

1952

Present : Gunasekara J.

RAN APPU, Petitioner, and PELIS APPUHAMY, Respondent

S. C. 280—Application for transfer of C. R. Gampola 10,147 to the District Court of Kandy

Court of Requests—Action instituted therein—Transfer of case to District Court—Circumstances when it may be permitted—Courts Ordinance, s. 79.

An action instituted in a Court of Requests may be transferred to the District Court under the provisions of section 79 of the Courts Ordinance if the disadvantage to the plaintiff of the transfer is outweighed by the advantage of having the matters involved in the plaint and in the defence or claim in reconvention decided at one and the same time in the District Court.

APPPLICATION under section 79 of the Courts Ordinance.

P. Somatilakam, for the defendant petitioner.

Ivor Misso, for the plaintiff respondent.

Cwr. adv. vult.

September 30, 1952. GUNASEKARA J.—

The plaintiff, alleging that the defendant was an over-holding tenant of certain premises that he had let to him, instituted this action in the Court of Requests of Gampola on the 4th March for the recovery of arrears of rent and damages and for ejection of the defendant. The defendant in his answer filed on the 6th May denied the averments in the plaint and prayed that the plaintiff's action be dismissed. He claimed in reconvention a sum of Rs. 2,500 as compensation for certain improvements which he averred that he had made to the property in pursuance of an agreement that he had entered into with the plaintiff 14 years ago, and he prayed that he be "allowed to retain possession" of the property until he should be paid such compensation. He has now applied for an order under section 79 of the Courts Ordinance (Cap. 6) transferring the action from the Court of Requests of Gampola to the District Court of Kandy holden at Gampola. It seems to me that, as in the case of *Jinasena v. Moosajee*¹, "the disadvantage to the plaintiff of a transfer is outweighed by the advantage of having the questions of the alleged tenancy, of the right to compensation and to the *jus retentionis* decided at one and the same time". I therefore allow the application.

Application allowed.

¹ (1938) 47 N. L. R. 142.