

1970

Present : Tennekoon, J.

S. M. ANIS, Appellant, and T. VINCENT SILVA, Respondent

S. C. 53/69—C. R. Colombo, 96754

Civil Procedure Code—Sections 9, 325, 327—Action brought under s. 327 in consequence of a tenancy action instituted by a purchaser of rented premises—Claim of defendant that he himself was a monthly tenant—Jurisdiction of Court of Requests to hear the action although the premises in question were valued at Rs. 30,000—Courts Ordinance, s. 75.

A bought certain premises from B who had previously rented the premises to C. C thus became the tenant of A. Thereafter A obtained a decree in the Court of Requests for ejectment of C, but when the Fiscal went to execute the writ of possession the present appellant D obstructed the Fiscal. In proceedings under section 325 of the Civil Procedure Code, D claimed that he was holding the premises as a monthly tenant of B and that A had failed to obtain an attornment from D. The Commissioner of Requests then made order that D's claim should be determined in an action under section 327 of the Civil Procedure Code. The premises in question were valued at Rs. 30,000.

Held, that the Court of Requests had jurisdiction to hear the 327 action, although the premises in question were valued at Rs. 30,000. In such a case, the jurisdiction should be determined by the value of the defendant's interest as a monthly tenant and not by the value of the premises.

A PPEAL from a judgment of the Court of Requests, Colombo.

C. Ranganathan, Q.C. with M. T. M. Sivardeen, for the defendant-appellant.

D. R. P. Goonetilleke, for the plaintiff-respondent.

Cur. adv. vult.

May 16, 1970. TENNEKOON, J.—

An action was filed by one Vincent Silva (the respondent to this appeal) in 1965 in the Court of Requests, Colombo, for ejectment of his tenant M. Kandasamy Thevar. He alleged in his plaint among other things that he had purchased the premises from one A. M. M. Mohamed Ibrahim, and that the defendant Thevar who had been a tenant of his vendor had thereafter become his tenant. The plaintiff obtained judgment after *ex parte* trial, and writ of execution for ejectment was issued. When the fiscal went to execute the writ one S. M. Anis the present appellant and another obstructed the fiscal. The affidavit of the fiscal's officer contains statements to the following effect :—

“Then S. M. Anis came forward and said that he rented out this premises from one A. M. M. Ibrahim since 15th December, 1961. As such he cannot vacate under any circumstances. Also he said that he is not going to allow to execute the writ. . . . The said Anis produced a document dated 12/3/61 in proof of payment of rent to A. M. M. Ibrahim.”

On the 11th of January 1966 the present respondent complained of the obstruction by a petition under section 325 of the Civil Procedure Code to which Anis and another were made respondents. In his objections filed on the 10th of March 1966 the appellant took up the position that he was holding the premises under Ibrahim as from 15-12-61 and that the respondent had failed to obtain an attornment from the appellant; consequently the respondent had no right of possession as against him.

The Commissioner of Requests acting under section 327 of the Civil Procedure Code proceeded to have the petition of the respondent numbered and registered as a plaint between the respondent as plaintiff and S. M. Anis the appellant as defendant. Anis filed answer on 13-12-67 and trial in this action was had on the 3rd and 29th of October 1968.

The main issues were (1) whether the defendant-appellant was in occupation of the premises from December 1961, as a tenant under Ibrahim, and (2) whether the respondent was entitled to eject the defendant-appellant unless he proved that the latter came into occupation of the premises as a sub-tenant under Kandasamy Thevar.

The Commissioner of Requests, after hearing evidence and submissions of counsel, reserved his order for the 22nd of November, 1968. On that date judgment was not ready and counsel for the appellant indicated to Court that he wished to make further submissions as to whether the Court had jurisdiction in the case. Further submissions were heard and judgment was ultimately delivered on 19-12-68 in favour of the respondent; decree was entered ordering that writ of possession in C. R. Colombo Case No. 91691 be reissued.

In appeal the only question argued was whether the Court of Requests had jurisdiction in this case; it was submitted that when the petition under section 325 was numbered and registered as a plaint it became an action for recovery of property and that the test of jurisdiction should be, not the amount of the monthly rent of the premises, but the value of the property itself.

No evidence was led in the court below in regard to the value of the premises or of the right to possession claimed by the plaintiff, and there is also quite naturally no finding on that question in the judgment of the Commissioner. I find however that in one of the deeds produced in the course of the trial the premises have been valued at Rs. 30,000 in 1964. Parties too have made their submissions on the basis that the value of the premises exceeds the limit of the monetary jurisdiction of the Court of Requests.

It was urged by counsel for the appellant that section 327 of the Civil Procedure Code does not confer on the court a jurisdiction, monetary or otherwise, beyond that conferred by section 9 of the Civil Procedure Code. He relies on the case of *Pillai v. Cader Meera*¹ where it was held that section 327 does not enable a District Court to number and register

¹ (1932) 34 N. L. R. 9; 1 C. L. W. 174.

as a plaint a petition filed under section 325 relating to obstruction to an order of possession under section 287 of the Civil Procedure Code pertaining to land situated outside the jurisdiction of the court issuing the order for delivery of possession. On the basis of this authority, it is contended that where, as in this case, a tenancy action is filed in the Court of Requests in respect of premises whose value is beyond the monetary limits of the jurisdiction of the Court, and where there has been resistance or obstruction to the execution of the writ of possession, a petition filed under section 325 cannot under section 327 be numbered and registered as a plaint because the court would then be dealing with a case in which there is a claim for recovery of possession of property beyond the court's monetary jurisdiction, and that the proper course for the judgment creditor to follow is to file an action in the appropriate District Court.

The appellant in this case in resisting or obstructing the fiscal's officer stated that he claimed a right to possession of the premises on the basis that he was a monthly tenant of the defendant-respondent's predecessor in title. He did not dispute the respondent's title to the land either then or at the trial. It is thus clear that the appellant's position was that having been a tenant of Ibrahim from 1961 onwards, he had a right to continue in possession in that capacity even after the respondent purchased the premises in 1964. It is I think now settled law that when a landlord sells premises which have been rented by him the tenant can lawfully continue in occupation only as a tenant who has attorned to the new owner; otherwise he must surrender his tenancy and seek his remedy upon the original contract of tenancy against his former landlord. See *Silva v. Madanayake*¹ and the cases discussed therein. Thus in the present case the appellant had no greater right to possession of the premises than that of a monthly tenant; and the right he claimed could only have been established by evidence of attornment to the respondent; but quite apart from the nature of the evidence that was necessary to establish such a right to possession, the appellant's interest in the land could not be valued in any view of the matter, at more than that of a monthly tenant.

Learned counsel for the appellant has submitted that having regard to the words "as if an action for the property had been instituted by the decree-holder against the claimant" appearing in section 327, the action must be valued as an ordinary *rei vindicatio* action in respect of the land. That may be so in some cases that can arise under section 327. Under section 75 of the Courts Ordinance, Courts of Requests have jurisdiction in cases relating to land where the "value of the land or the particular share right or interest in dispute shall not exceed three hundred rupees." It is not in every case relating to a land that the test of the value of the land itself need be applied. In certain cases the appropriate test to be applied would be the interest in dispute; and for that purpose courts

¹ (1967) 69 N. L. R. 396.

have frequently looked at both the plaint and the answer filed by the defendant to justify a Court of Requests assuming jurisdiction in a matter when an examination of the plaint alone might have yielded a different answer. See *Silva v. Senanayake*¹ and *Perera v. Liyanagama*².

I also find that the words which I have quoted from section 327 have been commented upon by this court in the following terms by Windham, J. (with Howard, C.J. agreeing) in the case of *Chinnathamby v. Somasundera Aiyer*³ :—

“ But these words, though no doubt they require the investigation to be treated as if it were a ‘fresh action’ (and on that point I concur with what was said in *Fernando v. Fernando* 24 N. L. R. (1923) at p. 505) cannot in my view reasonably be construed as placing the plaintiff—the decree-holder—in the position of having to comply with all the technical requirements of the Civil Procedure Code, non-compliance with which might prove fatal to an actual fresh action brought by him. Nor is there any question of his having to show a ‘cause of action’. It is sufficient that he is the holder of a decree for the possession of the immovable property. Section 327 merely says that the claim shall be investigated as if it were an action by the decree-holder against the claimant. But it is the *claim* (i.e., the case of the person offering resistance to the decree) which is required to be investigated, and not the decree-holder’s own right. For he holds the decree, and the onus is on the claimant to support his claim as against that decree.”

It seems to me that in examining the question whether the present action is within the monetary jurisdiction of the Court of Requests the words of section 327 which direct the court to “investigate the claim” of the defendant must be given their due weight. Even in an ordinary action by a tenant who has been dispossessed by his landlord to be restored to possession, the jurisdiction would be determined by the monthly rental and damages and not by the value of the premises—See *Premaratne v. Suppiah*⁴.

I accordingly hold that the learned Commissioner was right in concluding that the action was within the jurisdiction of his court. The appeal is dismissed with costs.

Appeal dismissed.

¹ (1963) 65 N. L. R. 383.

² (1956) 58 N. L. R. 454.

³ (1947) 48 N. L. R. 515 at 517.

⁴ (1962) 64 N. L. R. 276.