

1918.

Present: Shaw J.

USOOF v. ZAINUDEEN.

164—C. R. Colombo, 62,160.

Jurisdiction—Court of Requests—Action for rent and for damages for over-holding.

In an action for ejection and for damages for over-holding, the amount of a month's rent need not be added to the damages claimed to ascertain the value of the relief claimed.

Continuing damages may always be claimed in the Court of Requests, but judgment should be restricted to the monetary jurisdiction of the Court.

*Hewawitarana v. Marikar*¹ explained.

THE facts are set out in the judgment.

The plaint in this case was as follows:—

1. The plaintiff and the defendant reside at the respective places above mentioned, within the local limits of the jurisdiction of this Court.
2. Prior to the dates material to this action, the plaintiff at Colombo, within the jurisdiction of this Court, let to the defendant, and the defendant took on rent from the plaintiff, the house and premises bearing assessment No. 17, situated at Third Cross street, Pettah, Colombo, which are more fully described in the schedule marked A hereto annexed, excluding therefrom the southern half part of the downstairs, at a rental of Rs. 115 a month, payable on the 10th day of each and every succeeding month.
3. The defendant, as such tenant as aforesaid, entered into occupation of the said house and premises, and continued to be so up to the 28th day of February, 1918, as monthly tenant of the plaintiff, and is still in the unlawful occupation thereof, as hereinafter stated.

¹ (1916) 19 N. L. R. 239.

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4. The defendant paid rent to the plaintiff at the rate of Rs. 115 per mensem up to the 31st day of December, 1917, but since the 1st day of January, 1918, the defendant has failed to pay rent for the said house and premises.

5. The plaintiff appropriates to himself the sum of Rs. 230 deposited by the defendant at the commencement of the tenancy as and for the rent for the months of January and February, 1918.

6. The plaintiff did, on the 29th day of January, 1918, give the defendant notice in writing to quit and deliver possession of the said house and premises to the plaintiff on the 28th day of February, 1918, and the said tenancy was determined on the said 28th day of February, 1918, but, notwithstanding the determination of the said tenancy, the defendant has failed to quit and deliver possession of the said house and premises to the plaintiff, and since the 1st day of March, 1918, is in the unlawful possession thereof to the plaintiff's damage of Rs. 250 a month.

7. The plaintiff by his said notice intimated to the defendant that in the event of the defendant failing to quit and deliver possession of the said house and premises to the plaintiff on the 28th day of February, 1918, he (the defendant) should pay to the plaintiff damages at the rate of Rs. 250 per month from the 1st March, 1918.

8. By reason of the defendant's failure to quit and deliver possession of the said house and premises to the plaintiff, the defendant has become liable to pay, and the plaintiff is entitled to recover from the defendant, the said sum of Rs. 250 as damages per month from the 1st March, 1918.

Wherefore the plaintiff prays—

(i.) For a decree that the defendant be ejected from the said house and premises No. 17, situated at Third Cross street, Pettah, Colombo, fully described in the said Schedule A, and the plaintiff put, placed, and quieted in possession thereof.

(ii.) That the defendant be decreed to pay to the plaintiff the said sum of Rs. 250 as damages per month from the 1st day of March, 1918, until the defendant is ejected from the said house and premises, and the plaintiff placed and quieted in possession thereof.

(iii.) For costs of this action and for such further or other relief as to the Court shall seem meet.

A. St. V. Jayawardene (with him *B. F. de Silva*), for appellant.

Arulanandan, for respondent.

Cur. adv. vult.

November 20, 1918. SHAW J.—

This action was instituted on March 20, 1918. The plaintiff alleged that the defendant was the tenant of the plaintiff of certain premises on a monthly tenancy, and at a rent of Rs. 115 a month; that a valid notice to quit the premises was given by the plaintiff to the defendant, terminating on February 28, 1918; and that, notwithstanding the determination of the tenancy, the defendant had failed to deliver up possession of the premises.

The plaintiff concluded with a claim for ejectment, and for damages for over-holding from March 1, 1918, until the plaintiff should be placed in possession, at the rate of Rs. 250 a month. The answer,

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so far as is material for the purposes of this appeal, denied the tenancy alleged, and stated that the defendant entered into occupation as a tenant of one Mohamed Haniffa, and continues to occupy as his tenant; no plea to the jurisdiction was set up in the answer. The Commissioner has dismissed the action, on the ground that the plaint on the face of it shows a claim beyond the jurisdiction of the Court of Requests.

The Commissioner based his decision on the case of *Hewawitarana v. Marikar*,¹ which he considered to show that where there is a claim for ejectment as well as a claim for damages, the interest in the possession must be valued separately from any damages claimed, and that a claim for damages, not being a merely incidental claim, must be added to the other claim in order to find out the jurisdiction of the Court, and that, therefore, in the present case, at least the rental paid, namely, Rs. 115, must be added to the damages claimed, namely, Rs. 250, which sums together exceeded the monetary jurisdiction of the Court.

The case of *Hewawitarana v. Marikar*¹ is not very easy to understand, and I think that the Commissioner has misapprehended the decision. It does not decide that the rental value must be added to the damages claimed in order to ascertain the jurisdiction. What I understand it decided on this point was that the dispute between the parties was as to the right to possession for one month, and that that right must be valued at the rental reserved by the lease, namely, Rs. 305, and the plaintiff could not, by reducing his claim for damages to Rs. 300 a month, bring the case within the jurisdiction of the Court of Requests. That case further decided that a plaintiff could not claim and recover in the Court of Requests continuing damages in excess of the monetary jurisdiction.

When the present action was instituted the amount of damages due on the claim was well within the jurisdiction of the Court, and I cannot think that the jurisdiction of the Court can depend on the expedition with which judgment and possession are obtained. To so hold would render it dangerous for a plaintiff to ever claim continuing damages in a Court of Requests case. I think the continuing damages may be claimed, but judgment should be restricted to the monetary jurisdiction of the Court.

Another point argued in the course of the appeal was whether the case was beyond the jurisdiction of the Court, by reason of its being a dispute as to the right of possession to land upwards of Rs. 300 in value. This, however, is not an objection to the jurisdiction apparent on the face of the plaint itself, and it cannot be now taken as no plea to the jurisdiction on the ground as raised by the answer. Had the objection been properly taken, and the value of the premises been shown to be over Rs. 300, I am by no means sure, notwithstanding the decision in *Mudiyanse v. Rahman*,² that the

¹ (1916) 19 N. L. R. 239.² (1896) 2 N. L. R. 235.

objection would not have been a good one, but, as it is, there is no necessity for me to decide the point in the present case.

I allow the appeal with costs, and remit the case to the Court of Requests for trial on the facts.

The plaintiff is entitled to the costs of May 8. The other costs in the Court below will abide the final decision of the action.

Set aside and sent back.

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