

Present : De Sampayo J.

1918.

LEBBE v. BANDA *et al.*

48—C. R. Gampola, 3,256.

*Possessory action by lessee—Value of suit—Jurisdiction.*

The value of the subject-matter of a possessory action for the purpose of jurisdiction when the suit is brought by a lessee is not the value of the unexpired term of the lease, but the value of the land itself.

THE facts appear from the judgment.

*J. S. Jayawardene*, for the defendants, appellants.

*Oorloff* (with him *Bartholomeusz*), for the plaintiff, respondent.

March 20, 1918. DE SAMPAYO J.—

This case raises a question as to the value of the subject-matter of a possessory suit for the purpose of jurisdiction of the Court when the suit is brought by a lessee. Upon a deed of lease dated April 6, 1916, the plaintiff is the lessee of a land called Paragahaowitawatta, for a period of twenty years from the date of the lease, at a rental of Rs. 5 a year, and he has brought this possessory suit against the defendants on an allegation that he was forcibly ousted. If the value of the land is to be calculated according to the rental at the usual number of years' purchase, it is obviously below Rs. 300. The only evidence was that of the Korala, who valued the land with the house thereon above Rs. 300. There is no express finding as to the value, and the Court only considered the abstract question whether the jurisdiction of the Court should be determined by the value of the land itself, or by the value of the plaintiff's interest therein as lessee, which is admittedly below Rs. 300 in value.

The defendants have objected to the jurisdiction of the Court of Requests, on the ground that it is the value of the land itself that should be taken into consideration. The Commissioner in overruling the objection has relied on *Silva v. Siyaris*.<sup>1</sup> That was a case brought by a usufructuary mortgagee to be restored to possession, and the learned Judge who decided the case took care to point out that it was not a possessory suit. *John Sinno v. Julis Appu*<sup>2</sup> is still less applicable, because it was clearly an ordinary action brought

<sup>1</sup> (1909) 2 S. C. D. 64.

<sup>2</sup> (1907) 10 N. L. R. 351.

1918.  
 DE SAMPAYO  
 J.  
 Lebbe v.  
 Banda

by a lessee in ejectment on the strength of his lessor's title. On the other hand, *Wickremesinghe v. Jayasinghe*<sup>1</sup> which has been cited in support of the objection to the jurisdiction, is not a direct authority on the point. I have looked into the original record, and find that it is not a case by a lessee or by a person whose interest is anything less than ownership. The Appellate Court had to consider an opinion expressed by the District Judge that the value of the right claimed was the value of one year's possession before ouster, and it was held that the right claimed was "perpetual possession" of the land, and that the action should be valued according to the value of the land. Reference has also been made to my judgment in *Leidohamy v. Goonetilleke*,<sup>2</sup> where I remark that a possessory suit should be valued according to the value of the subject-matter of the suit, that is to say, of the property of which possession is claimed. I venture to think that that is a correct view. In such a suit neither the title to the land nor the extent of the plaintiff's interest therein is involved. The suit is based solely on the fact of possession and whether it be brought by the owner himself or by a lessee, the subject-matter is the land. Consequently, in the case of a lessee, the jurisdiction of the Court cannot be determined merely by the value of the unexpired term of the lease.

The order of the Commissioner with regard to the jurisdiction of the Court of Requests, so far as the specific ground on which it has been based is concerned, is, I think, erroneous. But, as I said, the question of fact as to the value of the land has still to be determined definitely, and the case should go back for that purpose. If upon the material already in the record, or on such further evidence as the parties may wish to call, the Commissioner finds that the land is no more than Rs. 300 in value the judgment appealed from will stand, but otherwise the plaintiff's action will be dismissed and the plaintiff referred to an action in the District Court.

The case is remitted to the Court of Requests to be dealt with as above indicated. The costs of appeal and of the action will be in the discretion of the Commissioner.

*Sent back.*

<sup>1</sup> (1914) 18 N. L. R. 84.

<sup>2</sup> (1913) 5 Bal. N. C. 14.