

1931

Present: Lyall Grant J.

ASANALLY *v.* APPUHAMY.1—*C. R. Teldeniya, 7,327.*

Court of Requests—Action to recover ground rent—Application to amend plaint—Claim for use and occupation—Civil Procedure Code, ss. 815 and 816.

Where, in an action to recover ground rent in respect of chena lands given for cultivation, the defendant pleaded that the action was not maintainable as the lease was not in writing,—

Held, that the plaintiff was entitled to amend the pleadings by including a claim for use and occupation.

A PPEAL from a judgment of the Commissioner of Requests, Teldeniya,

Navaratnam, for plaintiff, appellant.

June 2, 1931, LYALL GRANT J.—

The plaintiff in this case, the owner of certain lands, sued the defendant for ground rent in respect of his chena lands given for tobacco cultivation. The defendant amongst other defences pleaded that as a matter of law the plaintiff could not maintain the action inasmuch as a verbal lease was contrary to the provisions of Ordinance No. 7 of 1840. The plaintiff thereupon moved to amend his plaint by the addition of a fourth paragraph. "That the defendant has had the use and occupation of the said lands for about a year and the plaintiff claims Rs. 50 as compensation for such use and occupation." The learned Commissioner refused to allow the amendment as the proposed amendment would, in his opinion, alter the scope and nature of the action, converting it, in effect, from an action for a fixed sum claimed as rent under an informal lease, for a specified period, to an action for use and occupation to recover a reasonable remuneration. Argument was heard on the legal defence raised and the Commissioner upheld the legal objection taken and dismissed the action with costs. He allowed the plaintiff leave to reinstitute a properly constituted action for use and occupation.

The appellant submits that these findings should be set aside and the case remitted back to the Court of Requests for trial on the facts.

I think the learned Commissioner was wrong in refusing the plaintiff leave to amend the plaint. I do not think that the scope and nature of the action would be substantially modified by such amendment. Even without the amendment I am by no means sure that the plaintiff would not have been entitled to maintain the action for use and occupation. The third paragraph of the plaint says that the defendant took the lands from the plaintiff in or about January, 1929, and continued to make use of them till January, 1930.

Section 815 of the Civil Procedure Code sets out that in Court of Requests cases a variance between an allegation in a pleading and the proof shall be disregarded as immaterial, unless such proof discloses a new cause of action, or the Court is satisfied, that the adverse party has been misled thereby to his prejudice. Here I do not think that there was any substantial new cause of action. The cause of action was the non-payment of ground rent.

Section 816 confers wider power upon the Court. It allows the Court upon application to allow pleadings to be amended at any time before trial, or during the trial if substantial justice will be promoted thereby.

It was held in 1895 by Bonser C.J. in the case of *Read v. Samsudin* ¹ that in a Court of Requests action all technicalities of law should be avoided. When a plaint, defective in some material respect, has been filed, it is not necessary to move that it be taken off the file, but it is the duty of the Court of its own accord, or upon its attention being called, to reject the plaint or return it to the plaintiff for amendment. The Chief Justice also observed that it is not the duty of the Judge to throw technical difficulties in the way of administering justice. He ought to remove them out of the way upon proper terms as to costs and otherwise.

In the case of *Cassim Lebbe v. Natchiya* ² Shaw J. discussed this section of the Code and held that an amendment which is *bona fide* desired should be allowed at any period of the proceedings, if it can be allowed without injustice to the other side, and in most cases conditions as to costs will ensure no prejudice being caused to the other side.

The order is set aside and the case is remitted back for the purpose of allowing the plaintiff to amend his plaint as desired and for the trial of the case.

The appellant will have the costs of this appeal in any event.

Order set aside..

