1945 *Present:* **Soertsz A.C.J. and Canekeratne J.**

BASTIANAPPUHAMY, Appellant, *and* HARAMANIS APPUHAMY, Respondent.

97—C. R. Gampaha, 2,463.

Possessory action by lessee—Value of the subject-matter—Jurisdiction—Prescription Ordinance (Cap. 55), s. 4.

Where the plaintiffs, as lessees of a certain land, brought a possessory action against the defendants who claimed to be on the land as the tenants of a different owner,—

Held, that in a possessory action, whether brought by a plaintiff *suo nomine* or as lessee, the subject-matter is the right to possess the whole land, without limitation in point of time, and the jurisdiction of the Court is determined by the value of that right.

THIS was a case referred by Wijeyewardene J. to a Bench of two Judges, under section 48 of the Courts Ordinance. The question for decision was whether when a possessory action is brought by a lessee the jurisdiction of the Court should be determined by the value of the remainder of the plaintiff's lease.

H. W. Jayewardene (with him *G. T. Samarawickreme*), for the plaintiffs appellants.—The question for decision is whether the test of jurisdiction in a possessory action brought by a lessee is the value of the land or the value of the remaining period of the lease. It is submitted that, according to section 75 of the Courts Ordinance, the term of the lease must be considered in assessing the value of the subject-matter in dispute. In *Silva v. Siyaris* [1], where a usufructuary mortgagee brought a possessory action, it was held that the test of jurisdiction was not the value of the land but the value of the plaintiff's interest in the land, that is, the amount of the mortgage debt. In *Siyadoris de Silva v. Punchirala* [2] it was held that in a possessory action the test of jurisdiction was the value of the plaintiff's interest and not the value of the land. In *John Sinno v. Julis Appu* [3] where a lessee brought a suit to recover possession of property leased to him the jurisdiction of the Court was held to be determined not by the value of the land but by the value of the plaintiff's interest. In *Wickremesinghe v. Jayasinghe* [4] Pereira J. held that the value of the subject-matter in a possessory action was the value of the right claimed which in that action was the right of perpetual possession of the land as against the defendant. See also *Deonis v. Labonis* [5]. Further, a lease is regarded as a *pro tanto* alienation only for the term of the lease—*Abdul Azeez v. Abdul Rahiman* [6] ; *Carron v. Fernando* [7]. A contrary view was taken by Sampayo J. in *Lebbe v. Banda* [8] to the effect that the value of the subject-matter of a possessory action for the purpose of jurisdiction when the suit is brought by a lessee is not the value of the unexpired

[1] *(1909) 2 S. C. D. 64.*
[2] *(1908) 1 S. C. D. 32.*
[3] *(1906) 10 N. L. R. 351.*
[4] *(1914) 18 N. L. R. 84.*
[5] *(1913) 2 C. A. C. 125.*
[6] *(1909) 1 Curr. L. R. 275.*
[7] *(1933) 35 N. L. R. 352.*
[8] *(1918) 20 N. L. R. 343.*

term of the lease but the value of the land itself. This view was not adopted by Bertram C.J. in *Appuhamy v. Agidahamy* [1]. It is submitted that *Wickremesinghe v. Jayasinghe* (*supra*) laid down the correct principles regarding the test of jurisdiction.

N. Nadarajah, K.C. (with him *Kingsley Herat*), for the defendants respondents.—The test adopted in *Wickremesinghe v. Jayasinghe* (*supra*) is good only in certain circumstances. Where an action is brought by a lessee against the lessor the value of the interest is the value of the unexpired portion of the lease. But where, as here, a third party claims the interest, the value of the interest is the value of the land. *Lebbe v. Banda* (*supra*) states the correct view. See also *Leidohamy v. Goonetilleke* [2].

Cur. adv. vult.

November 14, 1945. SOERTSZ A.C.J.—

The plaintiffs, relying upon a deed of lease executed in their favour on November 1, 1943, in respect of a land called Millagahawatta, about seven acres in extent, for a period of three years at a total rental of ninety rupees, brought this action on July 4, 1944, alleging that the defendants had entered upon the land " forcibly and unlawfully " on May 29, 1944, and ousted them from the possession which their lessor had given them. They asked that the defendants be ejected from the land, that they themselves be restored to possession, and that the defendants be condemned to pay them twenty-five rupees on account of the damages sustained up to the date of action, and, thereafter, at Rs. 10 a month till they should be restored to possession. The defendants denied that the plaintiffs or their lessors ever had possession of this land or that they had ousted the plaintiffs, and asserted that they were on the land—which they described in somewhat different terms—as the tenants of one Albert Perera who, they declared, was the rightful owner, not the plaintiff's lessors. From the dates mentioned above, it is clear that although the action was brought within a year of the alleged dispossession as required by section 4 of Ordinance No. 22 of 1871, the plaintiffs themselves had had only about seven months' possession at the date of this ouster, and could, consequently, make out the year and a day's possession the Roman-Dutch law required only if they were entitled to fall back on their lessors' possession to supplement theirs, or if they could not do that, they had to establish a dispossession *vi et armis* to justify the possessory remedy they sought. There was another difficulty they had created for themselves. By joining to the claim for possessory relief a claim for compensation in damages, they gave the defendants an opportunity to plead their or their principal's ownership and this the defendants did.

It was in this hybrid state of the pleadings that the case came up for trial, and as was to be expected the issues framed were very confused. There were issues framed and adopted indicating that title would be investigated (see issues 5 and 8); there were others that suggested that the action was regarded as a possessory action, for instance, issue 4 which raised the question of a year and a day's possession.

[1] *(1921) 23 N. L. R. 473.* [2] *(1913) 5 Bal. N. C. 14.*

It is of course obvious that if the title to this land was going to be investigated, the Court had no jurisdiction for the land is, admittedly, over three hundred rupees in value. But the order under appeal shows that the learned Commissioner was going to try the case on the footing that it involved a possessory action and, even in that view of it, he found that the value of the subject-matter, that is to say, as he appears to have thought, the value of the land was above three hundred rupees. He said: " The test of jurisdiction in a possessory action is the value of the land and not the value of the remaining period of a lease." No issue had been proposed to suggest that, in this instance, the value of the subject-matter of the action, namely, the right to the possession of the land, uncomplicated by the lease, was less than the value of the land itself. We must, therefore, assume that the parties were agreed that the two values coincided as, in many instances, they would.

When the appeal came before our brother Wijeyewardene J. Counsel for the appellant contended that the subject-matter of the action was the remainder of the plaintiffs' lease and that that was the relevant value for determining jurisdiction. This contention reopened an old sore, and because of the opposite views taken by single Judges on this question, he referred it to a Bench of two Judges under section 48 of the Courts Ordinance (Cap. 6).

The more important cases dealing with this question are, on the one side, the cases of *John Singho v. Julis Appu* [1], *Siyadoris de Silva v. Punchirala* [2], and *Appuhamy v. Agidahamy* [3]; and on the other side, *Laidohamy v. Goonetilleke* [4] and *Lebbe v. Banda* [5].

The view taken in the former group of cases is stated thus by Wendt J. in *Siyadoris de Silva v. Punchirala:* " Assuming that the land is worth over Rs. 300, I cannot accede to the argument that that value is involved in this action; in other words, that this action by a lessee for two years must be valued at the same sum as if the claim was made by the owner of the land seeking a declaration of title to the whole dominium. I think that the proposition has only to be stated to be rejected. It is plaintiff's claim that has to be valued, not defendant's rights or claims by which he seeks to resist plaintiff. Plaintiff has only a leasehold interest, and that is all that can be really in issue in the action, although the defendant may allege and prove that the dominium is his and not the plaintiff's lessor's. I adhere to what I said in the case of *John Singho v. Julis Appu* ". For the moment, I would only say that the observation that in a possessory action " the defendant may allege and prove that the dominium is his and not the plaintiff's lessor's," can hardly be supported. The Roman-Dutch jurists, the text writers and case law are opposed to that view. See *Voet 43.16.3; 1 Nathan 405; 3 Bal. 299; 4 N. L. R. 144; 11 N. L. R. 105.* Title is not relevant unless, of course, the plaintiff claims compensation in damages (see Maasdorp Book II., p. 28 (1907 Ed.)). But, in that event, the question of title being introduced, jurisdiction would depend on the value of the land.

[1] *(1906) 10 N. L. R. 351.*
[2] *(1908) 1 S. C. D. 32.*
[3] *(1921) 23 N. L. R. 473.*
[4] *(1913) 5 Bal. N. C. 14.*
[5] *(1918) 20 N. L. R. 343.*

In the latter group of cases, de Sampayo J. taking a contrary view, said (see *Lebbe v. Banda*) "Reference has been made to my judgment in *Laidohamy v. Goonetilleke* where I remark that a possessory suit should be valued according to the value of the subject-matter of the suit, that is to say, of the property of which possession is claimed. I venture to think that is a correct view. In such a suit neither title to the land nor the extent of the plaintiff's 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. Consequently, in the case of a lessee, the jurisdiction of the Court cannot be determined merely by the value of the unexpired term of his lease."

After as careful a consideration as I could bring to bear on these opposite views taken by two very eminent Judges of this Court, I would venture respectfully to express my agreement with the view taken in the second group of cases. The other view, if I may say so with great deference, appears to me to result from the assumptions (*a*) that what is involved in an action of this kind is the plaintiff's claim, and (*b*) that that claim is for a leasehold interest and that it has to be valued on that basis. Neither assumption is warranted. Section 75 of the Courts Ordinance provides a special test. That section reproduces *verbatin* section 77 of Ordinance 1 of 1889 which was the section in force at the time the cases I have referred to were decided. It enacts that Courts of Requests shall have jurisdiction to hear and determine " all actions in which the title to, interest in, or right to possession of any land shall be in dispute . . . . provided that the value of the land, or the particular share, right, or interest in dispute . . . . shall not exceed three hundred rupees. . . . ". These are plain, unambiguous words and do not, as far as I can see, afford justification for saying that " it is the plaintiff's claim that has to be valued." What they do say is that the land in dispute, or the share of it in dispute, or the interest in dispute, or the right to possession in dispute that must be valued. In that view of it, the dictum of de Sampayo J. that in a possessory suit " whether it be brought by the owner himself or by the lessee, the subject-matter is the land " is not strictly correct for, although in many cases the value of the land and the value of the right of possession of it would be found to coincide, there may be cases in which the value of the two things would not be commensurate. In order, therefore, to ascertain whether an action is within or beyond the pecuniary 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 Examined in that way, an action brought by a plaintiff not as lessee but *suo nomine* to recover possession from a trespasser himself claiming *suo nomine* the right in dispute would be the whole right to possession of the particular land, and in such a case it has been held that " the value of the subject-matter . . . . is the value of *the right claimed* and that " so far as the action before that Bench was concerned, " is *the right of perpetual possession of the land as against the defendant.* It is difficult to assess such a right as it is to assess the value of a right to an

annuity in an individual case, but it is none the less necessary to assess it. The course usually adopted is to regard the right as being equal in value to the actual value of the land, and in the case of the *O. B. C. Estates Co. v. Brook & Co.*[1] the Supreme Court found no fault with the plaintiffs for following that course." (Per Pereira J. & Ennis J. in *Wickremasinghe v. Jayasinghe* [2].) In a possessory action of that kind, therefore, it is the whole, unlimited right of possession that has to be valued and there is, so far as I am aware not a single case in which that proposition has been challenged. Similarly, in an action by a lessee to recover possession he prays to be restored to possession of the whole land and without limitation in point of time, so that if even on the assumption that his claim determines the question of jurisdiction, on the face of it, it cannot be distinguished from a case like that of *Wickremesinghe v. Jayasinghe.* But if an examination of the plaintiff's claim and the defendant's answer to it is made, it becomes as clear that so far as the Court is concerned, it is called upon to adjudicate in regard to the right to the possession of the whole land at the date of adjudication.

In a possessory action whether brought by a plaintiff in assertion of his own right or by a lessee as has been already observed, title is an irrelevant question. Section 4 of Ordinance No. 22 of 1871 enacts that "the plaintiff in such action shall be entitled to a decree against the defendant for the restoration of such possession without proof of title." The defendant cannot oppose such a claim with an assertion that he has a good title to the land for possessory actions are given in enforcement of the principle that *spoliatus ante omnia est restituendus.* If then title is irrelevant, if possession is all that matters, a limited title such as that of a lessee is equally irrelevant. A Court may well refuse to hear a word about a lease for any purpose whatever except perhaps where it is relied upon as an item of evidence to show that the plaintiff has the requisite kind of possession to enable him to maintain a possessory action if that matter comes into question. For all other purposes, the lease is immaterial. The Court adjudicates between parties with reference to rights and obligations existing at the date of the action and with reference to the value of the subject-matter of the action at that date. It is not concerned with what is going to befall a plaintiff whom it has restored to possession, whether he would have to surrender his possession to a lessor in a year or two or whether, on the very next day, he would be evicted by the defendant by means of an action for declaration of title, any more than it is concerned with the future value of the subject-matter of the action. I am quite unable to discover any satisfactory principle upon which to discriminate between the value of what, after all, is the same subject-matter, that is to say the right to possess the whole land, whether a plaintiff sues in a possessory suit *suo nomine* or as lessee. If the "remainder of the lease" test is sound, then it should be possible for a lessee to bring a possessory suit asking that he be restored to possession for the remaining term of his lease. I have never known such an action but I can well imagine the Gilbertian situations that would arise from an action of that kind. But, it is said that this view would result in great hardship to a party who is only asking for possession for the period of his

[1] *1 S. C. R 1.* [2] *18 N. L. R. 84.*

lease. We must, however, be warned by the experience gathered from our Law Reports to steel our hearts against these *ad misericordiam* appeals. Nor do I, in fact, see any hardship at all. A plaintiff, like the plaintiffs in this case, recovers possession, if he succeeds, immediately for himself but ultimately for his lessor, and he should be in a position to arrange with his lessor for the launching and the conducting of the suit or, he can have recourse to his lessor to ask him to take all necessary action. But, if he chooses to turn himself into a catspaw for pulling his lessor's chestnuts out of the fire, he must not complain that he has burned his little toes.

I would dismiss the appeal with costs.

CANEKERATNE J.—I agree.

Appeal dismissed.