

1939

Present : Hearne J.

ASEERVATHAM *et al.* v. SEVEITY *et al.*

209—C. R. Jaffna, 11,547.

Courts of Requests—Action to have water-course declared appurtenant—Damages for obstruction—Jurisdiction.

The plaintiffs brought an action for a declaration that a water-course was appurtenant to their land and valued the claim at Rs. 75. They also claimed Rs. 300 as damages for wrongful obstruction.

Held, that the claim for damages was incidental to the main cause of action and that the Court of Requests had jurisdiction to entertain the action.

A PPEAL from a judgment of the Commissioner of Requests, Jaffna.

N. Nadarajah (with him *Curtis*), for defendants, appellants.

L. A. Rajapakse (with him *H. W. Thambiah*), for plaintiffs, respondents.

Cur. adv. vult.

February 21, 1939. HEARNE J.—

The plaintiff sued the defendants in the Court of Requests, Jaffna, for a declaration that a water-course, valued at Rs. 75 was “rightfully appurtenant” to his land and for an order that the defendants be required to remove obstacles placed by them which prevented him from using the water-course. He also claimed that by reason of the defendants’ wrongful obstruction his plants had died involving him in a loss of Rs. 300. This amount he asked as damages up to the date of plaint, and he also asked for continuing damages at the rate of Rs. 10 per mensem.

The question of jurisdiction was raised both in the lower Court and on appeal.

It is agreed that the main cause of action falls within the meaning of the words “All actions in which the title to, or interest in, or right to the possession of, any land shall be in dispute” appearing in section 77 of the Courts Ordinance, No. 1 of 1889.

It is conceded, on the authorities, that the test of jurisdiction in a land case is the value of the land or the interest in dispute irrespective of any damages or other relief claimed on the cause of action: but it is objected that, while the claim to damages at Rs. 10 per mensem is incidental and subsidiary and does not affect the jurisdiction of the Court, the claim to Rs. 300 for damages that had already accrued was a claim sounding only in damages and was, therefore, not incidental or subsidiary.

In my opinion, the damage suffered by the plaintiff was the consequence of the denial to him, as he claimed, of his right to use the water-course: the loss of his plants was directly the result of the trespass on which he founded his action: and his claim to Rs. 300 damages is therefore incidental to the main action. It is not in my opinion an independent head of claim for "debt, damage or demand" constituting within the meaning of these words in section 77 of the Courts Ordinance a distinct money claim.

It is argued that the plaintiff could in a separate action have maintained a claim to these damages. If he could it is clear that the main issues in such an action would have been whether the plaintiff was entitled to a right of way and water-course and whether the defendants had wrongfully obstructed the plaintiff in the use of the water-course, and these are also the main issues in the present case. This would have involved a conflict with the policy of the Civil Procedure Code, which is to prevent a multiplicity of actions. It is precisely on this principle that judgments of this Court, notably *Pedris v. Mohideen*¹, have proceeded.

On the facts of the case I agree with the learned Commissioner and I dismiss the appeal with costs.

Appeal dismissed.
