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There is no expression in the letter of the 15th of January binding the defendant not to revoke the authority; and it would be unreasonable to hold that the defendant, by employing the plaintiff to sell the land on such terms, bound himself to allow it to remain on sale for an indefinite time, and until the plaintiff could find a purchaser, and was not to be at liberty to change his intention if it should afterwards appear to him to be more advantageous to keep the land. At the utmost he would only be bound to allow the plaintiff a reasonable time to find a purchaser, which had, I think, looking at the circumstances, elapsed when the letter of the 23rd of February was sent.

I, therefore, find the third issue also for the defendant; and give judgment for him with costs.

Judgment for defendant.

June 9.
 Dec. 13.

Original Suit No. 759 of 1865; Appeal No. 68.

DEVSI' GHELA' *Plaintiff (and Respondent).*
 JIVARA'J MUKUNDA'S *Defendant (and Appellant).*

Contract between Hindús for sale of land in Bombay—Title.

In England the law gives to the purchaser of land a right to have a good title to it shown by the vendor. No such rule appears to exist in the Hindú law; and in a contract between Hindús for the purchase and sale of land in Bombay, the intention of the parties must be ascertained from the terms of the agreement, without regard to any implication.

THIS was a suit for the specific performance of an agreement, in the Gujaráti language, bearing date the 1st of February 1865, and signed by the defendant, by which the plaintiff agreed to sell, and the defendant agreed to buy, three *cháli* or ranges of building, situated near the Falkland Road, in the island of Bombay, for the price of Rs. 20,400, on account of which the defendant had paid to the plaintiff Rs. 2,000 as earnest-money.

The original suit was tried by COUCH, Acting C.J., in a Division Court, on the 11th, 16th, and 18th of January 1866.

A written statement had been put in by the defendant's son, in which he said that the plaintiff had not shown such a title to the property, the subject of the contract, as the plaintiff was bound to show, and the defendant was bound to accept, under the said contract."

Issue: whether the plaintiff can show such a title to the premises agreed to be sold, as he was bound to do by the contract.

Bayley and McCulloch, for the plaintiff:—The plaintiff handed to the defendant's attorney a conveyance to himself from one Pestanji Naurozji, dated the 27th of August 1864; and a conveyance from Bejanji Pestanji to Pestanji Naurozji, dated the 8th of January 1857. Bejanji Pestanji had purchased at a sheriff's sale. The bill of sale is dated the 29th of April 1856.

The *Honourable J. S. White and Mayhew*, for the defendant:—The sheriff only sells the interest of the execution debtor, which makes it peculiarly important that the title should go further back: *Sugd. Vend.* 305. A suit to redeem a mortgage may be brought in India within sixty years: *Act XIV. of 1859, Sec. 1., Cl. 15.* The current of decisions here is for a twenty years' title: *1 Mor. Dig., p. 424.* There is no stipulation in the contract with regard to title, but only as to vouchers. A stipulation to produce certain deeds, "which are all the title-deeds in the seller's possession," does not bar the purchaser's right to a good title: *Dick v. Donald (a)*. A stipulation that the purchaser shall accept such title as the vendor has, must be perfectly clear: *Southby v. Hutton (b)*. The vendor must express himself with reasonable clearness to deprive the purchaser of his ordinary right to title; *Drysdale v. Mace (c)*. And from *Eichholz v. Bannister (d)* it is clear that, even on the sale of goods, there is a warranty of title, if the seller, at the time of the sale, either by words or conduct, affirm the goods to be his.

McCulloch in reply:—The condition as to title, sought to be imported into the contract, is not certain in its terms,

(a) 1 Bligh, N. S. 660. (b) 2 My. and Cr. 207.

(c) 23 Law J., Ch. 519, per *Knight Bruce, L.J.* (d) 34 Law J., C. P. 105.

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and of general notoriety. The principles of English law, which belong to the English theory of real property, should not be introduced here. There must be a certain and necessary implication; and it must be shown that this is known amongst Hindús. The agreement here must be construed with reference to what natives would understand. The power of this court to enforce specific performance is derived from the Code of Civil Procedure.

Cur. adv. vult.

9th June. COUCH, C.J.:—This was a suit for the specific performance of an agreement, by which the plaintiff agreed to sell, and the defendant to buy, three *cháli*, or ranges of building, situated near the Falkland Road, outside the Fort; and the only issue raised between the parties was, whether the plaintiff could show such a title to the premises agreed to be sold, as he was bound to do by the contract.

It was admitted by the counsel for the defendant that the plaintiff was able to show a title, beginning with a bill of sale dated the 29th of April 1856: and that he handed to the defendant's attorneys a deed dated the 8th of January 1857, and another dated the 27th of August 1864; the former being a conveyance from one Bejanji Pestanji to Pestanji Naurozji, and the latter one from Pestanji Naurozji to the plaintiff.

At the hearing, several decisions of the English courts were referred to; but I think they cannot be applied to the present case. In England the law gives to the purchaser of land a right to have a good title to it shown by the vendor: *Ogilvie v. Foljambe (e)*; and any agreement in restraint of this implied right must be clear and unambiguous.

The parties to this suit are Hindús; and the question between them is to be determined according to Hindú law. In that law no such rule appears to exist; and the intention of the parties with regard to the title to be shown must be ascertained from the terms of their agreement, without having regard to any implication. Nor can the Court, in con-

struing such a document as this, look at it in the same light as it would at conditions of sale in England. Such conditions are prepared with reference to a known and settled state of the law, and are very different instruments from the documents by which, amongst natives, land in Bombay is contracted to be sold.

In this case the agreement, after providing for the expense of getting the *batáki* beaten, and publishing advertisements, and getting the land transferred into the name of the purchaser in the Collector's and Assessment offices, proceedings to which great importance is attached by native purchasers, proceeds: "Relating to these *cháls*, one old deed and one deed in my name, and the assessment and the ground-rent bills, whatever vouchers are with me, are duly to be delivered by me to you. Respecting these *cháls*, should any other person make any claim in any court of justice, I am duly to get the same cleared for you, by defraying the expenses with my own money. The time fixed for the same is two months, within which time I am duly to get the same cleared for you." The fair meaning of these words appears to me to be, that the defendant, the purchaser, agreed that no other title should be required to be shown than appeared in the documents thus mentioned. It would, I think, be refining too much to hold that the parties were only intending to provide for the delivery of the documents of title; and left the question, of what title was to be shown, to the uncertain operation of the law, either amongst Hindús or prevailing generally in Bombay.

My decision in this case is founded upon the agreement made by the parties; and does not affect the question of what title a vendor of land in Bombay, seeking specific performance of the contract, is bound to show. In two cases in this court, one decided by Mr. Justice Westropp and the other by Sir Joseph Arnould, it has been held that a purchaser cannot require more than a twenty years' title. With those decisions I am inclined to agree; but the question whether any lesser title should be deemed to be sufficient, remains to be considered.

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The rule of English Courts of Equity, that where the vendor of land sues a purchaser for a specific performance of the contract, the defendant is entitled to have an inquiry directed as to the title of the vendor to the lands in question, which right is derived from the extraordinary nature of the jurisdiction which the vendor seeks to put in action (*Jenkins v. Hills*) (f), is equally applicable in this country as a rule of equity; but in considering the nature and extent of the inquiry which should be made, the courts here must have regard to the usages of the place, the manner in and titles by which land is held, the law of limitation, and the modes of transfer which have been in use, as well as any other circumstances which can fairly be considered to have been within the knowledge and contemplation of the parties, when the agreement for sale was made.

In the present case, it being admitted that the plaintiff has shown such a title as, in my opinion, he was bound by the agreement to show, he is entitled to the usual decree for specific performance; and the defendant will be ordered to pay the costs of the suit.

Judgment for plaintiff.

The grounds of appeal were as follows:—1. That the plaintiff did not show such a title to the property in the plaint mentioned as he was bound to show under the contract. 2. That the Court ought not to have decreed a specific performance of the contract. 2. That the Court was in error in holding that there was any evidence of custom as to the titles to land, or as to contracts for the sale of land in Bombay, from which it could be inferred that, under the contract, the defendant had agreed that no other title should be required than appeared in the documents of title furnished by the plaintiff.

The appeal was heard before ARNOULD and WESTROFF, JJ., on the 13th of December.)

Mayhew (with him *Scoble*) for the appellant (the original defendant):—A vendor, whether of land or chattels, con-

tracting to sell, contracts to give a good title according to the law of the country where the contract is made ; and there must be an implication to make a good title in every contract for sale. In this case the title was not deduced even for a period of twelve years.

The authorities cited at the trial were referred to.

The Honourable L. H. Bayley, Advocate General, and McCulloch, for the respondent, were not called upon by the Court.

ARNOULD, J. :—In this case we entirely agree with the learned Chief Justice in the decision which he came to. The only issue raised was, whether the plaintiff could show such a title to the premises agreed to be sold, as he was bound to do by his contract. The contracting parties are both Hindús ; and the English law on the subject does not apply to them. No issue was raised with a view to show that the title was bad ; and I am clearly of opinion that the only issue raised was properly found in the affirmative.

WESTROPP, J. :—In this case the parties are both Hindús. The plaintiff (the vendor) has specified in the contract the only evidence of title which he was to be bound to furnish to the defendant (the purchaser), namely, two deeds. It may be that it would have been open to the defendant to show *aliunde*, if he could, that the title was bad ; and that in such case the Court would not force upon the purchaser a bad title. I am not at all prepared to say that this contract was one by the purchaser to take such title as the vendor had. If that were so, it would not be open to the purchaser to show that the title was bad. But the contract certainly does seem to me to have protected the plaintiff from the necessity of furnishing more evidence of title than the two deeds ; and although it may have been open to the purchaser to show, if he could, that the title was bad, he does not seem to have raised any issue for that purpose, or to have offered any evidence with that view. He was satisfied with the issue as to whether the plaintiff had shown such title as he was bound to show under his contract ; and I agree with my brother Arnould in thinking that that issue

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DRVSI' for believing that the decree below will do substantial justice
GHELA' between the parties; as the plaintiff's reluctance to complete
v. the purchase appears to have been occasioned by a general
JIVARA'S fall in the value of immoveable property, rather than by any
MUKUNDA'S *bonâ fide* sincere belief that the title is defective.

Decree affirmed.