

1965 Present : Abeyesundere, J.

B. A. SIMON SINGHO, Appellant, and **R. P. THELENIYA**
and others, Respondents

S. C. 191/64-C. E. Gampaha, 7778/A

Jurisdiction-Action for definition of boundary of a land-Valuation of subject-matter.

In an action for the definition of a boundary of a land, the monetary jurisdiction of the Court is determined by the value of the disputed area of land and not by the value of the whole land, the boundary of which has to be defined.

APPEAL from a judgment of the Court of Requests, Gampaha.

M. S. B. Fernando, for 1st defendant-appellant.

F. W. Obeyesekere, for plaintiffs-respondents.

U. G. P. de Silva, for 2nd defendant-respondent and in support of the cross - objections.

December 3, 1965. **ABEYESUNDERE, J.-**

The plaintiffs instituted this action in order to secure the demarcation of the eastern boundary of the land which is described in the plaint and adjoins on the east the land which is partly claimed by the first defendant. Judgment and decree were entered by the learned Commissioner of Requests in favour of the plaintiffs. The first defendant has appealed from the judgment and decree and the second defendant has filed objections to the judgment and decree.

According to the plan relied on by the plaintiffs, lots B, C, D and E depicted on that plan form part of the land, the eastern boundary of which is sought to be demarcated in this action. The first defendant claims title to the said lots and avers that he has acquired such title by prescription. The surveyor's report states that the lots B, C, D and E are encroachments made by the first and second defendants.

Issues 8 and 9 are as follows :-

"8. Are the said lots B, C, D and E now claimed by the plaintiffs worth more than Rs. 300 ?

9. If so, can the plaintiffs maintain this action ? "

When these two issues were framed on 10.9.63, the learned Commissioner of Requests made the following entry on the record :-

"Since issues Nos. 8 and 9 raise the question of jurisdiction I propose to try them first. "

The two aforesaid issues do not however appear to have been tried first. The answers of the learned Commissioner of Requests to these two issues are as set out in his judgment as follows :-

"8. Does not arise. 9. Does not arise, in view of the answers to the other issues."

In a case where the boundary of a land is sought to be defined, the existence of a disputed area of land is involved. It is the value of the disputed area of land which is material for determining the jurisdiction of the Court and not the value of the whole land, the boundary of which has to be defined. This view is supported by the judgment of this Court delivered by Bertram, C.J., in the case of Kalahepailiranage Arnolis Perera v. Maddumage Deonis alias Charles Perera and Atuldura Aratchige Don Charles Perera (S.C.80-C.R. Colombo 76428 decided on 21st June, 1921).

For the aforesaid reason it is necessary to determine whether the value of the said lots B, C, D and E is more than Rs. 300. The said issues 8 and 9 should therefore have been determined and answered by the learned Commissioner of Requests.

I set aside the judgment and decree and direct the Court of Requests of Gampaha to determine and answer the aforesaid issues 8 and 9 and to enter judgment and decree according to the answers to those issues. having regard to the law relating to jurisdiction as stated above.

The first defendant-appellant is entitled to the costs of his appeal.

As the judgment and decree are set aside, the objections of the second defendant to the judgment and decree are formally allowed, but he will not be entitled to any costs of the proceedings in this Court.

Sent back for further proceedings.

- End -