IN THE COURT OF APPEAL OF THE DEMCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Colamba Arachchige Chandrasiri

Lakmi Rubber Stores

Welipanna.

Plaintiff-Appellant-Petitioner

C.A.No.955/96 (F)

D.C.Mathugama No.1327/L.

Vs.

1.Panila Vithanage Rathwathi

Welipanna.

2.Madduma Arachchige (Deceased)

Kusumawathie,

Kopiwatta, Welipanna.

Defendant-Respondents.

Shamani Thushari Samarasakara

" Shaman" Kopiwatta, Welipanna

Substituted 2nd Defendant-Respondent

BEFORE : M.M.A. Gaffoor J., and

S.Devika de L.Tennekoon,J.

COUNSEL : Rohan Sahabandu P.C. with

S.B.Withanage for the Plaintiff-Appellant

Niranjan de Silva with P.Kotambage for

the 1st and 2A Defendant-Respondent.

ARGUED ON : 27.01.2017 , 06.04.2017

And 06.06.2017

Written Submissions filed on : Plaintiff –Appellant file on 10.11.2017

Defendant-Respondent filed on 09.11.2017

DECIDED ON : 18/01/2018

M.M.A. Gaffoor J.

This appeal relates to an action filed by the plaintiff-appellant against the 1st and 2nd defendant–respondents by plaint filed in the District Court of Matughama dated 5th February1988. The position of the Plaintiff is that the property in suit, that is Lot No. 1 of land called Mahawatta was sold to the 1st defendant in 1986 for Rs.60,000/= due to a monetary constraint he had at that time. Plaintiff further states that he did not know the real value of the land at the time of the sale. Further he avers that he has offered Rs. 75,000/= to the 1st defendant to buy back the property he had sold to the 1st defendant.

The plaintiff's position is that the 1st defendant transferred half of the land to him on a deed executed by D.J.P.Thilakarathne Bearing No1131 dated 21.05.1987 for Rs. 75,000/=. This transfer had been made in name of the one Chandrarathna, the brother in law of the plaintiff. Subsequently it is alleged that the 1st defendant requested a further Rs.60,000/= to recover the remaining half of the land in suit. When there was no agreement to this offer it is further alleged that the 1st defendant had transferred the remaining half of the land to the 2nd defendant by Deed No.1199 dated 12.10.1987 attested by the same Notary who executed the deed No.1199 dated 12.10.1987 attested by the same Notary who executed the earlier deed relating to the conveyed half of the property. Plaintiff states that the 1st defendant acted in collusion with the 2nd defendant who is a relative of the 1st defendant.

The 1st defendant answering the plaint on 31.05.1991 brings to the notice of the Court the following factors.

1st defendant purchased the whole property for Rs.60,000 by deed No.1002 referred to above :

(A) 1st defendant purchased the whole property for Rs.60,000 by deed No.1002 referred to above.

(B) She denies the true value of the property at Rs.20,000/=

(C) 1st Defendant admits she sold one half of the property in suit doe 30,000 under deed 1131. 1st defendant denies that she claimed Rs.60,000/= to recovery the remaining half of the property.

(D)1st defendant has sold half of the property not in collusion with the 2nd defendant but due to monetary constraints.

(E)1st defendant denies that the principle of Laesio enormis applies and that she did not get enriched unjustly.

The plaintiff has framed 7 issues, 1st defendant 5 issues and 2nd defendant 4 issues respectively. (Vide judgment Page 215). The trial proceeded thereon. District Judge of Matugama in judgment dated 16.04.1996 dismissed the plaintiff's claim as he had filed to adduce evidence in his favor to invoke the principle of laesio enormis.

The main issue to be consider in this appeal is whether the principle of laesio enormis has been proved the plaintiff appellants. Plaintiff and the assessor Edward F Wijeratna had given evidence and marked documents P1-P4. The first defendant had given evidence and the 2nd defendant had only marked documents V1-V6.

The learned District Judge in analyzing evidence of the assessor, Wijeratna had noted (Vide Page.216) that the value arrived at by the said assessor was on the basis of another land called Clarancil Estate which is situated about 2-3 miles away from the land in suit. Therefore the valued arrived at by the assessor was of no relevance to the case in point. The District Judge has totally disbelieved the evidence of the said assessor and

had rejected his valuation (vide page 216 2nd par last line (Emphasis mine)

It is to be noted that the burden of proving the said principle of laesio enormis, lies with the party who asserts the said right. Section 101 of the Evidence Ordinance, illustration (b) is very clear on this aspect of the substantive law. Further this Court in the case of *K.Podimenika Vs. Piyadasa (CA No.99/93 (F) D.C. Avissawlla case No.17054/L* decided on 1.11.2000 opined that, when the pela of laesio enormis is raised, the burden is on the person claiming the benefit of the doctrine to prove the value of the thing in question. Weeramanthrie Law of Contracts Page 335- Norman, Purchase & Sale 2nd ed. Page 576.

Learned District Judge further had observed that he is not in a position to accept the assertion that plaintiff was unaware of the real value of the property when he executed the deed in question. The plaintiff has admitted in evidence that he is a business man who had transactions with banks and in cross examination he had admitted that at the time of the sale he was aware that the value of the property was Rs.100,000/= . On the basis of the evidence of

the plaintiff the learned District Judge has come to the conclusion that the plaintiff cannot invoke the principle of leasio enormis. Therefore this Court refuses to interfere with his aspect of the plaintiff's case.

The main contention of the plaintiff is that the principle of leasio enormis lies for his benefit. In order to substantiate this argument the plaintiff appellant has cited *Jayawardena Vs. Amarasekera 15 NLR 280, Bodiga Vs. Nagoor 45 NLR 1.* Roman Dutch Authorities such a Wessels Law on Contract and professor Weeramantry Law of Contract Volume 1.

In *Jayawardena Vs. Amarasekera , Supra, Lascelles C,J.* Had held that:

> "a person who knows the value of his property is not entitled to recession of the sale merely by reason of the fact that the price at which he had sold the property is less than half its true value ....."

It will be seen that the principle of unjust enrichment has been mentioned in the plaint no issue has been framed in this respect.

In a recent judgment the Supreme Court in Appeal No.4/2012 decided 30.05.2016 bench comprising of Wanasundara J., Sisir de Abrew,J. and Anil Goonerathna J. in which Anil Goonerathna, J. delivered the judgment of Court, in which the principle of laesio enormis has been gone in to and had concluded with an erudite explanation of the said principle in page 12 of the said judgment Court observed thus,

Explanation of Principle.

Though the civil law permits the parties to make as good a bargain as they can, yet it states that gross inequality between the price which has been paid and the true value of an article implies something in the nature of fraud of undue influence and on that account allows the one party or his heirs to call upon the other either to rescind the contract and return the purchase money or the property sold as the case may be, or to correct the price by

paying a just value for the article. This inequality between the value of the thing and the price paid is termed laesio enormis.

A contract may be avoided by Court on the ground of laesio enormis either when the purchaser pays more than double the true value of the thing or the vendor sells the thing for less than half its value. The person sued has the option of restoring the thin or paying what is wanting to make up the just price. Where the consideration is less than half (or more than twice the true value of the property. The sale is voidable on the ground of laesio enormis unless there is come special consideration present in the case which bars the application of the principle. The difference in price must exist at the time of the transaction and not thereafter.

The doctrine still obtains in full force and vigour in Ceylon. *Bodiga vs. Nagoor 45 NLR1 at para 335.*

Action does not lie, where the aggrieved party was aware, or ought to have been aware of the true value at the time of making the contract. *Jayawardena vs. Amarasekera 15 NLR 280; Sobana*

Vs. Meera Labee (1940)5 C.L.J.46 .The burden is on the person claiming the benefit of the true value.

In the case of *Jaywardene Vs. Amarasekera (15 N.L.R. 280).* I would advert to a further position very much relied upon by the plaintiff. As it was held in *Jayawardene Vs. Amarasekera (15 N.L.R 280*) a person who knows the value of the property is not entitled to are rescission of the sale merely by reason of the fact that the price at which he has sold it, 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 said of the party who stands to lose by the transaction, and not on the side of the party who stand to make an unconscionable profit. The annulling of the contract on this heads is not permitted when the other party is prepared to increase or reduce the price of the thing to its true value (V.d l 1. 15.10)

But one has to gather its application only in the circumstances and facts of the case in hand. Though the above position had been projected by learned counsel for the plaintiff, as in *Jayawardena Vs. Amarasekera* it does not appear to be

conclusive, in answer to above I find that Justice |Fernando observes in *Gunasekra Vs, Amarasekera1993 (1) SLR at 176/177* the matter has not been decided conclusively in the manner as argued by learned Counsel for plaintiff, for the reasons stated therein as being obiter dictum. This aspect and matter has not been decided by Justice Fernando. I will refer to the relevant portion gathered from Page 176/177.

Learned counsel for the defendant submitted that lasio normis applied even if the vendor was aware of the true value, citing Wessells, Law of Contract, 2nd ed., Vo.l2, page 1344, Section 5100.

"There is a considerable dispute amongst the jurists whether the remedy applies in the case of a person who knows the true value of the thing, but nevertheless sells it for less than half, or purchase property knowing that it is only worth half. Voet seems to consider that in both cases the remedy cannot be invoked (voet, 18.5 .17)....

Counsel then sought to rely in the further observation of Lascelles, C.J., in that case, suggesting that knowledge is immaterial where the price is grossly disproportionate to the value, pointing that knowledge is immaterial where the price is grossly disproportionate to the value, pointing out that this dictum was cited in Walter Pereira's Law of Ceylon, 2nd ed., (1913), page 657. However, that appears to be an obiter dictum not supported by the opinion of any Roman Dutch Jurist; and indeed does not appear in the first edition of Walter Perera's work, it is also not cited by Weeramantry, in his discussion of laesio enormis. *In Sobana Vs. Meera Saibo,* it was held that the plea of leasio enormis could not be entertained where, assuming the land to have been worth Rs.500, the plaintiff knew that fact at the time he sold the land for Rs. 100.

Although *Jayawardena Vs. Amarasekera* was cited with approval, that obiter dictum was not applied. While there appears to be some substance in the contention that this obiter dictum does not correctly set out the Roman Dutch Law (and is possibly based on misunderstanding of the concluding portion of Voet

18.5.17)., the matter need not be decided now in view of my decision on the other questions arising in this case".

In all the facts and circumstances of the case, I find following important factors from which court has to draw conclusion. The factors in point from are as follows;

(a) Certain items of evidence had been disbelieved by the trial Judge, and the apex Court would not interfere as regards the trial Judge's findings on same.

(b)Validity of document V1 is in question.

(c) plaintiff was well aware of the true value of the property in dispute (Emphasis mine)

In these circumstances and in the context of the case in had I affirm as stated above both judgments of the District Court and the High Court. This appeal is dismissed without costs.

It is to be noted that according to the hierarchy of courts, this court is bound by the principles of law enunciated by the Supreme Court, unless one could differentiate on facts.

In the circumstances this appeal stand dismissed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

S.Devika de L.Thennekoon,J.

JUDGE OF THE COURT OF APPEAL