

1959

Present : T. S. Fernando, J.

H. L. G. EDWIN, Appellant, and D. D. ABEYGUNARATNE,
Respondent

S. C. 81—C. R. Matara, 5076

Jurisdiction—Action to eject a person from a house—Valuation of subject matter of action.

Where an action is instituted to eject a person from a house on the ground that the plaintiff is the owner thereof and that the defendant is in unlawful possession of it, the proper test for deciding the value of the subject matter of the action is the value of the house as a standing house and not the value of the cost of demolition of the house plus the value of the building materials thereof after demolition.

APPEAL from a judgment of the Court of Requests, Matara.

A. P. Wijemanne, for the 2nd defendant-appellant.

Sir Lalita Rajapakse, Q.C., with *Mangala Moonesinghe*, for the plaintiff-respondent.

Cur. adv. vult.

May 12, 1959. T. S. FERNANDO, J.—

The only question raised by counsel for the 2nd defendant-appellant before me was whether the learned Commissioner of Requests has reached a correct decision on the question of the jurisdiction of the Court of Requests to hear this case. At the commencement of the trial, the appellant's counsel desired that the issue framed in respect of the jurisdiction of the Court be heard first, but the learned Commissioner as he was entitled to do directed that evidence on all the issues be led so that he may adjudicate on all the matters arising in the case. After a very lengthy trial the question of jurisdiction was decided in favour of the plaintiff. This decision is canvassed and it has been contended that the learned Commissioner has misdirected himself on this vital issue by adopting a wrong test in deciding the value of the subject matter of the action.

The plaintiff instituted this action for ejection of the appellant and another from a certain house standing on a defined allotment of land within the urban limits of Matara on the ground that he was the owner thereof and that the defendants are in wrongful and unlawful possession of the said house. The appellant filed answer asserting that he was the owner of this house by right of construction and that he has acquired title by prescription thereto and to all the soil covered by the house adverse to and independent of the plaintiff and all others. It is in this state of the pleadings that the issues were framed and an additional issue framed in the course of the trial reads as follows :—

“ Is the subject-matter of this action the 9 cubit thatched house as described in paragraph 2 of the plaint inclusive of the soil on which the said house stands ”.

The learned Commissioner has answered this issue in the negative, but in my opinion the pleadings leave no room for dispute that the plaintiff sought to eject the defendants from the house of which he alleged they were in wrongful and unlawful possession. If a person is in unlawful possession of a house it seems to follow that he is in unlawful possession also of the soil on which that house stands. It is relevant to note that the 2nd defendant-appellant specifically claimed the soil and it is implied in the plaint that the appellant is not entitled to the soil.

The test applied by the learned Commissioner was not the value of the house as a standing house but the cost of demolition of the house and the value of the building materials thereof after demolition. On the basis he adopted the Commissioner valued the subject-matter as being under Rs. 300/- and therefore within the jurisdiction of his Court. This test is in my opinion the wrong test to be adopted. The house should have been valued as a standing house. There was an abundance of evidence on both sides as to the value of the house. It is sufficient to note that the annual value of the house for rating purposes was Rs. 104/- about the time of the institution of the present action. Having regard to that circumstance alone it cannot be seriously doubted that the house in question valued as a standing house at the time of the filing of the plaint was well in excess of Rs. 300/-. The evidence I have referred to above is sufficient to enable me to dispose of the question of jurisdiction, but I must add that, if the value of the soil covered by the house is taken into account in determining the value of the subject-matter of the action, as in my judgment it should be, then the subject-matter comes to be valued at well over a thousand rupees.

For reasons indicated above the judgment of the Court below must be set aside, and the plaintiff's action dismissed with costs in both Courts.

Appeal allowed.