

**RODRIGO
v.
RAYMOND**

COURT OF APPEAL
UDALAGAMA, J. AND
NANAYAKKARA, J.
CALA NO. 414/2000
DC MT. LAVINIA NO. 514/99/RE
JULY 20, 2001

Additional issue – On value of Action and Jurisdiction – Mediation Boards Act, No. 72 of 1988 – S. 71 (1) – Non-production of certificate – Latent and patent want of jurisdiction – Waiver or acquiescence – Absence of a certificate – Does it create an absolute Bar.

The plaintiff-respondent instituted action, *inter alia*, for ejectment of the defendant - petitioner from the premises in suit.

After the plaintiff-respondent's evidence the defendant-petitioner sought to formulate three issues which were based on the value of the action and the jurisdiction of the Court to entertain the respondent's case.

The District Court rejected the additional issues.

It was contended that the action cannot be maintained without first obtaining a certificate of non-settlement from the Mediation Board.

Held:

- (1) Absence of a certificate does not create an absolute bar to the institution, and the maintenance of an action even where the value of the action is less than Rs. 25,800.
- (2) It only creates a latent want of jurisdiction as opposed to total lack of jurisdiction or patent want of jurisdiction, where there is a latent want of jurisdiction it can be validated by the conduct of parties, such waiver, acquiescence and inaction unlike in the case of total or patent want of jurisdiction, no such conduct will confer jurisdiction on the Court.

- (3) The defendant-petitioner has failed to formulate an issue relating to the jurisdiction of the Court at the commencement of the trial. His failure to frame an issue on such a vital matter will amount to a waiver of objections in regard to lack of jurisdiction of Court to hear and determine the respondent's action. The defendant-petitioner is deemed to have consented and submitted to the jurisdiction of the Court and he cannot now be permitted to challenge the jurisdiction.

APPLICATION for Leave to Appeal from the Order of the District Court of Mt. Lavinia.

Cases referred to :

1. *Kandy Omnibus Co., Ltd. v. Roberts* – 56 NLR 30.
 2. *Beatrice Perera v. The Commissioner of National Housing* – 77 NLR 361.
- A. K. Premadasa, PC with C. E. de Silva for defendant-petitioner.
- P. A. D. Samarasekera, PC with Lalanath De Silva for plaintiff-respondent.

Cur. adv. vult.

September 14, 2001

NANAYAKKARA, J.

The plaintiff-respondent (respondent) instituted action in the District Court of Mount Lavinia against the defendant-petitioner (petitioner) claiming, *inter alia*, for ejection of the petitioner from the premises in suit, recovery of damages and arrears of rent.

Thereafter, the petitioner filed answer praying for dismissal of the action and other reliefs.

The trial commenced after recording the admissions and the issue of the parties. After the respondent's evidence, which was concluded after several dates of trial, the Court adjourned trial for 05. 10. 2000

to enable the respondent to summon an official witness to give 10 evidence on his behalf.

On this date the defendant sought permission of the Court to formulate three more additional issues which were based on the value of the action and the jurisdiction of the Court to entertain and hear the respondent's case.

The additional issues that were raised, translated into English in essence, are as follows :

- (16) Is the value of action in point of fact and law less than Rs. 25,000?
- (17) Has the plaintiff obtained a certificate of non-settlement 20 from the Mediation Board, where the premises in suit are situated, before the institution of the action?
- (18) If the above-mentioned issue No. 16 is answered in the affirmative and issue No. 17 is answered in the negative, can the plaintiff maintain this action?

When the learned Counsel for the respondent objected to the said issues being accepted by Court the parties were directed to tender written submissions on the matter. The learned District Judge thereafter on 12. 12. 2000 delivered his order rejecting the additional issues that were raised by the defendant. Being aggrieved and dissatisfied 30 by the said order of the learned District Judge, the defendant has preferred this application by way of leave to appeal praying for the reliefs claimed in the petition.

When this matter was taken up for inquiry, the learned Counsel for the defendant argued that as the correct value of the action does

not exceed Rs. 25,000, the respondent cannot have and maintain the action without first obtaining a certificate of non-settlement from the Mediation Board in terms of section 71 (1) of the Mediation Boards Act, No. 72 of 1988. Non-production of a certificate from the Mediation Board is a matter which affects the jurisdiction of the Court to hear and determine the case. He further contended that the value of the action as Rs. 50,000 has not been admitted in the answer of the defendant and an issue challenging the jurisdiction can be raised at any time during the hearing of any action.

In reply to the argument of the Counsel for the defendant, Counsel for the respondent submitted, although the plaintiff has specifically averred in his plaint that the Court has jurisdiction to hear and determine the action, the defendant has not unequivocally and specifically challenged the jurisdiction of the Court in responding to the averments in the plaint, in his answer.

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Counsel further argued when the parties recorded their admissions and issues, at the commencement of the trial, they had by their first admissions admitted the jurisdiction of the Court, now the defendant is estopped from challenging the jurisdiction of the Court.

The Counsel for the respondent further submitted, although the defendant has averred specifically in his answer, as the dispute has not been referred to the Mediation Board, the respondent cannot have and maintain the action. The defendant has failed to raise any issue on that averment.

At this stage, it is necessary to examine the question whether the defendant-petitioner is entitled to the relief claimed by him, by way of leave in the light of the submissions and the decided authorities cited by both parties. To determine this question one must closely examine the averments contained in the plaint, the position taken up by the defendant in his answer and the admissions and the contested issues in the case.

The defendant's main contention in this Court was that, since the value of the action is less than Rs. 25,000, the respondent should have referred the dispute to the Mediation Board in terms of the Mediation Boards Act and obtained a certificate of non-settlement ⁷⁰ before the action was instituted against the defendant. As the respondent has failed to do so, the Court is not possessed of jurisdiction to hear and determine the respondent's action.

It is clear that this argument of the defendant is based upon the question of jurisdiction of the Court to hear and determine actions where the value of the action is less than Rs. 25,000 in the absence of a certificate of non-settlement from the Mediation Board. Even if one were to accept the argument of the learned Counsel for the defendant, it should be stated that the absence of certificate does not create an absolute bar to the institution, and the maintenance of ⁸⁰ an action even where the value of the action is less than Rs. 25,000.

It only creates a latent want of jurisdiction as opposed to total lack of jurisdiction or patent want of jurisdiction. Where there is latent want of jurisdiction, it can be validated by the conduct of parties, such waiver, acquiescence and inaction, unlike in the case of total or patent want of jurisdiction no such conduct will confer jurisdiction on the Court. As Sansoni, J. observed in *Kandy Omnibus Co., Ltd. v. Roberts*,⁽¹⁾ there is a sharp distinction between cases of patent and latent want of jurisdiction where it appears on the face of the proceedings that Court had no jurisdiction is differently treated from cases where the ⁹⁰ want of jurisdiction is not so apparent and depending on some fact which was in the knowledge of the defendant which he could have put forward for some reason or other he has kept back. This position is also clearly enunciated and fortified by His Lordship the Chief Justice Tennekoon in the case of *Beatrice Perera v. The Commissioner of National Housing*⁽²⁾ where His Lordship has proceeded to distinguish between the total lack of jurisdiction which is not curable by the

conduct of parties and latent want of jurisdiction which is curable by the conduct of parties.

As far as the instant case is concerned, the defendant knew that ¹⁰⁰ the Court lacked jurisdiction to hear and determine the respondent's action, I am at a loss to understand as to why he failed to formulate an issue relating to the jurisdiction of the Court at the commencement of the trial. Although there was a specific averment in regard to the value of the action and non-production of a certificate from the Mediation Board, in the defendant's answer leading consequently to lack of jurisdiction of Court, his failure to frame an issue on such a vital matter will amount to waiver of objections in regard to lack of jurisdiction of the Court to hear and determine the respondent's action. The defendant is deemed to have consented and submitted ¹¹⁰ to the jurisdiction of the Court, and he cannot now be permitted to challenge the jurisdiction of the Court.

It should also be observed although the respondent has specifically averred in the plaint that the Court is possessed of jurisdiction to hear and determine the action, the defendant in responding to the particular averment in the plaint has not denied the jurisdiction of the Court in specific unequivocal terms. On the contrary, the defendant has admitted his place of residence and the premises in suit were situated within the local limits of the jurisdiction of the Court. Even in regard to the averment relating to the value of action in the plaint, ¹²⁰ it is to be noted, that the defendant has refrained from responding to this averment in clear specific terms, other than the general omnibus denial, he has made at the commencement of his answer.

Moreover, it should be stated that when the admissions were recorded at the commencement of the trial, the parties have in clear terms admitted the jurisdiction of the Court. Therefore, the defendant cannot be permitted at this late stage after several dates of trial deny

jurisdiction of the Court. The defendant had ample opportunity of objecting to the jurisdiction of the Court, if he has chosen or elected to waive such objections, he cannot subsequently be permitted to challenge it. The defendant should not be allowed to blow hot and cold at the same time, in this matter. The defendant is deemed to have submitted to the jurisdiction of the Court.¹³⁰

For the above-mentioned reasons, I am of the view that this application of the defendant is without merit. Therefore, his application for leave is refused. The respondent is entitled to costs fixed at Rs. 10,000.

UDALAGAMA, J. – I agree.

Application dismissed.