

1954

Present : Pulle J.

DEVASAGAYAM, Appellant, and AZEEZ, Respondent

S. C. 155—C. R. Colombo, 42, 413

Jurisdiction—Action for damages and ejection—Defendant's false plea of tenancy—Determination of value of subject-matter of action—Power of Court to examine not only plaintiff's claim but also defendant's answer.

In order to ascertain whether an action is within or beyond the pecuniary jurisdiction of a court it may be necessary to examine not only the plaintiff's claim but also the defendant's answer to it.

Plaintiff instituted action in the Court of Requests praying for damages and an order of ejection against the defendant in respect of certain premises which were of the value of over Rs. 300. The defendant pleaded that he was tenant under the plaintiff and, in the alternative, that the court had no jurisdiction to try the action as the value of the subject-matter of the action exceeded Rs. 300. The Commissioner rejected the defence of tenancy as false and gave judgment for the plaintiff.

Held, that as the substance of the dispute was whether the defendant was a tenant under the plaintiff or a bare licensee the Court of Requests had jurisdiction to try the action.

APPPEAL from a judgment of the Court of Requests, Colombo.

C. Renganathan, with H. C. Kirthisinghe, for the defendant appellant.

M. Ramalingam, with B. E. de Silva, for the plaintiff respondent.

Cur. adv. vult.

July 19, 1954. PULLE J.—

The action which gives rise to this appeal was instituted by the tenant of premises No. 287A, Old Moor Street. He alleged that at the time he went into occupation he found that the defendant appellant, who was himself a tenant and occupier of the neighbouring premises bearing No. 285, had placed a part of his stock in trade in the rear compound of premises No. 287A. He prayed for damages and an order of ejection against the defendant. The position taken up by the defendant was that he occupied the portion in dispute as a sub-tenant of the person who was the previous tenant of premises No. 287A and that when the plaintiff went into occupation the defendant entered into an express agreement with him to occupy that same portion as a tenant on a monthly rental of Rs. 10. He pleaded in the alternative that the court had no jurisdiction to try the action as the value of the portion exceeded Rs. 300.

The learned Commissioner rejected the defence of sub-tenancy as false and gave judgment for the plaintiff. He apparently accepted the evidence of the plaintiff and of his brother, who was the previous tenant. That evidence was to the effect that the plaintiff's brother permitted the defendant to store his goods on payment of Rs. 10 a month and that at the time he terminated his own tenancy the defendant removed the goods and he thereupon gave vacant possession to his landlord. The Commissioner further found that before the plaintiff could under his agreement with the owner take possession of the entirety of premises No. 287A the defendant again moved into the disputed portion with his goods.

When the plaintiff took possession of the premises, including the rear compound, the defendant promised to move out in a week's time. This permission was granted but the defendant did not keep his word. He later wanted a sub-tenancy and this was refused. It is beyond all dispute that the plaintiff did not want to have the defendant as a sub-tenant.

The only point taken on behalf of the defendant at the argument in appeal was that the value of the portion of the rear compound in which the goods were stored being of the value of over Rs. 300 the Court of Requests had no jurisdiction to entertain the action. It was submitted on the authority of *Bastian Appuhamy v. Haramanis Appuhamy*¹ that the action being one involving the right to possession of land, it was immaterial in what capacity the plaintiff sought possession. The mode of valuation of the subject-matter of actions of this kind had been debated in several cases and the Divisional Bench in *Bastian Appuhamy v. Haramanis Appuhamy*¹ after reviewing them expressed approval of cases like *Lebbe v. Banda*² and *Laidohamy v. Goonetilleke*³. The learned Commissioner answered the issue of jurisdiction against the defendant by directing himself on the lines indicated in the judgment of the Divisional Bench¹, namely,

“In order, therefore, to ascertain whether an action is within or beyond the pecuniary jurisdiction of a court, the nature and extent of the subject-matter in dispute has to be ascertained, and for that purpose, it would be necessary to examine not only the plaintiff's claim but also the defendant's answer to it.”

¹ (1945) 46 N. L. R. 505; 31 C. L. W. 33.

² (1915) 20 N. L. R. 343.

³ (1913) 5 *Bud. N. C.* 14.

The defendant did not set up an independent claim either against the owner who gave the premises to the plaintiff or against the plaintiff by virtue of an earlier contract of tenancy with the owner implemented by possession. He pleaded a tenancy under the plaintiff himself and, having regard to the evidence, the substance of the dispute was whether the defendant was a tenant under the plaintiff or a bare licensee. According to the evidence which has been accepted the defendant sought from being a licensee to become a tenant but the plaintiff refused to accede to his request. The defendant acknowledged the plaintiff's right to evict him and asked for time to leave. When the time arrived to leave he asked to become a tenant and the plaintiff declined. The learned Commissioner was, therefore, right in holding that the value of the action was about Rs. 10 and not the market value of the disputed portion which was over Rs. 300.

I dismiss the appeal with costs.

Appeal dismissed.

