

1972 *Present*: H. N. G. Fernando, C.J., and Wimalaratne, J.

R. ARNOLIS and 2 others, Appellants, *and*
R. HENDRICK, Respondent

S. O. 261/68 (Inty.)—D. C. Gampaha 13033/P

Conciliation Boards Act, No. 10 of 1950—Section 14 (1)—Certificate thereunder—No^t necessary for institution of a partition action—Partition Act, s. 2.

An action for partition of land can be instituted without the production of the certificate from a Conciliation Board which is referred to in section 14 (1) of the Conciliation Boards Act.

APP^EAL from an order of the District Court, Gampaha.

B. J. Fernando, with Vijaya Malalasekera, for the 21st, 22nd, 23rd and 24th defendants-appellants.

H. W. Jayewardene, with C. de S. Wijeratne, for the plaintiff-respondent.

Our. adv. vult.

December 21, 1972. H. N. G. FERNANDO, C.J.—

The only question raised in this appeal is whether an action for partition of land can be instituted without the production of the certificate from a Conciliation Board which is referred to in s. 14 (1) of the Conciliation Boards Act. While we agree with the decision of the learned District Judge that s. 14 does not apply to a partition action, it is expedient that we set out our own reasons for so agreeing.

It is no doubt correct that the existence of a dispute between co-owners, or between a co-owner and some person whose claim to some interest is denied, is often the occasion for the institution of a partition action ; and that a partition decree often serves finally to resolve such disputes. Nevertheless, a partition action is not based upon a " cause of action " as defined in the Civil Procedure Code, but upon the right, independently recognized by s. 2 of the Partition Act, of any co-owner to seek a partition or sale of co-owned land. Although it is usual to follow now the former practice of averring in a partition plaint the fact that common possession is not convenient, the Partition Act does not require such a fact to be averred or proved. It is thus clear from s. 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, and to divide the land into separate portions among the former co-owners. 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 derogate from or qualify the right to institute the action.

For practical purposes, a decision that s. 14 of the Conciliation Boards Act applies to partition actions will lead to absurdities which Parliament could not have intended or tolerated.

Let me take for example an instance in which one co-owner of a land, who is in possession of a lot on the east of the land, has a dispute with the owner of the neighbouring land concerning the boundary between the two lands, or concerning a claim by the neighbouring owner to a right of way. Could Parliament have reasonably intended that the existence of this dispute derogated from the right of any other co-owner of the land to seek a sale or partition, even if he is unaware of the dispute or even if he concedes the claim of the neighbouring owner ?

The purpose of the Conciliation Boards Act is to secure that disputes are settled as far as possible by the method of conciliation. Let me suppose therefore, that in the example which I have taken the dispute between one co-owner of a land and the owner of the neighbouring land is settled by a Conciliation Board, and the settlement declares that the boundary is that claimed by the neighbouring owner, or that the neighbouring owner does have a right of way. According to the provisions of the Conciliation Boards Act, a Court will then be bound

to give effect to the terms of this settlement, despite the fact that only one co-owner was a party before the Conciliation Board. I cannot think that Parliament intended any such absurdity or injustice.

The purpose of the Partition Act is to authorise a Court to enter a decree *in rem* declaring the ownership of allotments of land binding on all persons, subject only to certain narrow limitations. Such a decree cannot be entered unless the Court is satisfied that no person who is not a party has any right or interest in the land. If then, it is correct that a Conciliation Board does have jurisdiction to settle a dispute as to co-ownership, and that such a settlement will bind a Court of law, the Court will be compelled to enter a decree for partition in terms of the settlement before the Board, despite knowledge or suspicion that proceedings were taken before the Board with a view to defeating the rights of persons who were not parties to the settlement.

We endorse in addition the reasons upon which the learned District Judge based his decision of this question. For these reasons, the appeal was dismissed with costs.

WIMALARATNE, J.—I agree.

Appeal dismissed.
