

[FULL BENCH.]

Present: Bertram C.J., De Sampayo J., and Loos A.J.BANDA *v.* MENIKA *et al.*

187—C. R. Kurunegala, 23,550.

Action for recovery of land—Incidental claim for damages—Jurisdiction of the Court of Requests—Courts Ordinance, s. 77.

The test of jurisdiction in a land case is the value of the land or interest in dispute irrespective of any damages or other relief claimed on the cause of action. Any claim for damages is only incidental and subsidiary, and does not affect the question of Jurisdiction of the court.

Where the action involves a mere money claim, such as an action sounding in damages only, the continuing damages are not incidental, but are part of the cause of action, and must be reckoned in determining the monetary jurisdiction of the court.

BERTRAM C.J.—“It is no doubt a singular result that it should be possible to bring in conjunction a claim to land worth Rs. 300, and a further incidental monetary claim to the same amount, but there is nothing in the section to prevent such claims from being combined.”

THE facts appear from the judgment of De Sampayo J.

Croos-Dabrera (with him *Sansoni*), for defendants, appellants.—The Court of Requests has no jurisdiction, as the value of the land and the damages claimed amount to over Rs. 300. Under section 77 of the Courts Ordinance, No. 1 of 1889, the Court of Requests has jurisdiction to hear all actions in which the debt, damage, or demand shall not exceed Rs. 300, and also actions in which the title to, interest in, or right to the possession of any land shall be in dispute, provided the value of the land or the particular share, right, or interest in dispute shall not exceed Rs. 300. The claim for damages should, therefore, be added to the value of the land in order to determine jurisdiction. The value of a suit should be ascertained by looking at the relief claimed. If a claim for damages is allowed to be made where the land is worth Rs. 300, it will be giving to the Court of Requests a jurisdiction which was never contemplated by the Legislature. [De Sampayo J.—The claim for damages may be limited to Rs. 300.] But there is no reason why such a limitation should be imposed. Once damages are allowed to be claimed as being incidental to the main cause of action, there can be no limit to the amount. It is the principle that is in question. Under section 81 of Ordinance No. 11 of 1868, which was substantially the

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same as section 77, it was held, in the case of *Dingirihamy v. Dureya*,¹ that when the value of the land in dispute came up to the extreme monetary limit of the jurisdiction of the Court of Requests, no further claim could be made by way of damages. Wood Renton J. took a contrary view in *Cassim v. Sanhait*,² and held that the value of the land alone is the test of jurisdiction, and incidental damages need not be taken into consideration, but in the later case of *Hewavitarane v. Marikar*³ dissents from this view. In doing so he followed the judgment of the Full Court in *Thaynappa Chetty v. Pakir Bawa*.⁴ The case of *Cassim v. Sanhait*² has also been doubted in *Silva v. Salman Appu*⁵ and *Caro v. Arolis*.⁶ It was not the intention of the Legislature to enlarge the jurisdiction of the Court of Requests by giving them authority to deal with cases where the relief claimed is over Rs. 300. The claim for damages is independent of the claim to the land, and if by amalgamating them it is found that the relief claimed is in value over Rs. 300, the jurisdiction of the Court of Requests is ousted.

Counsel also cited *Mohideen v. Hapuwa*⁷ and *Usoof v. Zainudeen*.⁸

R. L. Pereira, for plaintiff, respondent.—It is clear from the language of section 77 that the Legislature intended to confer jurisdiction to Courts of Requests in all land cases where the value of the land in dispute did not exceed Rs. 300, regardless of any claim for damages. The claim for damages is merely incidental. Section 35 of the Civil Procedure Code supports this view. The Court may limit the claim for damages to Rs. 300. Counsel cited *Marikar v. Ismail Lebbe*.⁹

Cur. adv. vult.

December 19, 1919. DE SAMPAYO J.—

The plaintiff sued the defendants for declaration of title to an undivided two-thirds share of a certain land, which in the plaint was valued at Rs. 200, and he claimed Rs. 50 as damages, and further damages at Rs. 10 per mensem until he was quieted in possession of the share in question. The defendants in their answer stated that the entire land was of the value of Rs. 500, and objected to the jurisdiction of the Court of Requests. The Commissioner after inquiry found that the entire land was of the value of Rs. 400, and as the two-thirds share in dispute would then be worth only Rs. 266.66, he decided the issue as to jurisdiction in plaintiff's favour, and ultimately entered a decree declaring plaintiff entitled to the two-thirds share, and giving him judgment for Rs. 50 per annum as damages. The contention on behalf of the defendants

¹ (1887) 8 S. C. C. 121.

² (1906) 3 Bal. 20.

³ (1916) 19 N. L. R. 239.

⁴ (1866) Ram. (1863-68) 216.

⁵ (1915) 1 C. W. R. 145.

⁶ (1907) 10 N. L. R. 173.

⁷ (1915) 1 C. W. R. 117.

⁸ (1918) 21 N. L. R. 86.

⁹ (1919) 6 C. W. R. 63.

is that, even taking Rs. 266.66 as the value of the share in dispute, the amount of damages claimed and awarded should be added to that value in determining the jurisdiction of the Court. The question referred to a Bench of three Judges is whether this contention is right.

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Section 77 of the Courts Ordinance, as amended by section 4 of the Ordinance No. 12 of 1895, confers jurisdiction on the Court of Requests to hear and determine, *inter alia*, "all actions in which the title to, interest in, or right to the 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." So far as language goes, it is clear that the test of jurisdiction in a land case is the value of the land or interest in dispute irrespectively of any damages or other relief claimed on the cause of action. In a land case the subject-matter is the land, and the main purpose of the action is its recovery, and it appears to me that any claim for damages "consequential on the trespass which constitutes the cause of action," as section 35 of the Civil Procedure Code describes them, is only incidental and subsidiary, and does not affect the question of jurisdiction of the Court. There may be some difficulty arising from the fact that the amount of damages, especially if they are continuing damages, may itself exceed Rs. 300. But, inasmuch as there is no uncertainty in the actual provision of the Ordinance, the difficulty is, I think, apparent only. The solution of it probably lies in drawing a distinction between the subject-matter of the action and the relief to be granted. The plaintiff in an action no doubt makes his own estimate of the relief to which he is entitled, but it is for the Court to grant it wholly or partially according to the limitation imposed on its own powers. Section 77, for instance, gives jurisdiction in actions in which the debt, damage, or demand does not exceed Rs. 300, and as regards damages in land cases, it is possible that the reason why no special provision is made is that it is intended that the general limitation in regard to pecuniary jurisdiction should be observed. This view receives some support from the judgment in *Usoof v. Zainudeen*.¹ That was a case against an over-holding tenant, and the plaintiff claimed ejection and damages at a certain rate until the defendant was ejected from the premises, and Shaw J., who decided the case, observed that continuing damages might be claimed without the effect of ousting the jurisdiction of the Court, but that the judgment should be restricted to the monetary jurisdiction of the Court. Where the action involves a mere money claim, such as an action sounding in damages only, the further damages are not incidental but are part of the cause of action, and must be reckoned in determining the monetary jurisdiction of the Court. Such actions are distinguishable from actions for recovery of land with a prayer

¹ (1918) 21 N. L. R. 86.

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for damages as incidental to the cause of action. This distinction was emphasized in *Caro v. Arolis*,¹ in which the plaintiff sued the defendant for having wrongfully closed a plumbago pit belonging to him, and claimed by way of damages Rs. 300, with further damages at the rate of Rs. 50 per day *pendente lite*. Wood Renton J. held that the Court of Requests had no jurisdiction, and observed as follows: "The respondent (plaintiff) does not seek to recover his plumbago pit or complain of ouster from it. His action sounds in damages alone, and the additional damages claimed *pendente lite* are not in the nature of interest, nor are they referable to the principal demand; they are an independent head of claim." As regards an action for recovery of land with a claim for damages, *Cassim v. Sanhait*,² decided by Wood Renton J., is an authority for the proposition that under section 77 of the Courts Ordinance the value of the land itself should be the test of jurisdiction, and that where that test has been complied with, the jurisdiction so conferred is not ousted merely because the plaintiff claims subsidiary and incidental relief by way of damages. I am in entire accord with that decision, though the soundness of it was doubted *obiter* by Ennis J. in *Silva v. Salaman Appu*.³ What renders the position somewhat embarrassing is that Wood Renton J. himself withdrew the opinion expressed by him in *Cassim v. Sanhait* (*supra*), for in the subsequent case, *Hewavitarane v. Marikar*,⁴ the learned Judge said that after further consideration he had come to the conclusion that his judgment in *Cassim v. Sanhait* was wrong. So far as I can see the only new material he had for the purpose of reconsideration was *Thaynappa Chetty v. Packir Bawa*,⁵ to which his attention had not been called. I should say, with deference, that that case did not afford sufficient ground for altering the previously expressed opinion. That was an action in the District Court on a promissory note. The amount due at the date of action was £10, or Rs. 100, but judgment was given, with interest calculated up to the date of judgment, for a sum exceeding that amount. The District Judge disallowed the costs of the action, because he said that the plaintiff might have brought the action in the Court of Requests, whose pecuniary jurisdiction at that time was £10, or Rs. 100. The Supreme Court however, differed from the District Judge's opinion as to further interest being only subsidiary to the main claim, and laid down that it was not something incidental to the cause of action, but formed part of the cause of action itself, and further cited *Byles on Bills* to the effect that where interests is made payable on the face of the instrument itself, as in the case under consideration, it is recoverable, not as mere damages, but as an actual part of the debt. This is a good authority in regard to an action of the

¹ (1907) 10 N. L. R. 173.³ (1915) 1 C. W. R. 145.² (1906) 3 Bal. 20.⁴ (1916) 19 N. L. R. 239.⁵ (1866) Ram (1863-68) 216.

character declared in the first part of section 77 of the Courts Ordinance, namely, an action for the recovery of " a debt, damage, or demand," but has, I think, no bearing on the class of cases in which title to or interest in land is in dispute, and which are provided for later in the same section. I think that the reasoning in *Cassim v. Sanhait*¹ with regard to the latter class of cases is quite sound, and that its withdrawal is based on a decision which has no real connection with it.

I am, therefore, of opinion that the Court of Requests had jurisdiction in this case, and that the appeal must be heard on the merits of the case. The plaintiff should, I think, have the costs of the argument before the Full Bench.

BERTRAM C.J.—

I agree. With regard to the limit of the incidental monetary claim, I think that the section itself imposes one. If a man claims a declaration of title to land and damages exceeding Rs. 300, this will be an action in which the demand exceeded Rs. 300, and would, therefore, be outside the jurisdiction. This monetary claim would not be brought within the jurisdiction merely because it was made in conjunction with a claim to the title to land.

It is no doubt a singular result that it should be possible to bring in conjunction a claim to land worth Rs. 300, and a further incidental monetary claim to the same amount, but there is nothing in the section to prevent such claims from being combined, and our Legislature may well have thought it expedient that for the speedy settlement of small land cases the Court of Requests should have jurisdiction to deal, not only with claims to title in such cases, but also with such incidental claims as are recognized as naturally arising in connection with them by the Civil Procedure Code itself (section 35), subject always to the ordinary limitation of the Court's jurisdiction.

With regard to the suggestion made by Shaw J. in a previous case, and adopted by my brother De Sampayo in this case, that in cases of continuing damages the Court should impose its own limitation on the measure of the relief to be accorded, I desire to reserve my opinion. Such a result is no doubt very satisfactory, but I am not sure that it does belong not to the sphere of legislation rather than to that of interpretation.

Loos A.J.—

I have had the advantage of reading the judgments of my brother De Sampayo and of my Lord the Chief Justice, and I agree with the judgment of the former, subject to the remarks of my Lord the Chief Justice with regard to the judgment of Shaw J. in the case of *Usoof v. Zainudeen*.²

¹ (1906) 3 Bal. 20.

² (1918) 21 N. L. R. 86.

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