1913.

Present: Wood Renton A.C.J.

MARICAR *v.* ISMAIL.

205—C. R. Colombo, 32,825.

Action for rent in Court of Requests—No appeal lies without leave—Ordinance No. 12 of 1895, s. 13.

An action for rent only (and not an action for declaration of title or ejectment and rent) is not an action where an interest in land is in dispute; no appeal lies in such an action, without leave.

Meedin v. Meedin[1] queried.

THE facts appear from the judgment.

Drieberg, for the appellant.

A. St. V. Jayewardene (with him, *Canekeratne*), for the respondent.

July 11, 1913. WOOD RENTON A.C.J.—

Two points require to be considered in the present case: a preliminary objection on the part of the respondent's counsel to the appeal being heard at all, and the appeal itself on the merits. The ground of the preliminary objection is shortly this. The appellant treated the present case as one in which leave to appeal was required. He applied for leave to appeal and obtained it. The respondent's counsel contends that, as the action was in substance one relating to an interest in land, no leave to appeal was necessary, and if there was no necessity to apply for leave to appeal, an appeal as of right would be out of time. Section 13 (1) of the Courts of Requests

[1] *(1909) 5 A. C. R. 42.*

Ordinance, 1895 (No. 12 of 1895), provides that there shall be no appeal from any final judgment pronounced by the Commissioner of Requests of any Court of Requests in any action for debt, damage, or demand, unless upon a matter of law or with the leave of the Commissioner. Sub-section (2) provides that where leave is refused by the Commissioner, it may be granted by the Supreme Court. If the present action is to be viewed as an action for debt, leave to appeal was necessary. The plaintiff's claim itself is one for rent alone. It is not coupled with any prayer for a declaration of title, or for the ejectment of the defendant from the premises leased. *Meedin v. Meedin* [1] is relied upon by the respondent's counsel, as showing that such an action as the present is one wherein an interest in land is in dispute. The facts in that case are distinguishable, inasmuch as the plaintiff claimed not only rent but ejectment, and was therefore directly seeking to enforce his interest in the premises demised to the defendant. The case was decided under section 8 of the Courts of Requests Ordinance, which is now embodied in section 823 of the Civil Procedure Code. The Commissioner of Requests in *Meedin v. Meedin* [1] had regarded the case as one in which he was entitled to proceed *ex parte;* and the point before the Supreme Court was as to whether that view of the facts could be justified, or whether the action came under the proviso to sub-section (2) of section 823, that in all cases in which the title to, interest in, or right to the possession of land shall be in dispute the plaintiff, even where his opponent is absent on the day of trial, shall be required to adduce affirmative evidence in support of his claim. It is clear that in *Meedin v. Meedin* [1] the right to an interest in and to the possession of land was directly in dispute. But Sir John Middleton, who decided the case, went a step further, and used language which is capable of bearing the interpretation that a mere claim for rent, apart altogether from a claim for declaration of title or ejectment, should be regarded as an action in which an interest in land is involved. "I cannot," he said, "resist the conclusion that rent of a house is an interest in land, whether it be for a month or for a year. It is derived from the value of the land as augmented by the building of a house on it." That language was merely *obiter dictum*, and I venture to doubt whether it is a correct statement of the law. There is direct Indian authority upon the point. The respondent's counsel referred me to the decision of Mr. Justice Stephen in *Ibrahim Ismail Timol v. Provas Chander Mitter* [2] as an authority for the proposition that a suit by a lessor for rent is a suit for land. When the case is looked into, it does not, however, furnish authority for that proposition in any sense which could make it applicable to the present case. The facts on which the Court acted are stated in the argument of the Advocate-General, which places the *ratio decidendi* beyond all doubt. "I admit," he

[1] *(1909) 5 A. C. R. 42.*

[2] *(1908) I. L. R. 36 Cal. 59.*

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said, " that a suit for rent is not a suit for land, but this is not a suit of that character. The prayer in the plaint shows that the plaintiff is seeking to obtain such title as he can have to the land. The suit is not merely for a declaration, but is a suit to obtain control and possession of the house itself. The plaintiff under his plaint claims that, inasmuch as the defendant took over possession of the house, he is a trustee for the plaintiff, and that he has to receive the rents and profits for the plaintiff. He does not claim the surplus rents and profits, but claims to be entitled to the rents and profits." In the case with which I am dealing, the lessee of certain premises outside the jurisdiction of the Court having vacated the premises on account of being sentenced to a term of imprisonment, on his release brought a suit against the lessor, who had in the meantime taken over possession, claiming the rents and profits arising therefrom pending the termination of the lease, and further claiming that the lessor during his absence became a trustee for him. It is obvious that this was something quite different from a mere suit for rent; that the lessor was seeking to obtain possession of the premises by claiming the rents and profits from the lessor; and that he was, therefore, seeking to do something which directly affected the property itself. It was on that ground that the decision of Mr. Justice Stephen proceeded. But there is, as I have said, a direct authority on the other side. In the case of *Rangu Lall Lohea v. Wilson*,[1] it was held by Mr. Justice O'Kinealy that a suit by a landlord against a tenant for rent at a rate agreed upon for one period, and for rent on the basis of use and occupation for a subsequent period, was not a suit for land. The recent decision of my brother Pereira in *Punchirala v. Appuhamy* [2] corroborates, so far as it goes, the view of section 13 (1) of the Courts of Requests Ordinance, 1895, which I am now adopting. The respondent's counsel has referred me to the decision of Mr. Justice Ennis in 29—C. R. Negombo, 19,668.[3] But in that case the plaintiff prayed for the cancellation of the lease itself, and therefore put forward a claim, part of which at least directly affected the property. Apart altogether from authority, I cannot think that it could have been the intention of the Legislature that mere claims for rent, dissociated from any questions as to the title to or the posession of immovable property, should be subject to a right of appeal from a Court of Requests to the Supreme Court without leave. The preliminary objection fails. It remains only to deal with the merits, and as to these I have very little to say. The case was put in a nutshell by the respondent's counsel. By the assignment of the lease, to which the lessors were parties, the defendant can no longer claim rights under the instrument P 2. In document P 6 the defendant acknowledged the plaintiff not only as his landlord, but as the owner of the property,

[1] *(1898) I. L. R. 26 Cal. 204.*

[2] *(1913) 16 N. L. R. 360.*

[3] *S. C. Min.; Mar. 12, 1913.*

and has undertaken to pay rent to him. In order to obviate the effect of this acknowledgment, the appellant relies on the alleged execution of the document D 3, which was an authority to him by Abdul Hamid, one of the parties to his original lease, to pay the rent to the plaintiff. The plaintiff was no party to D 3. There is no reference to it in the document P 6. The only circumstances that can fairly be relied upon in support of its authenticity are the facts that Abdul Hamid was one of the original lessors, and that there is nothing in the record to show that between the date of the lease and the date of the execution of D 3 he had ceased to be a part owner of the property itself. These points deserve consideration, and I have considered them. On the other hand, they cannot outweigh the strong finding by the Commissioner of Requests that the evidence of Abdul Hamid as to the circumstances under which the document D 3 was executed is false, and that the document itself is a mere fabrication for the purposes of this case. On the grounds that I have stated the appeal must be dismissed with costs.

Appeal dismissed.