

1900.  
October 22.

PERERA v. PERERA.

D. C., Colombo. 12,118.

*Action under s. 247 of the Civil Procedure Code— Right of plaintiff to institute action in District Court even though the amount in dispute falls within the jurisdiction of the Court of Requests—Courts Ordinance, s. 74.*

Where plaintiff brought an action under section 247 of the Civil Procedure Code in the District Court of Colombo, though the amount of the writ under which the land had been seized was under Rs. 300, and such action was dismissed,—

*Held*, that the order of dismissal was not justified by section 74 of The Courts Ordinance, and that the risk of losing his costs was the only penalty incurred by a plaintiff who came into the District Court instead of the Court of Requests.

THE defendant caused the Fiscal to seize and put up for sale an undivided half share of a certain land under writ sued out in case No. 6,047 of the Court of Requests of Colombo. The plaintiff claimed that share, but after due inquiry his claim was dismissed, whereupon he instituted the present action under section 247 of the Civil Procedure Code, alleging the value of the share in dispute to be Rs. 450.

On the day of trial the defendant's counsel contended that as the amount of the Court of Requests writ under which the land had been seized was only Rs. 232.75, the matter of the present claim was one within the jurisdiction of the Court of Requests.

The District Judge upheld the objection in these terms:—

“ It seems to me that the plaintiffs had no right to bring this action here. An action under section 247 is not intended to

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decide questions of title, as the plaintiffs at first seem to have thought when they framed their plaint. The right which an unsuccessful claimant asserts to the property in dispute is not his right to the land, but the right which he claims in the execution proceedings, *i.e.*, the right to have the land released from seizure. The amount for which the land has been seized is only Rs. 232.75, an amount which is within the jurisdiction of the Court of Requests (*vide* 2 *N.L.R.* 166 and 2 *N.L.R.* 225). It does not matter what the value of the present land may be, but plaintiff's interest in the execution proceedings can be no more than the amount for which the Fiscal has made the seizure.

" I dismiss the plaintiff's action with costs."

Plaintiff appealed.

*Morgan*, for appellant.

*Browne*, for respondent.

BONSER, C.J.—

The only question raised by this appeal is whether the District Judge has the right to dismiss an action because the Court of Requests has concurrent jurisdiction.

In this case the District Judge, being of opinion that the subject-matter of this action was within the jurisdiction of the Court of Requests, refused to hear the case and dismissed it. The result will be very serious for the plaintiff, because the action was one under section 247 of the Civil Procedure Code, which must be brought within fourteen days of the order made on claim. The result of the order of the District Judge would be that he would be for ever debarred from prosecuting his claim.

Now, there is nothing in any of the Ordinances, so far as we have been referred to them, which affords any ground for the order now appealed from. Section 74 of The Courts Ordinance deals with this case, and provides that, where an action is brought in a District Court which might have been brought in a Court of Requests, the plaintiff shall lose all right to costs even if he succeeds in the action.

It seems to me that the risk of losing his costs is the only penalty incurred by a plaintiff who brings an action in the District Court instead of bringing it in the Court of Requests.

The case must go back to the District Judge to be dealt with according to law.

BROWNE, A.J., agreed.