[FULL BENCH.]

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PEDRIS *v.* MOHIDEEN.

Present: De Sampayo A.C.J. and Porter and Schneider JJ.

Jurisdiction—Court of Requests—Continuing damages—Action against overholding tenant—Damages exceeding Rs. 300 at date of decree.

Where a plaintiff claims continuing damages for being kept out of possession of any land, the relief as regards damages which the Court of Requests can grant is not restricted to the ordinary limit of its jurisdiction.

Plaintiff instituted this action in the Court of Requests on May 3, 1922, against an overholding tenant, alleging that the tenancy terminated on January 31, and claiming Rs. 50 as rent for January and damages thereafter at Rs. 50 per mensem till he recovered possession. Decree was entered on January 31, 1923, as prayed for.

Held, that the Court had jurisdiction to award damages prayed for, even though it exceeded Rs. 300.

THIS case was referred to a Bench of three Judges by the following judgment :—

GARVIN A.J.—This appeal fails on all grounds save on the question of law formulated below. The facts are as follows : The plaintiff sued his tenant, the defendant, in the Court of Requests for rent and ejectment. His plaint was filed on May 3, 1922. He pleaded that he had determined the tenancy by a notice to quit served on December 17, 1921, and claimed Rs. 50 as rent for the month of January, and for damages at the rate of Rs. 50 a month till delivery of possession. His prayer runs as follows :—

" The plaintiff prays for judgment against the defendant—

(*a*) For the sum of Rs. 50.

(*b*) For an order to eject the defendant and have plaintiff placed in quiet possession.

(*c*) For damages at Rs. 50 a month from February 1, 1922, till defendant is ejected.

(*d*) For costs."

After trial judgment was entered for the plaintiff as prayed for with costs, and the following decree was entered on the same day :—

" It is ordered and decreed that the defendant do pay the plaintiff the sum of Rs. 50 and costs of suit. It is further ordered and decreed that the defendant be ejected from the house and premises . . . . and that the plaintiff be placed and quieted in possession thereof, and it is further ordered and decreed that the defendant do pay the plaintiff further damages at the rate of Rs. 50 a month from February 1, 1922, till plaintiff is restored to possession of the said premises."

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The point of law raised in the appeal is that the decree is in effect a decree for approximately Rs. 400, exclusive of costs, and for further damages at the rate of Rs. 50, and that the decree to the extent that it is in excess of a sum of Rs. 300 is one which the Court of Requests has not the jurisdiction to enter. In effect the contention is that upon a decree of the Court of Requests no sum in excess of Rs. 300, exclusive of costs, is recoverable. The question is one of the great importance, and I think it should be speedily settled.

I would, therefore, direct that the matter be submitted to the Chief Justice with a view to the case being listed for argument before a Bench of three Judges.

H. V. Perera, for appellant—Section 77 of the Courts Ordinance, as amended by section 4 of Ordinance No. 12 of 1895, conferred jurisdiction in Courts of Requests in all cases where the debt, damage, or demand did not exceed Rs. 300, or in which the value of the land or the particular interest claimed in the land did not exceed Rs. 300. In *Banda v. Menika* [1] the Full Court held that a claim for an interest in land not exceeding Rs. 300 in value would be combined with a claim for incidental damages, provided that such damages did not exceed the monetary limit of the jurisdiction of the Court. The question raised in this appeal is whether the Court of Requests had jurisdiction to enter a decree for a sum exceeding Rs. 300 as continuing damages where the damages were within the monetary limit of the jurisdiction of the Court when the action was first brought, but had exceeded such limit at the time of entering the decree. This question was considered by Shaw J. in *Usoof v. Zainudeen* [2] where he held that though the Court of Requests had jurisdiction to entertain a case of continuing damages, where the damages that had accrued at the time of action were within its limits of jurisdiction, yet it could not enter a decree for an amount exceeding Rs. 300 as such damages, though the damages may have amounted to more during the course of the trial. This view was adopted by De Sampayo J. in *Banda v. Menika* (*supra*) while the Chief Justice and Loos J. reserved their opinion on the point. The remarks made by the Chief Justice, however, indicates that he was of opinion that cases of continuing damages could not be entertained at all by the Court of Requests.

It is clear that the Court of Requests can have no jurisdiction beyond what has been conferred by Ordinance, and there is no provision which enables it to enter a decree exceeding the limit of its usual jurisdiction. If the Court of Requests had jurisdiction to enter a decree as in this case, a party would be able to make use of this Court to recover an unlimited amount and to oust the jurisdiction of the District Court in a very important class of cases. Section 81 of the Courts Ordinance shows that the relief to be granted is to be limited, and that this limit is to be the same as its limit of jurisdiction.

[1] (*1919*) *21 N. L. R. 279.*

[2] (*1918*) *21 N. L. R. 86.*

M. W. H. de Silva, for respondent.—In this case it is conceded that the Court of Requests has jurisdiction to entertain cases of continuing damages, and that this action when first brought was well within the monetary limit of jurisdiction of the Court of Requests. Under the circumstances the contention that though the Court had jurisdiction to entertain the action, it could not give the plaintiff the full relief to which he was entitled is inconceivable. The plaintiff could not have gone to the District Court without incurring the risk of being condemned to pay the difference between the costs of the District Court and of the Court of Requests.

Once a plaintiff comes to Court he has no further control over the conducting of the case, and it is not possible for him to limit its duration. A defendant can always obstruct and delay the proceedings, and if the contention of the appellant be correct, it will always be to his advantage to do so, as the amount of continuing damages will automatically stop when it reaches the limit of Rs. 300. Thereafter he will be able to enjoy the premises wrongfully held by him without any liability to pay as long as he can manage to delay the proceedings. There must be some unequivocal provision of law to make the Court to come to such a conclusion, but no such provision has been pointed out. Section 81 to which reference has been made does not help the appellant, because it carefully avoids referring to Rs. 300 as the limit of relief.

The practice of the Courts for a number of years has been to enter decrees for sums amounting to over Rs. 300 in such cases. Very frequently decrees are entered for Rs. 300 and interest from the date of action, and even the case of *Banda v. Menika* (*supra*) under that was conceded. In *Goonesekera v. Pompeus* Loos A.J. held that a writ for over Rs. 300 in conformity with a decree of the Court of Requests was regular.

H. V. Perera, in reply.—If it is generally recognized that the Court of Requests cannot enter a decree for over Rs. 300, there would be no difficulty in instituting the action in the District Court where there is a probability of damages exceeding Rs. 300 at the time of decree.

If a plaintiff comes to the Court of Requests he must be taken to have waived the amount in excess of the limit of jurisdiction. Courts of Requests cannot assume jurisdiction by reason of the fact that they have done so for a number of years. It is for the Court to decide what jurisdiction has been conferred by law.

June 25, 1923. DE SAMPAYO A.C.J.—

I have reconsidered the opinion which I ventured to express in *Banda v. Menika* (*supra*) to the effect that where a plaintiff claims continuing damages for being kept out of possession of any land, the relief as regards damages which the Court of Requests can grant must be restricted to the ordinary limit of its jurisdiction. My

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brother Schneider has fully discussed that question in his judgment in this case, and I now agree with his view that where the subject of the action is within its jurisdiction, the Court may award incidental damages, even though it may in the result exceed the Rs. 300 limit.

I agree that this appeal should be dismissed, with costs.

PORTER J.—

I have had the opportunity of reading through the judgment of my brother Schneider, with which I am in entire agreement.

SCHNEIDER J.—

The plaintiff sued the defendant in ejectment upon the ground that the defendant's tenancy of certain premises under him had been terminated on January 31, 1922, by due notice. He prayed for Rs. 50 as rent for the month of January, and for the same sum by way of damages per mensem for overholding from February 1, 1922, till he recovered possession.

The defendant denied that any rent was due, and that his tenancy had been terminated as alleged. The action was instituted on May 3, and the decree was entered on January 31, 1923. It directed the defendant to be ejected and the plaintiff to be restored to possession. It ordered that the defendant to pay to the plaintiff Rs. 50 as rent and damages at the rate of Rs. 50 per mensem from February 1, 1922, till the plaintiff was restored to possession. It should be noted here that, at the date the decree was entered, the sum awarded as rent and damages amounted to Rs. 600 without reckoning the continuing damages from the date of the decree.

From this decree the defendant appealed. Garvin A. J., before whom, sitting by himself, the appeal came, referred to a Bench of three Judges, the question whether it was within the competence of the Court of Requests to enter a decree, in the circumstances of the case, for a sum exceeding Rs. 300.

The jurisdiction of Courts of Requests is entirely the creature of Statute law. The ordinary general jurisdiction of Courts of Requests is conferred by section 77 of the Courts Ordinance, No. 1 of 1889, and might be summarized as confined to—

(*a*) Actions in which the debt, damage, or demand shall not exceed Rs. 300.

(*b*) (1) Hypothecary actions in which the amount claimed shall not exceed Rs. 300 ;

(2) All actions in which the title to, interest in, or right to the possession of, any land shall be in dispute ;

(3) All actions for the partition or sale of land ;

provided that the value of the land or the particular share, right, or interest in dispute, or to be partitioned or sold, shall not exceed Rs. 300.

This action as well as the action *Banda v. Menika* (*supra*) both fall into the category of cases comprised under the head (*b*) above.

Banda v. Menika (*supra*) is the decision of a Full Bench of this Court, and must be regarded as a binding authority upon the point which it decided. The question raised there was whether, when the interest in land which was in dispute was Rs. 266 in value, any damages beyond Rs. 34 (which would make Rs. 300 when added to Rs. 266) could be claimed. It was held that the test of jurisdiction in cases falling under head (*b*) is the value of the interest in dispute, irrespective of any damages or other relief claimed on the cause of action, that any claim for damages was only incidental and subsidiary and did not affect the question of the jurisdiction of the Court. In the course of his judgment De Sampayo J. observed that the damages which a Court of Requests might award in such a case should be restricted to Rs. 300, as that is the *ad valorem* limit of its jurisdiction. This is only an *obiter dictum*, but even so it is entitled to weight coming from a Judge of his experience and his learning in the law. He cited with approval the case of *Usoof v. Zainudeen* (*supra*) decided by Shaw J. to the same effect. Referring to this observation Bertram C.J. in his judgment said : " With regard to the suggestion made by Shaw J. in a previous case and adopted by my brother De Sampayo in this case, that in cases of continuing damages the Court should impose its own limitation on the measure of the relief to be accorded, I desire to reserve my opinion. Such a result is no doubt very satisfactory, but I am not sure that it does belong not to the sphere of legislation rather than to that of interpretation. It would, therefore, appear that the Full Bench decision does not decide the precise question raised by this appeal which must therefore be decided upon first principles. It would be useful to refer very shortly to the history of Courts of Requests to see if it would throw any light which might be of assistance in deciding the question under consideration. There is a very strong resemblance both in the language and the provisions between our law and the English law. In both systems the same division of actions into the two broad categories, which I have indicated above exists. In both systems the same provisions exist as regards transfer to a higher Court when a counter claim involves matter beyond the jurisdiction of a Court of Requests, as regards the extent to which such a counter claim might be entertained, as regards abandoning the excess in a claim in order to maintain it in a Court of Requests and as regards the prohibition against dividing a cause of action.

The same reason is given for the establishment of these Courts in both countries. For their establishment in England the reason given is : " The proceedings in the County Court having become expensive and dilatory Courts of Requests, in which the parties were examined and judgment awarded in a summary manner, were established." [1] From 1845 to 1887 a number of Statutes were passed in England dealing with the extension of the jurisdiction of Courts

[1] *Encyclopædia of the Laws of England, vol. 4, p. 116.*

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of Requests. The earliest Ordinances in Ceylon creating and remodelling Courts of Requests are No. 10 of 1843 and No. 22 of 1852. In the book, which is called Nell's Reports, but which is really a practical treatise on the constitution of and the procedure in Courts of Requests combined with reports of cases on the subject, the author says : " These Courts of small causes were not contemplated by the Charter of 1833." He points out that the Governor availing himself of the powers vested in him by Letters Patent dated January 28, 1843, established Courts of Requests by Ordinance No. 10 of 1843. Speaking of their object he remarks : " The Legislature thought it expedient to establish Courts of Civil Causes exercising jurisdiction in suits of less importance and divested of the tedious formalities observed in the District Courts with the view of placing within reach of litigants a cheaper and more speedy process of obtaining a legal decision." [1]

These resemblances are not merely accidental, but clear indications that our Legislature adapted the English legislation to our needs. I have been unable to find any decisions of the English Courts upon the precise question to be decided on this appeal. There is nothing to be found in the history of the legislation to suggest that the relief which a Court of Requests might grant in an action such as the present one, which it can take cognizance of, is to be confined to any *ad valorem* limit. It may, therefore, be asked why should it be assumed that the damages which the Court could award as in this case are limited to Rs. 300. Section 81 of the Courts Ordinance was pointed out as supporting the argument that the relief must be limited to Rs. 300. I am unable to agree. That section deals with a case where the Court has no jurisdiction, as the claim in reconvention involves matter beyond its jurisdiction. It therefore confers a special jurisdiction to enable the Court to deal with the claim to a limited extent. It enacts " but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon such claim in reconvention." These words cannot be construed as meaning that the relief must be restricted to Rs. 300. On the contrary, they suggest to me that such a restriction was avowedly avoided, because if such a restriction had been intended nothing was easier to say in express terms that no relief exceeding Rs. 300 in value shall be given. What the words " the relief which the Court has jurisdiction to administer " mean is precisely what we are endeavouring to ascertain for the decision of this appeal. *Banda v. Menika* (*supra*), already referred to, is authority for the proposition that it is competent for a Court of Requests to grant relief exceeding Rs. 300. It seems to me therefore that the language of section 81 does not help the contention that the damages should be restricted to Rs. 300. Although section 77 limits the jurisdiction in actions for debt, damage, or

[1] *Nell's Reports 2.*

demand to Rs. 300, no such limitation is imposed as regards the damages which may be claimed in actions for recovery of possession. De Sampayo J. in his judgment in *Banda v. Menika* (*supra*) says : " As regards damages in land cases it is possible that the reason why no special provision is made is that it is intended that the general limitation in regard to pecuniary jurisdiction should be observed." I find it difficult to accept this view.

The policy of the Civil Procedure Code is to prevent a multiplicity of actions. It is, therefore, enacted in section 33 : " Every regular action shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute, and so to prevent further litigation concerning them." And in section 34 : " Every action shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action : but a plaintiff may relinquish any portion of his claim in order to bring the action within the jurisdiction of any Court. If a plaintiff omits to sue in respect of, or intentionally relinquishes any portion of, his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies : but if he omits (except with the leave of the Court obtained before the hearing) to sue for any such remedies, he shall not afterwards sue for the remedy so omitted." The provisions in these sections are strengthened by the " Explanation " under section 207 : " Every right of property, or to money, or to damages, or to relief of any kind which can be claimed, set up, or put in issue between the parties to an action upon the cause of action for which the action is brought, whether it be actually so claimed, set up, or put in issue or not in the action, becomes, on the passing of the final decree in the action, a *res adjudicata*, which cannot afterwards be made the subject of action for the same cause between the same parties."

These provisions make it clear that the plaintiff must claim in one action all the relief he is entitled to upon the one cause of action, and that his failure to ask for continuing damages will debar him from claiming them in any other action. It is no answer to say that he should not expect to obtain more than Rs. 300 by way of continuing damages if he comes to the Court of Requests. At the date of the institution of his action, the Court of Requests was the proper forum. If he should go to the District Court he runs the risk which is almost a certainty, that he would be mulcted in costs for prosecuting his claim in a higher Court. It is impossible to say till the final stage of execution is reached what would be the *quantum* of damages when they are continuing damages. Their continuation is due to circumstances beyond the plaintiff's control. In most cases they are to be attributed to the wilful act of the defendant. Is the law to be interpreted to be so inequitable that it punishes a person if he goes to the District Court because he should have

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sought relief in the Court of Requests, and if he goes to the Court of Requests it also punishes him by depriving him of a part of his claim which has been swelled by the defendant's own wrongful act. It is not possible to take such a view of the law. *Banda v. Menika* (*supra*) might be regarded as impliedly holding that the damages which might be awarded are not limited. It held that in land cases the test of jurisdiction is the value of the interest in land which is in dispute, and that damages were not to be reckoned for that purpose. Therefore, if damages are not to be reckoned why should a limitation be presumed to have been placed as to the amount of damages which can be awarded. The Court has jurisdiction to entertain the action and grant relief, why should the relief which it can grant be presumed to be restricted when there is no express provision to that effect. The Civil Procedure Code was in operation in 1890. The Courts of Requests Ordinance, No. 12 of 1895, which amended section 77 of the Courts Ordinance dealing with the jurisdiction of Courts of Requests was a later enactment. It is by virtue of the provision in section 35 (*b*) of the Civil Procedure Code that continuing damages can be claimed in an action of this character. There is no limit to the damages which might be claimed. It seems to me that this a fair argument to say that the Legislature advisedly refrained from fixing any limit to the *quantum* of the damages which might be claimed.

It is not opposed to any principle for full relief to be granted by a Court of Requests, although it may involve a sum larger than Rs. 300. On the contrary, as I have endeavoured to show, the policy of the Code is that an action shall decide all matters which could be put in issue upon the cause of action. When, therefore, the law grants a Court of Requests jurisdiction to take cognizance of an action of the character of the present one it contemplated that the Courts of Requests should have jurisdiction to finally dispose of the claim by granting such relief as the cause of action entitled the plaintiff to demand. Looking at the matter from a practical point of view, I could see difficulties which must arise if the continuing damages which are to be awarded are to be confined to Rs. 300. It would drive persons to the District Courts who otherwise could obtain relief in the Court of Requests. It would place a premium upon wrong doing, for the longer the trespasser manages to keep the lawful holder out of possession in an action in the Court of Requests, the more he stands to gain, as his liability to pay damages automatically stops when the Rs. 300 limit is reached. How is the decree to be worded so that the damages may be limited. How is such a decree to be reconciled with the provisions of sections 196 and 197 of the Civil Procedure Code ?

I am, therefore, of opinion, that it was competent for the Court of Requests to award the damages it awarded in this action. I dismiss the appeal, with costs.

Appeal dismissed