

1933

*Present : Garvin J. and Maartensz A.J.***SOBITA TERUNANSE AND ANOTHER v. SARNAPALA
TERUNANSE AND OTHERS.***134—D. C. (Inty.) Chilaw, 9,496.*

*Jurisdiction—Resistance to proprietary decree—By judgment-debtor—
Complaint to Court—Jurisdiction of Court passing the decree—Civil
Procedure Code, ss. 325 and 326.*

Where resistance is offered to the execution of a decree for possession by persons who are bound by the decree, the Court which passed the decree has jurisdiction to inquire into the complaint.

Where resistance is occasioned by persons claiming the property in good faith, the question of jurisdiction is determined by the ordinary tests which govern jurisdiction in a regular action.

A PPEAL from a judgment of the District Judge of Chilaw.

H. V. Perera, for appellant.

R. L. Bartholomeusz, for respondents.

January 18, 1933. GARVIN J.—

The petitioner complained to the Court under the provisions of section 325 that the officer charged with the execution of a decree for possession in his favour was resisted and obstructed by the second, third, fourth, fifth, sixth, seventh, and eighth respondents to his petition and that they did so at the instigation of the first respondent. An interlocutory order under section 377 was duly made by the Court. The respondents duly appeared and objected to the jurisdiction of the Court. Their objection was that the lands of which the officer endeavoured to deliver possession to the petitioner being lands outside the local limits assigned to this District Court it had no jurisdiction to entertain or investigate the complaint. The learned District Judge upheld the objection that he had no jurisdiction to investigate the matter of the complaint and dismissed the petition. The only question for us is this question of jurisdiction; the complaint has not yet been investigated.

Section 325 and the sections which follow it have been enacted for the purpose of providing certain summary remedies in cases in which there is resistance to the execution of decrees for the possession of property. What the law prescribes is that a complaint may be addressed to the Court, and that that Court should in the first instance investigate the matter of the complaint and if it is satisfied that resistance or obstruction was caused by the judgment-debtor or by some person at his instigation "commit the judgment-debtor or such other person to jail for a term which may extend to 30 days and direct the judgment-creditor to be put into possession of the property". If in the course of this investigation the Court is satisfied that the resistance or obstruction had been offered by some person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account it shall direct the petition of complaint to be numbered and registered as a plaint in an action between the decree-holder as plaintiff and the claimant as defendant. There is first a jurisdiction to exercise certain punitive powers so as to make a Court's decrees effective against the person or persons against whom they have been entered by compelling the judgment-debtor or any person acting at his instigation to submit to that decree upon pain of being punished by a term of imprisonment. There can be no question that that jurisdiction is vested in the Court which passed the decree. The words of section 325 which permits the judgment-creditor "to complain thereof to the Court" when read in the context in which they appear clearly indicate that the Court to which the complaint was to be made was the Court which passed the decree and in the nature of things it is but natural and proper that resistance to the execution of its decrees by persons who are bound by those decrees should be dealt with by the Court whose decree is thus flouted. But where upon its investigation the Court finds that the resistance was not occasioned by or, at the instigation of the person bound by the decree

but by a person who claims the property or at least to be in possession of the property in good faith on his own account, the section provides for a summary inquiry into the respective claims of the parties. While the Court is empowered to direct that the complaint be numbered and registered as a plaint the question has arisen whether it also has been given jurisdiction to try and determine the respective claims of the parties.

Now this Court has in two judgments which have been referred to in the course of the argument, namely the cases of *Daniel v. Rasiah* and *Pariyagam Pillai v. Cader Meera*², after a careful consideration of the provisions of these sections taken the view that the Court has no jurisdiction to try to determine the rights of the claimants where the land is situated outside the limits of the Court's jurisdiction. But these judgments have been misunderstood and misconstrued in the Court below as authority for the proposition that the Court which passed the decree under execution had no jurisdiction to exercise the powers created by sections 325 and 326 in any case in which the land is situated outside its jurisdiction. The judgments, while they are authority for the proposition that when we reach the stage of investigation into the respective claims of the judgment-creditor and the claimant to the possession of the land the question of jurisdiction must be determined by the ordinary tests by which jurisdiction is determined in any regular action, have not said and did not intend to say that the punitive powers created by sections 325 and 326 are not exercisable by the Court which passed the decree under execution, unless the land in respect of which the obstruction or resistance took place was situated within the local limits of its jurisdiction.

The judgment under appeal must therefore be set aside and the case sent back for investigation of the matter of the complaint. The appellant is entitled to the costs of this appeal and of the inquiry in the Court below.

MAARTENSZ A.J.—I agree.

Set aside.