

1947

Present : Soertsz S.P.J.

PERERA, Appellant, and WIJESINGHE, Respondent.

98—C. R. Panadure, 10,360

Court of Requests—Action ostensibly for damages—In reality, question of title to interests in land worth over Rs. 300 involved—Propriety of transfer of case to District Court—Courts Ordinance, s. 79.

An action brought in the Court of Requests although, ostensibly, one for damages was, in reality, an action in which "the title to, interest in or right to the possession of a land" which was worth over Rs. 300 was in dispute. The defendant, in his answer, took objection to the jurisdiction of the Court of Requests and raised an issue questioning that jurisdiction.

Held, that, in the circumstances, the case was one which should be transferred to the District Court.

A PPEAL from a judgment of the Commissioner of Requests, Panadure.

H. V. Perera, K.C. (with him Kingsley Herat), for the defendant, appellant.

H. W. Jayewardene (with him G. T. Samarawickreme), for the plaintiffs, respondents.

Cur. adv. vult.

February 19, 1947. SOERTSZ S.P.J.—

In this action, the plaintiffs claiming to be entitled to a half share of a certain land, and alleging that the defendant was in wrongful possession of that share, sued to recover Rs. 290 as damages sustained by them on account of this wrongful possession, together with interest thereon. The defendant, in his answer, averred that the plaintiffs were not entitled to any share of the land, and that the land belonged, in its entirety, to him. He prayed for the dismissal of the plaintiffs' action. It is admitted that a half share of this land is worth over Rs. 300 and a preliminary question arose whether the Court of Requests had jurisdiction

to try the case in view of the fact that although the amount claimed as damages was under Rs. 300, the question of title to interests in land worth over Rs. 300 was involved by the defence set up in the answer.

The Commissioner relying on the Divisional Bench ruling in the case of *Heen Banda v. Aluvihare*¹ held that the Court had jurisdiction and proceeded to try the case and gave judgment for the plaintiffs in a certain sum on account of damages on the ground that the plaintiffs had acquired a prescriptive title to the half share that they claimed of the land.

In my view, this action although, ostensibly, one for damages was, in reality, an action in which "the title to, interest in, or right to the possession of a land" was in dispute. But, I am bound by the ruling I have referred to and I must accept the decision given by the Commissioner on the question of jurisdiction. It is, however, open to me by virtue of the proviso to section 79 of the Courts Ordinance, to order that the whole proceeding be transferred to the District Court of Panadura. Section 79 enacts as follows :—

"Where in any proceeding before any Court of Requests any defence or claim in reconvention of the defendant involves matter beyond the jurisdiction of the Court, such defence or claim in reconvention shall not affect the competence or duty of the Court to dispose of the matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such claim in reconvention :

Provided always that in such case it shall be lawful for the Supreme Court, or any Judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from the court in which it shall have been instituted to some court having jurisdiction over the whole matter in controversy ; and in such case the record in such proceeding shall be transmitted by the clerk of the court to the court to which by such order the proceeding shall be so transferred ; and the same shall thenceforth be continued and prosecuted in such court as if it had been originally commenced therein."

In the circumstances and on the facts of this case I think it just and fair that it should be tried in the District Court. When the defendant pleaded as he did and took objection to the jurisdiction of the Court of Requests and raised an issue questioning that jurisdiction, he in effect applied for a transfer of the case.

Parties will of course take the steps necessary for enabling the case to be tried by the District Court. I set aside the judgment and decree entered by the Commissioner. All costs incurred up to date will be costs in the cause and will abide the final result and such order in regard to them as the District Judge may make.

Judgment and decree set aside.

¹ (1929) 31 N. L. R. 152.