

43 Phil. 251

[ G. R. No. 17254. March 29, 1922 ]

**CRISPULO VILLARUEL, PLAINTIFF AND APPELLEE, VS. TAN KING, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**ROMUALDEZ, J.:**

On April 14, 1918, the plaintiff and the defendant entered into the following contract:

*“Know all men by these presents:*

“That we, Dn. Crispulo Villaruel, married, as party of the first part, and the Chinaman Tan King, married, with certificate of residence No. 10090, Manila Insular Collector’s No. 27857, and with cedula No. F-1905383, issued at Pagsanhan, Laguna, on January 14, 1918, as party of the second part, both of legal age, the former residing in Manila and the latter in Pagsanhan, Laguna, Philippine Islands, do hereby agree and. covenant.

“1. That in consideration of the sum of two thousand seven hundred pesos (P2,700) which the said Chinaman Tan King binds himself to pay unto the said Dn. Crispulo Villaruel, the latter hereby agrees to sell, assign and transfer absolutely and perpetually to the said Chinaman, his heirs and successors in interest, his right, ownership and interest in sublots 11-C and 11-F, which are contiguous, of block 32 of the estate known as the ‘San Lazaro Estate,’ together with the two structures of mixed materials thereon, situated on Calle Bambang Nos. 216-220, Manila, free from all liens and encumbrances.

“2. That I, Tan King, do hereby declare that I accept this sale made in my favor by the said Dn. Crispulo Villaruel, and I hereby agree to pay and deliver unto the same, at the time of executing this document, the sum of one thousand seven

hundred pesos (P1,700), taking a receipt therefor from Villaruel, thereby leaving a balance of one thousand pesos (P1,000) which I promise and bind myself to pay unto the said Crispulo Villaruel within one year, from this date, which time may be extended another year at the option of the parties.

"3. That for the security of the payment of the said sum of one thousand pesos (P1,000) the property sold and described above is hereby transferred, in special and voluntary mortgage, unto the said Crispulo Villaruel which shall subsist until the said amount of P1,000 is fully paid; the debtor, the Chinaman Tan King, hereby binds himself not to sell or mortgage, or in any way encumber the aforesaid property, without the express consent of the creditor Dn. Crispulo Villaruel, and for this purpose they agree that these presents shall be recorded in, and registered with, the Bureau of Lands.

"4. In consideration of the fact that the Chinaman debtor, Tan King, will not pay any interest on the amount of his debt, it is hereby agreed that the said Dn. Crispulo Villaruel shall use and occupy the house No. 216 of Calle Bambang, Manila, without paying any rental therefor until the debt of P1,000 is fully paid by the debtor. The Chinaman Tan King, however, shall have the right to collect, from this date, the amount of four pesos (P4), which is the monthly rent of the annex situated behind the said house.

"If, for the purpose of enforcing the payment of the said sum of one thousand pesos, Dn. Crispulo Villaruel should be compelled to institute judicial proceedings against the said Chinaman Tan King, the latter shall pay a penalty of two hundred pesos (P200) as attorney's fees and other judicial expenses.

"In witness whereof we sign these presents in Manila this 14th day of April, 1918, after this document has been interpreted into the Tagalog dialect by the notary to the Chinaman Tan King.

(Sgd.) "C. VILLARUEL.

(Sgd.) TAN KING.

"Signed in the presence of:

(Sgd.) "B. G. LAURELA.

(Sgd.) P. A. REMIGIO.

"UNITED STATES OF AMERICA

"PHILIPPINE ISLANDS

“In the city of Manila this 14th day of April, 1918, before me personally appeared Dn. Crispulo Villaruel with cedula No. F-50291, issued at Manila on January 31, 1918, and the Chinaman Tan King with cedula No. F-1905383, issued at Pagsanhan, Laguna, on January 14, 1918, whom I know to be the persons who executed the foregoing instrument and before me acknowledged same to be their free and voluntary act.

“Before the Chinaman Tan King signed this document I made known to him the contents of this document by translating it into Tagalog which he understands and speaks.

“Before me,

(Sgd.) “P. A. REMIGIO,

“*Notary Public*

“*Until the 31st of December, 1918.*

“Inst. No. 1004, Not. Reg., p. 69, Book IX.”

(Bill of Exceptions, pp. 4-7.)

Because the defendant failed to pay the balance of the purchase price, that is, the sum of one thousand pesos (P1,000), in accordance with the terms of the contract, the plaintiff filed this action praying that the sale be resolved after returning to the defendant the amount of one thousand seven hundred pesos (P1,700) which he paid as a part of the purchase price, and that the latter be sentenced to pay him the sum of one hundred pesos (P100) as damages, plus the costs and that he be granted any other just and equitable remedy.

The defendant in his answer denied generally and specifically the allegations contained in the complaint and set up a special defense and a counter claim. Defendant's special defense is to the effect that he is the owner in fee simple of the property which was sold and that since the plaintiff refused to accept the one thousand pesos (P1,000), being the balance of the purchase price according to the contract, the defendant deposited that amount in the Court of First Instance of Manila at the disposal of the plaintiff. The counterclaim is based upon the fact that the plaintiff, under the terms of the contract, being in possession of the property in question, was notified to leave the premises within ten days after May 21, 1920; that he refused to leave the premises and still continues in possession thereof, thus causing

damages to the defendant in the amount of thirty pesos (P30) per month. The amended answer further alleges that the plaintiff has taken merchandise from the defendant to the amount of forty-seven pesos and seventy-seven centavos (P47.77). Defendant, therefore, prays that he be absolved from the complaint, that the plaintiff be ordered to vacate the house in question and sentenced to pay him the sum of thirty pesos (P30) a month until the property is vacated, plus forty-seven pesos and seventy-seven centavos (P47.77), the value of the merchandise taken by plaintiff, together with the costs of the action, and that he be granted any other just and equitable remedy.

The court, after due hearing, rendered its decision containing the final order as follows:

“The balance of the purchase price not having been paid within the time agreed upon in the contract, it is the order of the court that the sale executed by the plaintiff in favor of the defendant of sublots 11-C and 11-F of block 32 of the San Lazaro Estate with the improvements of mixed materials existing thereon at Nos. 316-320 of Calle Bambang, District of Santa Cruz of this city, is hereby resolved, the plaintiff being ordered to return to the defendant the amount of P1,700 paid by the latter. There is no ground for sentencing the defendant to pay the plaintiff the sum of P100 as damages because they have not been proven. With costs against the defendant.”

This is the judgment which is the subject of this appeal. The defendant-appellant assigns the following errors: (a) “the decreeing of the resolution of a sale that was entirely consummated, considering it as a conditional sale;” and (b) “the failure to sentence the plaintiff to vacate the house of the defendant on Calle Bambang No. 216, Manila, and to pay to defendant monthly rentals at the rate of thirty pesos (P30) per month from the time of the deposit of the amount due from defendant, until the premises are vacated.”

The fundamental point here presented is whether the purchase and sale in question is subject to the condition known as *pacto comisorio*.

At the outset it must be said that since the subject-matter of the sale in question is real property, it does not come strictly within the provisions of article 1124 of the Civil Code, but is rather subjected to the stipulations agreed upon by the contracting parties and to the provisions of article 1504 of the Civil Code.

“The ‘pacto comisorio’ or ‘ley comisoría’ is nothing more than a condition subsequent of the contract of purchase and sale. Considered carefully, it is the very condition subsequent that is always attached to all bilateral obligations according to article 1124; except that when applied to real property it is not within the scope of said article 1124, and it is subordinate to the stipulations made by the contracting parties and to the provisions of the article on which we are now commenting” (article 1504). ( Manresa, Civil Code, volume 10, page 286, second edition.)

Now, in the contract of purchase and sale before us, the parties stipulated that the payment of the balance of one thousand pesos (P1,000) was guaranteed by the mortgage of the house that was sold. This agreement has the two-fold effect of acknowledging indisputably that the sale had been consummated, so much so that the vendee was disposing of it by mortgaging it to the vendor, and of waiving the *pacto comisorio*, that is, the resolution of the sale in the event of failure to pay the one thousand pesos (P1,000) such waiver being proved by the execution of the mortgage to guarantee the payment, and in accord therewith the vendor’s adequate remedy, in case of nonpayment, is the foreclosure of such mortgage.

However, even supposing that the mortgage does not imply a waiver of the *pacto comisorio*, the fact is that in the instant case the plaintiff, before commencing this action in view of defendant’s failure to pay, did not serve judicial or notarial notice upon the defendant that he (the vendor) was willing to resolve the contract. Indeed, it does not appear that any such step had been taken by him. On the other hand, it appears that the defendant, before the complaint in the above-entitled case was filed, deposited with the court the sum of one thousand pesos P1,000 (less the amount of a certain account), which the plaintiff refused to accept. In view of these facts the resolution of the sale is improper, even if the *pacto comisorio* had been expressly stipulated in the contract.

“In the sale of real property, even though it may have been stipulated that in default of the payment of the price within the time agreed upon, the resolution of the contract shall take place *ipso facto, the vendee may pay even after the expiration of the period, at any time before demand for payment has been made either by suit or by notarial act.* After such demand has been made the judge cannot grant him further time.” (Italics ours.) (Art. 1504, Civil Code.)

The illustrious writer Mr. Manresa, commenting upon this article, explains fully what must be understood as a demand, and says:

“The Code in this article refers to a demand: we have already considered it. But it is pertinent to ask: demand of what and for what? Does it refer to a demand for payment? A reading of article 1504 will leave that impression; but it is scarcely impressed upon the reader’s mind when there appears the consideration of the anomalous and paradoxical result of requiring payment from a person *for the very purpose* of preventing him to pay, and to make this demand the basis for a stubborn refusal to accept payment of the purchase price.

“This simple consideration is more than enough to make it clear to us that article 1504 does not refer to a demand for payment or of a payment, but rather to an authentic notice that the vendor takes the option of resolving the contract, or, if it pleases you, in order to harmonize the spirit with the letter of the Code, it refers to a demand that the vendor makes upon the vendee for the latter to agree to the resolution of the obligation and to create no obstacles to this contractual mode of extinguishing obligations.” ( Manresa, Civil Code, volume 10, page 288, second edition.)

There is, therefore, no cause for the resolution of the sale as prayed for by the plaintiff. His action, at all events, should have been one for the foreclosure of the mortgage, which is not the action brought in this case.

Article 1124 of the Civil Code, as we have seen, is not applicable to this case. Neither is the doctrine enunciated in the case of *Ocejo, Perez & Co. vs. International Banking Corporation* (37 Phil., 631), which plaintiff alleges to be applicable, because that principle has reference to the sale of personal property.

The conclusion of the court *a quo* that the defendant did not offer payment of the balance of the purchase price either before or on the day of the expiration of the time agreed upon is supported by the evidence of record. But, as we have said, the default in this case did not give, nor will it give, the plaintiff the right to ask for the resolution of the contract.

The plaintiff was occupying the property in question, under and by virtue of the contract and in consideration of the interest on the one thousand pesos (P1,000) then due him and

had the right to occupy the property until said amount was paid. But said amount having been deposited in court on May 21, 1920, after deducting the sum of one hundred eight pesos and three centavos (P108.03) for merchandise taken by the plaintiff from the defendant, the right of the plaintiff to occupy the said premises ceased from that date.

It appears, however, that plaintiff's indebtedness to the defendant for merchandise amounts only to forty-seven pesos and seventy-seven centavos (P47.77) and the defendant, in his counterclaim (page 12, bill of exceptions), prays that the same be deducted from the one thousand pesos (P1,000) that he still owes the plaintiff.

It also appears that the defendant on May 21, 1920, requested the plaintiff to vacate the house in question, which the latter refused to do; and that the amount of thirty pesos (P30) that the plaintiff asks as the monthly rent of the said property is reasonable and adequate.

In view of the foregoing, the judgment appealed from is reversed, and the defendant is absolved from the complaint, and it is ordered:

First. That the plaintiff accept the amount of eight hundred ninety-one pesos and twenty-seven centavos (P891.27) which he must take from the Court of First Instance where they have been deposited by the defendant, the plaintiff to pay the expenses incurred by such deposit.

Second. That the defendant pay unto the plaintiff the sum of one hundred eight pesos and three centavos (P108.03), thus completing the one thousand pesos (P1,000), the purchase price of the property, with legal interest thereon from April 15, 1919, until paid.

Third. That the plaintiff vacate the premises in question and pay to the defendant rent for his occupation of the same from May 21, 1920, until he actually vacates the property at the rate of thirty pesos (P30) per month, this payment to be considered as the rent of said property.

And fourth. That the plaintiff pay to the defendant the sum of forty-seven pesos and seventy-seven centavos (P47.77), the value of the merchandise and cash taken by him.

So ordered without special pronouncement as to costs.

*Araullo, C. J., Malcolm, Avanceña, Villamor, Ostrand, and Johns, JJ., concur.*

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