LAMEER
v.
SENARATHNA

COURT OF APPEAL
S. N. SILVA, J. (P/CA)
RANARAJA, J.
C.A. NO. 919/92
D.C. COLOMBO CASE NO. 15158/L
FEBRUARY 28, 1995.

Rei Vindicatio Action – Settlement – Application to set aside – Prejudice – Compromise and settlement arrived at by the Attorney-at-Law. – Compulsion by Court to accept terms – Duress – Coercion – Laesio Enormis – Uncertainty of the settlement.

The plaintiff-petitioner instituted action for Declaration of title, ejectment and damages. Defendant-respondent filed Answer stating that he was in lawful possession. After several dates of trial, a settlement was recorded on 21.6.1991 that the Petitioner should sell the premises to the respondents at Rs. 75,000 a Perch. On 13.7.1991, the terms were recorded and signed by the parties. An application was made to set aside the settlement, on the grounds that (i) the Attorney-at-Law acted contrary to instructions; (2) he was compelled by Court to accept the terms. (3) *Laesio Enormis;* (4) Uncertainty of the settlement.

Held:

(1) When an Attorney-at-Law is given a general Authority to settle or compromise a case, client cannot seek to set aside a settlement so entered, more so, when the client himself had signed the record.

(2) There is no affidavit from the Attorney-at-Law affirming that the petitioner was forced into accepting the terms of settlement. Pleadings indicate that the settlement was first suggested on 21.6.1991 and entered only on 13.7.1991.

(3) Court cannot grant relief by way of restitution to a party who has agreed in Court, to sell property at a lesser price with the full knowledge of its true value.

(4) There is no uncertainty as, in this instance, the respondent has already deposited the full sum due.

Cases referred to:

1. *Babun Appu v. Simon Appu* 11 N.L.R. 44.
2. *Menchinahamy v. Munaweera* 52 N.L.R. 409.

3. *Sinnathamby v. Nallathamby* 7 N.L.R. 139.
4. *Silva v. Fonseka* 23 N.L.R. 447.
5. *Veloo v. Lipton Ltd.* 66 N.L.R. 214.
6. *Sobana v. Meera Saiboo* 1940 5 C.L.J. 46.
7. *Gunasekera v. Amarasekera* 1993 1 S.L.R. 170.
8. *Newton v. Seneviratne* 54 N.L.R. 4.

APPLICATION for Restitutio in integrum Revision of the order of the District Court of Colombo.

P. Nagendra, P.C. with *A. Jayasekera* for petitioner.
P. A. D. Samarasekera, P.C. with *K. Sri Gunawardena* for respondent.

Cur. adv. vult.

March 24, 1995.

RANARAJA, J.

This is an application by way of *restitutio* in *integrum*/revision to set aside the terms of settlement dated in the case on 13.7.91.

The petitioner instituted action against the respondent for a declaration of title to Lot A2 in plan No. 2612 dated 13.9.90, prepared by S. Rasappah, Licensed Surveyor, ejectment of the respondent and damages. The respondent filed answer stating that he was in lawful possession of the premises in suit from 1973. The trial commenced on 24.1.91 and continued on 15.3.91 and 21.6.91, on which day it was mooted that the petitioner should sell the premises to the respondent at Rs. 75,000/- per perch. On 13.7.91 the terms of settlement were recorded and signed by the parties. This application is to have the said settlement vacated.

The petitioner has not filed a certified copy of the proceedings of 13.7.91, as required by rule 3(1)(b) of the Supreme Court rules. This ground alone is sufficient to dismiss the petitioner's application.

This application has been filed on 30.11.92, that is over sixteen months from the day the terms of settlement were entered. A party seeking restitution must act with utmost promptitude. *Babun Appu v. Simon Appu* [1], *Menchinahamy v. Munaweera* [2]. The petitioner has sought to explain the undue delay on his mother's illness. He has however not produced any evidence in support of that fact except his *ipse dixit*. A delay of sixteen months, in the circumstances is far too

long a period after which this Court can grant relief prayed for by the petitioner.

It is conceded in the petition that after the terms of settlement were recorded, the respondent has regularly deposited the sums due as purchase price, which the petitioner has withdrawn. Court will not permit restitution when it would result in prejudice to the other party to a settlement, by the change that has taken place in the position of the parties during the interim – *Sinnathamby v. Nallathamby* [3]. The respondent has deposited a large sum of money of which the petitioner has had the benefit. In the event of relief prayed for by the petitioner being granted, the respondent will be prejudiced to the extent that he could have put the money deposited for more profitable use. The petitioner on the other hand, would have had an undue benefit of those sums of money.

The petitioner alleges that his Attorney-at-Law acted contrary to instructions. However, when an Attorney-at-Law has been given a general authority to settle or compromise a case, as was admittedly done in the instant case, a client cannot seek to set aside a settlement so entered by way of restitution, more so where the client himself has signed the record accepting the terms of settlement. *Silva v. Fonseka* [4], *Veloo v. Lipton Ltd.* [5].

The petitioner avers that he was compelled by Court to accept the terms of settlement, therefore he contends his consent was obtained by duress, coercion and undue influence. There is no evidence in support of this allegation. The proceedings of that date have not been filed. There is no affidavit by his Attorney-at-Law affirming that the petitioner was forced into accepting the terms of settlement. On the other hand, his own pleadings show that the settlement was first suggested on 21.6.91. The petitioner had not raised any objection to selling the land to the respondent or the proposed price of Rs. 75,000/- per perch. The recording of the terms of settlement was put off in order that the respondent could examine the title of the petitioner to the land. The terms were entered three weeks later. If the petitioner had any misgivings about the proposed settlement he could very well have refused to accept the terms recorded on 13.7.91 which he has not done.

The petitioner seeks to have the settlement rescinded on the ground of *laesio enormis*. Our Courts have thus far not given relief by way of restitution to a party who has agreed in Court to sell property at a lesser price with the full knowledge of its true value. The petitioner in his pleadings has admitted that he was aware, on the basis of the report of Surveyor A. F. Sameer, that a perch of the relevant land was worth Rs. 200,000/-. The principle of *laesio enormis* applies where the vendor was unaware of the true value of the land sold. *Sobana v. Meera Saibo* [6], see also *Gunasekera v. Amerasekera* [7]. In any event, the true value is based on the assumption that the land is free of encumbrances. This is not the case in respect of the land which was the subject-matter of the action. The respondent was in possession of the land and claimed the right to continue to possess it. In the circumstances, it would be artificial to expect any prospective buyer to pay the true value on purchase.

The petitioner submits the terms of settlement are uncertain regarding what is to happen to the money already deposited by the respondent, in the event of his defaulting in future. This argument is academic, as the respondent has already deposited the full sum due. Besides, such a situation could be met according to the principles laid down in the case cited by him namely, *Newton v. Seneviratne* [8]. In that case the Court held that where there is uncertainty in the terms recorded, the intention of parties must be given effect to in accordance with common sense.

The petitioner has not made out a case for the interference of this Court with the settlement entered on 13.7.92, by way of revision or granting the petitioner relief by way of *restitutio* in *integrum*. His application is accordingly dismissed with costs.

S. N. SILVA, J. – I agree.

Application dismissed.