

1955

Présent : Rose, C.J.

NALLATHAMBY, *et al.*, Appellants, and SOMASUNDERAM-KURUKKAL, Respondent

S. C. 126—C. R. Vavuniya, 10,558

Jurisdiction—Action for redemption of otty mortgage—Court where such action may be instituted—Courts Ordinance (Cap. 6), s. 75—Civil Procedure Code, s. 9 (b).

An action for the redemption of an otty mortgage and for the release of the mortgaged land from the mortgage is a dispute affecting an interest in land and can, therefore, be brought in the court within the local limits of whose jurisdiction the land in question is situate.

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

C. Suntheralingam, with *T. Arulanathan*, for the plaintiffs appellants

S. Sharvananda, for the defendant respondent.

Cur. adv. vult.

February 15, 1955. ROSE, C.J.—

This matter raises a question of jurisdiction. The plaintiffs-appellants brought this action in the Court of Requests of Vavuniya for the redemption of an otty mortgage and for the release of the mortgaged lands from the mortgage. It is common ground that the action could only properly have been brought in that court on the ground that the lands in respect of which the action is brought lie within the local limits of the jurisdiction of the Vavuniya court.

There is no doubt that the lands in respect of which the mortgage was entered into do lie within the jurisdiction of the court but the learned Commissioner held that the action was not brought "in respect of" the lands within the meaning of section 9(b) of the Civil Procedure Code and that no "interest in or right to the possession" of the lands in question was in dispute within the meaning of Section 75 of the Courts Ordinance.

The learned Commissioner appears to have relied in part upon two cases reported in 2 *Wecrakoon*. In the first case, at page 68, the action was brought to compel the lessor to accept rent and the learned judge very naturally held that the action was not brought in respect of any land at all.

The second case, at page 64, although it was a possessory action, raised only the question as to the method by which the action was to be valued. In that case too, therefore, no interest in the land was in dispute.

It seems to me therefore that neither of these cases are of assistance in deciding the present point.

Learned counsel for the appellants did not press in appeal the point that this is a hypothecary action within the meaning of Section 75 of the Courts Ordinance but he contended that it is an action in which both an interest in the land is in dispute as also the right to the possession of the mortgaged lands. The plaintiffs-appellants pray not only that the defendant-respondent should accept the money brought into court to settle the debt but also that the mortgaged lands should be released from the mortgage. It seems to me that it would be wrong to hold that a mortgage—usufructuary or otherwise—cannot be said to be an interest in land. The matter may not be free from difficulty but it seems to me that a dispute as to whether this particular usufructuary mortgage should be removed and the lands released from the encumbrance is a dispute affecting an interest in the lands in question. Moreover, so long as a mortgage is in existence the defendant has a right to possess the lands and in that sense the dispute may also be said to be one relating to the possession of the mortgaged lands.

For these reasons I am of opinion that the action was properly instituted in the Court of Requests of Vavuniya. The appeal is therefore allowed and the matter remitted to the learned Commissioner to determine according to law. The appellants will have the costs of this appeal and of the proceedings hereto completed in the lower court in any event.

Appeal allowed.
