

1950

Present : Jayetilleke C.J. and Swan J.

SUBBIAH PILLAI, Petitioner, and FERNANDO, Respondent

*Application 366—S. C. 209 'D. C., Colombo, 17,332**Privy Council—Application for conditional leave to appeal—Action between landlord and tenant—Valuation of the right to possession of the premises—Appeals (Privy Council) Ordinance, Cap 85, Schedule, Rule 1 (a).*

In an action between landlord and tenant the right to possession of the premises in question must be valued at the rental reserved by the contract of tenancy, for the purpose of valuing the matter in dispute in an application for conditional leave to appeal to the Privy Council.

APPPLICATION for conditional leave to appeal to the Privy Council.

N. E. Weerasooria, K.C., with V. Arulambalam and C. Chellappah, for the defendant petitioner.

Fernon Wijetunge, for the plaintiff respondent.

Cur. adv. vult.

September 26, 1950. JAYETILEKE C.J.—

This is an application by the defendant for conditional leave to appeal to the Privy Council. Under rule 1 (a) of the rules set out in the schedule to the Appeals (Privy Council) Ordinance (Chapter 85) an appeal lies as of right from any final judgment of the Supreme Court where the matter in dispute on the appeal amounts to or is of the value of five thousand rupees or upwards or where the appeal involves directly or indirectly some claim or question to or respecting property of some civil right amounting to or of the value of five thousand rupees or upwards. The plaintiff opposed the application on the ground that the matter in dispute on the appeal is less than Rs. 5,000. The test to be applied in considering the question whether the matter in dispute is of the value of less than Rs. 5,000 is thus stated by Lord Selborne in *Allan v. Pratt*.¹

“The judgment is to be looked at as it affects the interests of the plaintiff who is prejudiced by it and who seeks to relieve himself from it by appeal.”

The plaintiff alleged in his plaint that in the year 1944 he took on rent from the defendant the northern half portion of premises No. 130,

¹ L.R. 13 A.C. 781.

Fourth Cross Street, Pettah, at a monthly rental of Rs. 165 and that on September 18, 1946, the defendant wrongfully and unlawfully prevented him from entering the said premises by locking the gate at the entrance. He claimed a sum of Rs. 6,000 as damages from September 18, 1946, up to the date of the institution of the action, an injunction to restrain the defendant from interfering with his occupation of the said premises and further damages at Rs. 500 per day till the defendant removed the obstruction. He valued the subject matter of the action at Rs. 6,000 which represents approximately the amount he claimed as damages from September 18, 1946, up to the date of the institution of the action.

The defendant denied that the 'plaintiff was a tenant. He alleged that he gave the plaintiff permission to store his goods in a portion of an open room in the said premises and charged the plaintiff a sum of Rs. 165 as hire for the use of it and on September 27, 1946, he gave the plaintiff notice to vacate the said premises at the end of October, 1946. He alleged further that the plaintiff caused loss and damage to him by forcing open a gate leading to the said premises on October 5, 1946, and by failing to remove his belongings from the said premises at the end of October, 1946. He claimed in reconvention a sum of Rs. 165 as rent for December, 1945, and Rs. 2,000 as damages.

After trial the learned District Judge entered judgment in favour of the plaintiff as prayed for in his plaint with damages at Rs. 5 a day from September 18, 1946, and dismissed the defendant's claim in reconvention.

The defendant appealed from this judgment and this Court by its judgment dated June 30, 1950, reduced the damages to Re. 1 a day.

The total amount payable by the defendant on the decree of this Court is Rs. 1,380. The defendant is clearly not entitled to appeal against that part of the decree to the Privy Council. The decree, however, condemned him to pay damages till he removed the obstruction. That part of the decree involves the right to possession. The District Judge was not invited to assess that right and there are no materials before us on which we can say that it amounts to or is of the value of five thousand rupees or upwards. On the pleadings it appears to us that the relationship of landlord and tenant existed between the defendant and the plaintiff. The defendant says that he hired a portion of the premises to the plaintiff to store his goods and the plaintiff says that he took a portion of the premises on rent from the defendant to carry on his business. In an action between the landlord and the tenant the right to possession must be valued at the rental reserved by the contract of tenancy. The applicant is not entitled as of right to appeal in this case and I would therefore refuse his application with costs.

SWAN J.—I agree.

Application refused.