

1921.

Present : De Sampayo J. and Schneider A.J.

SUNNYGAMA CO., LTD., v. FONSEKA.

29—D. C. Kegalla, 5,281.

Jurisdiction—Sale of land situate in Kegalla—Deed executed in Colombo—Failure to deliver possession—Action for relief in Kegalla.

Defendant sold a land situated in Kegalla by a deed executed in Colombo, but failed to deliver possession. Plaintiffs sued him in the District Court of Kegalla claiming relief for failure to deliver.

On a plea as to jurisdiction, *held*, District Court of Kegalla had jurisdiction, as the cause of action, viz., the defendant's failure to fulfil his obligation, arose within the District Court of Kegalla.

THE facts appear from the judgment.

Allan Drieberg, K.C. (with *Ellian Perera*), for plaintiffs, appellants.

Canakarathne (with *B. F. de Silva*), for defendant, respondent.

September 30, 1921. DE SAMPAYO J.—

I think this appeal is entitled to succeed. The defendant by deed dated May 8, 1919, and executed in Colombo, sold and conveyed to the plaintiff company a land of the extent of 20 acres 1 rood and 11 perches. The land is situated in Kegalla within the jurisdiction of the District Court of Kegalla. It appears that the plaintiff company already held deeds for 4 acres out of the 20 acres sold by the defendant, and were in possession of that acreage. They brought this action against the defendant alleging that, except the 4 acres, of which they were already in possession, the defendant had failed to deliver possession of the balance in fulfilment of his obligation, and they claimed certain relief on that account. The action was brought in the District Court of Kegalla. An objection appears to have been taken on behalf of the defendant that the District Court of Kegalla had no jurisdiction, and that the plaintiff company should, if at all, sue in the District Court of Colombo, where the deed was executed, and where, therefore, the contract was made. This objection was upheld by the District Judge, and the plaintiffs' action was dismissed.

The District Judge appears to have relied upon a judgment of my own, which is cited, namely, *Kittoni v. Fernando*,¹ but the District Judge appears to have misunderstood what was decided in that case. My judgment does not support the ground on which the

¹ 2 O. W. R. 187.

District Judge dismissed the plaintiffs' action, but, apart from any authority, it is very plain on the face of the provisions of the Civil Procedure Code that the District Court of Kegalla had jurisdiction in this case. It may be that the Colombo District Court also had jurisdiction, being the Court where the contract was made, but the cause of action certainly arose within the District Court of Kegalla, for the plaintiffs' action was founded upon the defendant's failure to fulfil his obligation by delivering possession of what he sold to the plaintiff company.

I think the appeal should be allowed, and the case sent back for trial in due course. The plaintiff company should get the costs of the appeal.

SCHNEIDER A.J.—I agree.

Appeal allowed.

1921.

DE SAMPAYO
J.

*Sunmygama
Co., Ltd., v.
Fonseka*

