

1938

*Present : Hearne J.*

JINASENA, Petitioner, and MOOSAJEE, Respondent.

*Application for the transfer of C. R. Colombo, 33,312 to D. C. Colombo.**Court of Requests—Action for ejection—Claim in reconvention beyond jurisdiction of Court—Application for transfer of case to District Court—Courts Ordinance (Cap. 6), s. 79.*

Where, in a tenancy action in a Court of Requests, the claim in reconvention of the defendant was beyond the jurisdiction of the Court and the convention and reconvention were dependent on the same facts and involved an interpretation of the same law—

*Held*, that the Supreme Court should allow the transfer of the whole proceeding to the District Court if it was satisfied that the disadvantage to the plaintiff of a transfer was outweighed by the advantage of having the questions of the alleged tenancy and the claim in reconvention decided at one and the same time.

**T**HIS was an application for the transfer of a case from the Court of Requests, Colombo, to the District Court.

*D. W. Fernando*, for the defendant, petitioner.

*V. A. Kandiah*, for the plaintiff, respondent.

*Cur. adv. vult.*

March 22, 1938. HEARNE J.—

The plaintiff in C. R., Colombo, No. 33,312 sued the defendant praying for an order that the defendant be ejected from certain premises which he "had let to the defendant" for Rs. 100 damages and for further damages at the rate of Rs. 5 per diem "till the defendant is ejected from the said premises and placed in possession thereof".

The defendant filed an answer praying in convention that the plaintiff's action be dismissed with costs and in reconvention that he be declared entitled to the buildings that his father had erected on the land in consequence of an agreement with G. T. Pieris, the then owner of the land, that he be declared entitled to possess the land and buildings on payment of an annual rent of Rs. 540 in accordance with the terms of the said agreement, and in the alternative that he be declared entitled to compensation in a sum of Rs. 6,500 and to retain possession of the land and buildings until payment thereof.

In the circumstances of this answer the defendant has applied for an order transferring C. R. Colombo, 33,312, to the District Court of Colombo

There can be no doubt that the defendant is within his right in bringing forward his claim in reconvention. The question is whether this Court should exercise its discretion under section 81 of the Courts Ordinance and transfer the case as the petitioner prays. As the plaintiff's claim is for possession and as an order transferring the case to the District Court would put it at the bottom of the list in that Court I recognise, as was recognised in *Veeravaku v. Suppramaniam*,<sup>1</sup> that such an order would impose a hardship on the plaintiff. The facts in that case were very different from the facts in this case. There the claim in reconvention which was founded upon an alleged loan was a separate action independent of the plaintiff's action. It was in no way related to the plaintiff's claim. Here we have a convention and a reconvention which are dependent on the same facts and which involve an interpretation of the same law. It would be manifestly inappropriate if I indicated in this application the view I take of the *jus retentionis* asserted by the defendant. But I am satisfied in my own mind that the disadvantage to the plaintiff of a transfer is outweighed by the advantage of having the questions of the alleged tenancy, of the right to compensation and to the *jus retentionis* decided at one and the same time.

I therefore allow the application, and order that C. R. Colombo, 33,312, be transferred to the District Court of Colombo.

*Application allowed.*

---