

Present: Mr. Justice Wendt.

JOHN SINNO v. JULIS APPU.

C. R., Panadure, 7,344.

1907.
October 28.

Lessor and lessee—Action by lessee to recover possession of property leased—Valuation of suit—Non-joinder of lessor—Waiver—Civil Procedure Code, s. 22.

Where a lessee brings a suit to recover possession of property leased to him, the jurisdiction of the Court is determined not by the value of the land, but by the value of plaintiff's interest.

An objection to non-joinder of parties should be taken at the earliest possible opportunity; otherwise such objection will be considered to have been waived.

Quære,—Whether it is open to a party to a suit to rely on the prescriptive possession of a third party?

A PPEAL from a judgment of the Commissioner of Requests of Panadure.

A. St. V. Jayewardene, for the defendant, appellant.

Van Langenberg, for the plaintiff, respondent.

Cur. adv. vult.

October 26, 1906. WENDT J.—

This is an action by a lessee to recover from defendant possession of the leased land. Plaintiff says he took possession upon his lease, and defendant ousted him two and a half months later. The subject of the lease is a defined portion of Dawatagahawatta, but defendant, who claims an undivided interest in the land and admits the lessor's right to an undivided one-tenth share, denies that the lessor was entitled in severalty to the defined portion demised.

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The Commissioner has upheld the lessor's right by prescription to that portion, and has given plaintiff judgment. The lessor was not a party to the action, although he was added as a witness; and the most important point argued by defendant, the appellant, was that in the lessor's absence no declaration of his title could be made. Now, this is clearly an objection for want of parties, and one which section 22 of the Code requires to be taken "at the earliest possible opportunity, and in all cases before the hearing." It therefore came too late when taken, as it is said to have been, on the trial day. If taken in due time, it would have been open to plaintiff to add his lessor as a co-plaintiff. The decision which appellant's counsel referred to as establishing that a third party could not be brought in with the view to his prescriptive title being proved by one of the original parties, is said to have been rendered in an action under section 247 of the Code, and if a sound decision must be limited to that class of cases, to it peculiar considerations apply. The decision was not produced, and I have not been able to refer to it.

Going by the record, however, it appears to me that the first issue was framed to raise only the question whether a lessee has such an interest in the land demised as will entitle him to sue in ejectment. That he has is, I think, settled law, notwithstanding the qualification which Lawrie A.C.J. imposed on his concurrence with the judgment of Withers J. in *Perera v. Babappu*.¹ If the objection to his doing so be that the defendant may have to litigate afresh with the lessor, the non-joinder is a matter which, while it inconveniences defendant, does not affect plaintiff's right of action and therefore the objection was one which defendant could waive.

As to the valuation of the suit, I am of opinion that not the value of the land has to be looked at, but the value of plaintiff's interest, and that has not been shown to exceed Rs. 300.

On the merits I see no reason for differing from the Commissioner. Appeal dismissed with costs.

Appeal dismissed.