

1966

Present : Manicavasagar, J.

J. BEMPY, Appellant, and J. PETER, Respondent

S. C. 136/65—C. R. Balapitiya, 27105

Rural Courts—Action brought in Court of Requests for recovery of money—Award of a sum falling within exclusive jurisdiction of Rural Court—Invalidity—Rural Courts Ordinance (Cap. 8), s. 11—Civil Procedure Code, s. 636.

Where a person brings an action in the Court of Requests for the recovery of an amount which is within the monetary jurisdiction of that Court, the Court has no power to award an amount which falls within the exclusive jurisdiction of the Rural Court.

APPPEAL from a judgment of the Court of Requests, Balapitiya.

P. A. D. Samarasekera, for the Defendant-Appellant.

R. D. C. de Silva, for the Plaintiff-Respondent.

June 30, 1966. MANICAVASAGAR, J.—

This appeal raises the question of the jurisdiction of the Court of Requests in awarding damages in an amount which is within the exclusive jurisdiction of the Rural Court; it was not raised or considered in the original court, but that does not preclude the issue being determined on this appeal.

The action was for recovery of Rs. 200/-. being the plaintiff's share of the value of rubber trees, on two lands described in the plaint, cut and removed by the defendant. The onus of establishing that he was entitled to this amount, or in an amount in respect of which the trial court had jurisdiction was on the plaintiff; he failed in this, for the learned Commissioner found on the evidence that the plaintiff was entitled to damages in respect of the trees on one land only, and awarded him Rs. 40/-. The amount thus awarded fell within the exclusive jurisdiction of the Rural Court. The issue therefore is, can the plaintiff by bringing his action for an amount which is within the monetary jurisdiction of the court in which it is brought, be awarded by that court an amount which falls within the exclusive jurisdiction of the Rural Court? Section 11 of the Rural Courts Ordinance (Chapter 8), and Section 636 of the Civil Procedure Code (Chapter 86) are relevant to the consideration of this question. Section 11 which relates to the jurisdiction of the Rural Court provides that an action which falls within its exclusive jurisdiction shall not be entertained, tried or determined by any court established under the Courts Ordinance. Section 636

provides that where the want of jurisdiction is caused by reason of the exclusive jurisdiction of any Village Tribunal (Now Rural Courts by Ordinance 12 of 1945) the averment in the plaint made in pursuance of Section 45 shall be considered as traversed, whether the defendant in his answer is silent in reference to it or not : and it shall be the duty of the court to dismiss the action. It follows from these two provisions that the learned Commissioner, once he found that the quantum he could award fell within the exclusive jurisdiction of the Rural Court, should have dismissed the action. The fact that the action was instituted for an amount within the jurisdiction of the Court of Requests is irrelevant. I am fortified in the opinion I have expressed by a decision of this court in the case of *William Singho v. Edwin Singho*¹ where this identical question was decided.

I set aside the judgment, and dismiss the plaintiff's action with costs. This decision should not prevent the plaintiff from bringing an action in the Rural Court, if he chooses to do so.

Judgment set aside.

¹ (1957) 59 N. L. R. 18.