction. The principle is a reasonable one, because it may so happen that the execution-creditor with a writ in his hand for Rs. 30 may cause the Fiscal to seize a property belonging to a third party worth Rs. 3,000, and it is inconceivable that the Legislature should have contemplated that the title to property worth Rs. 3,000 should be tried in the Court of Requests, whose jurisdiction is expressly limited by section 4 of Ordinance No. 12 of 1895. That section says, that every Court of Requests shall have cognizance of and full power to hear and determine all actions, in which the " debt, damage, or demand shall not exceed Rs. 300, and also all actions in which the title to, interest in, or right to the possession of any land shall be in dispute, provided that the value of the land or the particular share, right, or interest in dispute shall not exceed Rs. 300."

It will be remarked that this action speaks of the right to the possession of any land which is in dispute, and even assuming that in an action under section 247 the question of possession has to be decided over again, as held in the case I have already referred to in 2 *N. L. R.* 166, it seems to me that " the right to the possession of any land " can only be measured by what the land is worth, and that therefore the value of the property seized must necessarily determine the question of jurisdiction.

In an earlier case, which was reported after the case in 2 *N. L. R.* 225, Chief Justice Bonser (Justice Withers concurring) said that

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the practice of permitting actions to be brought in the District Court where the right which the plaintiff was seeking to establish was the right to have the land rendered liable to satisfy a writ which he had obtained in a Court of Requests, was wrong and should cease. This was the converse of the case reported in 2 *N. L. R.* 166. The facts were these. The plaintiff had obtained mortgage decree against the second defendant for a debt of Rs. 38.95, and on the writ issued in the case the mortgaged property was seized, when the first defendant claimed it, and his claim was upheld by the District Court. The plaintiff then instituted in the District Court an action under section 247 to have the property seized declared executable under his writ. The reason given by Chief Justice Bonser for holding that the action should have been brought in the Court of Requests was that the value to the plaintiff of his right to have the land rendered liable to pay his debt should be measured by the amount he could recover, namely, Rs. 39.95; and that being so, the action ought to have been brought in the Court of Requests, quite irrespective of the value of the land in respect of which he wished to set up his right.

Now, there is nothing in section 247 which in my opinion would justify an execution-creditor who has seized land the value of which is over Rs. 300, and considerably in excess of the amount which he seeks to levy, in bringing an action in the Court of Requests to establish his right to have the property rendered liable to pay a paltry debt due by his execution-debtor, say, of Rs. 30. The words used in section 247, "to establish the right which he claims to the property in dispute," refer unmistakably to the claimant, and there is nothing in the section by which an assessment can be made of any right which the execution-creditor may conceive that he has to have the property seized rendered liable to pay his debt. In the case of movables there will of course be no difficulty as the execution-creditor can, although he has seized property exceeding in value the amount of his writ, sell sufficient to satisfy his writ, but I cannot understand how in the case of immovable property a part of it can be carved out on which execution may be levied in a similar way, nor can I appreciate the position advanced by Mr. Justice Browne, in 2 *Browne* 83, that a stranger whose property has been seized on a writ against the execution-debtor can prevent its sale by paying the amount thereof, and so having his property released. I do not think that any man would in these circumstances pay a debt not due by him, nor could he be expected in reason and fairness to do so.

It seems to me therefore inequitable that because the plaintiff values his right to have a stranger's land rendered liable to pay his

debt of Rs. 30 at that sum he should likewise have the right to have that stranger's right or title to valuable land made the subject of adjudication by the Court of Requests, whose jurisdiction is limited, as I have already indicated. Intricate questions of title may arise, and it would be unfair and unjust to allow such questions to be decided by a Commissioner whose experience and ability to try them may well be doubted.

Again, I do not see why the amount of the writ should alone be taken into consideration as determining the question of jurisdiction. There are two things that must be considered in a matter of this kind, and they are so closely mixed up that they should not be separated I mean that both the value of the land and the amount of the writ are important factors which must decide the question of jurisdiction. If the amount of the writ is below the sum of Rs. 300, and property under the value of Rs. 300 is seized in execution, then of course the Court of Requests has jurisdiction. If the property seized is under the value of Rs. 300, although the writ may be for Rs. 400, in such a case the Court of Requests will have jurisdiction if the unsuccessful claimant comes before it as plaintiff. These illustrations show, inasmuch as they reflect the practice and the actual state of litigation in our Courts in regard to actions under section 247, that it is the value of the land seized and not the amount of the writ that determines the question of jurisdiction.

Personally—and I say it with much diffidence—I should have thought the question free from difficulty were it not for the judgment of this Court reported in 2 *Browne* 83, in which it was held " that in actions under section 247, when either the amount to be levied or the subject of the levy under the judgment-creditor's writ is under Rs. 300, the Court of Requests has jurisdiction to entertain the action, but if the amount to be paid or the value of the property off which it is sought to levy it severally exceeds Rs. 300, then and then only has the District Court jurisdiction."

With the first part of this proposition I entirely agree, because it is self-evident, but the second part is, I venture to think, of too uncertain a nature, inasmuch as it is made to depend upon purely adventitious circumstances. What if the amount to be paid and the value of the property seized do not severally exceed Rs. 300? It is only the concurrence of these two conditions that is made the basis for the pronouncement that the District Court has jurisdiction. No reference is made to cases where one of these conditions is not present, and in view of the fact that cases constantly occur in our Courts where the amount of the writ is under Rs. 300, and *vice versa*, it would have been more satisfactory had some clear and distinct rule been laid down by which the question of jurisdiction could

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be determined. The judgment of the Court was delivered by Mr. Justice Browne, and Chief Justice Bonser shortly agreed with the judgment, and particularly with that part of it which dealt with the question of the Court in which claims of the nature under consideration should be brought. The judgment appears to my mind to have been based more on grounds of expediency and convenience than upon any fixed principle of law or practice.

The matter therefore stands thus. The view expressed by Mr. Justice Lawrie that the jurisdiction of the Court should be determined by the value of the property seized was apparently founded upon the *dicta* of Chief Justice Bonser in the case of *Abdul Cader v. Annamalay* (1). That case was decided after the case reported in 2 *N. L. R.* 225. There is a conflict between Chief Justice Bonser's judgment in 2 *N. L. R.* 166, and his judgment in 2 *Browne* 83, but, considering the support that the latter judgment apparently receives from the decisions of the Indian Courts which were cited by Mr. Van Langenberg, and which are based on the corresponding section of the Indian Code of Civil Procedure, I would adopt and follow it, as it is of the utmost importance that there should be no uncertainty in regard to a matter which is of almost daily occurrence in our courts. I thought it right at the same time to express my own views on the subject.

I agree to the order proposed by my brother Wendt.

LAYARD C. J.—

I have the advantage of reading the two judgments of the Puisne Judges, and I entirely agree with the views expressed by my brother Wendt, and with the order they both suggest making on this appeal.

It was suggested by the plaintiff's counsel in appeal that it would be a hardship on owners of large properties wrongfully seized under a writ if they were compelled to submit their claims to lands so seized to be adjudicated upon by inferior courts. The answer to that is clear in the first place, they need take no notice of the wrongful seizure, as a sale thereunder will not bind them as long as they have good titles; in the second place, if they do claim unsuccessfully and prefer to bring their action in the District Court, that Court has jurisdiction to deal with their claims, and they merely are bound to pay for the luxury of resorting to the higher Court. For the above reasons it appears to me no hardship will be caused by our decisions to the owners of large property wrongfully seized, as they can please themselves in the matter, and there is no necessity for them, as pointed out above, to enter into any litigation in what they do for them to bring their cases in the lower Court.

(1) 2 N. L. R. 166.