
(1919) 01 BOM CK 0016
In the Bombay High Court
Case No : O.C.J. Appeal No. 11 of 1918

The Tata Industrial Bank, Limited

APPELLANT

Vs

Rustomjee Byramjee Jeejeebhoy

RESPONDENT

Date of Decision : 20-01-1919

Acts Referred:

Specific Relief Act, 1877 — Section 14

Citation : (1920) 22 BOMLR 849 : 57 Ind. Cas. 957

Hon'ble Judges : Hayward, J; Basil Scott, J

Bench : Division Bench

Judgement

Basil Scott, Kt., C.J.—This is an appeal from a judgment of Mr. Justice " Kajiji delivered on an Originating Summons taken out for the determination of the question whether the plaintiffs or one of them are or is not entitled to specific performance of so much of the contract of the 10th of December 1917 as the defendants can perform and compensation in money for the deficiency. The defendants are the present trustees of the Jeejeebhoy Dadabhoy Charity Fund, and as such trustees are the owners of an immovable property in Meadows Street, for the sale of which at the price of Rs. 7,41,000 they have obtained the sanction of the Court. The agreement between the defendants and the plaintiffs is contained in two letters of the 10th of December 1917. The first is an offer by the defendants, the material passages in which are:

Our clients have agreed to sell to you their property at Meadows Street containing by admeasurement 1482 Sq. Yds. or thereabouts of quit and ground rent tenure bearing Collector's Old No. 131,131, New No. 4977,4978 and the New Survey No. 9429, and Municipal Ward A No. 1120, Street No. 117, for the sum of Rs. 7,41,000. Our clients have brought to your notice that notice has been served on them under the Land Acquisition Act for compulsory acquisition of a part of the property, namely, 160 Sq. Yds. or thereabouts, situate at Armenian Lane, and the sale is subject to the sanction of the Court.

2. The acceptance was in the following terms. Messrs. Tata Sons & Co. wrote:

With reference to your letter of date written on behalf of your clients, trustees of Jeejeebhoy Dadabhoy Charity Fund, we beg to confirm the agreement to sell to us their property at Meadows Street mentioned therein for the sum of Rs. 7,41,000 upon the terms and conditions mentioned therein. We enclose herein our cheque for Rs. 25000 by way of earnest money.

3. On the 18th February the solicitors of the plaintiffs' Bank submitted to the defendants' solicitors a draft conveyance in the schedule to which the area of the property to be conveyed was stated to be 1482 square yards. On the 15th March the same solicitors wrote to the defendants' solicitors as follows:-

We were compelled to send for the engrossment of the conveyance etc., herein this afternoon as it was found that the area stated on the plan prepared by Mr. Chambers was shown as 1281 Sq. Yds. whereas in the correspondence leading to the agreement to purchase, in the Deeds and in the Collector's Bill the area appears as 1480 and 1482 Sq. Yds. respectively. Under our clients' instructions we have written to Mr. Chambers this afternoon asking him to measure the property at once and we will write to you further as soon as, we are in a position to do so.

4. On the same day the defendants' solicitors wrote;

With reference to the plan of the property, we notice that the area shown in the plan is 1281 Sq. Yds. whereas in the conveyance prepared, the area is stated to be 1480 Sq. Yds. We presume the area in the draft conveyance has been taken by you from the last conveyance. We, therefore, suggest that in the schedule to the conveyance the following words should be inserted after the words 1480 Sq. Yds. "But by recent admeasurement, found to contain 1281 Sq. Yds." On hearing from you we will insert the said words in the schedule and get them initialled by our clients. Your clients may initial them when they attend to admit execution. We wish to make it clear that our clients are not responsible for the actual area of the land whatever it may be.

5. To this Messrs. Little & Co. replied as follows:-

We received your letter of the 15th instant crossing our letter to you of the same date and we are unable to accept the suggestion made by you in paras 8 and 9 on the subject of the area and we are unable to agree that your clients are not responsible for the area of the land agreed to be sold. Our clients agreed to purchase this property on the representation that it comprised 1480 Sq. Yds. and, as you are aware, the purchase price was calculated on that area, the intention being to demolish the buildings now standing upon the land. If it turns out that Mr. Chambers' measurement of 1281 square yards is correct our clients consider themselves no longer bound by their agreement to purchase, the discrepancy in area being so great as to entitle them to refuse to complete. We will inform you as soon as we have received Mr. Chambers' report.

6. On the 23rd March 1918 Messrs. Little & Co. wrote as follows:

Our clients desire to complete their purchase subject to a proportionate reduction in the purchase money, and we have to request you to inform us at your very early convenience whether your clients will make this allowance and take the necessary steps to complete the conveyance on the revised basis. Our clients understand that Mr. Chambers valued the property agreed to be sold to them during the latter part of last year and assessed the value of the buildings now standing thereon at Rs. 30,000 for removal, and the reduction in the purchase price to be paid by our clients should therefore be calculated in respect of the number of Square Yards by which the property is now found to fall short of 1482 Square Yards, at the rate per Square Yard at which our clients agreed to purchase that area for the price of Rs. 7,41,000.

8. Upon these facts the plaintiffs claim specific performance with compensation for the deficiency of 200 square yards or thereabouts, which compensation being taken at an uniform rate per square yard according to the agreed purchase money for the property would work out at something like a lac of rupees. The claim is based upon Section 14 of the Specific Relief Act which provides that-

Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion, to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

9. The first question which arises on the section in this case is whether the defendants are unable to perform the whole of their contract. The conclusion that I have come to is that the contract was for the sale of the defendants' Meadows Street property subject to such deduction as there might be for the claim of the Municipality for compulsory acquisition of the Armenian Lane site in which case the compensation money would pass to the purchaser if the contract is completed.

10. The property to be sold is described in every possible and conceivable manner as the property at Meadows Street, of quit and ground rent tenure, bearing Collector's old No. 131, 131, New No. 4977, 4978, New Survey No. 9429, Municipal Ward A No. 1120, Street No. 117. There can be no possible doubt as to the property agreed to be transferred. It may measure 1482 square yards or it may measure 1282 square yards. But whatever it measures I am of opinion that the* plaintiffs had determined to buy it and were prepared to pay the price of Rs. 7,41,000. In my opinion, therefore, the defendants are not unable to perform the whole of their contract. The mention of 1482 square yards, though the property which has been actually measured proved to be of a smaller area, is no more than a false description which prejudices no one since the subject-matter of the conveyance was known without any possible shadow of doubt.

11. If I could have held that there had been failure on the part of the defendants

to perform the whole of their part of the contract, I should still be unable to award to the plaintiffs the relief claimed by them, for the Court may only award compensation money for the deficiency where the part left unperformed bears only a small proportion to the whole in value. According to the plaintiffs' case the part unperformed may amount to anything between Rs. 50,000 and a lac. It is one-seventh in area of whole of this very valuable town site, and it would be a misuse of language to say that the part alleged to be unperformed bears only a small proportion to the whole in value. Section 15 of the Specific Relief Act indicates that where the part left unperformed forms a considerable portion of the whole, the plaintiff can only obtain specific performance if he relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for loss or damage sustained by him through the default of the defendant. This is not the English law but it is the law deliberately enacted by the Indian Legislature and applicable to all plaintiffs whether vendors or purchasers. The antithesis between Sections 14 and 15 appears to be that in Section 14 the part unperformed must be inconsiderable, whereas u/s 15 it must be considerable. There can, I think, be no doubt that in the present case if any portion of the contract has been left unperformed it is a considerable portion. The plaintiffs are, therefore, only entitled to specific performance upon relinquishing all claim to further performance, and all right to compensation, either for the deficiency, or for loss or damage sustained by them through the default of the defendants. In my opinion, therefore, the judgment of the learned Judge was right, the decree should be affirmed and this appeal dismissed with costs. The Court certifies that under Rule 503 this is a fit case for two counsel.

Hayward J.

12. I concur. The area was not the basis of the price settled between the parties. The sale was for a lump sum. The area did not restrict the settlement to a portion only of the property. The sale was of the whole property in Meadows Street. The area was therefore no more than a "false demonstration" and not a restriction of the description of the whole property in Meadows Street. It was, therefore, immaterial on the ruling underlying paras 811 to 813 of Vol. X of Halsbury's Laws of England.

13. It is in any case impossible to say with any show of reason that the difference of 200 square yards valued at nearly a lac of rupees bears only a small proportion to the whole in value, namely to 1480 Square Yards valued at somewhat over seven lacs of rupees. It is clear from illustration (a) that that could not be held to be only a small proportion within the meaning of Section 14 of the Specific Relief Act. It is true that even where the part which must be left unperformed forms a considerable portion of the whole, the purchaser has obtained specific performance in England; but the cases have not been uniform and have led to the rule that the purchaser must nevertheless pay the full price settled for the whole property before obtaining specific performance in India. Collett has compared the rule in England with that laid down by the latter part of

Section 15 of the Specific Relief Act in India at pp. 127 and 129 of the 4th Edn. of his work on the law of Specific Relief in India.