

Present: Wood Renton C.J. and De Sampayo J.

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HEWAWITARANA *v.* MARIKAR.

253—C. R. Colombo, 51,265

Jurisdiction—Action in Court of Requests for rent and ejectment—Continuing damages.

A alleging that B was his tenant, at a monthly rental of Rs. 310, and that the tenancy had terminated by notice, brought this action for ejectment and damages at Rs. 300 a month from the expiration of the tenancy until restoration to possession (waiving the Rs. 10 with a view to conferring jurisdiction on the Court of Requests).

Held, that the Court of Requests had no jurisdiction.

“The value of the right of possession involved is the rent or profit which might be due if the monthly tenancy continued. If it were a mere question of damages only, a plaintiff might, of course, waive any portion, but where the damages are a measure of the value of the right of possession which the Court is to enforce, a waiver cannot be allowed.”

Held, further, that continuing damages in excess of the jurisdiction of a Court of Requests cannot be claimed or recovered in an action of this kind.

THE plaintiff alleging that the defendant was his tenant from month to month at a rental of Rs. 310 per mensem sued him in ejectment and for damages at Rs. 300 per month. The defendant stated that his tenancy had terminated. The following issues were framed:—

Was defendant's tenancy determined on November 12 as stated in the answer?

Has this Court jurisdiction?

Was defendant noticed to quit?

¹ (1916) 19 N. L. R. 120.

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After trial judgment was entered for plaintiff as prayed for.
 The defendant appealed.

Hayley, for defendant, appellant.

A. St. V. Jayewardene (with him *B. F. de Silva*), for plaintiff,
 respondent.

Cur. adv. vult.

October 18, 1916. WOOD RENTON C.J.—

This case has been referred by my brother De Sampayo to a Bench of two Judges for the consideration of an important point of practice. The plaintiff, who sues as the executor of the late Edmund Hewawitarana, alleges that the defendant was his testator's tenant of certain premises in Fourth Cross street, Pettah, at a monthly rental of Rs. 310; that the tenancy had terminated; and that the defendant, although duly served with notice to quit, had failed to do so. He claims accordingly the ejection of the defendant from the possession of the premises, and damages at Rs. 300 a month from the date fixed in the notice to quit until such possession shall have been restored to him. The difference between the monthly rental and the damages claimed was abandoned by the plaintiff with a view to conferring jurisdiction on the Court of Requests. The defendant denied the tenancy, alleging that the tenants were third parties, with whom he has not in fact anything to do. The learned Commissioner of Requests held that, as the plaintiff had waived the excess of his claim, he had jurisdiction to dispose of the case, and, after hearing evidence, he gave judgment in the plaintiff's favour as prayed for, with cost. The defendant appeals.

Under section 77 of the Courts Ordinance, as re-enacted by section 4 of the Courts of Requests Ordinance, 1895,¹ Courts of Requests have jurisdiction to entertain actions in which the title to, or interest in, or the 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." It is clear from this enactment that the value of the land is not the sole test of jurisdiction. The Court of Requests will be competent to entertain the action, if the interest which it is brought to ascertain does not exceed the statutory limit of Rs. 300. It is no doubt open to a plaintiff, whose claim sounds in damages alone, to waive any portion of it in excess of the jurisdiction of the Court of Requests, so as to make that Court competent to entertain it. But I do not think that where, as here, he sets up and asks the Court to declare his right to possession of a land, and where the value of his interest in that possession exceeds Rs. 300, he can by abandoning his claim to the excess bring it within the jurisdiction of a Court of Requests.

¹ No. 12 of 1895.

The fact that the defendant did not directly dispute the plaintiff's title is, in my opinion, immaterial, where the circumstances are such as to necessitate the claim to possession being put forward and enforced. This disposes of the ground on which the learned Commissioner of Requests dealt with this case. But now that I have had the opportunity, after full argument, of reconsidering my own judgment in the case of *Cassim v. Canhait*,¹ I have come to the conclusion that it was wrong. I there held that in actions of this kind claims of damages are merely subsidiary and incidental heads of relief, which ought not to be taken into account in considering the question of jurisdiction. My attention was not called to the fact that in *Thaynappa Chetty v. Packir Bawa*,² a decision which we have ascertained by reference to the Supreme Court Minutes to have been that of a Full Court, even interest and a *fortiori* damages were held to be not merely incidental to the cause of action like costs, but part of the cause of action itself. I would add that I do not think that continuing damages in excess of the jurisdiction of a Court of Requests can be claimed or recovered in an action of this kind.

On these grounds I would set aside the decree of the Court of Requests, and direct decree to be entered up dismissing the plaintiff's action, with the costs of the action and the appeal.

DE SAMPAYO J.—

I am of the same opinion. The plaintiff would be entitled to bring this action in the Court of Requests if his "right to possession" of the land did not exceed Rs. 300 in value, as provided in section 77 of the Courts Ordinance. How is a landlord's right to possession to be valued when the tenancy is from month to month, and has terminated by notice, and the tenant still over-holds? In *Vengadasalem Chetty v. Superamaniam Chetty*³ Bonser C.J. observed: "It seems to me that it (*i.e. Mudiyanse v. Rahman*⁴) rightly decided that in a case like this the matter in dispute between the parties is the value of the premises for the month during which the defendant says that he is entitled to hold the premises." The deciding factor accordingly appears to be the period during which the tenant seeks, either by denial of the tenancy or of the notice, to keep the premises from the landlord. The plaintiff in this action evidently put his case on the same footing, for he claimed damages at the rate of Rs. 300 a month from the date of the expiration of the tenancy. Thus, the value of the right of possession involved is the rent or profit which might be due if the monthly tenancy continued. Can the plaintiff waive any portion of this rent or profit in order to bring the action in the Court of Requests? The Commissioner has held that he can. If it were a mere question of damages only, a plaintiff might,

¹ (1906) 3 Bal. 20.

² (1866) Ram. 1863-1868, 216.

³ 2 Browne 391.

⁴ (1896) 2 N. L. R. 235.

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of course, waive any portion, but where the damages are a measure of the value of the right of possession which the Court is to enforce, a waiver cannot, I think, be allowed. On the further question as to continuing damages also I agree with the opinion of my Lord the Chief Justice.

Set aside.

