

Present: Lyall Grant J.

RASIAH JOSEPH v. PUNCHY APPUHAMY.

34—C. R. Avissawella 12,845.

*Court of Requests—Jurisdiction—Claim for damages—Incidental examination of title.*

Where, in an action for damages in the Court of Requests, the plaintiff's claim is within the jurisdiction of that Court, the fact that it may be necessary to examine incidentally the title of parties to land, which is over Rs. 300 in value, does not deprive the Court of its jurisdiction.

**A** PPEAL from an order of the Commissioner of Requests, Avissawella.

*Weerasooriya*, for plaintiff, appellant.

*Samarakoon*, for substituted and added defendant, respondent.

July 7, 1927. LYALL GRANT J.—

The plaintiff in this case sued the defendant in the Court of Requests at Avissawella for a sum of Rs. 225 with interest in respect of loss and damage caused by the defendant having cut down and removed 75 timber trees.

The defence set up was that the land upon which these trees stood was not the property of the plaintiff, but was temple land belonging to the Mahadewale, Kandy, of which the defendant was a tenant and caretaker. Another defendant, who was added, was the trustee of the Kandy Mahadewale. He bears out the claim of the defendant and states that the land in question is of a higher value than Rs. 300 and argues that consequently the Court of Requests has no jurisdiction. Both parties were agreed that the value of the land was over Rs. 300, and the learned Commissioner dismissed plaintiff's action for want of jurisdiction.

On the question whether when a claim for damages in respect of trespass or otherwise raises an incidental question of the ownership of land above the value of Rs. 300, the Court of Requests' jurisdiction is ousted, there appear to have been divergent opinions expressed by this Court. In the case of *Dingiri Appuhamy v. Appuhamy*<sup>1</sup> Mr. Justice de Sampayo took the view that where the plaintiff averred title to a two-third share of a field and claimed Rs. 35 as damages, but where the defendant denied the plaintiff's title and the land was

<sup>1</sup> 3 *Court of Appeal Cases* 87.

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admitted to be over Rs. 300 that jurisdiction was ousted. He held that in view of the pleadings the claim for damages depended on proof of title to the land, and therefore the Court of Requests had no jurisdiction to try the case. On the other hand in a recent case argued and decided on August 30, 1926, and bound in the Supreme Court Minutes of that month (S. C. No. 126), Mr. Justice Jayewardene came to the conclusion that where the plaintiff's claim itself was within the jurisdiction of the Court of Requests, the mere fact that it might be necessary for the Court to examine the title of the parties to land, which was over Rs. 300 in value, incidentally, and only for the purpose of ascertaining whether the plaintiff's claim is sustainable or not, does not deprive the Court of its jurisdiction if the substantive claim is one within its jurisdiction.

The section of the Courts Ordinance which defines the jurisdiction of the Court of Requests is section 77. That section states that every Court of Requests shall be a Court of record and shall have original jurisdiction, and shall have cognizance of and full power to hear and determine all actions in which the debt, damage, or demand shall not exceed Rs. 300.

It appears to me that all that the Court of Requests can possibly decide in this action is as to the validity or otherwise of the plaintiff's right to recover from the defendant the sum of Rs. 225 with interest and costs. The mere fact that incidentally the Court may have to go into other matters which involve disputes relating to lands and interests beyond the jurisdiction of the Court does not seem to me to be a sufficient reason for saying that the Court shall not determine a claim which is clearly within its jurisdiction. I do not think that any opinion which the Court may incidentally find itself compelled to express as to the ownership of the land, the value of which is more than Rs. 300, can operate as *res judicata* as it will not be a judgment of a competent Court on a question of the ownership of the land; but it seems to me that a Court has always got full power to express opinions on relevant facts to the extent to which such opinion is necessary to enable it to come to a right conclusion in regard to the merits of the particular dispute before it, that particular case being one within its jurisdiction. I think the Court of Requests here has full power to determine the question which the plaintiff has put before it. Accordingly the decision of the learned Commissioner must be set aside with costs of appeal and the case remitted to him to be dealt with.

*Set aside*