

1946

Present : Wijeyewardene J.

CHANDRANAYAKA HAMINE *et al.*, Appellants, and
GUNASEKERE *et al.*, Respondents.

122—C. R. Gampaha, 2,946.

Jurisdiction—Action for declaration of boundaries—Jurisdiction of Court of Requests.

Where, in an action instituted in the Court of Requests for declaration of boundaries, the plaintiff established his claim to have the boundary of his land defined—

Held, that the test of jurisdiction was not the value of the land the boundary of which was sought to be defined.

A PPEAL from a judgment of the Commissioner of Requests, Gampaha.

L. A. Rajapakse, K.C. (with him *H. W. Jayewardene*), for the plaintiffs, appellants.

No appearance for the defendants, respondents.

Cur. adv. vult.

September 19, 1946. WIJEYWARDENE J.—

This is an action for declaration of boundaries.

Two persons, Don Brumpy and Peter Gunasekere, were the owners of undivided $\frac{2}{3}$ and $\frac{1}{3}$ share respectively of a land called Nugelandewatta of the extent of nearly 23 $\frac{1}{2}$ acres. By a deed of partition executed in 1904, these persons became entitled to a defined northern lot and a defined southern lot in lieu of the undivided shares. The plaintiffs are the heirs of Don Brumpy and the defendants, the heirs of Peter Gunasekere.

The plaintiffs filed this action for the definition of the boundary between the two divided portions as shown in plan 676 of 1936.

The first defendant filed in an answer pleading that he had been in adverse possession for fifteen years of a portion of nearly 5 acres forming part of the northern lot originally allotted to Don Brumpy by the deed

of partition and that he had acquired a prescriptive title to it. He pleaded further that the Court had no jurisdiction as he valued the cause of action over Rs. 300. The other defendants did not file any answer.

Several issues were framed at the trial one of which referred to the jurisdiction of the Court.

The plaintiff gave evidence stating, *inter alia*, that he leased by P 3 of 1937 for five years to the first defendant the entire northern lot allotted to Brumpy. As the first defendant failed to quit the premises on the expiry of the lease, he filed a case in the Court of Requests of Gampaha and obtained the decree P 1 of 1942 against the first defendant. That decree was affirmed in appeal. That decree declares the plaintiff entitled to recover the possession of the entire northern lot including the portion claimed by the first defendant in this case by adverse possession. The plaintiff explained further that it was during the subsistence of that lease that the boundary in question became obliterated as the first defendant was in possession of the northern lot as lessee and of the southern lot as an heir of Peter Gunasekere. The plaintiff admitted that the value of an acre of the land was about Rs. 1,000 but valued his action Rs. 100.

The defendant led no evidence but contended "that the test of jurisdiction on an action of this sort would be the value of the land, the boundary of which is sought to be defined". The Commissioner of Requests held against the plaintiff on this question of jurisdiction and dismissed his action with costs.

The Commissioner of Requests is clearly wrong.

I set aside the decree. On the evidence led in the case the plaintiff has established his claim to have the boundary defined. I remit the proceedings to the lower Court for the Commissioner of Requests to take the necessary steps to have the boundary defined.

The appellant will be entitled to costs here and costs in the lower Court up to date. All other costs will be in the discretion of the Commissioner of Requests.

Decree set aside.
