

AREBONOTO KANIMEA

v.

VEISARI GILBERTESE CO-OPERATIVE
LAND HOLDING SOCIETY LIMITED

[SUPREME COURT, 1978 (Tuivaga J.) 5th May]

Appellate Jurisdiction

Land law—trespass—jurisdiction of Resident Magistrate—Magistrate's Courts Ordinance (Cap. 10) Section 16.

The respondent obtained an order for possession of land occupied by the appellant. On appeal from the Magistrates' Court the appellant contended that the Resident Magistrate had no jurisdiction to entertain the suit, the parties to the action not having submitted to the magistrates' jurisdiction in writing.

Held: the requirement for consent contained in subparagraph (bb) of Section 16 of the Ordinance was of no relevance when the Resident Magistrate derived his jurisdiction from Section 16 subsection (b) (ii).

Case referred to:

Noakes v. Doncaster Amalgamated Collieries Ltd. [1940] A. C. 1014.

Appeal from the Magistrate's Court against order for possession of land.

J. G. Singh for the appellant.

K. C. Ramrakha for the respondent.

TUIVAGA J.:

In the pleadings filed in the Suva Magistrate's Court in this case, the respondent is alleging that the appellant is a trespasser on Crown Lease No. 74465 of which the respondent is the lessor and seeks the removal therefrom of the appellant. The appellant on the other hand claims that he has been and still is a tenant on the land by virtue of the fact that he has since 1968 been paying half-yearly rental to the respondent in the sum of \$2.50 and further claims that he is a protected tenant under the Crown Lands Act.

However the only question involved in this appeal is that of the true construction of paragraphs (a) and (b) of subsection (1) of section 16 of the Magistrates' Courts Act as amended by the Magistrates' Courts (Amendment) Acts of 1973 and 1974.

The amended provisions are as follows:

"16. (1) 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 civil causes—

(a) (i) in all personal suits arising out of any accident in which any vehicle is involved where the amount, value or damages claimed,

- A whether as a balance claimed or otherwise, is not more than three thousand dollars;
- (ii) in all other personal suits, whether arising from contract, or from tort, or from both, where the value of property or the debt, amount or damage claimed whether as a balance claimed or otherwise is not more than two thousand dollars;
- B (b) (i) in all suits between landlords and tenants for possession of any land (including any building or part thereof) claimed under any agreement or refused to be delivered up, where the annual value or annual rent does not or did not exceed two thousand dollars;
- (ii) in all suits involving trespass to land or for the recovery of land (including any building or part thereof) irrespective of its value, where no relationship of landlord and tenant has at any time existed between any of the parties to the suit in respect of the land or any part of the land (including any building or part thereof);
- C (bb) in any type of suit covered by paragraphs (a) and (b) of this subsection, whatever the value, amount, debt, or damages sought to be recovered is, or whatever the annual value or annual rent is, if all the parties or their respective barristers and solicitors consent thereto in writing:
- D

Provided that where any such suit has already been commenced in the Supreme Court it may only be transferred to a first class magistrate's court with the prior consent of the Supreme Court."

- E The appeal raises the question of jurisdiction of the Magistrates' Court to entertain a suit involving trespass to land or for the recovery of land pursuant to paragraph (b)(ii) of subsection (1) of section 16 of the Act. The contention of the appellant is that under paragraph (bb) consent in writing of the parties concerned is necessary before such a suit may be tried in the Magistrate's Court. Such a consent was not given by the appellant and therefore the Suva Magistrate's Court had no jurisdiction to try this case. The appellant contends that the learned Magistrate's decision in holding that consent of the parties in a suit involving trespass to land or for the recovery of land is not necessary notwithstanding paragraph (bb) is erroneous and cannot be supported. The appellant's argument is that paragraph (bb) is unrestricted in scope and therefore includes as well a suit brought under paragraph (b)(ii). Indeed the appellant is asking for a literal interpretation of paragraph (bb).
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- G The respondent's submission is that paragraph (bb) is of limited application and does not affect in any way the jurisdiction of the Magistrates' Courts over suits involving trespass to land or for the recovery of land under paragraph (b)(ii). This is claimed to be the only sensible construction because otherwise there would hardly be any point for the Act to limit the jurisdiction of the Magistrates' Courts in suits covered by paragraphs (a)(i), (a)(ii) and (b)(i) by prescribing limitations in value of the suits brought thereunder. It is said that consent of the parties is clearly unnecessary where as under paragraph (b)(ii) the suit is unlimited in value.
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This Court accepts that the jurisdiction of the Magistrates' Courts to try a suit governed by paragraphs (a)(i), (a)(ii) and (b)(i) is limited by the value of the suit in each case. This Court also notes that in relation to a suit governed by paragraph (b)(ii) no limitation in value of the suit is prescribed. The distinction is obviously most significant and reinforces this Court's view that paragraph (bb) cannot and should not be construed literally. It seems to this Court that on a proper construction paragraph (bb) was intended to enlarge the jurisdiction of the Magistrates' Courts by the parties consenting thereto where jurisdiction would be lacking because of the limitations in value of the suits in those paragraphs where such limitations do exist. Such consent can have no possible relevance to paragraph (b)(ii) because the value of the suit therein is unlimited. Thus to also require consent of the parties in such a case would clearly be otiose. Admittedly the language used in the amended provisions of subsection (1) of section 16 was not as apt as might be but I think there can be little doubt about the legislature's intention that the requirement of consent should only apply to those suits where limitations in value have been prescribed.

In approaching the problem of construction in this case I have found assistance in the observations of Viscount Simon L. C. in *Nokes v. Doncaster Amalgamated Collieries Ltd.* [1940] A. C. 1014 where at p. 1022 he said:

"If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

For the reasons given I am satisfied that the Magistrates' Courts do not require the consent of the parties concerned in order to assume jurisdiction in a suit brought under paragraph (b)(ii) of subsection (1) of section 16 of the Act. Accordingly the appeal is dismissed with costs.

Appeal dismissed.