1907.
*July* 15.

*Present:* Mr. Justice Middleton.

CATHERINA *v.* SILVA.

*C. R., Galle,* 8,443.

*Court of Requests—Jurisdiction—Subject-matter of suit—Title to property over Rs. 300 in value involved—Claim in reconvention—Courts Ordinance, No.* 1 *of* 1889, S. 81.

Where the plaintiff brought an action in the Court of Requests to vindicate title to a portion of land of the value of Rs. 36, and the defendant also set up title to the same portion, alleging that it formed part of a larger land exceeding Rs. 300 in value, and objected to the jurisdiction of the Court of Requests to try the action on the ground that the value of the property involved in the action exceeded Rs. 300 in value,—

*Held,* that the jurisdiction of the Court must be determined by the value of plaintiff's claim, and such claim being under Rs. 300 in value, the Court of Requests had jurisdiction to entertain the same.

*Held,* also, that the proper course was for the defendant to have claimed in reconvention title to the larger land, and moved for a transfer of the case from the Court of Requests to the District Court under section 81 of the Courts Ordinance.

ACTION *rei vindicatio.* The facts and arguments sufficiently appear in the judgment.

*A. St. V. Jayewardene,* for the defendant, appellant.

*H. A. Jayewardene,* for the plaintiff, respondent.

*Cur. adv. vult.*

15th July, 1907. MIDDLETON J.—

This was an action to vindicate title to 2 kurunies of land forming part of one acre, the alleged property of the plaintiff, which the defendant had wrongfully taken possession of. The defendant pleaded that the action being in effect to vindicate title to a separate entity of 1 acre of a value exceeding Rs. 300, the action was not within the jurisdiction of the Court of Requests (section 4 of Ordinance No. 12 of 1895).

The issues settled by the Commissioner in default of agreement by the parties were as follows:—

(1) Is the 1 acre extent of land in question a separate land, or is it a portion of Delgahakanattewatta, said to be its western boundary?

(2) Do the 2 kurunies in question form part of the 1 acre extent?
(3) Has plaintiff acquired prescriptive title to this 1 acre extent?
(4) What is the cause of action in this case, and is the value of what is in dispute such as to render the action not triable in this Court?
(5) Is this action not maintainable because the co-owners of Delgahakanattewatta are not joined?

The third issue therefore made the title of the whole 1 acre a point to be decided on the question of prescription. The land had been surveyed and marked A 2 and A 3; and the portion A 3, which is that in dispute, being only of a value of Rs. 36, the Commissioner of Requests proceeded to trial, and held that A 2 and A 3 were a separate land, and that defendant had encroached on and taken possession of the 2 kurunies forming A 3.

The defendant appealed, and contended that the action being in effect as to the title to the one acre of a value exceeding Rs. 300 was beyond the jurisdiction of the Court of Requests, and that the judgment, although it might be said only to decide the title to the 2 kurunies, would have the effect of *res judicata* as against the defendant in regard to the whole acre. Counsel were unable to produce any authorities, and I adjourned the case for research.

Counsel for the appellant subsequently cited *Oenamer v. Amenunlagey*,[1] where in 1856 a judgment in the Court of Requests was set aside on the ground that in a claim to recover certain paddy the parties had put in the title of the field in issue, the field being of a value beyond the jurisdiction of the Court of Requests. The learned counsel then referred to 187, D. C., Galle,[2] where it was held, following the judgment of this Court in D. C., Galle, 4,312, that a decree in a land acquisition case rejecting the claim of an alleged shareholder in the land to compensation would operate as *res judicata* between the same parties when a subsequent claim on the ground of prescription was raised by the claimant. The judgment, however, does not refer fully to the facts in that case, and it is conceivable that a title by prescription might arise after the necessary period had elapsed from the rejection of a claim on another ground.

The case of C. R., Kandy, 3,044,[3] was also quoted to show that the grounds of a decision might involve the definite exclusion of a party to any part of the land, and thus a decision as regards a claim for a share might be *res judicata* as to the whole land. The cases reported in 8 *Weekly Reporter* 175 and 1 *Browne* 21 seem to me to have but little bearing on the question. I think, as counsel for the respondent put it, *primâ facie* the criterion of jurisdiction is the nature and value of the plaintiff's claim.

[1] 1 *Lor.* 23.
[2] *S. C. Min.* April 10, 1905.
[3] *S. C. Min.*, March 12, 1906.

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MIDDLETON J.

In the present case the plaintiff's claim involved the right to 2 kurunies of land on his boundary. The defendant, however, in the third paragraph of his answer traversed the plaintiff's title to the whole acre, and this was the third issue. This issue the Commissioner of Requests tried, and found apparently by the judgment in the plaintiff's favour, so that the judgment might be *res judicata* of the defendant's claim to the whole acre.

In C. R., Colombo, 32,835,[1] my brother Wendt held that if the share of a land in respect of which the plaintiff claimed was not shown to be worth more than Rs. 300, the plaintiff might maintain his action in the Court of Requests. In that case the plaintiff claimed one-third, and conceded two-thirds to the defendant. Here each party claims the whole land, which in value is beyond the jurisdiction of the Court of Requests, but the plaintiff only sought for a decision as to a part, the value of which was within the Court's jurisdiction. Counsel for the appellant referred to the English Procedure in the Annual Practice (*Vol. I., pp.* 246 and 415, 1893 *ed.*), when a Court binds itself without jurisdiction as to striking out a cause.

I think, however, as suggested by counsel for the respondent, this case might have been dealt with under section 81 of the Courts Ordinance. Under that section no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any claim in reconvention of the defendant involving matter beyond the jurisdiction of the Court. There is no such claim here, but the Court of Requests has held and decided an issue beyond its jurisdiction. The Court could not have tried the issue of the ownership of the smaller piece in dispute without trying that of the larger; and the defendant might have claimed in reconvention and obtained an order under section 81, and did not do so. The decree in this case does not declare the plaintiff's right to anything beyond the two kurunies of land, which is clearly within the Court's jurisdiction, and so has not given relief beyond its jurisdiction. Considering that the defendant did not avail himself of his opportunity under section 81, I do not propose to interfere with the judgment and express no opinion as to the defendant's rights to bring a fresh action for the whole acre. The case of *Mussumat Edun v. Mussumat Bechun*[2] seems to enunciate a principle as to estoppels established and followed by the Privy Council, which might be applicable to the case of the Courts in Ceylon. I only state that in my opinion the Court of Requests had not made a decree beyond its jurisdiction, which is practically the ground of the appeal. The appeal must be dismissed with costs.

*Appeal dismissed.*

[1] *S. C. Min.*, December 21, 1905.

[2] (1876) 8 *Weekly Reporter* 175.