1970 *Present :* Alles, J., and Weeramantry, J.

D. M. K. APPUHAMY, Appellant, *and* K. KEERALA, Respondent

S. C. 559/66 (F)—D. C. Nuwara Eliya, 95/L

Vendor and purchaser—Sale of immovable property—Cancellation on ground of laesio enormis—Quantum of evidence.

Where a sale of an undivided share of a land is sought to be set aside on the ground of *laesio enormis*, the Court must compute the value of the land on the basis of the extent actually conveyed on the deed and not on the basis of evidence showing that the vendor possessed the entirety of the land.

[1] *(1964) 66 N. L. R. 475.*

APPEAL from a judgment of the District Court, Nuwara Eliya.

Rajah Bandaranayake, for the defendant-appellant.

D. R. P. Goonetilleke, for the substituted plaintiffs-respondents.

Cur. adv. vult.

June 16, 1970. WEERAMANTRY, J.—

The plaintiff instituted this action praying that deed No. 10,935 (P1, also marked D3) of 8th March 1963 be set aside on the ground of *laesio enormis*. Upon this deed the plaintiff sold to the defendant two extents of land for a sum of Rs. 1,000. The first of these was a paddy land and the second a highland planted in kurakkan on which also stood a house.

The learned District Judge has entered judgment in favour of the plaintiff on the basis that the value of the property so conveyed was a sum of Rs. 2,250 made up in this way :—Rs. 750 for the paddy land, and Rs. 1,500 for the kurakkan land and the house.

The finding of the learned District Judge that the property conveyed exceeded twice the consideration stated on the deed has been attacked on behalf of the appellant on more than one ground. The chief among these is that the properties conveyed were undivided half shares of the respective lands, as appears quite clearly from the schedule to the deed. The learned District Judge has on the other hand computed the value of these extents on the basis of the value of the entirety of each of these extents of land instead of on the basis of the value of the half share which in fact passed upon the deed. The learned District Judge was indeed conscious of the fact that the extent actually conveyed was less than the extents, the value of which he was assessing for the purpose of his judgment. Indeed he has observed that if these were the actual extents conveyed to the defendants the price paid would not have been inadequate He has, however, gone on to observe that the evidence is that the plaintiff had possessed the entire land and on this basis he has taken the view that the price paid is inadequate.

The learned District Judge appears to have misdirected himself in taking these extraneous circumstances into account instead of confining his attention to what actually passed upon the deed. What passed upon the deed was a half share of each of these lands, and although the plaintiff may have possessed the entirety of the land, still he was conveying specifically no more than an undivided half share in each land. For the purpose of *laesio enormis*, where it is sought to set aside this deed. we can only look to the extents actually conveyed on the deed and on this basis it seems clear that the valuation of Rs. 2,250 arrived at by the learned District Judge is in excess of the true value of what the deed itself conveyed.

On the question of valuation, it should be observed that there was only one witness who gave specific evidence in regard to the value of the house and that witness estimated the house as being worth Rs. 500 in value. Since this is the only definite evidence in regard to the value of the house, we feel that it is the only evidence which would be helpful to the Court in separating out the respective values of the kurakkan land and the house. In so far as concerns the second parcel of land conveyed upon the deed, the kurakkan land will then be worth Rs. 1,000 and half the land would be worth Rs. 500. Half the paddy land would be worth only Rs. 375 on the basis of the valuation which the learned District Judge has accepted. We are then left with a valuation of the property conveyed upon this deed as being the total of Rs. 500 being the value of the house and sums of Rs. 500 and Rs. 375 respectively (i.e. half the values accepted by the learned judge himself in regard to the two lands.) The total of these sums is Rs. 1,375 which falls far below the limit of Rs. 2,000 which the plaintiff must establish if he is to succeed on the ground of *laesio enormis*. On this ground alone the appeal is entitled to succeed.

We should, however, refer to the fact that the appellant does not accept the correctness of the valuations on which the learned judge has based his judgment, for there is evidence that a kurakkan land in this area is worth Rs. 1,500 per acre, so that the extent of 5 perches which was conveyed upon the deed would be worth approximately Rs. 35. This again would bring the value of the property sold to a yet lower figure.

For these reasons, we hold that the plaintiff is not entitled to have the deed set aside on the ground of *laesio enormis* and we set aside the judgment and decree of the learned District Judge and make order dismissing the plaintiff's action with costs both here and in the Court below.

ALLES, J.—I agree.

Appeal allowed.