

1928.

*Present* : Schneider J.

WICKREMENAYAKE *v.* EDIRISINGHA.

199—C. R. Tangalla, 11,844.

*Court of Requests—Action for damages—No prayer—Title—Jurisdiction—Value of land.*

Where in an action in the Court of Requests for the recovery of damages, arising out of the wrongful possession of land, more than Rs. 300 in value, the plaintiff claimed less than Rs. 300 without a prayer for declaration of title and where the defendant in his answer disputed the plaintiff's title,—

*Held*, that the Court of Requests had no jurisdiction to try the case.

**A** PPEAL from a judgment of the Commissioner of Requests, Tangalla.

*Weerasooriya*, for plaintiff, appellant.

*Soertsz*, for defendant, respondent.

November 30, 1928. SCHNEIDER J.—

The plaint in this action contains every allegation which is found in an ordinary action for declaration of title to land and for recovery of damages for a trespass.

It sets out the title of the plaintiff, his ouster, and the nature and quantum of the damages. But the prayer for a declaration of title and for restoration to possession is omitted and damages only are asked for. To account for this variation there is an allegation that the defendant gave up possession, thereby implying that at the time of the institution of the action he did not dispute the title of the plaintiff to the land or his right to the possession of it.

In his answer the defendant denied wholesale the allegations in the plaint. He denied in specific terms the plaintiff's title and ouster, and in effect asserted that the land described in the plaint was his and possessed by him as such.

The argument appears to have been addressed to the Judge of the lower Court that the plaintiff's action was for damages only, and as the amount claimed did not exceed Rs. 300 the Court of Requests had jurisdiction to try it although the value of the land

was admittedly above Rs. 300. He held against this contention and dismissed the action. This appeal is from that dismissal. On appeal it was submitted that the action had been wrongfully dismissed as the question of title was only "incidental" to the plaintiff's substantive claim, which was for damages. The case of *Rasih Joseph v. Punchi Appuhamy*<sup>1</sup> and that of *Poli Singho et al. v. Perera Appuhamy*,<sup>2</sup> which is cited and followed in that case, were relied upon in support of this contention.

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It appears to have been decided in both those cases that a Court of Requests has jurisdiction to hear and determine an action for damages not exceeding a sum of Rs. 300 although the title to the land for a trespass committed in regard to which the damages are claimed is disputed and the value of the land exceeds Rs. 300, because in such a case the Court is compelled incidentally "to express an opinion" on the ownership of the land. It was submitted that the present case cannot be differentiated from the former of those cases. That submission appears to be right. But it also appears to me impossible to adopt the view that the Court in this case is merely compelled to express an opinion upon the ownership of the land in order to determine the claim for damages. Courts of Requests derive their general jurisdiction from the provisions of section 77 of the Courts Ordinance, No. 1 of 1889. It confers jurisdiction on them to hear and determine the following classes of actions subject to a monetary limitation of Rs. 300 :—

- (1) Actions in which the claim is for "debt, damage, or demand."
- (2) Hypothecary actions.
- (3) Actions in which the title to, interest in, or right to, the possession of any land is in dispute.
- (4) Actions for the partition or sale of land.

The question in this case is whether this is an action in which the title to or possession of land in value over Rs. 300 is in dispute. There can be but the one answer to it, that it is.

Before the Court can determine that the plaintiff is entitled to claim any damages it must decide the issue whether the plaintiff is the owner of the land. The question of title is a substantive issue in the action. It is incidental in one sense, in that the plaintiff's prayer is only for damages, but it is nevertheless an issue.

I entirely agree with the learned Commissioner that it is the real issue in the action. The principle governing this and similar actions has to my mind been correctly stated in *Silva v. Fernando*,<sup>3</sup> where it was pointed out that it is not the relief actually prayed for

<sup>1</sup> (1927) 29 N. L. R. 159.

<sup>2</sup> (1926) 5 Times of Ceylon L. R. 46.

<sup>3</sup> 11 N. L. R. 375.

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but what is involved in the decision of the action which determines its monetary value. The same principle is to be found stated in the case of *Dingiri Appuhamy v. Appuhamy*.<sup>1</sup>

It would open the doors to flagrant evasion of the salutary limitations placed by the Courts Ordinance regarding jurisdiction if under the guise of a claim for damages only, Courts of Requests are held to have jurisdiction to determine questions involving title to land over Rs. 300 in value.

The appeal fails, and is dismissed with costs.

*Appeal dismissed.*



<sup>1</sup> (1913) 3 Court of Appeal Cases 87.