

1963

Present : H. N. G. Fernando, J.

T. D. Y. SILVA, Appellant, and A. W. F. SENANAYAKA,  
Respondent

*S. C. 235/1961—C. R. Colombo, 79879/R. E.*

*Court of Requests—Trespass—Title to premises in question not in dispute—Jurisdiction of Court of Requests to hear action for ejectment—Landlord and tenant—Death of tenant—Unlawful occupation thereafter by tenant's son—Remedy of landlord—Forum—Courts Ordinance, s. 75.*

Under section 75 of the Courts Ordinance a Court of Requests has jurisdiction to hear and determine an action for ejectment of a trespasser from premises title to which is not in dispute (if the damages claimed by the plaintiff do not exceed Rs. 300).

The plaintiff sued the defendant for ejectment from certain premises averring that the premises had been let to the father of the defendant, that the father had died, and that the defendant continued in unlawful occupation claiming to be the tenant of the plaintiff. A sum of Rs. 283 was also claimed by the plaintiff as damages.

*Held*, that, inasmuch as the defendant admitted the title of the plaintiff and the Court was not called upon to adjudicate any dispute as to title, the Court of Requests had jurisdiction to determine whether or not the defendant was a tenant under the plaintiff.

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

*D. R. P. Goonetilleke*, for the Defendant-Appellant.

*B. J. Fernando*, for the Plaintiff-Respondent.

*Cur. adv. vult.*

April 5, 1963. H. N. G. FERNANDO, J.—

The plaint in this action for ejectment averred that the premises in question had been let to the father of the Defendant, that the father had died on 7th March 1961, and that the Defendant continues in occupation claiming to be the tenant of the Plaintiff. The Defendant took two different pleas in his answer, firstly that he had been a partner with his father in the business carried on in the premises and was *qua* partner a tenant and as such entitled to continue in occupation, and secondly that under section 18 of the Rent Restriction Act he had become the tenant after his father's death. Both these pleas were rejected by the learned Commissioner, whose findings of fact cannot be challenged having regard to the evidence.

But counsel for the Defendant has raised on appeal a point which was neither put in issue at the trial nor mentioned in the petition of appeal, and which has been met with ability by Plaintiff's counsel. The point

raised is that if the Defendant is, as the Plaintiff avers, not a tenant, but a trespasser, the Plaintiff can only succeed upon proof of his title to the premises, and having regard to the value of the premises that title cannot be proved in the Court of Requests.

Several decisions were cited during the argument, but I do not find it necessary to refer to them. Under section 75, a Court of Requests has jurisdiction in an action in which the debt, damage or demand does not exceed Rs. 300, and in the present action the damages claimed were Rs. 283. Under the same section, the Court would have no jurisdiction in an action in which *title to land* is in dispute, if the value of the land exceeds Rs. 300. But the title to the premises is not in dispute, for the Defendant's substantial plea was that he is a tenant under the Plaintiff, and the only question in dispute was this allegation of tenancy. In other words, the Defendant's answer admitted the title of the Plaintiff, and the Commissioner was not called upon to adjudicate any *dispute as to title*. I would hold therefore that the Commissioner did have jurisdiction to determine whether or not the Defendant was as claimed a tenant under the Plaintiff.

The appeal is dismissed with costs.

*Appeal dismissed.*

