

1957

Present : L. W. de Silva, A.J.

WILLIAM SINGHO *et al.*, Appellants, and EDWIN SINGHO
Respondent

S. C. 200—C. R., Avissawella, 600

Jurisdiction—Debt, damage or demand not exceeding Rs. 100—Exclusive jurisdiction of Rural Court—Rural Courts Ordinance, No. 12 of 1945, ss. 9 (1) (a), 11, 12—Civil Procedure Code, s. 636.

Plaintiff *bona fide* and without any intention of evading the jurisdiction of the Rural Court instituted action in the Court of Requests for the recovery of a sum of Rs. 125. After trial, the Commissioner entered judgment in a sum of Rs. 66 in favour of the plaintiff.

Held, that, under sections 9 (1) (a), 11 and 12 of the Rural Courts Ordinance, read with section 636 of the Civil Procedure Code, the Court of Requests had no jurisdiction to enter judgment for a sum which fell within the exclusive jurisdiction of the Rural Court.

¹ (1930) A. C. 503.

² (1921) 1 K. B. 655.

APPEAL from a judgment of the Court of Requests, Avissawella.

G. T. Samerawickreme, for defendants-appellants.

N. Samarakoon, with *S. Sharvananda*, for plaintiff-respondent.

Cur. adv. vult.

July 31, 1957. L. W. de SILVA, A.J.—

The only point taken at the hearing of this appeal is that the debt due to the plaintiff-respondent from the defendants-appellants fell within the exclusive jurisdiction of the Rural Court, and the Court of Requests had no jurisdiction to hear and determine this case. The action was for the recovery of a sum of Rs. 125 alleged to be the respondent's share of the value of timber sold and appropriated by the appellants. After trial, the learned Commissioner of Requests entered judgment in a sum of Rs. 66 in favour of the respondent.

Learned counsel for the appellants relied on section 636 of the Civil Procedure Code and sections 11 and 12 of the Rural Courts Ordinance No. 12 of 1945 and contended that the Commissioner should have dismissed the action or referred the parties to the Rural Court since the case came within its exclusive jurisdiction. Learned counsel for the respondent, however, maintained that the Commissioner had jurisdiction and was not obliged to transfer the trial to the Rural Court since the respondent had made his claim *bona fide* and without any intention of evading the jurisdiction of the Rural Court. In support of this argument, learned counsel for the respondent referred me to the following decisions: *Loku Banda et al. v. Yahapela Veda et al.*¹, *Carolis and another v. Siyadoris and others*², and *Komale v. Petha et al.*³. The provisions of section 636 of the Civil Procedure Code do not appear to have been considered in these cases. Learned counsel for the appellants argued that the decisions relied on by the respondent have no application to the Rural Courts Ordinance now in force, and I have no difficulty in agreeing with him.

In *Loku Banda's case*¹, which was followed in the two later cases, *Lascalles C. J.* considered the construction of sections 28 and 34 of "The Village Communities Ordinance, 1889". Section 28 assigned to the Village Tribunal all cases in which the debt, damage, or demand shall not exceed twenty rupees. Section 34, after declaring that the jurisdiction conferred on Village Tribunals is exclusive, and shall not be exercised by any other tribunal on any plea or pretext whatsoever, enacted:—

"And, in order to prevent the jurisdiction of these tribunals being evaded, it shall be the duty of any court, civil or criminal, whenever it shall

¹ (1912) 15 N. L. R. 487.

² (1916) 2 C. W. R. 181.

³ (1921) 23 N. L. R. 251.

appear to them that any case brought before them is one properly cognizable by the Village Tribunal established in any place (and it shall be competent to a Commissioner of Requests or Police Magistrate to examine the parties at any stage of the case in order to ascertain this), to stop the further progress of such case, and to refer the parties to the Village Tribunals, and to condemn the parties: in costs as to such court shall seem fit.”

Lascelles C.J. held that, where a plaintiff *bona fide* and without any intention of evading the jurisdiction of the Village Tribunal, claims more than Rs. 20 in the Court of Requests, but is able to make good his claim to a part only of his demand, the Commissioner is not bound to transfer the case to the Village Tribunal. He enunciated this as the principle on which two other cases of this Court had been decided. Ennis J., who agreed with the Chief Justice, stated, however, that “the facts of the case show that it did not fall exclusively within the jurisdiction of the Village Tribunal.”

The conclusion reached by Lascelles C.J. was influenced by the language of section 34—“*and in order to prevent the jurisdiction of these tribunals being evaded*” &c. This was interpreted to mean that there was a *duty imposed on the Commissioner to prevent the jurisdiction of the Village Tribunal being evaded by intentionally increasing the amount of the debt, damage, or demand*, 15 N. L. R. at 489. In *Komale v. Petha et al.*¹, Shaw J. felt that he ought not to depart from the rulings of the Court, but said “*it certainly appears somewhat startling that the intention of the plaintiff can affect the jurisdiction of the Court.*” It is unnecessary to say any more about those rulings since they have no bearing on the provisions of the Rural Courts Ordinance No. 12 of 1945.

Section 11 of the Rural Courts Ordinance No. 12 of 1945 which, together with section 12, governs this appeal, declares that the jurisdiction conferred by this Ordinance on Rural Courts shall be exclusive, and cases within that jurisdiction shall not be entertained, tried or determined by any Court established under the provisions of the Courts Ordinance. Section 12 is as follows:—

“Where in any case, whether civil or criminal, instituted before any Court established under the Courts Ordinance, it appears to such Court at any stage of the proceedings that the case is one within the exclusive jurisdiction of a Rural Court, the Court shall stop the further progress of the case and refer the parties to such Rural Court, and, where such case is a civil case, may make such order as to costs as may seem just.”

The proviso to this section is not material to this appeal. It is to be noted that the provisions of the Rural Courts Ordinance have no reference whatever to an evasion, intentional or otherwise, of the jurisdiction of the Court. The provisions of sections 11 and 12 of the Rural Courts Ordinance are plainly more stringent than those of section 34 of the Village Communities Ordinance.

¹ (1921) 23 N. L. R. 251.

The want of jurisdiction seems to have escaped the notice of the learned Commissioner probably because the matter was not raised at the trial. But the problem has to be considered also in the light of the imperative requirements of section 636 of the Civil Procedure Code (Cap. 86) :—

“ When the want of jurisdiction is caused by reason of the exclusive jurisdiction of any Village Tribunal, the averment in the plaint made in pursuance of section 45 shall be considered as traversed, whether the defendant in his answer is silent in reference to it or not ; and it shall be the duty of the court to dismiss the action on this preliminary issue in bar at the earliest stage of the action whereat, by the admission of the parties or other evidence, it appears to the court that such Village Tribunal has exclusive jurisdiction.”

By Ordinance No. 12 of 1945, existing Village Tribunals have been declared to be Rural Courts. Section 9 (1) (a), read in the context of sections 11 and 12, makes it clear that all actions in which the debt, damage or demand does not exceed one hundred rupees come within the exclusive jurisdiction of a Rural Court. It was thus incumbent on the learned Commissioner to take into consideration the provisions of section 636 of the Civil Procedure Code and sections 11 and 12 of the Rural Courts Ordinance No. 12 of 1945 in view of his finding that the amount due to the respondent was only Rs. 66. Since he has acted without jurisdiction in entering judgment for the respondent, I set aside the judgment and decree and dismiss the plaintiff-respondent's action. Each party must bear the costs of the trial in the Court below. The appellants are entitled to the costs of appeal.

Judgment set aside.
