

A Marketable Title Is Free from Reasonable Doubt, Not Free from All Claims – Bombay High Court

In the matter of ***Unique Estate Development Co. Ltd Vs Eldred Anthony Nicholas Lobo***, the Bombay High Court decided the matter on the question: Does an obligation to 'make out a marketable title' require a vendor of immovable property to eliminate every single claim against that property, no matter how remote or fanciful? In answering this question, the Bombay High Court held that a marketable title is one which is "free from reasonable doubt" and not "free from all claim". In effect, a frivolous suit filed by a third party in respect of the property will not be a clog on the title.

Facts and Contentions: Unique Estate Developers Co. Ltd (**Unique**) had filed a suit against the Eldred Anthony Niclolas Lobo (**Eldred**) for specific performance of an agreement for sale of land. Unique was the purchaser. It was Unique's case that it was ready and willing to complete the transaction, but Eldred's failure to make out a marketable title prevented Unique from purchasing it.

The title was not marketable because of a claim made by the erstwhile partners of the Eldered in a civil suit filed before the Court at Thane, where they claimed a right to the same property. Though the partners failed to obtain interim or ad-interim reliefs, it was the case of Unique that until that suit was finally decided, Eldered could not be said to have made out a marketable title.

Issue: One of the points for consideration for the Court was that on account of the partnership suit in the Thane City Civil Court, could Eldered's title to the property be said to be clogged or not-marketable.

Since before the final hearing of the matter before the Bombay High Court, the partnership suit pending before the Thane Court was dismissed the question that the High Court had to decide was: Whether, on the date of institution of the Suit Unique was at all times ready and willing to perform its obligation under the agreement, but could not do so because of the pending partnership suit in Thane.

Judgment and Analysis: It was contended by Unique that "marketable title" is one that by definition is outside of and free from all litigation claims simpliciter. Analyzing the contention, the Court observed that in a suit for specific performance, a Court has to decide one point and one point only i.e. is the title, which the vendor had to offer when the suit is filed, such as the Court would force upon the purchaser?

It was observed that where the title is doubted by strangers who make claims upon the property, the truth or falsehood of such a claim can only be ascertained in litigation between those strangers and the vendor. Such a doubt cannot be resolved in a suit for specific performance. However, where there is a reasonable probability that a decree for specific performance will embroil the purchaser in litigation, the court should not exercise the discretion in a suit for specific performance, and should not force a muddled title on an unwilling purchaser.

The Court held that the aforesaid proposition of law contemplates a situation where the plaintiff is the vendor of the property, who asserts that his title is good and marketable. However, in the present case the situation was reverse the purchaser was alleging that the defendant-vendor's title was bad.

In response, by placing reliance on *Shankarlal & Anr v Jethmal & Anr*, it was submitted on behalf of Eldred that a marketable title is a title which, reasonably and

strictly speaking, a vendor would be in a position to force on an unwilling purchaser, under all circumstances, and which, therefore, is not afflicted with 'doubt'.

It was further observed that a 'doubt' should not be frivolous or idle, but should be such which a court of law would be disposed to regard as serious or sufficient. To discern the nature of 'doubt' the court should not only have regard to its own opinion but also on the probable opinion of other competent persons on it, so that a non-marketable title is not forced upon an unwilling purchaser.

In *Shankerlals* judgment it was also observed that:

"I should also like to add in this connection that although it has been tersely stated many a time that a purchaser cannot and should not be compelled to buy a lawsuit, this proposition cannot be stretched to mean that a probability of litigation howsoever remote or a threat thereof almost entirely empty and having no reasonable chance of success would be a sufficient reason for holding a title to be doubtful and therefore not deserving of specific performance."
(Emphasis Supplied)

The aforesaid proposition of law laid down in *Shankerlal & Anr v Jethmal & Anr* reasoned with the Court. Rejecting the submissions of Unique, the Court held that the Eldred's title as it stood then (when the suit was filed) was free from reasonable doubt and could have been forced upon Unique. Thus, holding that basis the merits of the partnership suit pending in Thane, Unique could have been

forced to take Eldred's title, as the title stood at that time.

Conclusion: In view of the above, this judgment will be a guide in the practice of conveyancing, where often during due diligence, a situation arises in which merely because a suit is filed by some third party it is contended that there is no marketable title free from reasonable doubt. It is extremely difficult to lay down a straight-jacket formula to decide that the title as offered by the vendor, is a marketable title or not, however, from the above position of law, it is clear that each case will have to be decided on its own facts and circumstances and that every Suit is not a clog on title.

Be that as it may, it would be interesting to see whether the banks and the financial institution would follow this judgment in letter and in spirit, whilst lending monies to borrowers against security of land, where such land is free from reasonable doubt but not free from all claims.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.