1978 *Present :* **Rajaratnam, J., Ismail, J. and Ratwatte, J.**

AMPALAVANAR RAMACHANDRAN and OTHERS,
Defendants-Petitioners

*and*

SINNAPPAR SUBRAMANIAM, Plaintiff-Respondent

*S.C. 12/77 (Inty)—D.C. Jaffna 5120/L*

*Thesawalamai Pre-emption Ordinance (Cap. 64)—Action to enforce right of pre-emption by co-owner—Objection taken under Conciliation Boards Act—Whether Certificate under such Act necessary before institution of action—Conciliation Boards Act, No. 10 of 1958—Meaning of word "dispute" in section 6.*

An action was instituted on 4th April, 1973, by a co-owner to pre-empt an individual share of a land sold to a 3rd party. The sale was on 17th June, 1972. At the trial the defendant raised an objection that inasmuch as a Conciliation Board had been cons-

tituted for the area as from 3rd December, 1972, the plaintiff who had not gone before the Conciliation Board to obtain a certificate was not entitled to have and maintain the action.

*Held :* (1) That the plaintiff who was a co-owner had a statutory right in terms of section 8(2) of the Thesawalamai Pre-emption Ordinance which right he could enforce. The action to enforce such a right was similiar to a partition action and was not based on a "cause of action".

(2) That the dispute if any, arose when the land was sold on 17th June, 1972, whereas the Conciliation Board was established only on 3rd December, 1972. It cannot be said that the plaintiff therefore could have taken the "dispute" before the Board when it arose.

Meaning of the word "dispute" in the Conciliation Boards Act discussed.

Cases referred to :

*Arnolis v. Hendrick, 75 N.L.R. 532.*

*De Silva v. Ambawatte, 71 N.L.R. 348.*

*Wijetunga v. Violet Perera, 74 N.L.R. 107.*

APPEAL from a judgment of the District Court, Jaffna.

*K. Kanag-Iswaran,* for the defendants-petitioners.

*C. Ranganathan, Q. C.,* with *S. Mahenthiran,* for the plaintiff-respondent.

*Cur. adv. vult.*

June 1, 1978. RAJARATNAM, J.

The main question before this Court is whether actions can be maintained under the Thesawalamai Pre-emption Ordinance without a production of a certificate from the Conciliation Board of the area.

In this case the plaintiff sought an order of Court to set aside Deed No. 8006 by which the 2nd defendant conveyed an undivided 7 lms v.c. of the larger land described in the schedule to the plaint to the 3rd defendant as null and void on the ground that the conveyance was contrary to the provisions of the Thesawalamai Pre-emption Ordinance, Cap. 64 C.L.E., which recognised the preferential rights of the co-owners to buy the land. The 3rd defendant was neither a co-owner nor a person who in the event of intestacy of the intending vendor will be his heir, and notice to sell was not published in terms of section 5 of the said Ordinance. The following dates are relevant :—

(1) Date of the impugned conveyance—17.6.72,

(2) Date of the appointment of the Conciliation Board of the area—3.12.72, and

(3) Date of the institution of the action—4.4.73.

The learned trial Judge equated actions arising from the Thesawalamai Pre-emption Ordinance to partition actions where

more often than not there are more than one co-owner. He considered the judgment in the case of *Arnolis v. Hendrick* reported in 75 N.L.R. 532. It was observed in that case by Fernando, C.J. at page 533, that a partition action is not based upon a 'cause of action' as defined in the Civil Procedure Code but upon the right independently recognised by section 2 of the Partition Act of any co-owner to seek a partition or sale of a co-owned land. He continued :—

> " It is thus clear from section 2 that the jurisdiction of a Court under the Partition Act is not principally to resolve and determine disputes but to ascertain the rights or interests of persons in land which is owned in common...... If then a co-owner has a right to institute an action for partition of a land, although no one disputes the rights or interests claimed or admitted in the plaint, the fact that some dispute does exist as to such rights or interests cannot derograte from or qualify the right to institute the action.
>
> For practical purposes, a decision that section 14 of the Conciliation Boards Act applies to partition actions will lead to absurdities which Parliament could not have intended or tolerated ".

Under the Thesawalamai Pre-emption Ordinance in terms of section 8 (2) an action to enforce the right of pre-emption under sub-section (1) may be instituted on any of the following grounds :—

(i) that the notice required by section 5 was not given or that the notice given was irregular or defective ;

(ii) that the price set out in the notice was fictitious or not fixed in good faith ;

(iii) that at the time of, and for three weeks after, the publication of the notice, the person seeking to enforce the right was absent from the district and that within a reasonable time after the lapse of the said period of three weeks and before the completion of the proposed sale, he tendered to the intending vendor the purchase amount stated in the notice and that such tender was not accepted.

The law also prescribed such an action after one year of the date of the registration of the deed of transfer.

It cannot be disputed that the plaintiff had a statutory right to come to Court and enforce that right within one year of the date of the registration of the purchaser's deed of transfer. We have

also to bear in mind that one co-owner going before the Board and a settlement effected there can be only with the purchaser of the property and any settlement will have to be effected with the vendor, the purchaser and all the co-owners from a practical point of view. I agree with learned trial Judge that this action is similar to a partition action arising from a statutory right and also it is impracticable to arrive at an effective settlement in certain cases where there are more than one co-owner.

We have also to be mindful of the purpose of the Conciliation Boards Act. The purpose of the Act is to secure that disputes are settled as far as possible by the method of conciliation and the Courts will be slow to send a case for conciliation where a final and effective settlement is not practicable where the plaintiff only comes into Court to enforce his statutory right. In the event of a party coming to know that there has been a conveyance of a land which he co-owns a day before the prescribed period of one year is over, should that party be expected to go before the Conciliation Board to settle "a dispute" before he comes to Court to enforce his statutory right ? On the other hand there can be no dispute with regard to his statutory right. A statutory right cannot be made something less than a statutory right by conciliation.

It is unfortunate that the Conciliation Boards Act has sometimes been interpreted and used in an unrealistic manner for no purpose except to defeat the objectives of the Act and the interests of justice. The objection raised by the defendant petitioner was rightly rejected and the Court decided to proceed with the action.

Another matter that was argued was that the conveyance by the defendant of the land in suit not in conformity to the provisions of the Thesawalamai Pre-emption Ordinance was a unilateral act by the defendant and it cannot be considered to have given rise to a dispute. In the case of *de Silva v. Ambawatte,* 71 N.L.R. 348, Samerawickrema, J. held with Wijayatilake, J. agreeing that even if a unilateral act is a wrongful one, it cannot be said to be a dispute. A dispute involves a controversy between 2 parties at least and imports conflicting acts and statements by them. In the present case I hold that the conveyance of the land in suit gave rise to a statutory right which could be enforced in Court and not a dispute for purposes of conciliation.

At this stage, it may be said that even if there was a dispute for purposes of argument, the dispute arose when the land was sold on 17.6.72 whereas the date of appointment of the Conciliation Board of the area was 3.12.72. It cannot be said that the

plaintiff therefore could have taken the "dispute" to the Board when it arose. It was held in the case of *Wijetunge v. Violet Perera*, 74 N.L.R. 107, that in such circumstances, a party has a right to institute an action without the required certificate from the Board even if sometime after the dispute arose and before the institution of the action, a Board of Conciliation is appointed. This additional submission of the defendant-petitioner must also fail.

In the course of the argument in this matter we had occasion to consider the term 'dispute' in relation to the Conciliation Boards Act and examine it. I am not too sure whether the Courts have been too liberal in interpreting the term dispute. The disputes enumerated in section 6 of the Act are (*a*) disputes in respect of any movable property that is kept or any immovable property that is wholly or partly situated in the Conciliation Board area, (*b*) any dispute in respect of any matter that may be a cause of action arising in that area for the purposes of the institution of an action, (c) any dispute in respect of a contract made in that Conciliation Board area. It is a matter for consideration in an appropriate case, as in this case it is not necessary, whether the term dispute must be given a strict interpretation together with a consideration whether the Act applies to disputes which by their very nature are not such that can lend themselves to conciliation.

The appeal of the petitioners therefore is dismissed with the direction that the record be sent forthwith for the trial to proceed. The plaintiff-respondent will be entitled to costs.

ISMAIL, J.—I agree.

RATWATTE, J.—I agree.

*Appeal dismissed.*