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Present: Lascelles C.J. and Wood Renton J.

JAYAWARDENE *v.* AMERASEKERA

72—D. C. Chilaw, 4,452

Enormis læsio—*Sale by a person who knows the value of the property for less than half the value—Action for cancellation of sale on the ground that the whole consideration was not paid—When sale is complete.*

A person who knows the value of his property is not entitled to rescission of the sale merely by reason of the fact that the price at which he has sold the property is less than half its true value.

The case is otherwise where the property is sold at a price grossly disproportionate to its true value. In that case the law is on the side of the party who stands to lose by the transaction, and not on the side of the party who stands to make an unconscionable profit.

On the execution of a notarial conveyance the sale is complete, and the mere fact that the whole of the consideration has not been paid cannot, in the absence of fraud or misrepresentation, afford ground for the rescission of the sale and the cancellation of the conveyance.

[1] *(1905) 8 N. L. R. 223.*

THE facts are set out in the judgment.

Bawa, K.C. (with him *V. Grenier*), for appellant.

Walter Pereira, K.C. (with him *G. Koch*), for respondent.

Cur. adv. vult.

June 18, 1912. LASCELLES C.J.—

This action was instituted with reference to the sale of certain coconut property by the plaintiff to the defendant. The price agreed on was Rs. 3,000, but the plaintiff contends that of this sum Rs. 1,310 only has been paid; and on account of the defendant's failure to pay the balance she asks to have the sale rescinded, or in the alternative judgment for the balance of Rs. 1,690. She also avers that Rs. 3,000, the price at which the land was sold, was less than half the true value of the property, and claims that the sale and the transfer of the property should be set aside on the ground of *læsio enormis*. The defendant contends that he has paid in full the amount of the purchase money, and that the property was sold at a fair value. The learned District Judge has disbelieved the plaintiff's evidence as to the non-payment of the purchase money, and has rejected the valuation, by which it was sought to prove that the lands were sold for less than half of their true value.

It is clear to me that the plaintiff cannot possibly succeed on her claim to have the sale cancelled in the ground of *enormis læsio*. I agree with the learned District Judge that the evidence by which it is sought to prove that the lands were sold for less than half their true value is far from convincing. But even assuming this to have been proved, the plaintiff would not necessarily be entitled to the benefit of the doctrine of *enormis læsio*. It is not the law that where a proprietor, who is in a position to know the value of his property, sells it for less than half of what is afterwards held to be its true value, he is entitled to come into Court and claim rescission. It is clearly laid down in *Voet 18, 5, 17*, that a proprietor who knows the value of his property is not entitled to rescission merely by reason of the fact that the price at which he has sold the property is less than half its true value. The proprietor, in such a case, has only himself to thank for any loss he may have suffered. As Voet puts it, "*Neque damnum intelligatur esse, quod quis suâ culpâ sentit.*" The case is otherwise where the property is sold at a price grossly disproportionate to its true value. In that case the law is on the side of the party who stands to lose by the transaction, and not on the side of the party who stands to make an unconscionable profit.

The plaintiff in this case was accustomed to the management of coconut property, and was by no means wanting in business capacity. She must be taken to have known the value of her property, and is

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therefore not entitled to rescission, even if it is proved that the property was sold for something less than half its value.

With regard to the claim for rescission, on the ground that the consideration has not been paid in full, no authority has been cited to us in which an action for rescission of a sale has been allowed on this ground. There can be no doubt but that on the execution of a notarial conveyance the sale is complete, and it is difficult to see how the mere fact, if it be a fact, that the whole of the consideration has not been paid can, in the absence of fraud or misrepresentation, afford ground for the rescission of the sale and the cancellation of the conveyance. The learned District Judge has entirely discredited the evidence of the plaintiff as to the non-payment of Rs. 1,690 out of the purchase money, and we are invited to review his finding in this respect.

At the argument I was impressed by the circumstance that although the plaintiff was cross-examined at length with regard to certain collateral matters, she was not confronted with and given an opportunity of denying or explaining the defendant's statements as to the manner in which he says he paid the purchase money. In the same way the documents on which the defendant relies were put generally to the plaintiff, but her attention does not appear to have been specifically directed to the passages in those documents which support the defendant's case. If the plaintiff's evidence had been more convincing, I should have been disposed to have ordered a new trial of the issue with regard to the payment of the purchase money. But having regard to the character of the plaintiff's evidence, and the view of it taken by the District Judge who heard the case, I have come to the conclusion that a new trial ought not to be ordered.

At the appeal the plaintiff's counsel tendered an affidavit sworn by the plaintiff to the effect that she was in a position to strengthen her case by fresh evidence. The new evidence consisted of (1) certain mortgages effected by the defendant on property comprised in the sale, which mortgages, it is said, would prove that the property was worth more than double the amount for which it was sold; (2) the diary of the plaintiff's late husband and the Dambulla Postmaster's account with him, which, it is said, would falsify the defendant's evidence that the plaintiff's husband was not maintaining her; (3) a letter, which, it is said, would prove the falsity of the defendant's letter D 14. In my opinion this affidavit does not afford ground for ordering a new trial. The evidence referred to in (1) is not relevant in the view which I take of the plaintiff's right to ask for rescission on the ground of *enormis læsio*. That referred to under heading (2) is merely a collateral matter. That referred to in (3) might be important if the affidavit had contained reasonable particulars of the letter referred to, but the affidavit gives no particulars of the evidence it is alleged the letter will furnish. In my opinion the appeal should be dismissed with costs.

WOOD RENTON J.—

I have had the advantage of reading the judgment of my Lord the Chief Justice, and I agree in the conclusion at which he has arrived. I do not think that any case has been made out for the cancellation of the sale on the ground of *enormis læsio*, and I have come, although with some hesitation, to the conclusion that the case ought not to be sent back for a new trial on the issue as to payment of consideration. The evidence on both sides is unsatisfactory, but I am not satisfied that the decision of the learned District Judge is wrong.

Appeal dismissed.