

Present : Bertram C.J.

1921.

APPUHAMY *et al* v. AGIDAHAMY.

301—C. R. Colombo, 78,243.

Court of Requests—Jurisdiction—Action by lessees against lessors and a co-owner of the lessees—Value of suit.

Where lessees sued in the Court of Request the lessors and a co-owner of the lessors in ejectment and for damages, alleging that the defendants unlawfully disputed plaintiffs' title.

Held, that for purposes of jurisdiction the leasehold interest and not the whole land must be valued.

IN this action the plaintiffs who are lessees of an undivided five-twelfth share of a land called Arambewattagewatta and of a eleven-twelfth share of a land called Nagahawatta sued their lessors, the first to third defendants and the fourth defendant as a trespasser, alleging wrongful dispossession and praying for restoration to possession and damages. The fourth defendant claimed to be entitled to a one-twenty-seventh share of the land Arambewatta on a deed executed subsequent to the deed of lease in favour of the plaintiffs, and alleged in his answer that he appropriated only his share of the produce of this land. The Commissioner of Requests (G. Koch, Esq.) overruled the plea to jurisdiction, and entered judgment for plaintiffs.

E. G. P. Jayatileke, for the appellant.

Weerasuriya, for the respondent.

December 9, 1921. BERTRAM C.J.—

The first point I have to decide in this case is a question of jurisdiction. Mr. Jayatileke takes exception to the jurisdiction of the Court of Requests. The action is brought by certain lessees against their lessors and a co-owner of the lessors, who claims one-twenty-seventh of the whole land. The interest leased to the lessees, though described as an undivided interest, is, in fact, a divided one, and the allegation of the lessees in their plaint is that the defendants forcibly and unlawfully disputed the plaintiff's title as such lessees. The value of the lessee's interest in the land leased is Rs. 240. It is a lease for six years, and they have paid Rs. 120, three years' rent in advance. It is contended by Mr. Jayatileke that in the circumstances we have to look not at the value of the plaintiffs' interest, but at the value of the whole land, and he cites as an authority for that proposition the case of *Lebbe v. Banda*.¹ But the essence of that judgment is that the action there in question was a possessory action. What my brother De Sampayo said was that

¹ (1908) 20 N. L. B. 343.

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“ in such a suit neither the title to the land nor the extent of the plaintiffs’ interest therein is involved. The suit is based solely on the fact of possession, and whether it be brought by the owner himself or by a lessee, the subject-matter is the land.”

It seems to me that this is not a possessory action. As regards the defendants, other than the fourth defendant, it is an action by the lessees against their lessors for their right in the land, and as I have said the value of the lessees’ interest is Rs. 240.

With regard to the fourth defendant Mr. Jayatileke says: “ We are sued as a trespasser. The test in such a case is what is the value of the whole land. It is alleged that I have ousted the plaintiffs from the whole land, and, therefore, the value of the whole land must be considered.” I do not so read the plaint. The fourth defendant is not sued as a trespasser with regard to the whole land. He is said to have unlawfully disputed the plaintiffs’ title as lessees, and though he may have assumed possession of the whole land, what he disputes is their title in that capacity. It seems to me, therefore, that the interest in dispute under section 77 of the Courts Ordinance is, as much in his case as in that of the defendants, the value of the leasehold interest and not the whole land in suit. I, therefore, disallow the objection to jurisdiction.

A further point arises on the appeal. It involves a very small amount. The fourth defendant appears to have bought in an outstanding interest—that of Juse—the brother of two of the persons from whom his mother, the first defendant, acquired a certain portion of her interest. There seems good reason to believe that this interest is, in fact, outstanding. But it may very well have been prescribed against. The learned Commissioner, however, for a reason I am not able to appreciate, declined to allow an issue to be framed for the determination of the precise interest which the plaintiffs had obtained by their lease. The interest claimed is extremely small, and Mr. Weerasuriya at this stage of the case—the lease having nearly expired—prefers for the purpose of this action to admit this interest rather than to let the matter be referred to the Commissioner for the purpose of determining whether it had been prescribed against. What the judgment gives the plaintiffs is first damages at the rate of Rs. 50 per crop from December, 1920. It also gives them an order quieting them in possession of the undivided five-twelfths share of the land. But Mr. Weerasuriya admits that the decree must be varied. The order as to damages must be varied by the addition of the words “ subject so far as the fourth defendant is concerned to a right to deduct Rs. 3·12 in respect of each crop,” and the order with reference to quiet possession must be made to apply to the first, second, and third defendants only. As the respondents have substantially succeeded, I think they are entitled to the costs of this appeal.

Varied.