

1930

Present : Dalton J.

SUPPAR RETTIAR v. MOHAMADO.

187—C. R. Colombo, 55,441.

Jurisdiction—Application by tenant for restoration to possession—Value of tenant's interest—Civil Procedure Code, s. 328.

In an application under section 328 of the Civil Procedure Code by a monthly tenant for restoration of possession, the test of jurisdiction is the value of the applicant's interest in the premises.

A PPEAL from an order of the Commissioner of Requests, Colombo.

N. E. Weerasooria, for defendant, appellant.

Hayley, K.C. (with him *Rajapakse*), for plaintiff, respondent.

December 17, 1930. DALTON J.—

This appeal arises out of a petition to the lower Court under the provisions of section 328 of the Civil Procedure Code. The petitioner, Suppar Rettiar (respondent in this appeal), stated that the premises No. 221/4, Colpetty, Colombo, were let to him by Seyado Mohammado on August 5, 1929, as a monthly tenant at the rate of Rs. 75 a month, payable on the 5th day of each month, and that Mohammado put him in possession. On September 17, 1929, he states he was ejected by the Fiscal in execution of an order for delivery of possession issued under section 287 of the Code and dispossessed of the premises. This order, it appears, was obtained by Mohammado in an action against one Kalid, who was alleged to be the tenant of the premises in question. Petitioner therefore asked in his petition of September 18 to be restored to his possession reserving his right to institute an action against Seyado Mohammado for damages.

The petition has been numbered as a separate action, and Seyado Mohammado

filed answer, pleading that petitioner was never in possession of the premises, and the premises being worth over Rs. 300, the Court had no jurisdiction.

The question of jurisdiction was tried as a preliminary issue. There does not appear to be any evidence of the value of the premises apart from the monthly rental, but it seems to have been assumed on both sides that the premises were worth more than Rs. 300. The Commissioner held that petitioner's interest was a month's possession and cannot be valued at anything more than a month's rental, namely, Rs. 75, and therefore he had jurisdiction.

From this decision Mohammado appeals.

It has been held in *Silva v. de Mel*¹ that section 328 of the Code applies to orders for delivery of possession under section 287 as well as to cases of dispossession in execution of decrees for possession of immovable property. That decision being binding on me, it is not necessary to consider that question further here. I have then been referred to the case of *Daniel v. Rasiah*,² which, it is urged for the appellant, is on all fours with the case before me on the question of jurisdiction. An examination of the argument and judgment in that case leads one to the conclusion that the principal point raised was whether the provisions of sections 325-330 had any application in the absence of any decree for possession, in other words, whether the earlier case of *Silva v. Silva*³ did not govern the question and *Silva v. de Mel* (*supra*) was either wrongly decided or decided without any reference to the conflict that arises if the order for possession issued from a Court of Requests. Garvin J. held he was bound by the later decision, and therefore the provisions of section 328 are applicable to a case of an order for possession under section 287. The learned

Judge then went on to consider the further question of jurisdiction and held that the land in question there being over Rs. 300 in value the Court of Requests had no jurisdiction. What was the value of the interest of the petitioner who was seeking to be restored to possession does not appear, although he was stated to be a tenant of the premises.

It is urged before me that the test of jurisdiction in this case is not the value of the premises but, in the words of section 77 of the Courts Ordinance, the value of the petitioner's particular right in the land. Courts of Requests have jurisdiction in "all actions in which the title to, interest in, and right to, the possession of any land shall be in dispute . . . provided that the value of the land or the particular share right or interest in dispute . . . shall not exceed Rs. 300".

In *Fernando v. Fernando*¹ Schneider J. held that the Court of Requests had no jurisdiction to investigate a claim under section 327 of the Code upon a complaint made by petitioner that the respondents had resisted the execution of a decree of the Court of Requests. It was admitted that the value of the premises was over Rs. 300, but it does not appear from the report how the respondents claimed possession, other than on their own account and not under the judgment-debtor. No attempt appears to have been made to show that the value of the respondent's right was less than Rs. 300. The original action being in the Court of Requests, it appears to have been urged for petitioner that proceedings under section 327 should be in the same Court, without regard to the value of the property. Schneider J., however, points out that if the plaintiff's original action was within the competence of the Court of Requests, the plaintiff by proceedings under section 327 can only seek to

¹ 10 N. L. R. 164.

² 31 N. L. R. 438.

³ 3 N. L. R. 161.

¹ 24 N. L. R. 502.

enforce a right in that Court the value of which cannot exceed Rs. 300. This authority therefore does not help appellant in the case before me. Further, an investigation under the provisions of section 327 is not limited to the determination of the question of possession, for as pointed out by Driberg J. in *Vanderporten v. Ameresekere*,¹ although it is correct to say the question is one of possession in the sense that the Court makes no declaration of title in plaintiff or claimant, but merely passes an order for executing or staying execution of the decree, nevertheless it reaches that objective by deciding whether the claimant has the right to retain possession or whether he has no right to retain possession against the plaintiff. The same road has to be traversed in proceedings under section 328.

In *Vengadasalem Chetty v. Suppramanien Chetty*² a claim by a landlord against an overholding tenant for possession of premises valued at Rs. 10,000, or for rent at the rate of Rs. 83.33 a month, it was held that the matter was within the jurisdiction of the Court of Requests, although the action was brought in the District Court. Bonser C.J. says: "It seems to me that it (an earlier decision) rightly decided that in a case like this the matter in dispute between the parties is the value of the premises for the month during which the defendant says he is entitled to hold the premises." This decision was followed in *Hewawitarana v. Marikar*³ where the plaintiff claimed damages from the defendant, as his tenant, and ejection. Wood Renton C.J. points out that it is clear from section 77 that the value of the land is not the sole test of jurisdiction. De Sampayo J., citing the judgment of Bonser C.J. quoted above, concludes

that the value of the right of possession involved is the rent or profit which might be due if the monthly tenancy continued. *Mudiyanse v. Rahaman*¹ is an earlier decision to the same effect. The cases of possessory actions cited to me have no bearing on this particular point as pointed out by Bertram C.J. in one of the cases cited.

On the above authorities I have come to the conclusion that the Commissioner's decision on the preliminary issue as to jurisdiction was correct.

A further question arises on the appeal from the fact that in the course of the proceedings petitioner stated he no longer wished to be restored to possession of the premises as claimed in his petition. The proceedings did not then terminate, as in my opinion they should have done, as petitioner wished to obtain a declaration that he was entitled to possession. It was stated quite frankly that this might be of assistance to him in any further action for damages.

It is quite clear, as pointed out in more than one of the authorities cited above, that the provisions of sections 325 to 330 of the Code provide a special form of relief to be obtained in a summary way and for the specific purposes set out in the sections. If the remedy that any one of the sections provides is not required, it is not in my opinion open to a party to use the procedure set out for some purpose other than that provided in the section. The petitioner, no doubt, when he filed his petition wished to be put into possession again, but some months elapsed before the hearing of the petition could be concluded. In view of the fact that he was only a monthly tenant, it was not likely that even if he were restored to possession appellant would fail to give him notice to quit at the earliest opportunity.

¹ 28 N. L. R. 452.

² *Browne*, 391.

³ 19 N. L. R. 239.

¹ 2 N. L. R. 235.

As he had been out of possession so long, one understands therefore his attitude taken up at the hearing in June. In view of his statement there, that he no longer required possession, having regard to the nature of the proceedings, his petition for an order restoring him to possession being the only matter before the Court should then have been dismissed,

subject to any right he had to bring an action for damages.

Upon this minor point the appeal must succeed. The principal question raised in both Courts was one of jurisdiction upon which appellant fails. The decree entered in the lower Court will be set aside, but under all the circumstances each party will bear their own costs in both Courts.

Decree set aside.

