IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

S.C. Appeal 182/2014
S.C/HCCA/LA/28/2012
UVA/HCCA/BAD/59/2002 (F)
D.C. Bandarawela Case No. 222/L

In the matter of an Application for Leave to Appeal from the Judgment dated 07.12.2011 in Appeal No. UVA/HCCA/BAD/59/2002(F) in terms of Section 5C (1) of the Act No. 54 of 2006

1. Kahandage Colman Edward Silva
2. Paul Felix Silva
3. Raymond Joseph Silva
4. Anthony Silva

All of Pallethennegedara
Kurukudhegama, Pattiyegedera

PLAINTIFFS

Vs.

1. A.M. Punchibanda **(Deceased)**

ORIGINAL DEFENDENT

2. A.M. Gunasekera
3. A.M. Appuhamy
4. A.M. Wijesekera
5. A.M. Rathnayake
6. A.M. Siriwardena
7. A.M. Dingiribanda
8. A.M. Kumarihamy
9. A.M. Sudubanda (**Deceased)**

All of Hapukanuwa, Kurukudhegama,
Pattiyegedera.

SUBSTITUTED-DEFENDANTS

AND

1. Kahandage Colman Edward Silva
2. Paul Felix Silva
3. Raymond Joseph Silva
4. Anthony Silva

All of Pallethennegedara
Kurukudhegama, Pattiyegedera

PLAINTIFFS-APPELLANTS

Vs.

1. A.M. Punchibnada **(Deceased)**

ORIGINAL DEFENDENT

2. A.M. Gunasekera
3. A.M. Appuhamy
4. A.M. Wijesekera
5. A.M. Rathnayake
6. A.M. Siriwardena
7. A.M. Dingiribanda
8. A.M. Kumarihamy
9. A.M. Sudubanda

All of Hapukanuwa, Kurukudhegama,
Pattiyegedera.

SUBSTITUTED-DEFENDENT-RESPONDENTS

AND NOW BETWEEN

2. A.M. Gunasekera
4. A.M. Wijesekera

Both of Hapukanuwa,
Kurukudhegama, Pattiyegedera

SUBSTITUTED 2ND AND 4TH DEFENDANT-RESPONDENT-PETITIONERS

Vs.

1. Kahandage Colman Edward Silva
2. Paul Felix Silva
3. Raymond Joseph Silva
4. Anthony Silva

All of Pallethennegedara
Kurukudhegama, Pattiyegedera

PLAINTIFF-APPELLANTS-RESPONDENTS

3. A.M. Appuhamy
5. A.M. Rathnayake
6. A.M. Siriwardena
7. A.M. Dingiribanda
8. A.M. Kumarihamy
9. A.M. Sudubanda

All of Hapukanuwa, Kurukudhegama,
Pattiyegedera.

SUBSTITUTED 3RD AND 5TH – 9TH DEFENDANT-RESPONDENT-RESPONDENTS

BEFORE: Sisira J. de Abrew J.
Anil Gooneratne J. &
Prasanna S. Jayawardena P.C., J.

COUNSEL: H. Withanachchi for Substituted 2nd & 4th Defendant-Respondent-Appellants

Manohara de Silva P.C., for the Plaintiff-Appellant-Respondents

ARGUED ON: 02.12.2016

DECIDED ON: 22.02.2017

GOONERATHNE J.

This was an action filed in the District Court of Bandarawela for a declaration of title to the land described as 'Neludande Agatha' by a plaint presented to the District Court on or about 24.07.1978 under the Administration of Justice Law. (folio 89/93) Land is in extent of one pela of paddy sowing. By the said plaint the Plaintiffs have sought to evict the Defendants and they also claim damages as pleaded. Learned District Judge dismissed the Plaintiffs' action. However issue Nos. (1) to (9) raised by the plaintiffs were answered in favour of the Plaintiffs. Though Plaintiff's action was dismissed the trial Judge in his Judgment states (last paragraph) without prejudice to the dismissal of the action, based on evidence and on a balance of probability Plaintiffs' case is proved.

When I consider the Judgment it is apparent that the action was dismissed by the learned District Judge (answering issue Nos. 14, 15, 16 & 18 & 19 in favour of the Defendant) for want of jurisdiction i.e failure to comply with Section 14 of the Conciliation Board Act to produce a non-settlement certificate from the relevant Conciliation Board, and due to a settlement entered before the Conciliation Board for the same corpus prior to the date of the present cause of action and District Court entered Decree based on the settlement. The appeal to the High Court was only on the question of dismissal of Plaintiffs' action. High

Court set aside that part of the Judgment (Dismissal) and allowed the appeal of the Plaintiff-Appellants.

The Supreme Court on or about 26.09.2014 granted Leave to Appeal on the following questions of law set out in paragraphs 15(i), (v), (vi), (vii)& (viii) of the Petition.

(i) Did the High Court err in law by applying the principles laid down in R. Arnolis and two others Vs. R. Hendrick in relation to the Certificate of non-settlement in the circumstances of this case?

(v) Did the High Court misdirect itself by failing to consider the fact that the Plaintiffs have not pleaded in the plaint or led evidence to establish the fact that there was no valid settlement between the parties?

(vi) Did the High Court err in law by reversing the findings of the learned Trial Judge arrived at against the Plaintiffs on the question of jurisdiction?

(vii) Did the learned High Court Judges err with regard to the validity of the settlement arrived at before the Conciliation Board?

(viii) Whether the High Court misdirected itself with regard to the constructions of the provisions of Section 14(1) of the Conciliation Boards Act No. 10 of 1958?

Learned President's Counsel for Plaintiff-Appellant-Respondent raised the following questions

(i) Whether issue Nos. 14, 15 and 16 could have been answered in favour of the Defendants in the event of the admission of document P14 without any objection by the defendants?

(ii) In any event, even, since the Defendants have failed to specifically raise any issue under Section 14 of the Conciliation Boards Act, can the Defendants challenge the maintainability of the Plaintiff's action?

It would be necessary to ascertain the very basic facts in a case of this nature which is now subject to an appeal in the Supreme Court. The material available suggest that the plaint was filed on or about 24.07.1978 pertaining to a land called "Neludande Agatha".

Defendants filed answer on 27.06.1979, and inter alia pleaded that Plaintiffs' land called "Neludande Agatha" does not give a clear description of the land and that the Defendants are the owners of a land called as "Neludande Penapotha Kumbura" in extent of paddy sowing of 1 amuna and 5 kurinis. The names of the lands as pleaded suggest two different lands. The records also indicates that thereafter, the Defendants filed amended answer on 14.06.1990 i.e 11 years after having filed the original answer. (folio 109-X2). In paragraph 9 of the amended answer it is pleaded that lot 2 in Surveyor Ariyasena, plan No. 3029 was subject to a settlement in the 'Atampitiya' Conciliation Board in terms of section 12 of the Conciliation Board Act and the Defendants are the owners and as per Section 13(3) (a) of the above Act, it is a settlement to be deemed to be a Decree of the District Court in terms of the said Act and for that reason District Court has no jurisdiction to hear and determine this action and Plaintiffs

cannot maintain this action. The certificate relied upon the Defendant parties is at folio 445, 446, 447 & 448 (වි3,වි 4, වි4a වි4b).

In paragraph 10 of the amended answer it is also pleaded that unless a certificate under Section 14 of the Conciliation Board Act is produced by the Plaintiffs, the present action cannot be maintained by Plaintiffs and District Court has no jurisdiction to hear and determine this action. It is further pleaded that no such certificate has been produced with the plaint or with the pleadings concerning the appointment of a guardian, or next friend and as at the time 4th Plaintiff was a minor.

Let me examine වි3 to වි4b (folios 445 – 448) namely the Conciliation Board Certificate issued under Section 12 of the said law.

Folio 445 refers to a complaint made by A.M. Punchibanda against K. J. Silva regarding forcible possession of Kurukude Pennapatha Kumbura in 1968. Both K. J. Silva and A.M. Punchibanda agreed to partition (බෙදා වෙන් කර ගැනීමට) 'Penapoth Kumbura' and 'Neludande Agatha' paddy fields. But K.J. Silva objects to pay Government Surveyor's fee, but A.M. Punchibanda agrees to bear the cost. The land to be separated as follows.

To A.M. Punchibanda as in transfer deed No. 30206which show an extent of 1 Amuna and 5 Kuranis. To K. J. Silva as in title deed 7068 of 20 May 1908 of 1 pala paddy sowing. Both parties agree to partition the land, according

to Government Surveyers plan (settlement entered on 25.101.1975) V3 – folio 446, refer to the information that is required to be sent to court as per Section 13 of the Act. It states that complaint was made against K.J. Silva by A.M. Punchibanda regarding forceful possession of ‘‘Penapoth Kumbura” Since 1968. The Conciliation Board inquired into the matter and settled the dispute. As stated above it is recorded that K.J. Silva and A.M. Punchibanda agreed to partition. “Neludande Agatha” and ‘‘Penapoth Kumbura”, respectively. In the same manner as stated in folio 445. K.J. Silva did not agree to pay Surveyors fees but Punchibanda agreed to bear the cost. Both parties agree that the partition of the land in dispute is to be done by a survey of a Government Surveyor.

Folio 447 – It refers to notes of Attampitiya Conciliation Board. Notes pertaining to settlement of dispute. It is recorded that a settlement was possible and parties on 25.01.1975 agreed to settle the dispute, as follows. As stated above surveyor fees to be paid by A.M. Punchibanda.

Folio 448 – It is a continuation of folio 447. The manner of separation of lands are stated viz. ‘‘Penapoth Kumbura” and “Neludande Agatha (both paddy fields). As in deed No. 30206 attested by D.W.C. Ekanayake Notary, of land in extent of paddy sowing of 1 amuna and 5 kurinis to A.M. Punchibanda. The land depicted in transfer deed No. 7068 of 20th May 1908 an extent of land

of 1 pela paddy sowing to K. J. de Silva. Parties agree to a Surveyor as above to partition the land by a survey to be done by a Government Surveyor.

On perusing all above papers of the Attampitiya Conciliation Board it is apparent that K. J. de Silva and A.M. Punchibanda entered into a settlement on 25.01.1975 subject to the land being partitioned and shown by a survey plan to be surveyed by a Government Surveyor. Though the matter was settled, there is no indication of a Survey done and a plan executed as agreed between parties. That shows that the agreement had been conditional on execution of a plan, which material is not available to this court. (No plan was produced to prove agreement as above)

In the submissions of learned President's Counsel this court was informed that K.J. Silva is not a Plaintiff to the action before court since he parted with title to the property in dispute in the year 1974 in favour of his children the present Plaintiffs. Original Defendant Punchibanda was a party to the suit but is now deceased. There is this question which has not been properly addressed to this court by learned counsel for 2nd and 4th Defendant –Respondent-Appellant, the validity of the purported settlement which was agreed upon and entered by the original Defendant with K.J. Silva who had parted with title. As such can the Appellant party place any reliance on such a settlement or agreement? Even the learned District Judge has not considered this aspect. Learned District Judge in

his Judgment in this regard refer to the settlement between the original Defendant and K.J. Silva (who is not a party to the suit). Learned District Judge no doubt referred to the relevant law under the Conciliation Board Act, viz Section 13(2) & 13(3). Therefore based on such a settlement by way of an agreement would not bind a minor. (4th Plaintiff). As such the Conciliation Board decision conveyed to court which is in document V3 produced by the Defendants to support their position that the dispute was settled between parties cannot be permitted to stand, or same to be filed of record as in Section 13(3) of the Conciliation Board Act which is deemed to be a decree of that court.

Section 13 of the said law reads thus:

13(1) Any party to a civil dispute which is settled by a Conciliation Board in any Conciliation Board area may, within thirty days after the date of settlement of such dispute, in writing notify to the Chairman of the Panel of Conciliators constituted for such Conciliation Board area that, with effect from such date as shall be specified in the notification, the settlement effected by such Board will be repudiated by him for the reasons stated in the notification, and, where such notification is made with such reasons stated therein, such settlement shall cease to be in force from the date specified in such notification.

(2) Where the written notification referred to in subsection (1) is not received by such Chairman within thirty days after the date of settlement of such dispute, such Chairman shall forthwith transmit to the District Court or the Court of Requests or the Rural Court, as the case may be, having jurisdiction to hear and adjudicate upon such dispute, a copy of the settlement recorded by that Board. Such copy shall be signed and certified by the President of that Board.

(3) (a) Immediately upon the receipt by the District Court or the Court of Requests, as the case may be, of the copy of the settlement referred to in subsection (2), the District Judge or the Commissioner of Requests of that court shall cause such copy to be filed of record in such court. Such settlement shall, with effect from the date of such filing, be deemed to be a decree of that court, and such of the provisions of the Civil Procedure Code as relate to the execution of decrees shall, as far as may be practicable, apply mutatis mutandis to and in relation to such settlement which is deemed to be a decree.

(b) Immediately upon the receipt by the Rural Court of the copy of the settlement referred to in subsection (2), it shall be the duty of the President of such court to file such copy in the records of such court. Such settlement shall, with effect from the date of such filing, be deemed to be a judgment of such court, and such of the provisions of the rules made under section 52 of the Rural Courts Ordinance as relate to the execution of judgments shall, as far as, may be practicable, apply mutatis mutandis to and in relation to such settlement which is deemed to be a judgment.

However documents V1 to V7 produced by the Defendant party do not show that the settlement was filed of record by the District Court or by any other document, filed of record. Even if the Appellant party in the manner they did continue to urge that there is a decree in their favour, it was held in *Somasunderam Vs. Ukku (44 NLR 446); 26 CCW 47. Section 480* applies not only to orders, but to decrees as well. It has been held that where a decree is entered against a minor who is not duly represented by a guardian, he may move to have the proceedings set aside under Section 480 of the Code even after he attains

majority. Section 480 of the Code enacts that no order to affect a minor not represented.

In the purported settlement of the Attampitiya Conciliation Board which is claimed to be referred to court, the 4th Plaintiff who was a minor and a co-owner of land in dispute along with the other 3 Plaintiffs were not parties to the settlement. The minor was not a party or represented by a next friend or guardian for the action at the relevant time, in the manner argued by the Appellants that there was a decree of court. K. Julian Silva transferred the land in dispute on 06.03.1974 to the four Plaintiffs by deed which was accepted by the learned District Judge who pronounced that Plaintiffs have title (vide answers to issue No. 1 – 9). In fact none of the Plaintiffs were parties in the Conciliation Board application relied upon by the Defendant party. On this question I fully agree with the views expressed by the High Court.

The Appellants states the corpus was partitioned by a settlement of the Conciliation Board (V3/P11). When the case in hand was filed in the original court, 4th Plaintiff was a minor and V3/P11 indicates that the settlement entered, was not between the actual owners. (Guardian of 4th Plaintiff in the District Court by that time had transferred the title to property to the four Plaintiffs). Prior to the Conciliation Board agreement, K. Julian Silva parted with title and as such had no status to enter into a settlement on behalf of any other

Plaintiffs although he was made guardian or next friend of the 4th Plaintiff very much later and subsequent to institution of the District Court case in Bandarawela by the Plaintiffs. As such V3/P11 is of no force or avail in law and Plaintiffs are not bound by the settlement between their predecessor in title and the original Defendant. As such a question of repudiation may not arise, though Plaintiff-Respondent rely on document P14 to prove repudiation. In the circumstances I observe that the learned District Judge was in error in answering issue Nos 14 to 19 incorrectly. In any event issue Nos. 14, 15 & 16 should have been answered in the negative, and the rest of the issues would be consequential to issue No. 14, 15 & 16.

The main question before this court, though the above matters need to be discussed in order to get to the bottom of this case, is whether there was a non-production of a certificate of non-settlement and if so whether non-production of same is fatal to maintain the case in hand.

Defendant-Appellant very confidently argue that there was no, non-settlement certificate produced and P14 relied upon by the Plaintiff party relates to some other dispute. Whatever it may be P14 is a certificate of non-settlement and it discloses a repudiation of the earlier settlement V3. I am unable to accept the position of the Defendant-Appellant that P14 refers to some other dispute. This court cannot be confused on such a submission. It is

evident on perusing all the available documents of the Conciliation Board inclusive of certificates, that it is a land dispute relating to “Neludande Agatha” and ‘‘Penapoth Kumbura”. It is a land dispute referring to the above named lands. The certificates and documents relied upon by the Defendant-Appellant වි3 to වි4b (folios 445 – 448) refer to the above mentioned lands. It is the same dispute that arose over and over again between the original Defendant and the father of Plaintiffs, K.J. de Silva.

This was a continuing dispute between the original Defendant and K.J. Silva. Dispute culminated into a cause of action from the date of issuance of non-settlement certificate marked P14, which according to the available material produced at the trial, was before the District Court. When P14 was produced and marked in evidence, there had been no objection to P14 being produced by the Defendant-Appellant. As such it is evidence for all purposes of the law. P14 indicates it is a non-settlement certificate, issued to court as per Section 14 of the conciliation Board law, regarding a complaint by A.M. Punchibanda (original Defendant) against K.J. Silva pertaining to lands described as above i.e Nildande Agatha and Nildande Pennapatha Kumbura, after the survey to separate the lands were done and the refusal of K.J. Silva to partition the land. P14 is dated 20.12.1975. It is further stated in P14 that the dispute had been inquired into on 20.12.1975 but the Board was not successful in settling

the dispute. Having issued such a non-settlement certificate the Board may be functus?

On the other hand Defendant-Appellant did not move court to review issue Nos. 1 to 9 answered in favour of the Plaintiff-Respondent by way of appeal or by any other methods of review. In the appeal only the jurisdictional issue had been considered by the Defendant-Appellant, which the High Court rejected. Further document P13 suggests that there were numerous complaints to the relevant Conciliation Board, by the original Defendant and K.J. Silva and the Chairman of the Conciliation Board in P13 and P13a observes that there is no possibility for the Board to settle the dispute. Having said so the Board had again requested the parties to be present for an inquiry finally on 76.12.11 at 9.00 a.m.

I have to observe that the High Court Judgement at Pg. 7 refers to P13 as stated above but the dates reflected in the Judgment shows a slight difference. Perusal of P13 indicates that a further inquiry was fixed for 11.12.1976. The High Court Judgement also refer to that date, but goes on to state that after inquiry on 11.12.1976, P14 non settlement certificate dated 20.12.1976 was issued. Such a statement looks more probable in keeping with the date reflected in P13. All other documents relied upon by the Defendant-Appellant gives the 1975 date. It is unfortunate that Defendant-Appellant has

not filed the entirety of the Conciliation Board proceedings, before this court but only relies on somewhat illegible documentation. As such certificate P14 is evidence for all purposes of the law, and it cannot be accepted as argued by the Defendant-Appellant that there was no repudiation. Therefore I am of the view that P14 repudiated the settlement in V3. In the absence of material to contradict P14, only conclusion was that V3 was lawfully repudiated by P14 and such a position is acceptable in view of Section 114 of the Evidence Ordinance i.e court may presume that judicial and official acts have been regularly performed.

I have to once again observe that the learned District Judge was in error in answering issue Nos. 14 & 15 and I have to say the same as regards issue Nos. 16 to 19(b).

Document P14 is a certificate of non-settlement which is issued under the Conciliation Board Law. In the manner described in P13 dispute has been a long standing continuing land dispute which remains unsettled. The questions of law referred to this court do not raise a question of Plaintiff's title. In the absence of the record of the Conciliation Board being produced as evidence and failure to lead evidence from a person in authority from the Conciliation Board, to establish the position of Appellant, P14 needs to be acted upon, and accept that settlements relied upon by the Appellant was repudiated.

If repudiation was not done, Chairman of the Board should transmit the record to the District Court.

In view of above it is necessary to once again look at Section 13 of the Conciliation Board Act. If repudiation has not taken place Chairman of the Board is required to transmit the settlement of record to the District Court (Section 13(2). Was it done in that way, as evidence does not clearly reveal so. If any such communication is received a settlement would have to be filed of record and the settlement would be deemed to be a decree of court (Section 13(3)) VI to V7 being documents of the Defendants does not give a clear indication that a settlement was filed of record. Even if it was filed the so called settlement was entered not between Plaintiffs and Defendants but between K.J. Silva who parted with tittle and the original Defendant. Such a decree or settlement is of no force or avail in law. In these circumstances P14 and Plaintiff's position is fortified and more probable.

It is also necessary to comment on the following matters before I proceed to answer the question of law raised before the Supreme Court. Pleadings both plaint and answer according to submissions of parties were filed in or around 1978/1979 (under law No. 25 of 1975) and the amended answer filed on 14.06.1990. Trial commenced with framing of issues on 06.10.1993, and in fact leading of evidence commenced on 03.04.1995. By the time trial

commenced, the Administration of Justice Law No. 25 of 1975 was repealed, and the Civil Procedure Code was in operation. None of the parties addressed court on this point, and on transitional provisions, nevertheless the main question to be decided in this appeal proceeded on a jurisdictional issue which in fact emanates from the provisions of the Conciliation Board Act (now repealed and replaced by the Mediation Board Act). I note that the case cited by the learned High Court Judge in the Judgment of the High Court, *Arnolis Vs. Hendrick 75 NLR 532* cannot be ignored so easily or consider it to be irrelevant as the Defendant Appellant argued. In the said case it was held by *H.N.G. Fernando C.J*

"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.

This dicta is very important, as the Judgment was delivered during the period the Conciliation Board Act was in operation.

Pg. 533 of the said Judgment and 534 reads as follows.

> 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.

The above dicta in no uncertain terms suggest that a partition suit can be instituted without a Conciliation Board Certificate. The Conciliation Board Certificates relied upon by the Defendant-Appellant seems to proceed on the basis of partitioning the land in dispute "පෙනපොත කුඹුර හා නෙඵදණ්ඩ අගත කුඹුර බෙදා පහත සඳහන් අන්දමට බෙදා වෙන්කර ගැනීමට එකග වුහ". (vide V3, V4, V4අ & V4ඇ). The dispute referred to the Conciliation Board was a land dispute. The members of the Conciliation Board may not be lawyers or persons

with knowledge of land law. On the other hand setting up of Conciliation Boards and Mediation Boards, by the legislature was to ease the burden of litigants and in a way to avoid prolonged court procedure, and pave the way to settle not so complex or complicated disputes between parties. Therefore it may have been open to hear further arguments on this aspect by learned counsel on either side. There is nothing definite on this point, as there was no attempt by either counsel to address court on this aspect on the date of hearing. It became necessary for this court to consider same as the record before us indicates so and reference made by the High Court Judge to the above Judgment of *H.N.G. Fernando C.J*

I would answer the substantial questions of law as follows:

(1) No – The High Court no doubt considered the dicta in R. Arnolis Vs. Hendrick which deals with an important question i.e partition of land can be instituted without the production of the Conciliation Board Certificate. The purported certificates produced by the Appellants suggest partitioning of lands (P3/P11). Learned District Judge merely accepts the settlement and entered decree. There is nothing to indicate that the learned District Judge examined the settlement and decided to enter decree as a valid decree of the District Court as per the Provisions of Chapter XX of the Civil Procedure Code and or Section 466 of the Administration of Justice (Amendment) Act No. 25 of 1975 and or Section 13(3) of the Conciliation Board Act. Nor did the learned District Judge consider whether the settlement was between parties to the suit.

If the so called Decree was a Partition Decree, a Conciliation Board Certificate is not essential or a pre-requisite in view of Arnolis Vs. Hendrick. Partition Decree would bind the parties and the whole world. If the decree in question is merely a decree in a land dispute, still it cannot bind the parties to the suit as they were not parties to a settlement before the Board.

(v) No – There is no misdirection since evidence was led and non-settlement certificate was produced and marked P14 which remains as evidence.

(vi) No – Trial Judge has not properly examined the question of jurisdiction and or considered whether a settlement was entered between parties to the suit.

(vii) No and (viii) No

The additional question raised by the learned President's Counsel are also answered in favour of the Plaintiff-Respondents.

(i) P14 is evidence for all purposes of the law, as such trial Judge could not have answered that question in the affirmative. There was no settlement between the party to the suit.

(ii) No. Defendants cannot challenge the maintainability of the action.

I affirm the conclusion of the High Court Judgment. It is possible to fault any Judgment delivered by a court of law, and the Apex Court need to concentrate only on the real issues between parties, and the substantial questions of law raised in the appeal to ensure justice is done. Plaintiff party never entered into a settlement with the Defendants. Even the so called settlement entered never reached finality as document P13 indicates it was a

continuing dispute between the original owners, to the land in question. The real factual position seems to be that parties concerned never settled the issue between them, and the material suggests that their disputes continued from one generation to the other. Therefore this appeal stands dismissed without costs.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

Sisira J. de Abrew J.

I agree.

JUDGE OF THE SUPREME COURT

Prasanna S. Jayawardena P.C., J.

I agree.

JUDGE OF THE SUPREME COURT