

MELL *v.* FERNANDO *et al.*

1896.

September 11.

D. C., Colombo, 4,732.

*Jurisdiction—Action under s. 247 of the Civil Procedure Code—Test as to Court in which it is to be instituted.*

Plaintiff obtained a mortgaged decree against second defendant for a debt of Rs. 39·95, and on the writ issued in the case seized the mortgaged property. First defendant claimed it, and his claim was upheld by the District Court. Plaintiff then instituted in the District Court an action under section 247 of the Civil Procedure Code against both the defendants to have the property seized declared executable under his writ—

*Held*, that as the value of the right that the plaintiff was seeking to establish was Rs. 39·95, his action under section 247 should have been brought in the Court of Requests, although the value of the land affected was in excess of the jurisdiction of such Court.

THE facts of the case appear in the judgment.

*Peiris*, for appellant.

*Bawa*, for respondent.

11th September, 1896. BONSER, C.J.—

This is an action under the 247th section of the Civil Procedure Code, to have it declared that certain land is executable under a mortgage decree which has been made against the second defendant.

The land in question is claimed by the first defendant. The amount of the mortgage debt is Rs. 39·95. The plaint gives a perfectly unintelligible description of the land. It appears to have been a combined effort, and two Acting District Judges made attempts to understand it, but absolutely failed. The answer is equally unintelligible. A surveyor was employed, and he was unable to unravel the difficulty or explain the plaint.

The case came to trial, and in the result the Acting District Judge came to the conclusion that the plaintiff had not proved the identity of the land claimed with the land described in the mortgage. The counsel for the appellant has pointed out that the Acting District Judge fell into error in one or two points as to certain of the deeds which were put in. Even so the case is not made clearer; and after hearing all that Mr. Peiris had to say, I am of opinion that the plaintiff has quite failed to prove what is necessary for him, to prove to maintain this action. In the course of the argument I asked why this case for Rs. 39·95 was brought in the District Court, and was told that actions of this

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BONSER, C.J. kind are treated as being actions for the value of the land affected, and that in this case the value of the land was in excess of the jurisdiction of the Court of Requests. In my opinion the practice is wrong, and should cease. The right which the plaintiff was seeking to establish was his right to have this land rendered liable to pay his debt of Rs. 39·95. Now, what is the value of that right? The value to the plaintiff of his right is measured by the amount he can recover—in this case Rs. 39·95; and that being so the action ought to have been brought in the Court of Requests quite irrespective of the value of the land in respect of which he wished to set up his right. Therefore the costs both in this Court and in the District Court must be taxed as though the action had been instituted in the Court of Requests.

This appeal will be dismissed.

WITHERS, J., agreed.

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