

[ZEKIA, J. and ZANNETIDES, J.]

HOUSSEIN MEHMED BIRADER,  
*Appellant (Plaintiff),*

v.

ZEKIYE ALI OSMAN,  
*Respondent (Defendant).*

*(Civil Appeal No. 4299).*

1959  
Dec. 2,  
1960  
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HOUSSEIN  
MEHMED  
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v.  
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*Jurisdiction—Jurisdiction of members of District Courts—According to the amount in dispute or the value of the subject matter of the action—The criterion is the amount or value actually in dispute as disclosed upon the pleadings—Action for trespass—The Courts of Justice Law, 1953, section 26, sub-sections (1) to (7).*

*Practice—Powers of the Court and procedure where the pleadings are vague or unsatisfactory as to the value of the subject matter.*

*Costs—Extravagant claims—Powers of the Court or the taxing master to deal with such claims—By applying rigorously the rules regarding costs—Civil Procedure Rules, 0.59, r. 7 and r. 17.*

The appellant-plaintiff alleged that the respondent-defendant built part of her house on his land and that the newly added eaves of her old house are projecting over the same land. He claimed accordingly an order directing the defendant (respondent) to demolish (a) that part of her house, which was arbitrarily built on his land and, (b) the eaves projecting as aforesaid. He claimed also damages. At the end of the st. of claim it was stated that the subject matter of the action was between £200—£500. By her defence the defendant (respondent) denied the alleged trespass. There was, however, nothing in her defence disputing the value of the subject-matter of the action alleged in the st. of claim. At the hearing of the summons for directions counsel appearing for the parties agreed to ask Mr. A., a valuer, to make an assessment of the land actually in dispute and declared that the parties had agreed to be bound by his valuation. At the hearing of the action before the President of the District Court of Nicosia, the valuer informed the Court that he made the assessment asked for. It was to the effect that the value of the portion of the land actually in dispute was about £20. Whereupon the learned President remitted the case to the Magistrate sitting at Lefka. Reasons assigned were as follows "It appears that the value of the subject-matter actually in dispute between the parties does not exceed £100 and it is within the extended jurisdiction of the Magistrate. . . . ."

On an interlocutory appeal by the plaintiff against that order,

*Held* (1) Under the provisions in sub-section 7 of section 26 of the Courts of Justice Law, 1953, the basis of the juris-

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diction is the actual value in dispute as disclosed upon the pleadings. This, however, does not prevent the Court from going into the pleadings and ascertain for itself the amount in dispute or the value of the subject-matter of the action.

(2) But in the instant case there appears to be nothing on the record as to the value of the claim involving demolition which claim forms part of the subject-matter of the action. No statement or admission on the record as to the amount of the value of the house to be affected if the demolition of part of such house is ordered and carried out, beyond the allegation appearing on the statement of claim that the subject matter is between £200 and £500. This allegation stands uncontradicted and undisputed. We are of the opinion therefore that the learned President wrongly remitted the case to the Magistrate.

*Per curiam:* (1) It may be that the pleadings are vague, indefinite and inconclusive in respect of the value of the subject-matter of the action. In such a case the Judge may require the parties, before the hearing and preferably when dealing with summons for directions, with a view to ascertaining what is the value of the claim actually disclosed upon the pleadings, to supplement the st. of claim or counterclaim; but we do not think that it is desirable for a Court after the hearing started to go into the matter of jurisdiction without application on either side unless, of course, on the face of the pleadings such question presents itself.

(2) On the other hand we realise that the practice to exaggerate claims and counterclaims has to be discouraged. It must be remembered that the Court or the Registrar as the taxing master can effectively deal with such extravagant claims or counterclaims by applying rigorously the Rules of Court regarding costs, specially Rules 7 and 17 of Order 59 of the Civil Procedure Rules.

*Appeal allowed with costs.*

### **Interlocutory Appeal.**

Interlocutory appeal against the order of the District Court of Nicosia (Josephides, P.D.C.) dated the 22nd October 1959 (Action No. 1611/59) whereby it was held that the subject-matter of the action did not exceed £100 and the case should be remitted to the Magistrate at Lefka for trial.

*Ozer Beha* for the appellant.

*Osman Mehmed* for the respondent.

*Cur. adv. vult.*

The facts sufficiently appear in the judgment of the Court which was delivered by:

ZEKIA, J. : The appellant (plaintiff) in his statement of

claim alleges that defendant (respondent) built part of her house on his land and also alleges that the newly added eaves of her old house are projecting over the same land. He claimed (a) an order directing the defendant to demolish part of her house which was arbitrarily built on his land ; (b) an order of demolition of the eaves projecting over his said land, and damages.

It was also alleged at the end of the statement of claim that the subject-matter of the action was between £200 - £500.

The respondent-defendant denied building on the land of the appellant and that the new eaves of her old house are projecting over plaintiff's land. There was nothing in the statement of defence, however, disputing the value of the subject-matter of the action stated in the statement of claim.

A summons for directions was filed by the plaintiff by which (a) a local inquiry was requested to be carried out by the L.R.O. and (b) an inspection of the property was asked.

At the hearing of this summons the following decision was made:

" After discussion in Court, counsel agreed to ask Mr. J. Mavroudis, valuer, to make an assessment of the land actually in dispute and to accept his valuation.

They applied for time to enable them to obtain Mr. Mavroudis' consent and to visit the *locus in quo* at Lefka "

On the 13.7.59 counsel of both sides stated that the case was not settled and it had to be fixed for hearing. The case was fixed for hearing on the 22nd October, 1959.

On the 22nd October, 1959, Mr. Mavroudis informed the Court that he inspected the *locus in quo* and made an assessment of the portion of the land actually in dispute. He found the size of that portion to be about 35 sq. ft. and its value about £20. Defendant thereupon accepting Mr. Mavroudis' valuation said that he was prepared to submit to judgment for £20 as damages for trespass and to an order for demolition of the projecting eaves of her house but the plaintiff did not accept this and insisted on his claim for an order of demolition of part of defendant's house erected on his land.

The Court remitted the case to the Magistrate sitting at Lefka for hearing. Reasons assigned are:

" It appears that the value of the subject-matter actually in dispute between the parties does not exceed £100 and it is within the extended jurisdiction of the Magistrate. I accordingly direct that this case shall be tried by the Magistrate at Lefka for the purpose of saving costs

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of litigation as both parties reside at Lefka where the property in dispute is situate. Costs reserved”.

There appears to be nothing on the record as to the value of the claim involving demolition which claim forms part of the subject-matter of the action. No statement or admission on the record as to the amount of the value of the house to be affected if the demolition of part of such house is ordered and carried out, beyond the allegation appearing on the statement of claim that the subject matter is between £200 and £500. This allegation stands uncontradicted and undisputed. We are of the opinion therefore that the learned President wrongly remitted the case to the Magistrate. Appeal allowed with costs. Order in question set aside.

We wish, however, in this connection to make the following remarks :

Section 26 sub-section 7 of the Courts of Justice Law, 1953, relates to the point under consideration and reads as follows:—

“ For the purposes of this section, the amount in dispute or the value of the subject-matter of an action shall be the amount or value actually in dispute between the parties thereto as disclosed upon the pleadings, notwithstanding that the amount claimed or the alleged value of the subject-matter in the action exceeds that amount or value”.

This provision is a repetition of section 16 sub-section 7 of the Administration of Justice Law, 1935, which provision affected considerably the jurisdiction of the Courts of first instance regarding disputes relating to immovable property which was formerly governed by clauses 28 and 20 of the Cyprus Courts of Justice Order, 1927. The adjudication of any dispute in respect of immovable property even if such dispute was restricted to part of such property was left to the Court which could have cognizance and jurisdiction over the whole property and its value. The provision in question did away with this inconvenience and has accepted as basis the actual value in dispute as disclosed upon the pleadings.

For the purposes of jurisdiction the claim indorsed on the writ or the allegation as to the value of the subject-matter in the pleadings does not prevent the Court from going into the pleadings and ascertaining for itself the amount in dispute or the value of the subject-matter. It is clear however that the Court has to confine itself to the pleadings. It may be that the pleadings are vague, indefinite and inconclusive in this respect, and a Judge might require the parties, before the hearing and preferably when dealing with summons for directions with a view to ascertaining what is the value of the claim actually disclosed in the pleadings, to supplement the

statement of claim and counterclaim ; but we do not think that it is desirable for a Court after the hearing started to go into the matter of jurisdiction without application on either side, unless of course on the face of the pleadings such a question presents itself. On the other hand we realise that the practice to exaggerate claims and counterclaims has to be discouraged. It must be remembered that the Court or the Registrar as the taxing master can effectively deal with such extravagant claims or counterclaims by applying rigorously the Rules of Court regarding costs, specially Rules 7 and 17 of Order 59 of the Civil Procedure Rules.

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*Appeal allowed with costs.*