

Present: Fisher C.J. and Drieberg J.

1927

MENIK ETANA v. KIRI APPU.

266—D. C. Kandy, 32,791.

Laesio enormis—Sale of land—Consideration being a promise to support—
Certainty of price essential.

A sale of land cannot be set aside on the ground of *laesio enormis*, where a part of the consideration for the sale was a promise by the vendee to support the vendor.

In a claim for relief on such ground the price must be certain and fixed.

A PPEAL from a judgment of the District Judge of Kandy.

Garvin, for plaintiff, appellant.

H. V. Perera (with *Rajapakse*), for defendant, respondent.

December 13, 1927. DRIEBERG J.—

The appellant alleged that she sold to the respondent by deed of February 7, 1920, lands worth Rs. 900. The consideration stated in the deed was Rs. 300. The appellant pleaded that no consideration passed and that there was an informal agreement that the respondent should support her and re-transfer the lands to her whenever demanded. She prayed for a declaration that the respondent was holding the lands in trust for her, or in the alternative that the deed be set aside on the ground of *laesio enormis*.

1927

DRIEBERG
J.Menik Etana
v.
Kiri Appu

The respondent denied these averments and stated that he paid the price of Rs. 300.

At the trial the appellant did not press the question of the trust. There was therefore only the claim on the grounds of *laesio enormis*, and the learned District Judge held that such a claim could not be made as the appellant did not allege that she was not aware of the real value of the land, and, further, that on the averments in the plaint there was sufficient consideration. He therefore dismissed the action. The appeal is from this judgment.

The judgment of the learned District Judge is right. The transaction as it was described in the plaint was not a sale; according to the plaint no sum of Rs. 300 passed, nor apparently was it intended to pass; it was a transfer in trust for the appellant, and the doctrine of *laesio enormis* has no application in such a case (*Fernando v. Fernando* ¹).

The action could not succeed for another reason; the price which it is sought to challenge in a claim for relief on the ground of *laesio enormis* must be something ascertained and certain (*2 Nathan art. 854, 1905 ed.*).

The consideration for the sale as alleged by the appellant was a sum of Rs. 300 and a promise by the respondent to support the appellant which is not capable of assessment in money.

The appeal is dismissed with costs.

FISHER C.J.—I agree.

Appeal dismissed.