

**(1921) 09 BOM CK 0015****Bombay High Court****Case No:** None

Vallabhdas Tulsidas

APPELLANT

Vs

Nagardas Juthabhai

RESPONDENT

**Date of Decision:** Sept. 23, 1921**Citation:** 92 Ind. Cas. 143**Hon'ble Judges:** Norman Macleod, C.J; Shah, J**Bench:** Division Bench**Judgement**

Norman Macleod, C.J.

This is an appeal from the decision of Mr. Justice Kanga. The suit filed by the plaintiff, was for damages for the breach of a contract dated the 20th August 1920 whereby the defendant agreed to sell to the plaintiff and the plaintiff agreed to buy from the defendant certain Immovable property at Cadell Road for the sum of Rs. 35,000. The plaintiff paid Rs. 1,500 by way of earnest money, and according to the terms of the contract if in the title there should be any such thing as might require to be set right then the defendant was to set it right on his own account, and if he could not do that then he was to return the earnest money which the plaintiff had paid. When the title was investigated it was ascertained that the property was ancestral and that the defendant had two minor sons who had an interest therein. The plaintiff, therefore, required the defendant to obtain an order of the Court sanctioning the sale by the defendant on behalf of his minor sons. The defendant, however, made no endeavour to obtain such sanction. Accordingly, there was a breach of the contract. There can be no doubt that the defendant knew that the property was ancestral and that accordingly his interest in the property was limited. It is, therefore, a case of a vendor contracting to sell property to which he knew that his title was defective; and the only question at issue is whether he should pay damages calculated according to the ordinary rule in the case of a breach of contract, or whether he is only bound to pay the purchaser's costs of the agreement and of the investigation of title. I do not wish to exclude the possibility of there being cases in which it may be found there was an implied contract that in the event

of the title proving to be defective without any default of the vendor, he should not be liable to pay damages according to the ordinary rule. But in this case it seems to me that clearly the conduct of the plaintiff in agreeing to sell the property, in which he knew he had not a good title, is equivalent to wilful default, and there is no occasion to reconsider what I said in *Hasan Premji v. Jerbai* (1920) O.C.J.1920 decided by Macleod, C.J. and Shah, J., on the 17th December 1920] in the passage which has been quoted by the learned Judge.

2. I think, therefore, that the decision of the Court below was right, and the appeal must be dismissed with costs.

Shah, J.

3. I agree. It seems to me that, on the admitted facts of this case, the decision of the Trial Court is right. The defendant knew that the Immovable property, which he agreed to sell, was his ancestral property; and it is difficult to accept the suggestion made before us under the circumstances of this case that he could not realise the limitations upon his power to alienate this property which was part of the ancestral property and in which his minor sons had a vested interest according to Hindu Law. The limitations upon his power to alienate ancestral Immovable property are by no means obscure; and I do not believe that the defendant was not aware of them at the date of the agreement. When he was called upon to make good the title, he did not, and it is now conceded that he could not ask for the sanction of the Court for the sale on behalf of the minors on the ground of necessity or any other ground which would entitle him to convey the full title to the property so as to bind his minor sons. I do not see how he could be heard now to say that when he entered into this agreement he did not realise the limitations upon his power to sell this property. In the case of, a vendor who agrees to sell property which he knows<sup>1</sup> he is not competent to sell except under certain circumstances he cannot take advantage of a Clause in the contract such as we have in the present case; nor can he urge with justice that he is not liable to pay damages on the footing of Avilful default. On the facts it seems to me that this is clearly a case in which with full knowledge of the limitations on his power the defendant contracted to sell this property. It is right, therefore, that the damages should be assessed on the lines directed by the Trial Court.