

1962

Present : Sansoni, J.

JOSLIN FERNANDO, Appellant, and J. MADANAYAKE, Respondent

S. C. 165—C. R. Colombo, 78,538

*Landlord and tenant—Death of tenant—Wrongful occupation of premises thereafter by tenant's daughter—Landlord's suit for ejectment—Jurisdiction of Court.*

After the death of a tenant, the landlord (plaintiff) sought to eject the tenant's daughter (defendant) who was in wrongful occupation of the premises in question as trespasser from the time of the tenant's death. The defendant too denied that there was any privity of contract between her and the plaintiff.

Held, that, as the premises let were worth more than Rs. 300, the Court of Requests had no jurisdiction to try the action.

**A**PPEAL from a judgment of the Court of Requests, Colombo.

V. *Thillainathan*, for Defendant-Appellant.

W. D. *Gunasekera*, with N. *Senanayake*, for Plaintiff-Respondent.

July 26, 1962. SANSONI, J.—

There is no question that the premises in dispute in this case are worth considerably more than Rs. 300/-. The plaintiff brought this action against the defendant alleging that he had let the premises to one W. M. Fernando as tenant, and that on the death of W. M. Fernando, the defendant, who is his daughter, continued to be in possession. The plaintiff sued the defendant on the ground that the defendant was in wrongful occupation from the time of W. M. Fernando's death.

The prayer is for ejectment and damages. It is clear from the plaint that this is not an action against a tenant, who has been given notice but is overholding, but against a trespasser who never had a right to be on the premises. The defendant has filed three answers. I need only look at the final answer, because it is upon that answer that the case went to trial. In that answer the defendant denied that the plaintiff was the owner of the premises. She also denied that W. M. Fernando was a tenant under the plaintiff. She denied that there was any privity of contract between her and the plaintiff. In other words, the defendant never, at the time the case went to trial, conceded that the plaintiff was her landlord, and she disputed the plaintiff's title. In those circumstances, I think it is correct to say that the court had no jurisdiction to try this action. The case, in my view, falls within the ruling of *Tambiah, J.*, in *Silva v. Abeysundera*<sup>1</sup>. I need not go into the facts, although I must confess that I find it difficult to follow the reasoning in the judgment of the lower Court, with regard to the facts and the position of the parties, which the learned Commissioner has set out. On the view I take, I hold that this case fails on the question of jurisdiction, and the plaintiff's action is dismissed with costs in both courts.

*Appeal allowed.*

<sup>1</sup> (1961) 63 N. L. R. 94.