

1972

Present : Deheragoda, J.

**PETER FERNANDO and another, Appellants, and
WIMALASENA PERERA, Respondent**

S.C. 41/70—C. R. Colombo, 98091/R. E.

Jurisdiction—Action to eject defendant from a land—Plaintiff's claim within jurisdiction of Court of Requests—Answer of defendant stating that the value of the land was worth over Rs. 12,000—No claim in reconvention for declaration of title—Jurisdiction of Court of Requests prevails then—Courts Ordinance, s. 75.

Plaintiff instituted action in the Court of Requests to eject the 1st and 2nd defendants from a land on the ground that the defendants who had been placed in possession of the land as licensees by the plaintiff's predecessor in title were wrongfully refusing to quit. The 2nd defendant filed answer claiming title to the land by virtue of prescriptive possession and stated that the

subject-matter of the action was worth over Rs. 12,000 and therefore beyond the monetary jurisdiction of the Court of Requests. But the defendants did not make a claim in reconvention that they be declared entitled to the land on the basis of prescription; they merely asked for a dismissal of the plaintiff's action.

Held, that the monetary jurisdiction of the Court of Requests was not ousted in the absence of a counter-claim by the defendants for a declaration of title to the land.

APPEAL from a judgment of the Court of Requests, Colombo.

D. R. P. Goonetilleke, for the defendants-appellants.

K. Shanmugalingam, with *N. Abeynayake*, for the plaintiff-respondent.

July 26, 1972. DEHERAGODA, J.—

The plaintiff-respondent instituted this action, *inter alia*, to eject the 1st and 2nd defendants-appellants from Lot 6 in Plan No. 2148. The plaintiff's case is that the defendants had been placed in possession of the land concerned by his predecessor in title as licensees and that the defendants are estopped from denying and disputing the title of the plaintiff to the premises, that they had been requested to vacate and deliver vacant possession, and that they are in wrongful and unlawful occupation.

The 2nd defendant in her amended answer claims title by virtue of prescriptive possession and states that the subject matter of the action is worth over Rs. 12,000 and is beyond the jurisdiction of the Court of Requests. She prays that the plaintiff's action be dismissed.

The only substantial ground urged by the learned counsel for the 1st and 2nd defendants-appellants is that in view of the answer of the 2nd defendant claiming title by prescription, the value of the action should be based on the value of the land which exceeds the monetary jurisdiction of the Court of Requests. His contention is that the learned Commissioner of Requests has wrongfully entered judgment in favour of the plaintiff on a mistaken view of the law that the monetary jurisdiction of the Court depends only on the plaintiff's right to possession and not upon the plaintiff's claim taken with the defendants' answer.

I agree with the learned counsel for the appellants that the jurisdiction of the Court will have to be determined after an examination of both the plaintiff's claim and the defendants' answer. But one has to have in mind that the jurisdiction of the Court depends on the relief prayed for by the parties and what section 75 of the Courts Ordinance precludes a Court from doing is to entertain an action praying for relief which is in excess of the jurisdiction of that Court. While in the plaint the plaintiff prays for the ejectment of the defendants from the premises concerned

as they were licensees, the defendants in their answer did not make a claim in reconvention that they be declared entitled to the land on the basis of prescription, but merely asked for a dismissal of the plaintiff's action.

Learned counsel for the defendants-appellants contends that upon a mere averment by the defendants in the answer claiming title to the land by prescription, the monetary jurisdiction of the Court of Requests is ousted even though relief in the form of a declaration of title is not counter claimed. He cited in support the case of *Bastian Appuhamy v. Haramani's Appuhamy*¹ (46 N. L. R. 505) and in particular the following passage at page 508 :—

“ In order, therefore, to ascertain whether an action is within or beyond the precuniary jurisdiction of a Court, the nature and extent of the subject-matter in dispute has to be ascertained, and, for that purpose, it would be necessary to examine not only the plaintiff's claim but also the defendant's answer to it. ”

Learned counsel for the plaintiff-respondent argues that the answer of the defendants includes a prayer which is merely for a dismissal of the action of the plaintiff and not for a declaration of title to the land from which the plaintiff seeks to eject them. Prescriptive possession has been set up merely as a defence to the plaintiff's action in ejectment and an adjudication of the defendants' claim to title has not been prayed for. He cited in support of this argument, along with other cases, the Full Bench case of *Heen Danda v. Aluvihare*² (31 N.L.R. 152). In that case the plaintiff, after setting out his title to the land, which admittedly was over the value of Rs. 300, claimed a sum of Rs. 150 as damages against the defendant for having forcibly cut and removed jak trees. The defendant in his answer had denied the plaintiff's title to the land, but had made no claim in reconvention on that basis. While holding that the Court of Requests had jurisdiction to entertain that action, Fisher, C. J. said at page 156 as follows:—

“ There was no claim in reconvention in the present case and we are therefore concerned only with what was stated by the defendant in his answer as a defence. Such a defence, in my opinion, does not bring into operation the proviso in section 77 (present section 75 of the Courts Ordinance) which I have set out above. The meaning of the first part of section 81 (present section 79 of the Courts Ordinance) is, in my opinion, that where a defence is raised which involves consideration of a question which could not be made the direct subject-matter of a prayer for relief by the Court, the Court can deal with and decide the question for the purpose of deciding whether the plaintiff is entitled to the relief he claims. That is the situation in this case, and it is a situation with which in my view the section directly and expressly deals. ”

¹ (1945) 46 N. L. R. 505.

² (1929) 31 N. L. R. 152.

Having regard to the fact that the defendants in the instant case have raised the question of prescriptive title merely as a defence to the plaintiff's action, and prayed only for a dismissal of the plaintiff's action on that ground, I am of the view that the principle set out in the Full Bench case reported in 31 N.L.R. page 152 (*eupra*) is in point. I am bound by that decision. The defendants-appellants' appeal is accordingly dismissed with costs.

Appeal dismissed.

