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*Present: Garvin J.*

DANIEL v. RASIAH.

274—C. R. Colombo, 54,675.

*Jurisdiction—Order for delivery of possession by Court of Requests—  
Complaint by party dispossessed—Value of property over Court's  
jurisdiction.*

Where the enforcement of an order for delivery of possession issued by a Court of Requests in favour of the purchaser of immovable property is followed by a petition for wrongful dispossession under section 328 of the Civil Procedure Code, the Court of Requests has no jurisdiction to entertain the petition when the property exceeds in value the limit of the Court's jurisdiction.

In such a case the party dispossessed must proceed by way of separate action in a Court of competent jurisdiction.

**A** PPEAL from an order of the Commissioner of Requests, Colombo. Certain premises were sold and seized in execution of a money decree entered in case No. 41,401 of the Court of Requests, Colombo. The purchaser obtained a Fiscal's conveyance and was granted an order for delivery of possession under section 287 of the Civil Procedure Code. The Fiscal, in placing the purchaser in possession, dispossessed one Daniel Joseph, who petitioned the Court under section 328 of the Civil Procedure Code. The Commissioner directed his petition to be numbered and registered as a plaint in an action as required by the section. At the inquiry a preliminary objection was taken to the jurisdiction of the Court on the ground that the property in respect of which the dispossession took place was over Rs. 300 in value. The Court upheld the objection.

*Tisseverasinghe*, for plaintiff, appellant.—The Commissioner had entertained this application under section 328 of the Civil Procedure Code and directed that it should be numbered and registered as a

plaint. It is now too late to object to jurisdiction. The Court of Requests issued the writ. The Court issuing the writ is the proper Court to investigate all matters arising in the execution proceedings. There is no distinction between the rights of a holder of an order for possession under section 287 and the holder of a decree for possession under sections 325-328 (*Silva v. de Mel*<sup>1</sup>). The words "in the same manner and with the like power" in section 327 do not refer to questions of jurisdiction. *Fernando v. Fernando*<sup>2</sup> should not be followed. Such a procedure works great hardship.

*N. E. Weerasooria*, for defendant, respondent.—The objection to jurisdiction was taken as a preliminary issue. Section 77 of the Courts Ordinance alone confers jurisdiction on the Court of Requests. There is no provision of the Civil Procedure Code expressly enlarging such jurisdiction. The Legislature could not have intended that a Court of Requests should try the title to land over Rs. 300 in value. The decision in *Silva v. de Mel (supra)* is in fact contrary to the views expressed in the earlier case of *Silva v. Silva*<sup>3</sup>. Sections 325 to 328 clearly refer to decrees for possession under heads (B) and (C) in Chapter XXII. of the Code. A Court which would consider such an application would be the Court which passed the decree and therefore a competent Court. The extension of the privileges of sections 325 to 328 to a holder of an order for possession is wrong. Hence the difficulty. *Silva v. de Mel (supra)* has been decided without reference to the conflict that arises if the order for possession issued from a Court of Requests. Had the point been taken the decision may have been otherwise, especially in view of *Silva v. Silva (supra)*.

*Tisseverasinghe*, in reply.

April 1, 1930. GARVIN J.—

In execution of a money decree entered in case No. 41,401 of the Court of Requests of Colombo, premises bearing No. 3 in Union lane, Union place, were duly seized and sold. The purchaser obtained a Fiscal's conveyance and was later granted an order for delivery of possession under section 287 of the Civil Procedure Code. The Fiscal placed the purchaser in possession and is said to have dispossessed one Daniel Joseph, who petitioned the Court pleading that he was in *bona fide* possession of the premises as tenant of one Gnanakannu Nadar and praying to be restored to possession.

The Commissioner, after the inquiry contemplated by section 328, directed that his plaint should be numbered and registered as a plaint in an action. In due course the matter came up for trial, when a preliminary issue was raised as to the jurisdiction

<sup>1</sup> (1915) 18 N. L. R. 164.

<sup>2</sup> (1923) 18 N. L. R. 350.

<sup>3</sup> (1898) 3 N. L. R. 161.

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of the Court. The premises are admittedly over Rs. 300 in value. The objection in short is that a Court of Requests has no jurisdiction to entertain a petition under section 328 in any case in which a person has by virtue of an order for delivery of possession under section 287 been dispossessed of premises the value of which is over Rs. 300.

The learned Commissioner upheld the objection and the petitioner appeals.

Sections 328 to 330 have for their object the protection and assistance of holders of decrees for possession and third parties who have been dispossessed.

Of these, sections 325 to 327 enable a decree holder who has by reason of resistance or obstruction to the officer charged with the execution of the writ failed to obtain possession to "complain thereof" to the Court, and where such resistance or obstruction is found to have been caused by a person other than the judgment-debtor claiming in good faith to be in possession on his own account or on account of some person other than the judgment-debtor, the decree-holder by reason of the procedure laid down is able to obtain prompt investigation of the claim of the party resisting.

The language of these sections, it seems to me, plainly indicates the Court which issued the writ as the Court to which complaint is to be made and which is required to investigate the claim of the party resisting where the resistance is offered by a *bona fide* claimant.

Similarly, the language of section 328 which deals with the converse case of a person who having been dispossessed seeks to be restored to possession, indicates that the Court to which application for that purpose is to be made is the Court which issued the writ, and that it is that Court which has to make a preliminary examination of the petitioner to ascertain whether there is probable cause for making the application, and if it decides in favour of the petitioner, cause the petition to be "numbered and registered" as a plaint.

The language and scope of these sections strongly indicate that all complaints of resistance as well as of wrongful dispossession were intended to be addressed to and investigated by the Court which passed the decree under execution. There is nothing to indicate that either the investigation or both the complaint and the investigation were to be addressed to and entertained by any other Court.

These sections it is to be noticed are grouped together under the head "Resistance to Execution of Proprietary Decrees," and section 325, the opening words of which govern the whole group of sections, indicate that they relate to the execution of decrees for the possession of property under heads (B) and (C).

Inasmuch as a Court of Requests can only entertain an action for the possession of property if that property does not exceed Rs. 300 in value, the decrees it enters for possession of property necessarily can only refer to property which it must be assumed does not exceed Rs. 300 in value. The Court of Requests which had jurisdiction over the original suit would have jurisdiction over the claim.

If the matter be viewed from this standpoint, it becomes clear that these sections were drawn upon the assumption that the Court which passed the decree would entertain and investigate complaints arising from the execution or the attempt to execute the decree, and that no question of jurisdiction pecuniary or local would or could arise.

Property sold in execution very frequently exceeds in value the amount of the writ, and also the pecuniary limit set to the jurisdiction of the Court where the Court which issued the writ happens to be a Court of Requests. Consequently, when the enforcement of an order for delivery of possession issued by such a Court in favour of a purchaser of immovable property is followed by a complaint of wrongful dispossession, it must frequently happen that the property in regard to which the complaint is made exceeds in value the limit of the Court's jurisdiction.

Apart entirely from the difficulty, if not impossibility, of applying these sections to a case such as this, it is difficult to believe that the Legislature could have intended, or even contemplated, that a complaint of resistance to or dispossession by officers charged with the execution of a decree or order made by a Court of Requests would be investigated by a District Court or by a Court of Requests to the extent of the preliminary inquiry and thereafter be numbered and registered as a plaint in the District Court and heard and disposed of by that Court.

It is implicit in the language of these sections that all such complaints will be investigated by the Court which issued the writ, in as much as the Court which had jurisdiction to pass a decree for possession in the original suit would have jurisdiction over the claim.

These sections do not contemplate a case such as the one under consideration, because what the draftsman had in contemplation was resistance or dispossession under decrees for possession, and not the various cases which may arise in consequence of resistance to or dispossession by an officer charged with the enforcement of an order for possession issued under section 287.

In the case of *Silva v. Silva (supra)*, a Full Bench consisting of Bonser C.J., Lawrie J., and Withers J. held that the provisions of sections 325 and 326 were applicable to resistance or obstruction

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in the cases of a "decree" and not to the case of an order for possession under section 287.

This, if I may respectfully say so, is in accordance with the conclusion at which I have arrived upon an examination of the language of this group of sections—that they do not contemplate resistance or dispossession in the case of an order for possession under section 287.

The law as declared and settled by this case was after an interval of about 17 years disturbed by the judgment of another Full Bench consisting of Wood Renton C.J., Shaw J., and de Sampayo J. The learned Judges purport to differentiate the case of *Silva v. Silva* (*supra*). What they have done is to limit its application as an authoritative decision only for the proposition that for the purposes of the punitive provisions of sections 325 and 326 the words "decree for possession" do not include orders for possession under section 287.

They claimed to be free to go upon their own view in regard to proceedings under section 328, and held that that section was applicable to a case of dispossession whether under an order for possession or under a decree for possession. The differentiation is a very fine one and gives no effect to the *ratio decidendi* in *Silva v. Silva* (*supra*), which was that the words "decree for possession" in section 325 which appear to me to control the meaning of the whole group of sections does not include an order for possession. Indeed, in the later case the Judges dissent from the reasons given for the decision in the earlier case, and hold that the relevant provisions of the Code relating to enforcement of a decree for possession including section 328 are made applicable to orders for possession by the second paragraph of section 287.

The resulting position is this :—

The punitive provisions of sections 325 and 326 are not available where there has been resistance or obstruction to the officer charged with the enforcement of an order for possession.

The provisions of section 328 are applicable to the case of a person who has been dispossessed by an officer purporting to act under the authority of an order for possession under section 287.

Section 326 is not specially mentioned ; it is a little difficult to see how it can be made applicable to the case of orders for possession. The Court has no power to punish resistance in such a case, and consequently a person who offers resistance need not submit his defence or explanation to the Court. These observations apply also to section 330.

I am bound by the decision in *Silva v. de Mel* (*supra*), that the provisions of section 328 have been made applicable by section 287

to the case of an order for possession. But that judgment does not consider the position which arises when the Court which issued the order for possession is a Court of Requests and the land in respect of which it is issued is over Rs. 300 in value, nor does it say how this section is to be applied in such a case.

If the Court of Requests has jurisdiction to investigate the claim of the party dispossessed irrespective of the value of the land no difficulty arises. If it is precluded from investigating the claim when the value of the property exceeds Rs. 300, the party dispossessed, it seems to me, has no remedy under section 328, and must proceed by way of a regular action in a Court of competent jurisdiction.

The ordinary jurisdiction of a Court is that which is assigned to it by the Courts Ordinance. Unless section 327 and the group of sections of which it is one can reasonably be construed as giving the Court of Requests a special jurisdiction, it must be admitted that a Court of Requests has no jurisdiction to investigate a petition under section 327 where the land is over Rs. 300 in value.

In *Fernando v. Fernando* (*supra*), Schneider J. held that these sections do not vest a Court of Requests with any special or higher jurisdiction than that conferred by the Courts Ordinance. After careful consideration I am driven to the same conclusion. It is impossible to read into the language of these sections an intention to enlarge the jurisdiction of Courts of Requests, for the reason that they did not in my opinion contemplate the investigation by a Court of Requests of a petition complaining of resistance or dispossession, except in respect of a decree for possession entered in a suit over which it had jurisdiction and consequently had jurisdiction also over the claim.

I realize that in upholding this objection to the jurisdiction of the Court of Requests I am compelling a person dispossessed of property by an officer purporting to be acting under the authority of an order for possession to a separate action and depriving him of the benefit of the summary procedure for obtaining restoration to possession prescribed by section 328. But this is the logical and necessary result of the judgment in *Silva v. de Mel* (*supra*). The remedy is in the hands of the Legislature, who alone can by appropriate amendments on the lines of the developments embodied in the Indian Code of Civil Procedure place our law upon a more satisfactory footing.

The appeal is dismissed with costs.

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*Appeal dismissed.*