

1909.
March 30.

Present : Mr. Justice Wendt.

WERTHELIS *v.* DANIEL APPUHAMY.

C. R., Negombo, 16,245.

Action under s. 247, Civil Procedure Code—Seizure of land lying outside the jurisdiction of the Court issuing writ—Claim—Test of jurisdiction—Cause of action—Seizure—Residence of defendant—Civil Procedure Code, ss. 47, 244, 245, 246, and 247.

Where on a writ issued from the District Court of Negombo land situate within the jurisdiction of the District Court of Kurunegala was seized, and a claim was made and reported to the District Court of Negombo, and the claim being disallowed by the said Court, the claimant brought an action, under section 247 of the Civil Procedure Code, in the Court of Requests of Negombo against the judgment-creditor, who resided outside the jurisdiction of such Court,—

Held, that the Court of Requests of Negombo had no jurisdiction to entertain the action.

WENDT J.—The cause of action in an action under section 247 is the seizure, which is a violation of the right of ownership, and not the disallowance of the claim.

Held, also, that it was competent for the Court at this stage, under section 47 of the Civil Procedure Code, to return the plaint to be presented to the proper Court.

Order made accordingly.

A PPEAL by the plaintiff from a judgment of the Commissioner. The facts sufficiently appear in the judgment.

Tambiah (with him *A. Drieberg*), for the plaintiff, appellant.

R. L. Pereira, for the defendant, respondent.

Cur. adv. vult.

March 30, 1909. WENDT J.—

This appeal raises an interesting question as to the jurisdiction of the Court, which, so far as I am aware, has not in the same form been raised before. The present action is brought by an unsuccessful claimant of land under the provisions of section 247 of the Civil Procedure Code. The land is situated within the territorial limits of the District Court of Kurunegala, and the seizure was effected at the instance of the present defendant in execution of a writ issued by the District Court of Negombo, to which the Fiscal in due course reported the claim made by the present plaintiff. That Court having disallowed the claim, the plaintiff has brought the present action in the Court of Requests of Negombo. In his plaint

he describes the defendant as "of Banduregoda," and it appears to have been conceded that the defendant's residence is outside the territorial jurisdiction of the Court of Requests. The land in respect of which the action is brought being also outside the Court's limits, the plaintiff was driven to rely on the head (c) of section 9 of the Civil Procedure Code in order to establish the competency of the Court of Requests. He says that the cause of action arose in Negombo, and his counsel has argued that that cause of action was constituted by the Negombo Court disallowing his claim, and he relied upon the opening words of section 247, which give a right of action to the party against whom an order under sections 244, 245, or 246 is passed.

The defendant, however, contended, in the first place, that the scope of the action allowed by section 247 being to establish the right which the plaintiff claims to the property in dispute, that amounted to a direction that the action shall be brought in the Court whose territorial limits included the property in question. This contention is not new, for I find that it was put forward in a case, D. C., Kurunegala, 1,574,¹ where the Court (Bonser C.J. and Browne A.J.) held that section 247, which gave the plaintiff the right of bringing the action, contained nothing limiting his right under section 9 to choose the Court in which to sue.

The defendant argued, secondly, that the true cause of action accruing to the unsuccessful claimant arose from the violation of his right of ownership which was involved in the seizure of his property, and that that cause of action necessarily arose where the property was situated. I think this contention is sound. *Actus curiæ nemini facit injuriam*. It is true that section 247 requires an adverse order of the Court before the action can be brought, but that order merely determines for the time whether the seizure was lawful or unlawful. It is the wrongful act of the party who is made defendant in the statutory action which constitutes the cause of that action. That is the view which was taken by Lawrie A.C.J. in C. R., Kurunegala, 5,571.² There certain movables in the Kurunegala District were seized under a Chilaw writ at the instance of a decree-holder resident in Chilaw, and the Supreme Court held, reserving the judgment of the Court below, that the action had been rightly brought in Kurunegala. "In my opinion," said the learned Judge, "the Kurunegala Court of Requests had jurisdiction to try this section 247 action, because the cause of action was the seizure in execution by the Fiscal of movables in Kurunegala. That is the wrong, for the prevention or relief of which this action was brought." If I may say so, I entirely agree with that reasoning.

The next question is as to the proper order to be made upon the view of the law which I have enunciated. Section 47 of the Civil Procedure Code enacts that "in every case where an action

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¹ S. C. Min., Feb. 21, 1900.

² S. C. Min., June 21, 1899.

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has been instituted in a Court not having jurisdiction by reason of the amount or value involved, or by reason of the conditions made necessary to the institution of an action in any particular Court by section 9 not being present, the plaint shall be returned to be presented to the proper Court." Having regard to the decision of the Indian Courts under the corresponding section 57 of the Indian Code of Civil Procedure, I think it is not too late now to make an order under section 47. The appellant must pay the costs consequent upon his having sued in the wrong Court, and I direct that upon the Commissioner of the Court of Requests being satisfied within one month of receiving back the record, that the plaintiff has paid defendant's costs in both Courts, he will endorse upon the plaint the date when it was presented, and the date of its return, together with the reason for such return, and will return it to the plaintiff to be presented to the proper Court. The Commissioner will retain a copy of the plaint.

Appeal allowed ; case remitted.
