

1932

*Present : Garvin S.P.J. and Maartensz A.J.*PARIYAGAM PILLAI *v.* CADER MEERA

37—D. C. Colombo, 1,275

*Jurisdiction—Order for delivery of possession—Resistance offered by bona fide claimant—Land situate outside Court's jurisdiction—Civil Procedure Code, s. 327.*

Where in a proceeding under section 327 of the Civil Procedure Code the subject-matter of the claim is proved to be outside the limits of the jurisdiction of the Court, monetary, local or otherwise, the Court has no right to determine the claim.

**A** PPEAL from an order of the District Judge of Colombo.

*Weerasooria*, for plaintiff, appellant.

*H. V. Perera*, for defendants, respondents.

January 22, 1932. GARVIN S.P.J.—

In execution of a money decree obtained in this case certain premises outside the jurisdiction of this Court were seized and sold at the instance of the substituted plaintiff to whom the original plaintiff had assigned the decree. At the sale the substituted plaintiff became the purchaser. He then obtained an order for delivery and possession under the provisions of section 287 of the Civil Procedure Code but was resisted and could not get possession. Proceedings were then taken under the provisions of section 325 and the Court on being satisfied that the persons who resisted were other than the judgment-debtor and were claiming to be in possession of the property on their own account directed that the petition of the substituted plaintiff be numbered and registered as a plaint as provided for by section 327 of the Code. The defendants filed answer and took the objection that the Court had no jurisdiction to entertain and determine the contest which arose between them and the plaintiff purchaser. At the hearing a preliminary issue as to jurisdiction was framed and tried and the learned District Judge upheld the plea and dismissed the action.

The parties are agreed that if the question of the Court's jurisdiction to entertain this proceeding must be determined in accordance with the rules for ascertaining the jurisdiction of the Court prescribed by section 9 of the Civil Procedure Code then this matter would clearly be outside the jurisdiction of the Court. It was urged, however, that the language of section 327 must be construed to mean that a special jurisdiction has been vested in the Court which issued the order for possession to hear and investigate this contest as to possession and title whether the matter came within the ordinary limits of its jurisdiction or not.

In the case of *Fernando v. Fernando*<sup>1</sup> it was held that section 327 did not enlarge the ordinary limits of the Court's jurisdiction, and this decision was followed by me in the case of *Daniel v. Rasiah*<sup>2</sup>. In each of the two cases referred to the question arose in connection with a proceeding in the Court of Requests, and in each case the question for decision was whether the Court of Requests had jurisdiction to determine the matters which fell for decision in a proceeding under section 327 or section 328 where the matter was manifestly in excess of the monetary limits set to its jurisdiction. This case differs from those referred to, in that being a proceeding in a District Court there is no question of a monetary limit. It is difficult, however, upon principle to hold consistently with those two rulings that although section 327 does not give a Court jurisdiction to determine a matter which is outside the monetary limits set to its jurisdiction that it nevertheless has jurisdiction to deal with matters which are definitely outside other limits set to its jurisdiction. The language of section 327 if it is not capable of the interpretation that the Court, whatever that Court may be, is vested with a special and unlimited jurisdiction to deal with the matter irrespective of the pecuniary or other limitations of its ordinary jurisdiction, is not capable of any other interpretation save that a Court may only investigate claims which fall within the limits of its jurisdiction.

Now, the words we are called upon to construe are these " . . . . the Court shall direct the petition of complaint to be numbered and registered as a plaint in an action between the decree holder as plaintiff and the claimant as defendant, and the Court shall without prejudice to any proceeding under which the claimant may be liable for punishment for such resistance or obstruction proceed to investigate the claim in the same manner and with the like power as if an action for the property had been instituted by the decree holder against the claimant, and shall pass such order as it shall think fit for executing or staying the execution of the decree". There is, no doubt, in this section and in the whole group of sections of which this is one, an indication that it was assumed that any claim made to property in respect of which the Court in the original suit granted a decree for possession would fall within the ordinary limits of the jurisdiction of the Court. In the case of *Daniel v. Rasiah* (*supra*) I expressed the opinion that that apparently was the impression in the mind of the draftsman. The section deals expressly with decrees for possession of property which would necessarily imply that the property

<sup>1</sup> 24 N. L. R. 502.

<sup>2</sup> 31 N. L. R. 438.

had been the subject of a suit in respect of which the Court had exercised jurisdiction. This would naturally give rise to the impression that any subsequent claim to the property would also be within the limits of its jurisdiction. Nevertheless cases may arise where a stranger to the proceedings might claim that the subject-matter of the claim was outside the jurisdiction of the Court. Such cases are rare and might well have been lost sight of. The effect of the extension of these sections to resistance to the delivery of possession under an order for possession has infinitely multiplied the occasions upon which the matter of the claim falls outside the ordinary limits of the Court's jurisdiction. In the case of a Court of Requests the monetary limits of its jurisdiction is Rs. 300 and a judgment for a small money claim may result in the seizure in execution of that decree of property worth several thousands of rupees; and so also in the District Court the execution of a money decree must frequently result in the seizure of property outside the jurisdiction of the Court.

However that may be, we are bound by the decision in the case of *Silva v. de Mel*<sup>1</sup> though we are inclined respectfully to differ from the conclusion arrived at in that case. The case immediately before us is such a case in that it arises in the course of the execution of a decree for money. We have been pressed, however, to accept the view that the language of section 327 would justify the Court in assuming jurisdiction and proceeding to adjudicate upon this claim. I do not feel, however, that we should be justified in placing upon the words of this section such an interpretation as would enlarge its jurisdiction and enable a Court to try and determine any claim arising out of the resistance to the officer charged with the execution of a decree or order for possession. It would be reasonable to expect that if such was the intention of the legislature there would have been words in the section which would unmistakably indicate its intention. It is urged, however, that inasmuch as a Court is directed to number and register the complaint as a plaint in an action between the decree holder as the plaintiff and the claimant as defendant and to investigate the claim that it must be assumed that the legislature intended to direct the Court to hear and determine the claim irrespective of whether it came within the ordinary limits of its jurisdiction or not. I do not think that all this can be fairly gathered from the use of the word "shall" and moreover it must be remembered that the Court is directed to investigate the claim "in the same manner and with the like power as if an action for property had been instituted". The Court is not vested with an unlimited jurisdiction but is directed to exercise in respect of this matter the same powers that it would have if the action had been instituted regularly and in the ordinary way and no more. The section read as a whole appears to me to do no more than enable a Court which had jurisdiction to entertain and decide a matter which but for this provision could only have been brought before it by way of a regular action. It does not extend its ordinary jurisdiction but it merely prescribes a special procedure for the disposal of matters within the limits of its jurisdiction which but for this section it could only entertain and dispose of if brought before it by way of a regular action.

<sup>1</sup> 18 N. L. R. 164.

A search for Indian authority has not produced many decisions upon the corresponding provisions of the Indian Act, but the case of *Muttammal v. Chinnana Gounden*<sup>1</sup> is exactly in point. There a bench of two Judges took the same view as I have indicated above. "It seems to me" said one of the presiding Judges "that section 229 (which corresponds to our section 327) gives a special jurisdiction only in those cases in which the value of the property claimed is not at the date of the claim in excess of the ordinary power or the pecuniary limit of the jurisdiction of the Court that passes the decree." The only question in that case was whether the matter was beyond the monetary limits of the Court's jurisdiction. In the case of *Sithalakshmi v. Vythilinga*<sup>2</sup> the majority of the Court appear to have been disposed to give the section a wider interpretation and to hold that the words "in the same manner and with the like power" receive their full meaning if they be taken to express that the Court has the same power to enforce the attendance of parties and witnesses as in a regular action. I should have hardly thought it necessary to insert these words in the section for that purpose alone, for if a Court be directed to inquire into a matter we must assume that it would be entitled to exercise in respect of that matter its ordinary powers of summoning and examining witnesses. I prefer the view of the minority in that case which is in accordance with the view expressed in the earlier Indian case—*Muttammal v. Chinnana Gounden* (*supra*), and which is in accordance with the view taken by this Court in the two cases referred to by me.

As I have already said, if this section is to be interpreted as I think it must be interpreted as meaning that the Court is empowered within the limits of its jurisdiction to number and register a complaint as if it were a plaint and then proceed with the matter in the manner in which it would have proceeded had it been brought before it in a regular action, it follows necessarily that the jurisdiction of the Court remains exactly where it was before section 327 was enacted and that if in any instance the matter of the claim is proved to be outside the limits of that jurisdiction whether the limits be monetary, local or otherwise, the Court has not the jurisdiction to determine the claim.

We were invited by counsel to refer this case to a full bench with a view to the reconsideration of the law as laid down in *Silva v. de Mel* (*supra*) I am not prepared to take this course. Whatever decision be taken by this Court on the point, there are other difficulties which can only adequately be dealt with by legislation.

For these reasons I think that the judgment under appeal must be affirmed. The appeal is dismissed with costs. . . .

MAARTENSZ A.J.—I agree.

*Appeal dismissed.*

<sup>1</sup> I. L. R. 4 Mad. 220.

<sup>2</sup> I. L. R. 8 Mad. 548.