

1961

Present : Tambiah, J.

F. H. G. SILVA, Appellant, and A. ABEYSUNDERA,
Respondent

S. C. 104—C. R. Colombo, 74,778

Landlord and tenant—Death of tenant—Landlord's suit against sub-tenant for damages and ejectment—Jurisdiction of Court—Rent Restriction Act.

Upon the death of a tenant, the landlord sued the sub-tenant for damages and ejectment. The plaintiff averred that the defendant was a trespasser. The defendant did not claim to be the tenant of the plaintiff. He raised the issue that the Court of Requests had no jurisdiction to hear the case.

Held, that as the value of the premises in question was over Rs. 300 the Court of Requests had no jurisdiction to hear the case.

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

H. Wanigatunga, with *H. Mohideen*, for the defendant-appellant.

H. W. Jayewardene, Q.C., with *V. Thillainathan*, for the plaintiff-respondent.

Cur. adv. vult.

June 7, 1961. TAMBIAH, J.—

In this case, the plaintiff had let the premises bearing assessment No. 16, Daisy Villa Avenue, Bambalapitiya, to one G. R. S. Gunasekera. The plaintiff had filed action against the said G. R. S. Gunasekera in Case No. 68921 stating that the said G. R. S. Gunasekera sublet two rooms of the premises in suit to the defendant without obtaining her prior consent in writing, in contravention of the Rent Restriction Act. Mr. G. R. S. Gunasekera died on the 29th of March 1958 before service of summons could be effected on him and the plaintiff thereafter obtained an Order of Court substituting one L. D. S. Gunasekera in place of the deceased. Mr. G. R. S. Gunasekera was noticed on the 29th of September 1957 to quit the said premises by the 31st October of the same year. The plaintiff, in his plaint, pleaded that as the tenancy between the plaintiff and the said G. R. S. Gunasekera was terminated by reason of the death of Mr. G. R. S. Gunasekera on the 29th of March 1958 and/or by reason of the notice to quit, the defendant's right to remain in the two rooms of the said premises as a sub-tenant or as a licensee had come to an end and consequently the defendant was a trespasser after the 29th of March 1958. The plaintiff claimed damages and ejectment. The defendant, on the other hand, raised the issue that the Court of Requests had no jurisdiction to hear this case.

The learned Commissioner held that as the defendant was not a contractual tenant but a trespasser, he could not be sued unless the plaintiff proved ownership of the property. As regards the question of jurisdiction, the learned Commissioner, purporting to follow the ruling in *Saibo v. Ameen*¹, stated as follows :—

“ The case of 60 N. L. R. 426 is very much in the plaintiff's favour on the question of jurisdiction, for it holds that where the plaintiff claimed that defendant was a trespasser and the defendant contended that he was his lawful tenant, without disputing his title, the jurisdiction of the Court to try the case did not depend on the value of the premises, but on the rental value. I am satisfied that this Court has jurisdiction to try this case and that the plaintiff is entitled to ejectment of the defendant. ”

In the instant case, the defendant does not claim to be the tenant of the plaintiff and has put the plaintiff to the proof of his title and the plaintiff, on the other hand, has averred that the defendant was a trespasser. I fail to see how the ruling in *Saibo v. Ameen* (supra) applies to the facts of this case.

The owner of premises, who has a sub-tenant on his premises, has three courses open to him to obtain possession. Firstly, he could bring an action against the tenant and add the sub-tenant as a party to the action under Section 18 of the Civil Procedure Code. Secondly, if he

¹ (1956) 60 N. L. R. 426.

has sued the tenant without joining the sub-tenant he can obtain a subsequent order for ejectment against him under section 327 of the Civil Procedure Code. Thirdly, where the landlord has sued the tenant without joining the sub-tenant he may sue the latter for ejectment in a separate action. (vide *Ibrahim Saibo v. Mansoor*¹.) In the instant case, as the plaintiff has sued the defendant as a trespasser, the value of the suit is the value of the said premises which admittedly are worth over Rs. 50,000. The Court of Requests, therefore, has no jurisdiction to hear the case.

It is a matter of regret that the law has not been amended to give relief to landlords to eject tenants by a speedier process in the Court of Requests. Although they could bring an action against their tenants for ejectment in the Court of Requests, if the rent is less than Rs. 300, they have to sue a sub-tenant as a trespasser in a District Court, if the value of the premises is over Rs. 300.

The defendant has not set out any title in himself and has raised the question of jurisdiction to resist the plaintiff's action. His conduct has been such that he deserves no costs in the lower Court. The appeal is allowed and the plaintiff's action is dismissed. There will be no costs in the Court of Requests, but he is entitled to his costs of appeal.

Appeal allowed.

¹ (1953) 54 N. L. R. at 223.
