

1971 Present : H. N. G. Fernando, C.J., and Thamotheram, J.

V. G. WAMBECK, Appellant, and D. H. D. JOHN DE SILVA
and another, Respondents

S. C. 116/67(F)—D. C. Galle, 3415/M.

Conciliation Boards Act No. 10 of 1958, as amended by Act No. 12 of 1963—Sections 6 and 14—Dispute in respect of a contract to convey land—Whether it is “ a dispute in respect of immovable property ”.

Parties who are in dispute as to whether a land must be conveyed by one to the other have a dispute in respect of immovable property within the meaning of section 6 (a) of the Conciliation Boards Act even though in law the determination of the dispute may depend upon the terms of a contract.

APPEAL from a judgment of the District Court, Galle.

N. R. M. Daluwalle, for the substituted plaintiff-appellant.

C. Ranganathan, Q.C., with *M. S. Osman* and *M. Sivarasingham*, for the defendants-respondents.

Cur. adv. vult.

July 24, 1971. H. N. G. FERNANDO, C.J.—

The plaintiff brought this action for an order requiring the defendants to execute a deed of transfer of a certain land in favour of the plaintiff.

The plaintiff's case was that the plaintiff's daughter one Mildred Gunatilaka and her husband had, by a deed of 3rd December 1963, conveyed this land to the defendants for the purpose of raising a loan. The plaintiff by two deeds of 3rd December 1963 and 13th December 1963 became entitled to purchase the land from the defendants on payment to them of the sum of Rs. 35,000 within a period of one and a half years. Relying upon these deeds, the plaintiff brought into Court the sum of Rs. 35,000 and sought to enforce his option to purchase the land. One of the defences to the action was based on the provisions of Conciliation Boards Act No. 10 of 1958, and issue No. 9 was framed as follows :—

“ Can the plaintiff maintain this action without complying with the provisions of Section 14 of the Conciliation Boards Act No. 10 of 1958 as amended by Act No. 12 of 1963 ? ”

The learned trial Judge answered this issue in favour of the plaintiff holding that the provisions of section 14 of the Act are not effective to oust the jurisdiction of the Court, and that therefore the Court had jurisdiction to entertain the action, although the matter had not previously been referred to the Conciliation Board. Upon the other issues in the case however, the learned Judge held that the plaintiff was not entitled to the Conveyance which he claimed on the ground that he had not tendered to the defendants the purchase price for this land within the time stipulated in the relevant deeds. He accordingly dismissed the plaintiff's action.

Counsel for the plaintiff in appeal has had to concede, in view of judgments of this Court, that issue No. 9 should have been answered against the plaintiff. But Counsel has made a new submission of law that the provisions of s. 14 are not applicable to this action, and that a Certificate referred to in that section is not a pre-requisite for the institution of an action of this nature.

It appears that the land of which the plaintiff now claims a conveyance is situated in Ward No. 13 of the Municipal Town of Galle, and that the area of that Ward is within the area for which a Conciliation Board has been established. But there was apparently no evidence in this case to show that the deeds which conferred on the plaintiff the option to purchase this land were executed in a place within an area for which a Conciliation Board has been established. Therefore Counsel submitted, it has not been shown that the dispute in this case could have been referred to the Conciliation Board as being a dispute of the kind mentioned in paragraph (b) or paragraph (c) of s. 6 of the Act. Accordingly in his

submission the dispute could only be referable to a Conciliation Board if it fell within paragraph (a) of s. 6 which provides for the reference to a Board of—

“ (a) any dispute in respect of any movable property that is kept, or any immovable property that is wholly or partly situate, in that village area ; ”

Counsel's further argument had been that this dispute is one in respect of a contract to convey land, and is not “ a dispute in respect of immovable property ”. He sought support for this proposition from a judgment in *Pelis v. Silva*¹, in which it was held that an action to enforce an agreement for the sale of land is not an action in respect of land within the meaning of s. 9 (b) of the Civil Procedure Code. I must of course agree that such an action is one to enforce an agreement of sale, but the judgment in the cited case does not contain any reason for the opinion that such an action is not also an action in respect of land, and I myself think there may be good ground for holding that such an action may properly be instituted in the Court having jurisdiction in the place where the land is situated.

But even if the case just cited was correctly decided, it does not in my opinion assist Counsel's present argument. For the purposes of civil procedure, there are several known categories of actions, and it may be that if a particular action falls clearly within the category of actions upon a contract, it should not be regarded as falling also within a different category. But in the instant case the question for determination is whether or not the Legislature in requiring disputes in respect of immovable property to be referred for conciliation intended that a dispute regarding the transfer of immovable property is “ a dispute in respect of immovable property ”.

The object of the Legislature clearly was that an attempt must be made to settle disputes by Conciliation, and for this purpose the Legislature established Conciliation Boards for specified territorial areas. If then there is a dispute concerning a land in any such area it is most reasonable to think that the Legislature wished the dispute to be brought before the particular Board established for that area because in its expectation such a dispute would be best capable of settlement by persons operating the conciliation procedure in that area.

It seems to me that in common sense, and according to the ordinary meaning of words, parties who are in dispute as to whether a land must be conveyed by one to the other do have a dispute in respect of that land even though in law the determination of the dispute may depend upon the terms of a contract.

¹ (1958) 60 N. L. R. 289.

In the result, the plaintiff's action had to fail for non-compliance with s. 14 of the Conciliation Boards Act, and the order dismissing the plaintiff's action is for that reason affirmed. The appeal is dismissed with costs.

THAMOTHERAM, J.—I agree.

Appeal dismissed.

