

Present: Bertram C.J.

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BANDA *et al.* v. APPUHAMY *et al.*

113—C. R. Kurunegala, 2,955.

Court of Requests—Misjoinder of causes of action—Action by usufructuary mortgage for damages in respect of two contiguous lots—Action against three trespassers as to one lot, and against two only as to the other lot—Civil Procedure Code, s. 805.

Plaintiffs who are usufructuary mortgagees brought an action in the Court of Requests in respect of two contiguous lots of land over which they claimed a charge under their mortgage. In respect of the first lot the action was brought against all three defendants, and in respect of the other lot against the first two defendants only.

Held, that there was a misjoinder of causes of action.

In the Court of Requests, where in the same plaint two or more causes of action are joined, it must appear on the face of the plaint that all the causes of action so united are consistent with each other, that they entitle the plaintiff to the same kind of relief, and that they affect all the parties.

THE plaint in this case was as follows:—

For a First Cause of Action.

1. The parties to this action are residents within the jurisdiction of this Court.
2. The plaintiffs were the mortgagees of the lands described in the Schedule hereto annexed, by right of mortgage bond No. 44,328 of November 23, 1920, herewith filed, with its translation marked P 1.

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3. The defendants above named, who have no manner of right of title whatever to land No. 1 in the schedule hereof, unlawfully prevented and are preventing the plaintiffs from possessing or taking the produce of their shares of the said land, from date of the execution of the said mortgage bond, to their loss and damage of Rs. 56.

For a Second Cause of Action.

4. The plaintiffs were the mortgagees of the lands as described in paragraph 1 hereof.

5. The first and second defendants above named, who have no manner of right or title whatever to land No. 2 in the schedule hereof, unlawfully prevented and are preventing the plaintiffs from possessing or taking the produce of their shares of the said land from date of the execution of the said mortgage bond, to their loss and damage of Rs. 15.

6. The defendants above named have failed and neglected to pay the plaintiffs the said damages, in both causes of action or any portion thereof, though thereunto often requested.

Wherefore, the plaintiffs pray—

- (1) For a decree for Rs. 71 against first and second defendant; (2) for a decree for Rs. 56 against the third defendant; (3) for costs of suit; (4) for such further and other relief as to this Court shall seem meet.

R. SABAPATHY,
Proctor for Plaintiffs.

J. Joseph (with him *Rajakarier*), for appellant.

Croos-Dabrera, for respondent.

August 22, 1922. BERTRAM C.J.—

This is an appeal against a judgment of the Commissioner of Requests of the Kurunegala Court of Requests dismissing the plaintiff's action on the ground of misjoinder of parties and causes of action. The action is brought by the plaintiffs who are usufructuary mortgagees. It is brought in respect of two contiguous lots of land over which they claim a charge under their mortgage. It is brought in respect of the first lot against all three defendants, and in respect of the other lot against the first two defendants only.

All the defendants combine together, engage the same proctor, and put in a common answer. Their case is that the plaintiffs had obtained this mortgage in fraud of their rights under certain informal engagements with plaintiffs' mortgagor. It would certainly be a singular thing if two claims of this sort could not be tried together in a single action. But, for one circumstance, I should have upheld the contention of the plaintiffs without qualification. What the plaintiffs are doing in effect is this: They bring an action on one cause of action against first three defendants with regard to the first lot of land, and they combine with this claim a claim on another cause of action, viz., a claim against two of the defendants only. In other words they are combining two sections of the Civil Procedure Code, namely, sections 14 and 36, and this, by the

judgment of Pereira J. in the case of *The London and Lancashire Fire Insurance Co. v. The Peninsula and Oriental Co.*,¹ they have been expressly held entitled to do.

There is, however, one circumstance to which I have alluded above, which is fatal to the plaintiffs' claim in its entirety. That is, that this action is in a Court of Requests, and is accordingly governed by section 805 of the Civil Procedure Code. That section enacts that where in the same plaint two or more causes of action are joined, it must appear on the face of the plaint that all the causes of action so united are consistent with each other, that they entitled the plaintiff to the same kind of relief, and that they affect all the parties. It is clear, therefore, that the plaintiffs are not entitled to proceed in respect of the first lot against the three defendants, and in respect of the other lot against the first two defendants only.

Mr. Croos-Dabrera, who appears for the respondent, takes a further point. Basing himself on the case of *Rabot v. D'Silva*,² he claims his right to uphold the judgment on any other ground without giving notice to the other side. The ground he takes is that the value of the land in respect of which action is brought exceeds Rs. 300 in value. I do not think that this is a good objection. The claim is a claim for damages on the ground that the plaintiffs have been deprived of their security. The damages they claim are only Rs. 71. Mr. Croos-Dabrera relies mainly upon two decisions of this Court reported in 18 N. L. R. 84, a judgment of Mr. Justice Pereira, and in 20 N. L. R. 343, a judgment of Mr. Justice de Sampayo. Both these cases were possessory actions, and in the first of them Mr. Justice Pereira insisted on the circumstance that what was claimed was the right to the perpetual possession of the land.

This is not a possessory action, and I do not think that those authorities apply. The claim is a claim for damages. To this Mr. Croos-Dabrera replies by citing *Dingiri Appuhamy v. Appuhamy*.³ There it was held by my brother De Sampayo that although in that case the claim was a claim for damages, in respect of the removal of crops, the actual title to the land in question was in dispute. Here, however, the title to the land is not in dispute. All that is in dispute is a certain interest in the land, namely, a right to hold the land and to take the produce in lieu of interest.

What we have to interpret in section 77 of the Courts Ordinance. No. 1 of 1889, which confers jurisdiction on Courts of Requests in all actions in which the title to, interest in, or right to possession of any land shall be in dispute, provided that the value of the land or the particular share, right, or interest in dispute shall not exceed Rs. 300. (I have omitted certain words which appear intended to deal with partition suits only.) These words: (1) "title to interest in or right to possession of" and (2) "the value of the land or the

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*Appuhamy*¹ (1914) 18 N. L. R. 22.² (1905) 8 N. L. R. 22.³ 3 C. A. C. 87.

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particular share, right, or interest in dispute" are clearly to be interpreted *reddendo singula singulis*. As the interest in dispute is not the whole title to the land, and as the value of that interest is less than Rs. 300, I think the case is within the jurisdiction of the Court of Requests.

The question now arises, what should be done in view of the defect in plaintiffs' claim to which I have above alluded. The learned Commissioner has dismissed the action. Herein, I think, he is wrong. I think the learned Commissioner's judgment should be set aside, and the case sent back for retrial, and that thereupon the plaintiffs should be given the option of waiving their claim against the third defendant, or of severing their claims in respect of the two lots of land, and abandoning one of their claims, reserving the right to bring a fresh separate action in respect of the claim so abandoned.

The appeal is allowed, with costs.

Appeal allowed.

