

1929.

Present: Fisher C.J., Drieberg J., and Maartensz A.J.

HEEN BANDA v. ALUVIHARE.

28—C. R. Matale, 19,311.

Court of Requests—Action for damages—Value of land over Rs. 300—Denial of plaintiff's title—No claim in reconvention—Jurisdiction—Court's Ordinance, ss. 77 and 81.

In a Court of Requests, the plaintiff after setting out his title to a land, which was admittedly over the value of Rs. 300, claimed a sum of Rs. 150 as damages against the defendant for having forcibly cut and removed jak trees. The defendant in his answer denied plaintiff's title to the land, but made no claim in reconvention on that basis.

Held, that the Court of Requests had jurisdiction to entertain the action.

Per FISHER C.J.—Where a defence, which involves consideration of a question, which could not be made the direct subject-matter of a prayer for relief by the Court, is raised the Court can deal with and decide the question for the purpose of deciding whether the plaintiff is entitled to the relief he claims.

THE plaintiff averred title to a certain land and complained that the defendant forcibly entered on the land and cut and removed five jak trees. He prayed for judgment against the defendant for Rs. 150 as damages.

The defendant in his answer admitted that he cut the trees, but denied the plaintiff's title to the land. He said that the land in question had been given to him on his marriage and that he and his wife had been in sole and undisturbed possession for about twenty-five years and pleaded the benefit of section 3 of Ordinance No. 22 of 1871, but he made no claim in reconvention on that basis. He further stated that the land was worth over Rs. 5,000 and that in consequence of the value of the land the Court of Requests had no jurisdiction to adjudicate on the matter.

At the trial the parties agreed that the land was over Rs. 300 in value.

The Commissioner held that he had jurisdiction to adjudicate on the matter and awarded Rs. 150 damages to the plaintiff.

The defendant appealed.

Navaratnam (with *Wendt*), for defendant, appellant.—Though the action is in the form of an action for damages the real question in issue is one of title. The jurisdiction of a Court of Requests in cases in which the question was the title to land over Rs. 300 in value has been the subject of conflicting decisions of the Supreme Court. The learned Commissioner has followed one set of decisions and not the other.

If the defendant sets up title in himself or in someone else and the land is over Rs. 300 in value the Commissioner has no jurisdiction to adjudicate on the matter. (Section 77, Courts Ordinance; *Dingiri Appuhamy v. Appuhamy* ¹; *Wickremenayake v. Edirisingha*. ²)

The decision in this case if upheld would be a *res adjudicata*. (Section 207, C. P. C.; section 34, C. P. C.; *Andris v. Siriya et al.* ³. *Dingiri Menika v. Punchi Mahatmaya et al.*⁴; *Samichi v. Pieris*.⁵)

[FISHER C.J.—The words of section 81, Courts Ordinance, answer the question of the jurisdiction of the Court of Requests?]

Section 81, Courts Ordinance, contemplates cases in which the defendant counterclaims.

Counsel cited further *Catherina v. Silva*,⁶ *Baban Appu v. Gunewardene et al.*,⁷ *Silva v. Fernando et al.*,⁸ *Pedris v. Mohideen*,⁹ *Jose Antonio Baretts v. Francisco Antonio Rodrigues and others*,¹⁰ *Podisinno et al. v. Perera Appuhamy*,¹¹ *Rasih Joseph v. Punchi Appuhamy*.¹²

Ranawake, for plaintiff, respondent.—The Court of Requests cannot merely on the pleadings refuse to adjudicate on the matter, but must consider the *bona fides* of the defence (see A. L. Smith L.J. in *Howorth v. Sutcliffe*,¹³ *Latham and another v. Spedding*¹⁴).

The decision on the question of title will not operate as a *res adjudicata* as the inquiry into title was only incidental (see Muttusami Ayyar J. in *Manappa Mudali v. S. T. McCarthy* ¹⁵; see Pereira J. in *samichi v. Pieris*,¹⁶ *Bapuji Raghunath and others v. Kuvarji Edulji Umrigar*,¹⁷ *Alagirisa'mi Naiker v. Innasi Udayan and another*.¹⁸

Counsel cited further *Darma Ayyan v. Rajapa Ayyan and another*,¹⁹ *Banakiyanage Poddi v. Franciscu Fernando Obeyesekera*.²⁰

1929.

Heen Banda
v.
Aluwihare

¹ (1913) *Court of Appeal Cases*, Vol. III., 87.

² 30 N. L. R. 158.

³ (1924) 27 N. L. R. 70.

⁴ (1910) 13 N. L. R. 59.

⁵ (1913) 16 N. L. R. 257.

⁶ (1907) 10 N. L. R. 260.

⁷ (1907) 10 N. L. R. 167.

⁸ (1908) 11 N. L. R. 375.

⁹ (1923) 25 N. L. R. 105.

¹⁰ I. L. R. 35 Bombay 24.

¹¹ (1926) 5 *Times* L. R. 46.

¹² 29 N. L. R. 159.

¹³ (1895) 2 Q. B. 358 at 364.

¹⁴ (1851) 17 Q. B. 440.

¹⁵ (1881) I. L. R. 3 Madras 192, at 196.

¹⁶ (1913) 16 N. L. R. 257.

¹⁷ I. L. R. 15 Bombay 400.

¹⁸ (1881) I. L. R. 3 Madras 127.

¹⁹ I. L. R. 2 Madras 181.

²⁰ 3 S. C. C. 13.

1929.
Heen Banda
v.
Aluvihare

Navaratnam (in reply).—In *Podisimmo et al. v. Perera Appuhamy*¹ Jayawardene J. definitely states that a decision of a Court of Requests on a question of title may be pleaded as *res judicata* in any subsequent litigation though the question of title arose indirectly.

The Indian decisions cited in this connection have no application since a Small Cause Court cannot adjudicate finally, but only incidentally on a question of title in consequence of section 19 of the Presidency Small Cause Courts Act (Act XV. of 1882) which excludes from the jurisdiction of a Small Cause Court suits for the recovery or partition of immovable property or for the foreclosure or redemption of a mortgage of immovable property or for the determination of any other right to or interest in immovable property.

August 23, 1929. FISHER C.J.—

In this case the plaintiff after setting out in the plaint his title to certain land, which is admittedly of the value of over Rs. 300, and after stating that the defendant forcibly entered the land and cut and removed five jak trees prayed for judgment against the defendant for Rs. 150 as damages.

The defendant in his answer admitted having cut the trees, but denied that the plaintiff was entitled to the land. By way of defence he said that the land in question had been given to him on his marriage and that he and his wife had been in sole and undisturbed possession for about twenty-five years, and pleaded the benefit of section 3 of Ordinance No. 22 of 1871, but he made no claim in reconvention on that basis.

The question referred to us for decision is whether the Court of Requests had jurisdiction to hear the action. The jurisdiction of a Court of Requests in cases in which a question with regard to land of the value of over Rs. 300 is raised has been the subject-matter of several conflicting decisions by this Court. The last two reported cases on the point are *Rasiah Joseph v. Punchi Appuhamy*² and *Wickremenayake v. Edirisingha*.³ In the former case the plaintiff sued for Rs. 225 in respect of loss and damage caused by the cutting down and removal of seventy-five trees by the defendant. The defence raised was that the land upon which the trees stood was not the property of the plaintiff, but was temple land of which the defendant was tenant and caretaker. Lyall Grant J. in holding that the Court of Requests had jurisdiction to try the case said "The mere fact that incidentally the Court may have to go into matters which involve disputes relating to lands and interests beyond the jurisdiction of the Court does not seem to me to be a sufficient reason for saying that the Court shall not determine a claim which is clearly within its jurisdiction."

¹ (1926) 5 *Times L. R.* 46.

² 29 *N. L. R.* 159.

³ 30 *N. L. R.* 158.

In *Wickremenayake v. Edirisingha* (*supra*) the claim was for a sum of less than Rs. 300 as damages for wrongful possession of land admittedly of the value of more than Rs. 300. The plaint set out the title of the plaintiff to the land. The defendant in his answer, in the words of Schneider J., " Denied in specific terms the plaintiff's title and ouster and in effect asserted that the land described in the plaint was his and possessed by him as such." Schneider J. held that the Court of Requests had no jurisdiction, and in the course of his judgment said: " Before the Court can determine that the plaintiff is entitled to claim any damages it must decide the issue whether the plaintiff is the owner of the land. The question of title is a substantive issue in the action. It is incidental in one sense, in that the plaintiff's prayer is only for damages, but it is nevertheless an issue. "

1929.
FISHER C.J.
Heen Banda
v.
Aluwihare

Section 77 of the Courts Ordinance, 1889, invests a Court of Requests with jurisdiction to hear and determine—

- (a) All actions in which the debt, damage, or demand does not exceed Rs. 300 subject to certain conditions as to residence and to place of origin of the cause of action;
- (b) All hypothecary actions in which the amount claimed does not exceed Rs. 300 subject to a condition as to the situation of the land charged;
- (c) All actions in which the title to, interest in, or right to the possession of any land shall be in dispute; and
- (d) All actions for the partition or sale of land.

Then follows a proviso " 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. " In my opinion the proviso only qualifies the jurisdiction in the actions included in (c) and (d). The qualification of jurisdiction based on value in actions included in (a) and (b) has already been provided for. I think that this view is supported by the terms of section 81, with which I will deal later.

In the case before us the prayer of the plaintiff is to recover Rs. 150 damages. That is the object of the action which being one in which " the debt, damage, or demand does not exceed Rs. 300 " was in its origin an action within the jurisdiction of the Court.

It is contended, however, that owing to the assertion of title in the plaint and the denial by the defendant of that title and the assertion of the title of himself and his wife in the answer the action became one which was beyond the jurisdiction of the Court, inasmuch as it became an action in which " the value of the land in dispute " was over Rs. 300. That contention involves a consideration of section 81 which, so far as one can judge by the reports, was not put before the Courts for consideration when the question

1929. of jurisdiction was considered on previous occasions. The section,
 FISHER C.J. in so far as it is material to set it out, runs as follows:—

Heen Banda
 v.
 Aluvihare

“ 81 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 effect 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”

There was no claim in reconvention in the present case and we are therefore concerned only with what was stated by the defendant in his answer as a defence. Such a defence, in my opinion, does not bring into operation the proviso in section 77 which I have set out above. The meaning of the first part of section 81 is, in my opinion, that where a defence is raised which involves consideration of a question which could not be made the direct subject-matter of a prayer for relief by the Court, the Court can deal with and decide the question for the purpose of deciding whether the plaintiff is entitled to the relief he claims. That is the situation in this case, and it is a situation with which in my view the section directly and expressly deals.

It is unnecessary to decide the question, on which we had a considerable amount of argument, whether the decision of a Judge of the Court of Requests in a case like the present case would operate as *res judicata* should the defendant bring an action against the plaintiff to vindicate title. The section, however, provides an opportunity for a defendant in such a case who has a *bona fide* belief in his title and desires to assert it and claim the benefit of it to take steps to have the question decided by a competent Court.

In my opinion the Court of Requests is competent to try this action and the appeal must be dismissed with costs.

DRIEBERG J.—I agree.

MAARTENSZ A.J.—I agree.

Appeal dismissed.