

1920.

Present : Shaw J. and De Sampayo J.

In re THE APPLICATION OF MISSO.

50—D. C. Colombo, 876.

*Entail and Settlement Ordinance—Sale of entailed property—Investment of proceeds—Contribution by fiduciary—Subsequent application by fiduciary for sale of property—Claim to take back his contribution.*

Property subject to *fidei commissum* was sold by order of Court and the proceeds invested in another property. When that property was bought, the fiduciary contributed a sum of money towards the purchase price. The fiduciary applied that the property so acquired be sold, and that the proceeds, less the sum contributed by him, be paid into Court.

*Held*, that (1) the fiduciary was not entitled in the case of a sale to receive back the sum paid by him.

(2) A sale should be ordered if it be reasonable from the point of view of the fiduciary, and if there is no prospect of loss to the *fidei commissary*.

THE facts appear from the judgment.

A. St. V. Jayawardene, for the appellant.

*Cur. adv. vult.*

July 27, 1920. SHAW J.—

This is an application from an order of the Judge made under section 4 of the Entail and Settlement Ordinance refusing to allow the sale of property the subject of a *fidei commissum*. The land which was originally subject to the *fidei commissum* was sold on a previous occasion by leave of the Court and the money invested in the present property.

At the time of that sale the present appellant, who is the fiduciary, contributed a sum of Rs. 1,500 towards the purchase price of the present property.

His affidavit in the present case in effect says that he is disappointed with the property and finds it an unsatisfactory investment, and he therefore desires a sale. He suggests that the money which is to be received from the sale should be paid into Court subject to the *fidei commissum*, less the amount which he contributed towards the purchase, which should be repaid to him. I do not think that he is entitled in the case of the sale to receive back any part of the purchase price, because the money which he contributed to the purchase of the present property has now become subject to the *fidei commissum*. The Judge has refused to make the order on the ground that the property may go up in price when the

*fidei commissaries* came in for their rights, but that may be said with regard to any trust property for which authority for sale is desired. I think that an order should be made if it is reasonable from the point of view of the fiduciary that it should be sold, and if there is no prospect of loss to the *fidei commissary*. The sale proposed is for an amount which is more than the original value of the *fidei commissum* property.

Therefore it does not appear, so far as one can tell from the facts before us, that any loss will be likely to occur to the heirs, and notice should be given by the Court before any order is made.

I would send the case back to the District Judge for the purpose of his giving notice to the parties interested, and after hearing them and any other arguments the fiduciary may wish to bring before him to make an order considering the question in the light that I have previously mentioned.

DE SAMPAYO J.—I agree.

*Sent back.*

1920.

SHAW J.

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of Misso*