

1967

Present : Siva Supramaniam, J.

A. NAGARAJAH, Petitioner, and P. A. JEBARATNA-
RAJAH, Respondent

*S. C. 516/66—Application for Revision and/or Restitutio in
Integrum in C. R. Colombo, 87945*

*Landlord and tenant—Action for rent, ejectment and damages—Jurisdiction of Court of
Requests—Extent—Courts Ordinance, as amended by Act No. 5 of 1964, s. 75—
Civil Procedure Code, ss. 35 (1), 36 (2).*

Where, in a contract of monthly tenancy, the rent per month was Rs. 60, and the landlord sued the tenant in the Court of Requests for recovery of possession of the rented premises and also claimed, as arrears of rent, a sum of Rs. 720 and continuing damages—

Held, that the fact that, in addition to the claim for ejectment valued at the monthly rental of Rs. 60, a sum of Rs. 720 was claimed as arrears of rent could not oust the jurisdiction of the Court of Requests. "Since the test of jurisdiction is the value of the right of possession, the claim for arrears of rent should be regarded as incidental and subsidiary and its inclusion cannot oust the jurisdiction of the Court so long as the amount claimed at the date of action does not exceed Rs. 750."

"Where several causes of action are joined in the same action in conformity with the provisions of the Civil Procedure Code, a Court of Requests has jurisdiction to hear and determine such an action provided the total value of the cause (or causes) of action relating to a debt, damage or demand does not exceed Rs. 750 and the total value of the cause (or causes) of action relating to interest in land does not exceed Rs. 300."

Held further, that where the plaintiff claims continuing damages for being kept out of possession of any land, the relief as regards damages which the Court of Requests can grant is not restricted to the ordinary limit of its jurisdiction. The Court of Requests had, therefore, jurisdiction in the present case to enter a decree for a sum of Rs. 3,300 as rent and damages up to the end of April 1965.

APPLICATION by way of Revision and/or Restitutio in Integrum to set aside as null and void a decree entered by the Court of Requests, Colombo.

Elro Vannitamby, for defendant-petitioner.

S. Sharvananda, for plaintiff-respondent.

Cur. adv. vult.

January 16, 1967. SIVA SUPRAMANIAM, J.—

The defendant-petitioner has made an application by way of Revision and/or Restitutio in Integrum to set aside the decree entered in this case as null and void and to dismiss the plaintiff-respondent's action or in the alternative to remit the case to the lower Court for trial in due course.

The facts leading up to the present application are as follows:—The defendant-petitioner was, during the relevant period, a monthly tenant under the respondent in respect of certain premises, which were subject to the provisions of the Rent Restriction Ordinance, on a monthly rental of Rs. 60. By a notice dated 25-2-64 the respondent terminated the tenancy with effect from 1-6-64. On 12-6-64 the respondent instituted this action for the ejection of the petitioner from the said premises and for the recovery of a sum of Rupees seven hundred and twenty as arrears of rent and continuing damages at Rs. 60 per month from 1-6-64. It was averred in the plaint that although the petitioner had been a tenant from 1st March 1962 he had paid only a total sum of Rs. 8'0 as rent and was in arrear in a sum of Rs. 750 up to the end of May 1964. It was further averred that the petitioner had sub-let the premises without the respondent's written consent. The respondent restricted her claim in respect of the arrears of rent to Rs. 720. The petitioner in his answer denied these averments and stated that he had paid rent at Rs. 200 per month although the authorised rental was Rs. 55 per month and that the total sum paid by him was Rs. 2,680. He claimed a sum of Rs. 975 in reconvention from the respondent. The case was fixed for trial on 11th May 1965. On that date the petitioner who was present in person and was unrepresented admitted to the Court that he was in arrear of rent and that a sum of Rs. 3,300 was due to the respondent from him as rent and damages up to the end of April 1965. The petitioner entered into a compromise with the respondent in terms of which he consented to judgment being entered against him for ejection from the premises and for the recovery of a sum of Rs. 3,300 and further damages at Rs. 61'62 per month from 1st May 1965 subject to the condition that if he paid each month's damages of Rs. 61'62 together with a sum of Rs. 7'50 out of the arrears of rent and damages on or before the 5th day of each month commencing from 1st June 1965 without making default, writ of ejection should not issue till 31st December 1968. Decree was entered under S. 408 of the Civil Procedure Code in accordance with the said compromise. The petitioner continued in occupation of the premises in terms of the said consent decree and paid the instalments that fell due from month to month until March 1966. He defaulted in respect of the sums payable on 5th April 1966. On the respondent's application the Court issued writs for the recovery of the balance amount due under the decree and for ejection of the petitioner from the premises. The petitioner then made an application for stay of execution and the matter came up for inquiry on 23rd June 1966. On that date both parties were represented by Proctors and they entered into a further compromise which was recorded by the Court in the following terms:—

“ It is agreed that the defendant should deposit in Court Rs. 41'36 being damages and instalments due on 5.4.66, 5.5.66 and 5.6.66 on or before 26.6.66. The June damages and instalment to be deposited on 5.7.66 in Court and thereafter the sum of 139'12 on the 5th of the following months as from 5.8.66 to be deposited in Court. The

application for writ already allowed be issued to the Fiscal but not to be executed till 31.12.66. In default of any one of these payments writ to be executed forthwith without any notice.”

The petitioner defaulted again in regard to the said payments and in terms of the aforesaid compromise entered into on 23.6.66 the respondent will be entitled to have the writs executed by the Fiscal. On 7.12.66 the petitioner filed the present application in this Court.

The grounds on which he seeks to have the decree entered on 11th May 1965 set aside and all subsequent proceedings quashed may be summarised as follows :—

- (a) That the Court had no jurisdiction to entertain the plaint in this case as the subject matter of the action exceeded the monetary jurisdiction of the Court of Requests.
- (b) (i) That the Court had no jurisdiction to enter a decree in accordance with the compromise entered into between the parties on 11th May 1965 as the amount decreed to be payable by the petitioner to the respondent was for an amount in excess of the monetary jurisdiction of the Court of Requests.
 - (i) That the decree entered in pursuance of the compromise was bad as the compromise included matters outside the scope of the action, and
- (c) That the compromise was not binding on him as “ his consent was not real and valid and was extracted by putting him into fear of immediate ejection if he did not consent.”

As regards the first ground learned Counsel for the petitioner submitted that the plaint contained in fact two causes of action, one for the recovery of a sum of Rs. 720 as arrears of rent and the other for ejection of the petitioner and for recovery of possession of the premises along with continuing damages. He argued that the value of the second cause of action would be the amount of the monthly rent and that the Court of Requests had no jurisdiction to hear and determine an action in which the aggregate monetary value of the causes of action amounts to Rs. 780.

Under S. 75 of the Courts Ordinance as amended by Act No. 5 of 1964 a Court of Requests has jurisdiction to hear and determine the following classes of actions :—

- (a) Actions in which the debt, damage or demand shall not exceed Rs. 750.
- (b) Hypothecary actions in which the amount claimed shall not exceed Rs. 750.
- (c) Actions in which the title to, interest in or right to the possession of 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, and

- (d) Actions for partition or sale of land when the value of the land does not exceed Rs. 300.

An action by a landlord for ejection of the tenant from the leased premises on the termination of the contract of tenancy will fall under class (c). It was held by a Divisional Bench of this Court in the case of *Banda v. Menika*¹ that the test of jurisdiction in such a case is the value of the land or interest in dispute irrespective of any damages or other relief claimed on the cause of action. Where the action is one for ejection of a monthly tenant, "the value of the right of possession involved is the rent or profit which might be due if the monthly tenancy continued"—per De Sampayo J. in *Hewavitarana v. Mariker*².

In the instant case, the rent per month was Rs. 60/- and the action for recovery of possession of the premises was therefore within the jurisdiction of the Court of Requests. Does the fact that a sum of Rs. 720 was also claimed as arrears of rent oust the jurisdiction of the Court?

In an action for the recovery of immovable property, S. 35 (i) of the Civil Procedure Code permits (unless with the leave of the Court) only the following claims to be made:—

- (a) Claims in respect of mesne profits or arrears of rent in respect of the property claimed;
- (b) Damages for breach of any contract under which the property or any part thereof is held; or consequential on the trespass which constitutes the cause of action; and
- (c) Claims by a mortgagee to enforce any of the remedies under the mortgage.

As stated by De Sampayo J. in *Banda v. Menika*¹ at page 280 "In a land case the subject matter is the land and the main purpose of the action is its recovery." "The claims which may be included in such an action are incidental claims as are recognised as naturally arising in connection with land cases by the Civil Procedure Code itself (S. 35) subject always to the limitation of the Courts jurisdiction"—per Bertram C. J. *Ibid.* at page 283. Since the test of jurisdiction is the value of the right of possession, the claim for arrears of rent should be regarded as incidental and subsidiary and its inclusion cannot oust the jurisdiction of the Court so long as the amount claimed at the date of action does not exceed Rs. 750.

If, on the other hand, the claim for arrears of rent is not regarded as incidental and subsidiary to the principal cause of action, viz., the recovery of possession of the land, but is treated as a separate and independent cause of action, the position will be that the plaintiff has joined in his action two causes of action (such joinder being permitted by S. 35 (i) of the Civil Procedure Code) as follows:—

- (a) A cause of action falling within the category of "Debt, damage or demand" valued at Rs. 720, and

¹ (1919) 21 N. L. R. 279 F.B.

² (1916) 19 N. L. R. 239 at p. 241.

(b) A cause of action falling within the category of an interest in land valued at Rs. 60.

In terms of S. 36 (2) of the Civil Procedure Code the value of the aggregate subject matters is Rs. 780.

Is the jurisdiction of the Court of Requests ousted in cases in which the value of the aggregate subject matters exceeds Rs. 750? Section 75 of the Courts Ordinance provides that the Court of Requests has jurisdiction in money cases in which "the debt, damage or demand" does not exceed Rs. 750. It also provides that the Court of Requests has jurisdiction in land cases in which the value of the interest does not exceed Rs. 300. It does not, however, provide that the value of the aggregate subject matters should not exceed Rs. 750 in order to enable the Court of Requests to exercise jurisdiction. Nor is there any other provision of law which imposes such a limitation.

I am therefore of the opinion that where several causes of action are joined in the same action in conformity with the provisions of the Civil Procedure Code, a Court of Requests has jurisdiction to hear and determine such an action provided the total value of the cause (or causes) of action relating to a debt, damage or demand does not exceed Rs. 750 and the total value of the cause (or causes) of action relating to interest in land does not exceed Rs. 300. This view finds support in the following passage in the judgment of Bertram C.J. in *Bandu v. Menika*. (*Ibid.* page 283):—"It is no doubt a singular result that it should be possible to bring in conjunction a claim of land worth Rs. 300 and a further incidental monetary claim to the same amount, but there is nothing in the section to prevent such claims from being combined . . .".

For the foregoing reasons, I hold that the Court of Requests had jurisdiction to entertain the plaint in the instant case.

The next point urged by Counsel for the petitioner was that, notwithstanding the petitioner's consent, the decree entered was bad since the amount payable under the decree was in excess of the jurisdiction of the Court of Requests. There can be no question but that if the Court had no jurisdiction the parties cannot, by their consent, confer jurisdiction. In terms of the compromise, the petitioner admitted liability in a sum of Rs. 3,300 "as rent and damages up to the end of April 1965". It is submitted that the sum of Rs. 3,300 included a sum payable by the petitioner to the respondent on account of certain repairs effected to the premises and that that claim was outside the scope of the action and could not therefore have been included in the compromise. The record however does not show the breakdown of the sum of Rs. 3,300 although there is an admission of liability on account of repairs. It is now settled law that where the plaintiff claims continuing damages for being kept out of possession of any land, the relief as regards damages which the Court of Requests can grant is not restricted to the ordinary limit of its jurisdiction—*Pedris v. Mohideen*¹. *Ex facie*, the Court had jurisdiction to enter a decree for a sum of Rs. 3,300 as rent and damages. In view

¹ (1923) 25 N. L. R. 105 F.B.

of the petitioner's admission on the trial date that he was in arrear of rent, the respondent would have been entitled to a decree for ejection of the petitioner forthwith from the premises. But in view of the petitioner's admission of liability in a sum of Rs. 3,300 as rent and damages and his undertaking to liquidate that sum by monthly instalments, the respondent agreed to allow the petitioner to continue in occupation of the premises till December 1968 provided there was no default in the payments. The petitioner, having enjoyed the benefit of the decree entered in pursuance of the compromise and having continued in occupation of the premises for over one and a half years is now estopped from questioning the validity of the decree on the ground that the sum of Rs. 3,300 included an amount which fell outside the scope of the action. The second ground of the application therefore fails.

The last ground urged, namely, that the petitioner's "consent to the compromise was not real and valid and was extracted by putting him into fear of immediate ejection" is without any merit. According to the averments in the petition the petitioner agreed to the terms of the compromise because he was not in a position to proceed with the trial as his Counsel and Proctor had refused to appear for him on that date as he had failed to pay their balance fees. The fact that the petitioner entered into a compromise because he anticipated that decree would be entered against him if the case proceeded to trial on that date and that he would be ejected forthwith from the premises does not render the compromise invalid. The complete absence of *bona fides* on the part of the petitioner is shown by the fact that although the decree was entered on 11th May, 1965 and a second compromise was entered into on 23rd June 1966 he has waited until the approach of the date on which he has to vacate the premises to challenge the validity of the original compromise and of the decree.

I dismiss the petitioner's application with costs.

Application dismissed.