

## IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Civil Appeal No. 8 of 1956

Between:

DHANJI BHIMJI

Appellant

AND

GOKAR DAYA

Respondent

Magistrates' Courts Ordinance s. 17 (4)—jurisdiction of Magistrates' Courts in action for possession where title to land in dispute.

The respondent had leased the suit premises to the appellant for five years. The lease gave the appellant an option to renew for a further five years. The lease expired but the appellant continued in occupation. The respondent brought an action for possession in the Magistrate's Court, contending that the appellant was holding over unlawfully. The appellant maintained that he had exercised the option to renew. It was further contended by the appellant that the Magistrate's Court had no jurisdiction to determine the action since the title to land was disputed, and all interested parties had not consented to adjudication by the Magistrate's Court. (Magistrates' Courts Ordinance, section 17 (4)). The Magistrate's Court rejected the appellant's argument and awarded judgment for possession to the respondent.

*Held (on appeal).*—The title to land was disputed in this suit, and the Magistrate's Court had therefore no jurisdiction to adjudicate.

Appeal allowed: judgment of the lower court set aside.

Cases referred to:

*Chew v. Holroyd* (1852) 8 Exch. 249.

*Express Co. Ltd. v. Kettle* (1904) 6 G.L.R. 160.

*Spens Black v. Kelburn & Kavori Timber Co.* (1912) 31 N.Z.L.R. 982.

*Allan v. Kenny & Crawford* (1903) 22 N.Z.L.R. 67.

*Tomkins & Anor. v. Jones* (1889) 22 Q.B.D. 599.

*A. D. Patel* for the appellant.

*R. Munro* for the respondent.

HAMMETT, J. [14th November, 1956]—

Judgment:

This is an appeal by the defendant-appellant against the decision of the Magistrate's Court sitting at Nadi dated 1st August, 1956, whereby judgment was given in favour of the plaintiff-respondent on a claim for possession of business premises situated in Nadi town.

There are three grounds of appeal, the first of which reads:

"The learned Magistrate had no jurisdiction to hear and determine this action."

The jurisdiction of the Magistrate's Court in possession action is contained in the Magistrates Courts Ordinance (Cap. 5), section 17 of which the relevant parts are as follows:—

“ 17 (1) (b). A magistrate empowered to hold a court of the first class shall, in addition to any jurisdiction which he may have under any other Ordinance for the time being in force, have and exercise jurisdiction . . . in all suits between landlord and tenant for possession of any lands or houses claimed under agreement or refused to be delivered up, where the annual value or rent does not exceed two hundred pounds.”

and

“ 17 (4). If, in any suit or matter before a magistrate's court, the title to any land is disputed, or the question of the ownership thereto arises, the court may adjudicate thereon if all parties interested consent; but, if they do not all consent, the presiding magistrate shall apply to the Supreme Court to transfer such cause or matter to itself.”

There is no definition of the word “land” in the Magistrates' Courts Ordinance, and reference must therefore, be made to the Interpretation Ordinance, section 2 (30) where land is defined as follows:—

“ ‘land’ includes messuages, tenements and hereditaments, corporeal or incorporeal, of any tenure and description, and whatsoever may be the estates therein.”

The facts in this case were that the plaintiff-respondent leased the business premises in question to the defendant-appellant on 1st March, 1951, for 5 years at a rent of £7 per month. The lease gave the defendant-appellant an option to renew the tenancy for a further period of 5 years.

The lease expired and the defendant-appellant did not vacate the premises. After correspondence between the parties' legal advisers, a summons was issued in the Magistrate's Court by the plaintiff-respondent claiming recovery of possession of the premises.

The defendant-appellant denied the right of the plaintiff-respondent to possession and maintained that by virtue of the exercise of his option he was in occupation and entitled to retain possession for a period of 5 years from 1st March, 1956 as the plaintiff-respondent's tenant on the same terms as the original lease. He further pleaded that since the issue was one of title to land the Magistrate's Court had no jurisdiction to determine the case.

The plaintiff-respondent denied that the defendant-appellant had exercised the option given him in the lease or that he had any right to remain in possession of the premises.

The question to be determined on the first ground of appeal is whether in this case “the title to any land” was disputed—bearing in mind the very wide meaning given to the word “land” in section 2 (30) of the Interpretation Ordinance.

I have given careful consideration to the authorities cited before me and more particularly those contained in the County Court Practice 1954 at page 65 and those set out in *Wily's Magistrates Courts Practice* 3rd Edition at page 63 et seq. The authorities quoted in *Wily* are mostly to be found in the New Zealand Law Reports which are not available to me. From a perusal of the notes on these authorities in the text book, however, it would appear to be true that no general rule can be laid down as to when the title to any corporeal or incorporeal hereditament comes into question. Where it was disputed whether a demise was of the whole of the house or only a part it

was held to be a question of title, *Chew v. Holroyd* (1852) 8 Exch. 249; similarly where the dispute was whether there had been any letting at all, *Express Co. Ltd. v. Kettle* (1904) 6 G.L.R. 160. Again where the question arose as to whether the defendant had acquired a vested leasehold estate or merely a conditional option, which depended on the construction of a lease, it was held that a question of title arose; *Spens Black v. Kelburn & Kavori Timber Co.* (1912) 31 N.Z.L.R. 982. But where an old lease had expired and there was no evidence that a new lease had been arranged it was held that no question of title arose, *Allan v. Kenny and Crowford* (1903) 22 N.Z.L.R. 67.

In the case of *Tomkins and another v. Jones* (1889) 22 Q.B.D. 599, it was held that where the issue between the parties was whether the plaintiffs title to certain leasehold properties had been made out, a question of title to land arose.

In the present case the plaintiff-respondent contended that the defendant-appellant was not a tenant of the premises and had no right or title to remain there. He was merely a former tenant holding over unlawfully. The defendant-appellant contended, however, that he had exercised the option granted him in the original lease and that he was in occupation by virtue of, and was entitled to, a 5-year lease of the premises.

The issue which had to be determined in this case was whether or not the defendant-appellant had exercised his option and was in possession of the premises under the terms of a further 5 years lease on the same conditions as the original lease, i.e. whether the defendant-appellant had any title to a 5-year lease of the said premises or not.

In these circumstances I am of the opinion that in this suit the title to land was disputed and since all parties interested had not consented, the Magistrate's Court had no jurisdiction to adjudicate thereon.

For these reasons I must allow this appeal.

The proceedings at the trial in the court below were a nullity and its judgment must therefore be set aside.