IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal from the Judgment of the Court of Appeal dated 10.06.2014.

S.C. Appeal No:

126/2015

SC/Spl/LA Case No:

114/2014

C.A. No:

137/98 (F)

District Court of Gampaha

Case No: 31388/L

Ahangama Vithanage Mala Mangalika Abayagunasekera,
221/A, Saranapala Mawatha, Akaravita, Gampaha.

PLAINTIFF

Vs.

1. Anestus Perera *alias* Saman Perera
2.Hewapathiranahelage Emalin

Both of Saranapala Mawatha, Akaravita, Gampaha.

DEFENDANTS

AND BETWEEN

Ahangama Vithanage Mala Mangalika Abayagunasekera,
221/A, Saranapala Mawatha, Akaravita, Gampaha.

PLAINTIFF-APPELLANT

Vs.

1. Anestus Perera *alias* Saman Perera (deceased)
2. Hewapathiranahelage Emalin (deceased)

Both of Saranapala Mawatha,

Akaravita, Gampaha.

DEFENDANT-RESPONDENTS

1A. Hewa Pedige Sumithra Malkanthi

1B. Wanni Arachchige Amila Madushan Perera

1C. Wanni Arachchige Ashan Shehan Perera

1D. Wanni Arachchige Eranda Wimukthi Perera

All of No. 48/F, Samagi Mawatha,

Dombawala, Udugampola.

SUBSTITUTED DEFENDANTS-RESPONDENTS

AND NOW BETWEEN

Ahangama Vithanage Mala Mangalika Abayagunasekera,

221/A, Saranapala Mawatha, Akaravita,

Gampaha.

PLAINTIFF-APPELLANT-APPELLANT

Vs.

1A. Hewa Pedige Sumithra Malkanthi
1B. Wanni Arachchige Amila Madushan Perera
1C. Wanni Arachchige Ashan Shehan Perera
1D. Wanni Arachchige Eranda Wimukthi Perera
All of No. 48/F, Samagi Mawatha, Dombawala, Udugampola.
SUBSTITUTED DEFENDANTS-RESPONDENTS-RESPONDENTS

Before : S. Thurairaja, P.C., J.

: Menaka Wijesundera, J.

: Sampath B. Abayakoon, J.

Counsel : Navin Marapana, P.C., with Uchitha Wickremesinghe and Saumya Hettiarachchi instructed by Tharanath Palliyaguruge for the Plaintiff-Appellant-Appellant.

: Uditha Egalahewa, P.C., instructed by Deshananda Bandara Bulathgama for the 1A, 1B, 1C, and 1D Substituted Defendants-Respondents-Respondents.

Argued on : 02-06-2025

Written Submissions : 14-07-2016 (By the Substituted Defendants-Respondents-Respondents)

: 23-09-2015 (By the Plaintiff-Appellant-Appellant)

Decided on **:** 04-09-2025

Sampath B. Abayakoon, J.

This is an appeal preferred by the plaintiff-appellant-appellant (hereinafter referred to as the plaintiff) on the basis of being aggrieved of the judgment pronounced on 10-06-2014 by the Court of Appeal.

From the said judgment, the Court of Appeal dismissed the appeal preferred by her in order to challenge the judgment pronounced by the learned District Judge of Gampaha on 27-02-1998, where the action instituted by the plaintiff seeking a declaration of title to the land morefully described in the plaint and for other incidental reliefs was dismissed after trial.

When this matter was supported before this Court on 21-07-2015 for the granting of Leave to Appeal, this Court, having considered the relevant facts, circumstances and the law, granted Leave to Appeal on the following questions of law, as averred in paragraph 14 of the petition filed before the Court.

1. Has His Lordship of the Court of Appeal erred in law by failing to consider that in terms of section 10 of the Prescription Ordinance the respondents' causes of action *inter alia* based on *Laesio Enormis*, were prescribed as they have not claimed relief within 3 years of the date of the execution of the disputed deed No. 1449.
2. Has His Lordship of the Court of Appeal erred in law by failing to consider that the plaintiff is a *bona fide* purchaser of the land in suit and that she was not a party to any transaction with the respondents.
3. Has His Lordship erred in law by failing to consider that the plea of *Laesio Enormis* is not available against a subsequent purchaser of the property and could only be made against the purchase from the seller.
4. Has His Lordship failed to consider that the 2nd defendant-respondent in her evidence at the trial has stated that at the time she executed the said deed No. 1449, she was very much aware of the true value of the property and therefore the plea of *Laesio Enormis* is not available to a person who knows the value of the property at the time of the sale even

if (which is denied), the price at which she has sold the property is less than half of its true value.

5. Has His Lordship erred by failing to consider that the respondents had waited for 6 years without taking any action in relation to the property in suit and only took steps when this action was filed in the District Court of Gampaha by the petitioner and also did not provide any explanation for not taking any such action at the trial.
6. Has His Lordship erred in law by failing to consider that the respondents are trying to contradict and show that deed No. 1449 was not a transfer deed, but in actual fact was a deed of mortgage when such evidence could not be admitted as per section 92 of Evidence Ordinance.

At the hearing of this appeal, this Court heard the submissions of the learned President's Counsel on behalf of the plaintiff and the submissions made by the learned President's Counsel on behalf of the substituted defendants-respondents-respondents (hereinafter referred to as the substituted defendants). This Court also had the benefit of considering the written submissions tendered by the parties in this regard.

This is a matter where the plaintiff has instituted an action before the District Court of Gampaha for a declaration of title of the land morefully described in the schedule of the plaint, and for an interim injunction among other incidental reliefs.

The land in suit has been described as Lot 1 and 4 of the plan No. 256 dated 21-03-1975 by K. G. Hubert Perera, Licensed Surveyor (the plan marked as P-01 at the trial).

It needs to be noted that the plaintiff has not sought an ejectment of the defendants mentioned from the said land on the basis that the plaintiff is in possession of the land in question.

In the above-mentioned plan marked P-01, Lot 1 has been described as a land of 01 rood 17.1 perches in extent, and Lot 4, which is the access road provided

for the said land from the main road, has been described as a land of 1.34 perches in extent.

In her plaint, the plaintiff has averred her cause of action on the basis that the defendants who are in possession of Lot 2 of the same plan caused obstructions to the common Southern boundary between Lot 1 and Lot 2. Pleading her title to the property, the plaintiff has stated that the 2nd defendant named in the action sold the land to one Francis Paul Kingsley Dias by deed No. 1449 dated 10-05-1993, and upon said Dias's demise, his heirs transferred the said rights to the plaintiff by deed No. 7490 dated 09-07-1998, whereby she became the owner of the property.

The defendants filing their answer on 24-05-1989 has admitted the execution of deed No. 1449 as a deed of transfer, but has claimed that in fact what occurred between the parties was only a loan transaction where the land was pledged as security, and therefore, no title can pass on to the plaintiff.

They have also averred that the land in question is much more valuable than the stated consideration in the deed. They have claimed that on the basis of the principle of *Laesio Enormis,* they are entitled to get the said deed No. 1449 to be declared null and void.

At the trial before the District Court, the parties had admitted that the 2nd defendant was a previous owner of the land mentioned in the schedule of the plaint, and the fact of execution of the deed No. 1449 dated 10-05-1993 by Notary Public K. K. Wijegunaratne.

Based on the above admissions, the plaintiff has raised 2 issues on the basis of her title, and if her title is proved, whether she can obtain a judgment as prayed for in her plaint.

The defendants have raised issue No. 3 to 7, which reads as follows.

> 3. පැමිණිල්ලේ සඳහන් එකී අංක. 1449 දරණ ඔප්පුවෙන් නීත්‍යානුකූල පැවරීමක් සිදු කර ඇත්ද
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> 4. එසේ නොමැති නම් පැමිණිල්ල ඉදිරියට ගෙන ගිය හැකි ද

5. කෙසේ වෙතත් උත්තරයේ 5වෙනි ඡේදයේ සඳහන් පරිදි පැමිණිලිකාරිය අයුතු පොහොසත්වීමක් ලබා ඇත්ද

6. එකී අංක. 1449 දරණ ඔප්පුවෙන් පෙන්නුම් කරන්නේ උත්තරයේ සඳහන් පරිදි ණය ගනුදෙනුවක්ද

7. කෙසේ වෙතත් උත්තරයේ 13වෙනි ඡේදයේ සඳහන් පරිදි *Laesio Enormis* පදනම මත එකී අංක. 1449 දරණ ඔප්පුව බලශූන්‍යවේද

The above admissions and issues had been recorded on 05-09-1989 and the trial has commenced on 02-01-1990. Halfway through the trial, while plaintiff's witness Charlotte Jayasinghe, the wife of Kingsley Dias who transferred the inherited rights in relation to the land along with her children to the plaintiff, was giving evidence, the learned Counsel who represented the defendants had raised the following additional issues which had been accepted by Court.

8. ස්වාමිපුරුෂයාගේ දේපළ බූදල් නොකර එම කාර්ය පටිපාටිය අනුගමනය නොකර මේ බූදලය වෙනත් කෙනෙකුට පැවරුවාද

9. බූදල් කාර්ය පටිපාටිය අනුගමනය කොට මෙම දේපළ පවරා නැත යනුවෙන් පිළිතුරු ලැබුනහොත් එය විත්තියේ වාසියට පැමිණිල්ල නිෂ්ප්‍රභා කිරීමට හේතුවක්ද

10. පැමිණිලිකාරියට මෙම දේපළ පැවරීමේදී බේරුම්කරුට නිසි අයිතියක් බූදල් නඩුවකින් ලැබී තිබෙනවාද

11. එසේ බූදල් නඩුවකින් අයිතියක් ලැබී නැත්නම්, 'නැත' යන පිළිතුර ලැබුනහොත් එය විත්තියේ වාසියට තීන්දුකල යුතුද

In his judgment dated 22-02-1998, the learned Additional District Judge of Gampaha has answered the issues raised by the plaintiff in the negative, and all the issues raised by the defendants in their favour. The learned District Judge appears to have determined that the deed of transfer upon which the plaintiff relied on to claim the title to the property was in fact a mortgage, and thereby accepting the defendants' evidence to that effect. The learned District Judge has also determined that the plaintiff's predecessors in title could not have executed the deed of transfer in favour of the plaintiff since no

testamentary action has been initiated as to the estate of the deceased Kingsley Dias who became the owner of the land upon deed No. 1449.

However, it is clear that the primary reason for allowing the counter claim made by the defendants had been on the basis of *Laesio Enormis*.

Since the questions of law upon which Leave to Appeal was granted by this Court revolves around the questions of whether the defendants of the action had a basis to claim reliefs on the basis of *Laesio Enormis*, and whether a deed of transfer can be interpreted as a mortgage in the manner it has been determined by the learned District Judge as well as the Court of Appeal, I will focus my judgment on the said questions of law.

It was the position of the learned President's Counsel who represented the plaintiff that the plaintiff has only sought a declaration of title and not ejectment because the plaintiff's possession of the land was never disturbed, other than the disruption of the Southern boundary of the land. It was submitted that the defendants took up their respective positions only in their answer dated 24-05-1989 praying for the setting aside of the deed marked P-03, namely deed No. 1449, where the 2nd defendant has sold the land in question to Kinsley Dias, noting that the defendants had not challenged the deed upon which the plaintiff obtained title from the heirs of the said Dias, namely deed No. 7490 dated 09-07-1988, marked P-02 at the trial.

He went on to submit that in terms of section 10 of the Prescription Ordinance, an action on the basis of *Laesio Enormis* has to be initiated within 3 years from the cause of action, whereas the defendants have pleaded *Laesio Enormis* only in their answer filed more than 6 years after the execution of the questioned deed. Submitting as to the facts pointing towards the consideration mentioned in the deeds produced before the Court and the evidence of the 2nd defendant where she has claimed that the transaction was not an actual transfer, it was pointed out that the evidence has established the fact that the 2nd defendant knew that she was selling the land for a lesser sum than the actual value she claimed at the time of the execution of the said deed.

Citing relevant judgments pronounced in this regard by our Superior Courts, it was contended that under such circumstances, a claim of *Laesio Enormis* cannot be maintained.

Referring to the provisions of section 92 of the Evidence Ordinance, it was his position that since no exception was pleaded as required, and no constructive trust has been pleaded other than a mere statement, there was no basis before the District Court or the Court of Appeal to make a determination as to the validity of the deed of transfer upon which the 2nd defendant has sold the land to Kingsley Dias. It was his position that the plaintiff was a *bona fide* buyer who had nothing to do with the transaction between the 2nd defendant and Kingsley Dias, where her deed was never challenged. It was submitted that both the original Court and the Court of Appeal erred in law when both the Courts decided to dismiss the plaint and to grant relief based on the counter claim of the defendants.

It was the position of the learned President's Counsel who represented the substituted defendants that the fact of selling the land by the 2nd defendant to Kingsley Dias only as a security for a loan has been well established before the trial Court. He pointed out that the plaintiff has failed to file any replication before the trial Court challenging the position taken up by the defendants. It was also argued that the prescription claim as to the plea of *Laesio Enormis* is a matter that was raised for the first time in the Supreme Court. It was his position that this was not a matter where patent lack of jurisdiction can be claimed, and since the prescription has not been pleaded previously, it has to be assumed that the plaintiff has waived such a claim.

It was contented further that the 2nd defendant never admitted in her evidence that she knew the value of the property, but her position was that she never sold it.

Pointing towards the valuation reports obtained by the defendants in relation to the land in question, the learned President's Counsel submitted that the actual value of the land was much more than the value for which the land had been sold to Kingsley Dias.

The learned President's Counsel admitted that the deed upon which the 2nd defendant has sold the land to Kingsley Dias has been annulled by the Court on the basis of *Laesio Enormis*. He also brought to the attention of the Court that His Lordship of the Court of Appeal has decided to disallow the damages awarded by the trial Judge to the plaintiff since there was no prayer before the Court seeking any damages.

In this context, it needs to be noted that in the Court of Appeal judgment, the determination had been that the learned District Judge has decided to revoke the deed marked P-03 (deed No.1449 dated 10-05-1993) on the basis that no proper consideration had been passed to the vendor in that deed.

It was on that basis the Court of Appeal has proceeded to consider whether the said deed is in fact an outright transfer or not. It had been determined that even if it can be considered as a transfer, the deed can be annulled on the basis of *Laesio Enormis*. It has also been determined that the plaintiff cannot claim title based on the deed marked P-02, namely deed No. 7490 dated 09-07-1998.

Having in mind the above factual matrix and the relevant law, and also the questions of law upon which Leave to Appeal was granted, I will now proceed to consider the appeal.

The action initiated by the plaintiff is a *vindicatory* suit where she has sought for a declaration of title to the land morefully described in the schedule of the plaint, but not ejectment.

In such a situation, the onus is on the plaintiff to identify the corpus of the action and to prove her title to the same. Once a plaintiff establishes the necessary ingredients that needs to be proved in such a suit, the burden shifts to the defendant to show that he has a better title or claim to the land than that of the plaintiff.

In the District Court judgment, I do not find anything to satisfy that the learned District Judge has proceeded to consider whether the plaintiff has proved at least paper title to the land mentioned in the schedule of the plaint, or whether the corpus has been identified.

After summarizing what the plaintiff and the defendants have stated in their respective plaint and answer, and narrating the admissions and the issues, the learned Additional District Judge of Gampaha has proceeded straight away to consider the stand taken up by the defendants to claim that the transaction was not in fact a transfer of a land, but a security for a loan obtained, and the relevant claim of *Laesio Enormis,* before proceeding to dismiss the action of the plaintiff and grant relief as sought by the defendants.

I am also unable to find that the Court of Appeal has considered this legal aspect in the Court of Appeal judgment where the judgment of the District Court was affirmed. I find that His Lordship of the Court of Appeal has only considered the judgment of the District Court in order to justify granting of relief to the defendants by the learned Additional District Judge.

Under these circumstances, I find it relevant to consider the 6th question of law under which Leave to Appeal was granted by this Court before considering the other questions of law. The 6th question of law relates to whether the learned District Judge, as well as the Court of Appeal, was correct in the way the validity of the deed of transfer that was challenged before the District Court was determined.

There cannot be any dispute that the said deed No. 1449 marked P-03 at the trial was an outright deed of transfer by the 2nd defendant of the action, namely Hewapathiranahelage Emalin, to Francis Paul Kingsley Dias for a sum of Rs. 18,000/-. In the notarial certificate, the Notary has clearly stated that the said sum was transacted before him.

I am of the view that this is a situation where the provisions of section 92 of the Evidence Ordinance are clearly applicable.

Section 92 of the Evidence Ordinance, which has 6 provisos attached to it reads as follows.

> **92. When the terms of any such contract, grant, or other disposition or property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement**

shall be admitted as between the parties to any such instrument, or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from its terms.

The provisos to the section provide for conditions under which the effects of such a document can be challenged.

In the case of **B. M. G. Setuwa Vs. B. T. Ukku 56 NLR 337** it was held that it is never open to a party who executes a conveyance which is unambiguously a deed of sale to lead parole evidence to show that in reality it is a deed of mortgage and not sale. This rule equally applies where there is an agreement in the deed itself whereby the vendee undertakes to re-transfer the property for consideration within a specified period, and also where there is a separate agreement to the same effect, whether notarial, or not.

Per Gratiaen, J.,

> *"The respondent did not rely on any proviso to section 92 of The Evidence Ordinance. Nor did he allege a trust of the kind which section 5 (3) of the Trusts Ordinance permits to be established by oral evidence. In the result, the learned trial Judge should not have admitted evidence for the purpose of contradicting, varying, adding to, or subtracting from the terms of two notarial instruments each of which unambiguously purported to record a transaction between a vendor and his purchase (not between a mortgagor and his mortgagee)."*

In my view, the only way the defendants could have challenged the said deed of transfer would have been by pleading that although a deed of transfer was executed, the real purpose was not to pass beneficial interest of the property, but only as a security for a loan, by claiming the benefits of a constructive trust in terms of section 83 of the Trusts Ordinance.

I find that what the defendants have done in this action had been to make mere oral statements as to the intention of the parties, or to claim that the full consideration was not passed despite the fact that the deed of transfer speaks otherwise. It is my considered view that if a deed of transfer can be allowed to be challenged in the manner in which the Court held in favour of

the defendants, there can be no certainty in such transactions. At no point in the answer of the defendants or by way of issues, the defendants have claimed a constructive trust.

The evidence clearly shows that after the execution of the deed of transfer, the possession of the land had been handed over to the purchaser of the property, and it was on that basis the heirs of Kingsley Dias had transferred their inherited rights of the property to the plaintiff by the deed marked P-02. There was no evidence before the Court to suggest that the vendor allowed the vendee to enjoy the property in lieu of interest of the loan as claimed by the defendants.

If it was the contention of the defendants that the transaction was not an outright sale, they should have filed an action before a competent Court claiming rights on the basis of a constructive trust for a declaration claiming reliefs on that basis. The defendants have clearly slept over their rights until the plaintiff decided to file an action to obtain a declaration of title to the land, and had thought it fit to claim that the transaction upon which the plaintiff's predecessors in title obtained their rights was not an actual transfer.

Under these circumstances, it is my considered view that there was no basis to consider the defendants' counter claim that the transaction was not an outright transfer in terms of the provisos of section 92 of the Evidence Ordinance. Hence, I hold that both the Courts have erred in law when it was determined that the deed marked P-03 was not an actual deed of transfer, whereas it was.

Having said that, I will now proceed to consider the other questions of law which revolves around whether there is any justification of the decision to annul the deed of transfer marked P-03, under which the plaintiff had claimed title.

The prescriptive period for one to claim benefit under the principle of *Laesio Enormis* is not a matter expressly provided for under the provisions of the Prescription Ordinance. As correctly pointed out by the learned President's

Counsel for the plaintiff, in such circumstances, it is the provisions of section 10 of the Prescription Ordinance that should be considered applicable.

The said section 10 of the Prescription Ordinance reads as follows.

> **10. No action shall be maintainable in respect of any cause of action not hearing before expressly provided for or expressly exempted from the operation of this Ordinance, unless the same shall be commenced within 3 years from the time when such cause of action shall have accrued.**

As I have stated before, the defendants have only claimed *Laesio Enormis* in the answer they filed in response to the action initiated by the plaintiff more than 6 years after the execution of the deed marked P-03, which clearly is a claim that has been long prescribed in terms of the Prescription Ordinance.

In the case of **Gunasekara Vs. Wickremasinghe (2005) 1 SLR 390**, the plaintiff-appellant transferred the property in question with the right of re-purchase within a period of 1 year. The date of execution of the conditional transfer deed was 17-09-1987, the date of institution of action had been on 14-06-1993, which was 6 years after the execution of the said deed. The plaintiff-appellant sought to set aside the said deed based on the principles of *Laesio Enormis*. The trial Court dismissed the plaintiff's action stating that it is time barred.

Per Andrew Somawansa, J., P/CA

> "*It is to be seen that 'Laesio Enormis' is not a matter that is specifically covered by any of the sections contained in the Prescription Ordinance. Certainly, neither section 3, 5 or 6 would be applicable to this concept. Section 3 of the Prescription Ordinance deals with the lands or immovable property. Section 5 deals with mortgage, debt, or bond and Section 6 deals with partnership, deeds, written promise, contract, bargain, agreement, security, promissory notes, bills of exchange, etc. Thus, it is to be seen that the applicable section would be Section 10 of the Prescription Ordinance.*"

Although, the learned President's Counsel for the substituted defendants submitted that the question of prescription has been taken up for the first time only before the Supreme Court and it cannot be taken up in such a manner, I do not agree. I am of the view that this is a question of law that needs determination as it has been allowed by this Court when formulating the questions of law under which this appeal would be considered.

For the reasons as considered above, I am of the view that the defendants' claim of *Laesio Enormis* before the District Court was clearly prescribed in terms of law. However, I am in agreement with the learned President's Counsel that the question of prescription is not a matter where patent want of jurisdiction can be asserted, but a latent want of jurisdiction, which can be waived by the conduct of the parties.

Although the matter under appeal is not an action initiated by the defendants on the basis of *Laesio Enormis*, when this position was taken up by the defendants, the plaintiff has thought it fit not to raise an issue based on prescription at the trial, though if raised, the claim of *Laesio Enormis* would clearly be prescribed under the facts and circumstances of the case. Since this was a matter that has not been raised or required to be considered before the trial Court or before the Court of Appeal for that matter, I am of the view that the question of prescription is a matter that has been waived off by the conduct of the plaintiff, and a matter that cannot be taken up for the first time at the hearing of this appeal, although a question of law has been raised before this Court in that regard.

However, it is my considered view that when considering the principle of *Laesio Enormis,* the delay and the conduct of the party who claims benefits under the principle of *Laesio Enormis* is very much a relevant factor. The defendants who claimed the benefit of *Laesio Enormis* have not initiated any legal proceedings on such a basis until they were required to file an answer to the plaint preferred by the plaintiff, which was a claim made more than 6 years after the execution of the deed marked P-03. Under such circumstances, I am of the view that the defendants were not entitled to take up such a

position since they have not gone before a Court of law seeking a remedy without undue delay.

It is also a well settled principle of law that a plea of *Laesio Enormis* is not available against a subsequent purchaser of the land, but a claim that can only be made against the person who purchased the land from the original vendor. The plaintiff of the action is not a person who purchased the land from the original vendor, but a third party who purchased it from the heirs of the original owner. The plaintiff has had no connection whatsoever to the original transaction where the benefit of *Laesio Enormis* had been claimed by the defendants.

This question as well as the question of delay in claiming reliefs in terms of the principle of *Laesio Enormis* was well considered in the case of **Podi Menika Vs. Heen Menike (2004) 3 SLR 289,** where it was held,

1. The principle of Roman-Dutch law is to remedy injustice caused to a seller of a thing due to his ignorance or lack of knowledge. This principle could not apply to a situation where the seller was aware of the true value of the property at the time of execution of the deed.
2. A transferor who institutes an action on the principle of *Laesio Enormis* has to do so without delay. The principle of *Laesio Enormis* is available as against a transferee of a deed and not against a 3rd party who had become entitled to the property on a deed granted by the transferee.

Per Dissanayake, J.,

"*Laesio Enormis has been described by Grotius as: "if the seller or purchaser has been prejudiced in the price to the extent of more than half the real value, even though no fraud has been perpetrated on either side the party so prejudiced may give the other the option of either cancelling the sale or of increasing or reducing the price in accordance with the real value. This mode of restitution applies to almost all contracts." Grot 3 (17-1-5).*

Laesio Enormis is a well-recognised principle in the Roman-Dutch law to remedy injustice caused to a seller of a thing due to his ignorance or lack of knowledge.

This principle will not apply to a situation where the seller was aware of the true value of the property at the time of the execution of the deed, however the property was sold at a lesser price.

The remedy available to an aggrieved party under this principle is not confined to cancellation of the contract but also damages. In such a situation the contract is not void but is voidable. Therefore, a transferor who institutes an action on the principle of Laesio Enormis has to do so without delay. The principle of Laesio Enormis is available as against a transferee of a deed and not against a third party who had become entitled to the property on a deed granted by the transferee."

In the case of **Jayawardene Vs. Amarasekara 15 NLR 280**, which was a case where the principle of *Laesio Enormis* was considered;

Per Lascelles, C.J.,

"*It is clear to me that the plaintiff cannot possibly succeed on her claim to have the sale cancelled on the ground of enormis laesio. I agree with the learned District Judge that the evidence by which it is sought to prove that the lands were sold for less than half their true value is far from convincing. But even assuming this to have been proved, the plaintiff would not necessarily be entitled to the benefit of the doctrine of enormis laesio. It is not the law that where a proprietor, who is in a position to know the value of his property, sells it for less than half of what is afterwards held to be its true value, he is entitled to come into Court and claim rescission.*"

In the case of **Menik Ethana Vs. Kiri Appu 29 NLR 381**, it was held;

"*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 would 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 sale no sum of Rs. 300/- passed, nor apparently was it intended to passed; it was a transfer in trust for the appellant, and the doctrine of laesio enormis has no application in such a case."

The above line of authority clearly establishes that to claim *Laesio Enormis,* the person who sells the land to another must have the intention to sell the land, but due to the facts and the circumstances, the seller could not have known the true value of the land. It has to be established that as a result, he sold it for less than half of its actual value.

However, in the matter under the appeal, the position taken up by the defendants before the trial Court had been that the 2nd defendant never had the intention of selling the land to Kingsley Dias, but she only entered into the transaction to secure a loan obtained by her from the said Dias.

It is my considered view that under such circumstances, there cannot be a basis for the defendants to claim the benefit of the principle of *Laesio Enormis.* As pleaded by they themselves, the intention of the 2nd defendant was not to sell the land. The evidence led on behalf of the defendants at the trial had been to the effect that they very well knew the value of the land when the 2nd defendant executed the deed marked P-03 in favour of Kingsley Dias.

It is my view that under the said circumstances, the defendants cannot have had the benefit of the principle of *Laesio Enormis* as determined by the learned Additional District Judge as well as His Lordship of the Court of Appeal.

As the evidence clearly demonstrates, the plaintiff was not the party who purchased the land from the 2nd defendant who claimed the benefit of *Laesio Enormis* before the District Court. She is a *bona fide* purchaser of the land from the heirs of Kinglsey Dias for a valuable consideration that fits the value

of the land under given circumstances. Hence, it is my view that the principle of *Laesio Enormis* cannot be made use of against the plaintiff of the action.

For the reasons as considered above, I am of the view that the judgment pronounced by the learned Additional District Judge of Gampaha, as well as the judgment pronounced by the Court of Appeal cannot be allowed to stand, as the said judgments are judgments pronounced without giving due considerations to the relevant principles under which the relief has been granted in favour of the defendants of the action.

Accordingly, I answer the 1st question of law in the negative, and all the other 5 questions of law in the affirmative.

The judgment dated 27-02-1998 pronounced by the learned Additional District Judge of Gampaha and the judgment dated 10-06-2014 pronounced by the Court of Appeal is hereby set aside.

Allowing the appeal, I hold that the plaintiff is entitled to the reliefs (ඌ) and (ඍ) of her plaint dated 17-08-1988.

The appeal is allowed. There will be no costs of the appeal.

Judge of the Supreme Court

S. Thurairaja, P.C., J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court