

1945

Present: Soertsz A.C.J.

KANDIAH, *et al.*, Petitioners, and PONNIAH, Respondent.APPLICATION FOR *Restitutio in integrum* IN C. R. JAFFNA, 6,637.*Restitutio in integrum—Consent decree—Terms of settlement misunderstood by Proctor—Mistake.*

Where the terms of a settlement which was brought about between the parties were misunderstood by the Proctor who appeared for the plaintiffs and were, consequently, wrongly entered by Court—

Held, that relief by way of *restitutio in integrum* should be granted to rectify the mistake.

THIS was an application for *restitutio in integrum*.

N. Nadarajah, K.C. (with him H. W. Thambiah), for the petitioners.

N. Kumarasingham, for the respondent.

Cur. adv. vult.

July 30, 1945. SOERTSZ A.C.J.—

This is an application for *restitutio in integrum* by the plaintiffs in Case No. 6,637 A, C. R. Jaffna. Their plea is that the land in suit belonged to the 2nd plaintiff, the wife of the 1st plaintiff and that they instituted the action just mentioned to be declared entitled to that land and to have the defendant, the nephew of the 2nd plaintiff who was disputing their title, ejected from the land. Before the trial date, some of the relations and friends of both parties brought about a settlement, and on the trial date this settlement was minuted in the journal of August 26, 1942, in these terms:—

“Defendant is willing to take a transfer of the land from plaintiff for Rs. 170. Plaintiff present and admits having received Rs. 170 from defendant on this account. Of consent action is dismissed. No costs.”

The plaintiffs say that the true settlement was that the defendant should buy the land for Rs. 450 and that he paid Rs. 170 and undertook to pay the balance at the execution of the transfer. The plaintiffs then saw their Proctor and informed him that the case had been settled and that the defendant had agreed to buy the land and had paid Rs. 170. The Proctor assumed that Rs. 170 was the full consideration and so it came about that the settlement was minuted as it was. Thereafter, the defendant put off the fulfilment of his obligation from time to time and the plaintiffs were compelled to institute case No. 453 D. C. Jaffna to compel the defendant to carry out the settlement. Thereupon, the defendant filed answer and relied on the terms of settlement minuted in the journal of August 26, 1942, and then, for the first time, the plaintiffs became aware of the mistake that had occurred. Hence this application.

The plea of the plaintiffs is supported by the affidavits of two men who had interested themselves in effecting the settlement, one of them a retired Registrar of Lands, and a neighbour of both parties, the other a relation. On these affidavits, there is a *prima facie* case. I would, therefore, follow the procedure adopted in *Rahim Bhai v. Weerasinghe*¹; *Abeysekere v. Haramanis Appu*²; and *Sinnatamby v. Nallatamby*³ and remit the case to the Court of Requests, Jaffna, for the Commissioner officiating there to inquire into this matter, giving both parties an opportunity to put their cases before him, and for him to make such order as in his opinion, the evidence justifies. The costs of this application will be in his discretion when he makes his order.

Case remitted for inquiry.
