

MUDIYANSE v. RAHMAN.

C. R., Anurádhapura, 1,202.

1896.

September 28
and October 8.

Landlord and tenant—Jurisdiction of Court of Requests—Action for rent and ejection of tenant—Tenant having title to tenement at termination of tenancy superior to that of landlord.

Where a contract of tenancy is legally determined, the landlord may sue the tenant in the Court of Requests for rent overdue and damages for non-surrender of the tenement and for ejection of the tenant therefrom, although the value of the tenement is beyond the monetary limit of the jurisdiction of such Court, provided the rent and damages claimed fall within such jurisdiction.

Where at the termination of a holding the tenant has gained a title to the tenement superior to that of the landlord, he must still fulfil his obligation under his contract with the landlord and restore to him the tenement, and then if the landlord in his turn refuse to give it up, the tenant can proceed to evict him by appropriate legal proceedings.

THE facts of the case appear in the judgment.

Pereira and Van Langenberg, for defendant, appellant.

8th October, 1896. WITHERS, J.—

This plaint contains two causes of action, one being the failure to pay rent for the use of a boutique due and payable under a

1896.
September 28
and October 8.

WITHERS, J.

contract of letting and hiring, and the other a failure to surrender to the lessor the premises so hired after due notice to quit.

The letting and hiring were under an ordinary contract from month to month, and the tenant had notice to quit on the 30th of April last.

The rent agreed to be paid according to the plaint was Rs. 5 a month. It was alleged that defendant owed the plaintiff Rs. 25, being rent for five consecutive months, including the said month of April.

This contract was specially denied, and therefore the question of tenancy under a contract with the plaintiff became the principal issue to be tried.

Damages for withholding possession were claimed at the rate of Rs. 10 a month till the boutique should be surrendered, and the plaintiff amongst other things prayed for an order of ejection against the defendant. The Commissioner found the contract and notice proved as declared, and gave judgement for the plaintiff as prayed for. As regards the facts at issue I see no reason to think that the Commissioner has arrived at a wrong decision, and if there was no other question involved I should at once affirm his decision.

But an important point was raised in the answer and pressed in appeal, and it is this :—

It was pleaded in the answer that the Court of Requests had no jurisdiction to try the case, because the value of the boutique which the plaintiff prayed the defendant might be ejected from was Rs. 400. The value of the boutique seems to have been acquiesced in so far as I can find. The Commissioner ruled against the defendant on this plea, remarking that it would be very hard on a landlord for a tenant to raise an objection of the kind in an action like this.

The law in certain cases may seem to be hard, but if the plea raised in the defence is a valid one, it must be sustained. The question therefore to be determined is whether the plea to the jurisdiction is a valid one. If it is not, the judgment appealed from must stand.

Section 39 of the Civil Procedure Code enacts that every action of regular procedure shall be instituted by presenting a duly stamped written plaint to the Court, and if the plaintiff seeks the recovery of money the plaint must state the precise amount, so far as the case admits. In an action for a specific chattel, or to establish, recover, or enforce any right, status, or privilege, or for mesne profits, or for the amount which will be found due to the plaintiff on taking unsettled accounts between

1896.

September 28
and October 8.

WITHERS, J.

him and the defendant, the plaint need only state approximately the value of the chattel, right, status, or privilege, or the amount sued for, and by section 46, if the relief sought is undervalued and the valuation is not corrected within the time fixed by the Court, the plaint must be rejected. This is what may be called the jurisdictional value.

The next step is to ascertain the jurisdiction of a Court of Requests. That is declared by the 77th section of Ordinance No. 1 of 1889, which governs this case and enacts as follows :—

Every court of requests shall be a court of record and shall have original jurisdiction, and shall have cognizance of and full power to hear and determine all actions in which the debt, damage, or demand shall not exceed one hundred rupees, and in which the party or parties defendant shall be resident within the jurisdiction of such court, or in which the cause of action shall have arisen within such jurisdiction ; and also all actions for the partition or sale of land and 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 such land or of the particular share, right, or interest in dispute to be partitioned or sold shall not exceed three hundred rupees, and the same or any part thereof is situated within the jurisdiction of such court, or the party or parties defendant shall be resident within the jurisdiction of such court.

In this case no doubt the right to possession of the boutique may be said to be in dispute, and as the defendant withholds it when he is bound to restore it, the plaintiff asks for consequential relief in the nature of an order for ejectionment. But the right to possession in this case is a right flowing from the contract of lease which has been duly determined. In addition to the amount of the rent unpaid, plaintiff asks for compensation for the deprivation of the premises. By being kept out of possession he says in effect that he loses the benefit of enjoyment, which he calculates to bring him in Rs. 10 a month. His plaint was instituted on the 5th day of May, *i.e.*, five days after the date on which the defendant should have restored the premises. He should, I think, have restricted his compensation to the loss sustained during the interval between non-delivery and the institution of his action. If this is a correct mode of valuing the infringement of his right to possession of the land, this action comes well within the jurisdiction of the Court below. The order for ejectionment is only asked in aid of plaintiff's right to have possession, and which right, as I said before, flows from the relation of the contracting parties as lessor and tenant.

If it was a conflict between the parties of adverse rights of possession to the boutique, the measure of valuation of the plaintiff's right might be different. But the defendant in this case cannot be heard to say that he has an adverse right of

1896.
September 28
and October 8.

WITHERS, J.

possession, for a tenant in possession under a contract of letting and hiring cannot deny his landlord's title *pro hac vice*. He does not say that the plaintiff's interest in the premises wholly determined before the expiry of the lease.

Supposing the defendant has gained a superior title he must first fulfil his obligation under the contract of restoring the property to his landlord, and then, if the landlord in his turn refuse to give up the property, the tenant can proceed to evict him by appropriate legal proceedings. For these reasons I come to the conclusion that the Court of Requests had jurisdiction to try and determine this action.

The judgment is accordingly affirmed with this modification, that damages will be assessed at Rs. 250 for deprivation of enjoyment of the boutique up to the date of action.
