

1908.
May 14.

Present: Mr. Justice Grenier.

DAVITH APPUHAMY. v. PERERA.

C. R., Ratnapura, 9,185.

Court of Requests, jurisdiction of—Mortgage action—Civil Procedure Code, s. 9—Ordinance No. 12 of 1895, s. 4.

A Court of Requests has no jurisdiction to entertain an action on a bond mortgaging immovable property, unless such property is situate within the jurisdiction of such Court.

A PPEAL by the defendant from a judgment of the Commissioner of Requests (Allan Beven, Esq.).

The facts material to the report sufficiently appear in the judgment.

B. F. de Silva, for the defendant, appellant.

H. A. Jayewardene, for the plaintiff, respondent.

Cur. adv. vult.

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This is an action on a mortgage bond executed by the defendants in favour of the plaintiff in Ratnapura. The defendants are resident out of the jurisdiction of the Court, and the property mortgaged is situated in Kalutara. The defendants contended, both in the Court below and in appeal, that the Court of Requests of Ratnapura had no jurisdiction to entertain this action, on the ground that the provisions of section 4 of Ordinance No. 12 of 1895 clearly contemplated that an action of this character should be brought in the Court within whose territorial jurisdiction the property hypothecated is situated. Whatever may have been the reason for the enactment, I must give effect to it. Section 9 of the Civil Procedure Code, in view of the later enactment, was wrongly held by the Commissioner to apply to this case. Counsel were unable to refer me to any authorities, and I must merely decide the question on a plain construction of section 4 of Ordinance No. 12 of 1895.

The appeal is allowed with costs.

Appeal allowed.

