

1899.

November 27.

GOONERATNE v. DON. PHILIP.

D. C., Colombo, 10,442.

Purchase and sale—Rescission on ground of enormis læsio.

In order to succeed in an action for rescission of sale on the ground of *enormis læsio*: plaintiff must prove that the property was at the date of the sale worth double the price the defendant paid for it.

THE plaintiff prayed for a rescission of the sale of certain allotments of land which one Simon Perera (the second defendant), who held his power of attorney, had sold to Don Philip (the first defendant) by deed dated 2nd August, 1894, for Rs. 23,500. Plaintiff alleged, *inter alia*, that the real value of the lands so sold was Rs. 50,000, and that the two defendants had acted collusively and fraudulently in the matter. He expressed his readiness to refund to the first defendant the sum of Rs. 23,500 upon the cancellation of the deed, and in the alternative he prayed that if the sale were to stand, the defendants be condemned to pay to the plaintiff the sum of Rs. 26,500, which represented the difference between the proper value of the lands and the amount for which it was sold.

The Additional District Judge (Mr. Felix Dias) found as follows.

“ The plaintiff was heavily indebted to the first defendant on a mortgage of this property, and asked his attorney by letter to obtain time from his creditor and settle as much of the debt as possible, and if there be any balance left to give him a bond for it. If, under such circumstances, the attorney conveyed the land to the first defendant for Rs. 23,500, I fail to see how the transaction can be described as fraudulent The land was bought originally from the Crown as a forest for Rs. 18,276 in 1889 and sold by the purchaser in the same state to the plaintiff in 1891 for Rs. 19,000. At the date of sale to the first defendant by the plaintiff's attorney (the second defendant) only 55 acres had been cleared and planted with cocoanut aged two or three years, and I consider Rs. 23,500 a fair and reasonable price at the time of the second defendant's sale to the first defendant.”

The plaintiff's action was dismissed.

He appealed.

Dornhorst (with *H. Jayawardene*), for plaintiff, appellant.

Layard, A.-G. (with *Sampayo* and *Van Langenberg*), for defendants, respondents.

27th November, 1899. BONSER, C.J.—

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In my opinion this appeal must be dismissed on the ground that the *enormis læsio* on which the contract was sought to be impeached is not proved.

For the plaintiff to succeed in an action of this kind he must prove that the property was at the date of the sale worth double the price the defendant paid for it. In my opinion the plaintiff, although he may have established that the property was worth more than the purchaser gave for it, has failed to establish that the discrepancy in value was sufficient to amount to *enormis læsio*. That being so, it is unnecessary to consider the further questions raised in the appeal, the question as to whether the action is prescribed as coming within section 11 of Ordinance No. 22 of 1871, and the further question whether, if it did come within that section, time began to run only from the date when the plaintiff became aware of the sale. The sale, I should mention, was made by the plaintiff's agent whilst the plaintiff was in jail, and it is alleged that he did not become aware of the sale until he came out of jail. Those are questions, as I said before, which, for the purposes of this case, it is unnecessary to decide.

I base my judgment on the failure of the plaintiff to make out that there was *enormis læsio*.

WITHERS, J.—

This is an action by a vendor to rescind a contract for the sale of immovable property on the ground of *enormis læsio*.

The first thing the plaintiff had to prove was that at the date of sale the property was worth twice as much as the purchaser paid for it. I am far from being satisfied from the evidence that that value has been made out. That being so, I would affirm the judgment.