

1957

Present : Sansoni, J.

M. B. KEPPITIPOLA KORALE MAHATMAYA, Appellant, and  
H. JAYATU *et al.*, Respondents

S. C. 3—C. R. Kegalle, 20415

*Court of Requests—Failure of nilakarayas to perform services—Nindagama overlord's action for damages—Issue as to title to Nindagama land—Jurisdiction of the Court to decide it.*

When a Nindagama overlord institutes an action in the Court of Requests against nilakarayas for the recovery of the value of services due in respect of a field belonging to a panguwa, it is competent to the Court to decide the question of title to the field although the plaintiff's share of the field is worth more than Rs. 300.

**A**PPPEAL from a judgment of the Court of Requests, Kegalle.

*C. R. Guneratne*, with *B. S. C. Ratwatte*, for the plaintiff-appellant.

No appearance for the defendants-respondents.

*Cur. adv. vult.*

February 6, 1957. SANSONI, J.—

The plaintiff in this action claimed to be the overlord of a panguwa of the Dodantale Nindagama. He has sued the defendants on the ground that they failed to perform the services due by them, as Nilakarayas of half share of a field belonging to that panguwa, for the year ending June, 1953. He claimed Rs. 240 as damages on that account.

The plaintiff pleaded that he was the absolute owner of half share of the field in question, and alleged that the defendants were the Nilakarayas of the other half share.

The defendants in their respective answers admitted the plaintiff's title to a half share of the field. Some denied that there was a failure to perform services, while others denied that the field was subject to rajakariya.

When the case came to trial, certain issues were framed, one of them being in the following terms :—

(6) Has this Court monetary jurisdiction to entertain this action ?

The learned Commissioner decided to try this issue first as it went to the root of the case, and heard arguments on it. He subsequently delivered his order answering it in the negative. In his order, he stated that it was conceded that the value of the land in dispute was more than Rs. 300. He held that as the question of title was a substantive issue in the action, the Court had no jurisdiction. He has followed the judgment of Schneider, J., in the case of *Wickremanayake v. Abeynaike*<sup>1</sup>, but has not referred to any later decisions on this point, presumably because they were not cited to him. That judgment has been referred to but not followed in the later case of *Heenbanda v. Aluwihare*<sup>2</sup>, which came before a Divisional Bench. It was there held that even though a defence involves consideration of a question which could not be made the direct subject matter of a prayer for relief by the Court, the Court can still deal with and decide the question for the purpose of deciding whether the plaintiff is entitled to the relief he claims. It follows, therefore, that even though the defendants have not conceded the plaintiff's title, it was still open to the plaintiff to prove in this action that he was the overlord of the half share of the field, in spite of the fact that this half share was worth more than Rs. 300. The matter has also been considered by Maartensz, A.J., in *Divitotawala v. Keerala*<sup>3</sup>. Maartensz, A.J., in that case disagreed with a judgment of Schneider, J., where the latter had held that a Court of Requests has no jurisdiction to decide the question of title to a Nindagama where the overlord sues the tenants for recovery of the value of services. Presumably, in the case which came before Schneider, J., the land was over Rs. 300 in value. Maartensz, A.J., followed the judgment of the Divisional Bench in *Heenbanda v. Aluwihare* (supra) and held that the Court of Requests had jurisdiction to decide the question of title, and that the plaintiff-overlord should have proved his title in the action.

I have no doubt that if these cases had been cited before the learned Commissioner, he would have held that he had jurisdiction to decide the question of title which was in issue between the plaintiff and the defendants in this action. I do not think that it makes any difference that the plaintiff in this action asks for a declaration that the defendants hold the field subject to rajakariya to the plaintiff. What matters is, that the plaintiff has not in this action sued for a declaration of his title to a half share of the field, but merely for the value of the services which he claimed to be due to him as overlord from the defendants as tenants of that half share.

For these reasons, I set aside the finding of the learned Commissioner on issue (6) and hold that the Court of Requests has jurisdiction to entertain this action. The case must now go back to the lower Court for a trial of the remaining issues.

*Appeal allowed.*

<sup>1</sup> (1928) 30 N. L. R. 158.

<sup>2</sup> (1929) 31 N. L. R. 152.

<sup>3</sup> (1931) 32 N. L. R. 381.