

**1974 Present: Walgampaya, J., Tittawella, J., and  
Gunasekera, J.**

**Mrs. P. D. E. GUNAWARDENA, Petitioner, and D. L. D.  
BASTIAN, Respondent**

**S. C. 9/74—Application for a Writ of Certiorari in  
D. C. B. 26344**

*Debt Conciliation Ordinance (Cap. 81), as amended by Art No. 5 of 1959*  
*—Section 19 (1) (2)—Conditional transfer of immovable property*  
*—Right of the transferor to transfer his rights to a third party*  
*subsequently.*

Where A transfers immovable property for a sum of money to B subject to the condition that, if A pays back the money within a specified period to B, B should re-transfer the property to A or his "aforewritten heirs, etc.", A would not be entitled to claim relief under the Debt Conciliation Ordinance before the expiry of the specified period if he has already transferred to a third party C his right to obtain a retransfer of the property. In such a case A ceases to be a "debtor" once he divests himself of his right to obtain a retransfer.

**A**PPPLICATION for a Writ of *Certiorari*.

A. A. M. Marlene, for the petitioner.

J. G. Jayatilake, for the respondent.

*Cur. adv. vult.*

June 24, 1974. GUNASEKERA, J.—

This is an application for a Writ of *Certiorari* and/or *Prohibition* filed by the petitioner against six respondents, the 2nd to 6th of whom are the members of the Debt Conciliation Board of Ceylon.

The first respondent to this application had by deed No. 3330 dated 11.11.1969 transferred certain premises to the petitioner for a sum of Rs. 6,800 subject to the condition that if this sum of Rs. 6,800 was paid back to the petitioner within a period of three years the petitioner would re-transfer the premises to the first respondent or his "aforewritten heirs, etc.". By deed No. 783 dated 19.4.1970 the first respondent transferred for a sum of Rs. 5,000 to one Prema Gunasekera "all the rights and privileges accruing to me under and by virtue of deed No. 3330 dated 11.11.1969". Thereafter but before the expiry of the aforesaid three year period the first respondent made an application to the Debt Conciliation Board for relief under the provisions of the Debt Conciliation Board Ordinance as amended by Act No. 5 of 1959. At the inquiry before the Board the petitioner produced the said deed No. 783 and took objection to the first respondents capacity to make any application to the Board and to the jurisdiction of the Board to entertain the application of the 1st Respondent. The Board made order overruling the objection on the ground that any deed executed during the validity of the conditions in deed No. 3330 would be invalid. We assume that the Board meant by this that the said deed No. 783 was invalid in terms of the prohibition contained in Section 19 (1) and (2) of the Ordinance as amended by Act No. 5 of 1959. We are of the view that Section 19 (1) and (2) do not in anyway affect the validity of deed No. 783 as there is no prohibition whatsoever in this section or any other provision of the Ordinance against the debtor transferring his rights at any time.

As the applicant had prior to his making this application to the Board divested himself of his right to obtain a retransfer of this property we are of the view that he was not a debtor within the meaning of the Ordinance and that he had no status to make this application. We, therefore, allow the application of the petitioner

and make order quashing the orders of the Debt Conciliation Board dated 10.5.73 and 13.10.73 and hold that the Board had no jurisdiction, in law, to entertain the application of the first respondent. As the first respondent opposed this application before this Court, we make order that the first respondent do pay the petitioner a sum of Rs. 210 as costs.

WALGAMPAYA, J.—I agree.

TITTAWELLA, J.—I agree.

*Application allowed.*

