

tion is whether a Court of special jurisdiction has acted within its jurisdiction or not, this question must always be decided by the Court of general jurisdiction, and the question whether the matter is *res judicata* or not is practically concluded by the decision that the Court of exclusive jurisdiction acted within its jurisdiction or not. I, therefore, see no difficulty in interpreting the proviso from this point of view, whereas after considering various alternative solutions it seems to me that any other solution lands us in great difficulties.

C. H. O.

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CHETA

v.

BAIJA.

DALIP SINGH J.

APPELLATE CIVIL.

Before Mr. Justice Fforde and Mr. Justice Addison.

SHAM DAS (PLAINTIFF) Appellant

versus

KISHAN CHAND AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 934 of 1925.

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May 31.

Vendor and Purchaser—Vendor's duty to shew a good title—Sale by joint Hindu family—failure to procure signatures of male members of the family to the conveyance—whether ground for rescission of contract.

Where the trustees for sale of immoveable property owned by a joint Hindu firm covenanted to secure the signatures of all the proprietors of the firm to a deed of sale of the property :

Held, that the purchasers were entitled to insist upon all the adult members of the firm executing the deed, and failure on the part of the vendors to comply with such a requisition entitled the purchasers either to rescind the contract and to obtain *restitutio in integrum* (where the parties can be restored to their former position), or to affirm the contract and to recover damages for breach.

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v.
KISHAN CHAND.

First appeal from the decree of Mirza Abdul Rab, Senior Subordinate Judge, Amritsar, dated the 23rd March 1925, ordering that the trustees shall produce in Court two fresh sale-deeds, etc.

SHEO NARAIN, DIN DIYAL, KHANNA, and HEM RAJ, for Appellant.

G. C. NARANG and MAYA DAS, SETHI, for D. R. NARANG, for Respondents.

JUDGMENT.

FFORDE J.

FFORDE J.—This is a suit for rescission of a contract of sale of certain shop premises and for return of the deposit money. The sale was by public auction under the instructions of the defendants who were selling as trustees for a joint Hindu trading firm known as Jawala Nath-Kanshi Ram. This firm, having fallen into financial difficulties and being unable to meet the demands of its creditors, appointed the defendants trustees for the creditors to realise the firms' assets and to discharge its liabilities. The deed of trust, which is dated the 27th of January, 1922, was made between Nathu Mal, Harikishen Das and Bishen Das of the one part, and Lala Kishen Chand and Lala Gokal Chand (the defendants respondents) of the other part. Nathu Mal and Harikishen Das are brothers and senior members of the joint Hindu family, while Bishen Das is their nephew. The deed starts with the following recital:—

“ A debt of about one lac and twenty thousand rupees is due by our firms styled Jawala Nath-Kanshi Ram at Amritsar and Benares. We raised this amount from different creditors and spent it in connection with our business. According to Hindu Law all the members of the family are liable for payment

of the said amount. As we cannot ourselves arrange for payment of the aforesaid debt, we have appointed Lala Kishen Chand, son of Lala Sain Das and Lala Gokal Chand, son of Lala Shib Sahai, caste *Khatris*, and Bhai Gurmukh Singh, son of Bhai Narain Das, caste *Arora*, residents of Amritsar, Katra Ahluwalia and Chauk Darbar Sahib, as our trustees to arrange for payment of the debt."

The property vested in the trustees is then described, and the deed continues: "The trustees shall be competent to execute deeds of sale in respect of the said houses themselves or get the same executed by us. If any purchaser of a house or shops wishes to join any one of us in connection with the execution of deed of sale or secure the signature of any person from amongst us and the members of our family we shall have no objection in this behalf."

The present suit is mainly concerned with this latter clause. The premises, which are the subject-matter of this litigation, were duly put up for auction and knocked down to the plaintiff Sham Das for Rs. 63,200 and a deposit of Rs. 15,800 was made by the vendee on the 15th of August, 1922. A deed of sale was executed on the 7th of November, 1922, by the trustees (the respondents) in favour of Sham Das, and another deed of even date was executed by the same persons in favour of Lala Duni Chand and Lala Durga Das who had agreed, with the consent of the vendors, to take a portion of the property which had been knocked down to Sham Das. In both these sale deeds there appears the following recital:—"Let it be noted that we have secured on this deed of sale also the signatures of the proprietors of the firm known as Jawala Nath-Kanshi Ram for the satisfaction of the said vendees." In point of fact, the name

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of only one of the proprietors, namely, Harikishen, appears as a vendor in this conveyance.

The whole question now is whether or not the purchasers were entitled to insist upon the other members of the firm Jawala Nath-Kanshi Ram joining in the conveyance. There is no doubt that the trustees did agree to procure the signatures of these persons to the deed of sale, and it is equally clear that they neglected to do so. The vendors now say that the trustees could by themselves give a good title, and that it was not necessary to have the name of any member of the joint family added to the conveyance. The purchasers, on the other hand, have all along been insisting that all the joint owners of the property should execute the deed. After several vain attempts to make the vendors comply with their request, the vendees on the 6th of March, 1923, sent a telegram to the trustees, informing them that if they did not comply with their request within 24 hours, they would be held liable for the consequences. This was followed up by a telegram on the 7th of March, 1923, informing the trustees that as they had failed to perform their part of the contract, the vendees cancelled the contract and claimed damages and return of the earnest-money. No reply was made to these telegrams until the 10th of April, 1923, when the trustees sent the following telegram through Mr. Todar Mal, Barrister :—

“ Under instructions from Messrs. Gokal Chand-Kishen Chand this formal notice to repeat they were throughout readily willing to complete and register sale deed of two shops of Jawala Nath-Kanshi Ram are to even now and though non-essential Nathu Mal-Bulla Mal sign the deed but you evaded to perform

your part as market gone down all responsibilities yours. ”

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The vendees replied by formal notice, dated the 17th of April, 1923, to the trustees, giving them a further opportunity to secure the required signatures to the conveyance, and notifying them that if these signatures were not obtained within a period of one week from the date of notice, the vendees would take proceedings for recovery of the earnest-money. The trustees replied to this by a postcard, dated the 21st of April, 1923, addressed to Lala Sham Das, plaintiff, in which they informed him that if he attended at the house of Lala Duni Chand, Vakil, at 5 P.M. on the 24th of April, with the deeds of sale of the premises in question, the signatures of the remaining original proprietors of these premises would be secured there. In pursuance of this notice, the parties with their friends met on the appointed day at the office of Mr. Duni Chand. It is alleged that Nathu Mal and Bishen Das (*alias* Bulle Shah), two of the members of the proprietary family, were willing to sign the deed of sale but did not do so; and the meeting proved abortive. No further steps appear to have been taken by the trustees to secure the necessary signatures, and the next step was the institution of the present suit on the 1st of May, 1923, by Sham Das.

The questions to be decided are whether : (1) the vendees were entitled to insist upon at least the male members of the proprietary family joining in the conveyance; (2) the failure of the trustees to procure such signatures entitled the vendees to rescind the contract and recover the deposit money; and (3) the vendees gave the trustees reasonable time to comply with their demand.

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In my judgment, all these questions must be answered in the affirmative. When two parties have entered into the relation of vendor and purchaser by making a binding contract for the sale of land—as was admittedly the case here—the vendor is bound to show a good title to the property sold and to comply with all necessary and reasonable requisitions to ensure such a title. To show a good title and to convey the property sold are conditions precedent to the purchaser's liability on the contract. In the case of the breach of this duty on the part of the vendor, the purchaser is at liberty where the contracting parties can be restored to their former position, either to rescind the contract and to obtain *restitutio in integrum* or to affirm the contract and to recover damages for the breach. (William's, Vendor and Purchaser, 3rd Edition, Volume I, page 35.) If in the present case the signatures required by the purchasers were necessary for the purpose of giving a good title, the failure to secure those signatures is a breach of one of the main duties which the vendors had to fulfil. The learned trial Judge in the course of his judgment has said: "The plaintiff was no doubt entitled to get a good marketable title * * * The purchaser, while he is not on the one hand at liberty to raise doubts which are not considerable or rational, cannot be compelled on the other hand to take a title which will expose him to litigation and hazard". With these expressions I am in entire agreement, but I do not agree with the learned Judge that the plaintiff did get a good conveyance in view of the omission of the vendors to secure the signatures of the adult members of their family to the deed of sale. The deed of trust itself provides that these signatures shall be secured should any purchaser of the property

auctioned so require. The vendors, moreover, expressly undertook to secure these signatures. Any person buying house property owned by a joint Hindu family is always open to the risk of subsequent litigation to defeat his title. It is a very common thing for members of such a family who were minors at the time of the sale to bring a suit often at the instigation of one of the adult members for the purpose of setting aside such a sale. A purchaser is entitled to insist that every reasonable step shall be taken to reduce to a minimum the chances of such litigation succeeding. Although he can never be immune from the risk of litigation, he can at least reduce its prospects of success by securing the signatures of all the adult members of the joint family to the deed of sale. In order to get a good contract of sale, I think, it is a reasonable and proper requisition on the part of the vendee that not only the manager of the family, but also all adult members, whose names can reasonably be secured, should be parties to the conveyance. As I have said, not only was this safeguard provided for in the deed of trust under which the trustees were authorised to sell the property in dispute, but the trustees expressly agreed to this condition.

It remains to be considered whether the purchasers gave the trustees reasonable time to carry out their obligation in this regard. I am satisfied that they did. Negotiations on this matter were continuing from November, 1922, until April, 1923. The trustees had every opportunity to make arrangements for securing the signatures of the proprietors, and they do not appear to have made any but half-hearted attempts to do so. They have nowhere said that they were not given sufficient time. They accepted the final notice of the 17th of April without demur and,

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indeed, formally undertook to comply with it. The suggestion—which the learned trial Judge seems to have accepted—that the purchasers in insisting upon the signatures in question were merely doing so for the purpose of avoiding the contract of sale, owing to the fact that the value of house property had fallen, is not warranted on the evidence before us. House property is said to have been falling in value since 1921, but there is no convincing evidence that there was a sudden drop in value shortly after the auction had taken place. The plaintiff Sham Das was a lessee of a portion of the premises sold and had been carrying on his business there for a considerable time. He genuinely desired to acquire this property to prevent his business being disturbed in the event of those premises being acquired by some other purchaser. I think the vendees were acting with complete *bona fides* in their endeavour to secure a reasonably sound title to the property which they had contracted to buy. The defendants' failure to execute a good conveyance, owing to their omission to secure the signatures of the adult members of the joint Hindu family owning the property, amounted, in my judgment, to a breach of one of the main duties of the contract, and entitled the vendees to "sue under the equitable jurisdiction of the Court to enforce rescission and procure the consequent restitution". (Williams, Vendor and Purchaser, 3rd Edition, Volume I, page 35).

The learned trial Judge has given what amounts to a compromise decree, for which he had no sanction from the parties and which was not within the scope of the suit. He has ordered that the trustees shall execute two fresh sale deeds in favour of the plaintiff, to be signed by all the members of the joint Hindu

family carrying on business under the name and style of Jawala Nath-Kanshi Ram. If the trustees fail to produce these deeds so signed within one month, the learned Judge has declared that the plaintiff shall be entitled in equity to a refund of the deposit, namely, Rs. 15,800. If the deeds, however, are produced in Court within the time specified, the plaintiff's suit is to be dismissed. I can only infer from this decision that the learned Judge, in agreement with the plaintiff, took the view that the names of all the members of the joint family were necessary for the purpose of conveying a reasonably good title.

In my judgment, the plaintiff is entitled to have the contract of sale rescinded and to be restored to his original position. The deposit of Rs. 15,800 has been in the hands of the defendants, and Dr. Narang states that it has been drawing interest at the rate of four *per cent.* I think, therefore, that the plaintiff is entitled to a refund of this sum with interest at four *per cent.* from the date it was paid to the defendants until the date of its refund.

I would accordingly accept this appeal, decree the rescission of the contract of sale and order the defendants to refund to the plaintiff the sum of Rs. 15,800 together with interest at four *per cent.* from the 15th of August, 1922, up to the date of realisation, and I would also award the plaintiff his costs throughout.

ADDISON, J.—I concur.

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Appeal accepted.