

45 Phil. 162

[ G.R. No. 20107. September 14, 1923 ]

**AGAPITO ZIALCITA AND JULIA CAILLES DE ZIALCITA, PLAINTIFFS AND APPELLANTS, VS. JOSEFA ARIAS, DEFENDANT AND APPELLEE.**

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

**STREET, J.:**

This action was instituted in the Court of First Instance of the City of Manila by the plaintiffs, Agapito Zialcita and Julia Cailles de Zialcita, to compel the defendant, Josefa Arias y Fernandez, to pay to the plaintiffs the sum of P9,000, representing a balance of the purchase price of a piece of land which the plaintiffs had bargained to sell to the defendant, and to recover damages for breach of contract on the part of the defendant. To the complaint in this action the defendant interposed an answer, consisting of a general denial, and by way of a counterclaim the defendant sought to recover the sum of P3,000 with interest, which the defendant had paid to the plaintiffs as part payment of the land which had been the subject of agreement. At the hearing the trial judge absolved the defendant from the complaint and entered judgment in favor of the defendant to recover on her counterclaim the sum of P3,000, with legal interest from April 4, 1922, with a deduction of P70, the value of certain canes that had been cut from the lot by the defendant.

It appears in evidence that the plaintiffs are the owners of a lot containing 11,543 square meters, located in the barrio of San Dionisio, of the municipality of Parañaque, Province of Rizal; and in September of the year 1920 Julia Cailles de Zialcita entered into negotiations with the defendant, Josefa Arias y Fernandez, for the sale of said lot to the latter. In the end an agreement was reached by which Josefa Arias y Fernandez delivered to Julia Cailles de Zialcita the sum of P3,000 in part payment of the purchase price of said property. The payment and receipt of this money is evidenced by a written receipt (Exhibit A),

dated September 22, 1920.

It was agreed that the price should be at the rate of one peso per square meter, the exact superficial area of the lot to be determined by survey; and it was further understood that the transaction should be concluded and the balance of the purchase price paid as soon as the plaintiffs could deliver to the defendant a Torrens title for the property in question. In fact, on September 13, 1920, a few days prior to the date of the agreement above mentioned, a proceeding had been instituted in the Court of First Instance of Rizal to register the property in the name of the Zialcitas. Obstacles to the speedy registration of the land seem to have been encountered, with the result that neither in 1920 nor in 1921, were the plaintiffs able to deliver a Torrens title to Josefa Arias y Fernandez. Meanwhile the defendant had taken possession of the land and, after clearing off some bamboo which grew thereon, she constructed upon the ground a *camarin* to contain a rice mill which she intended to instal therein. As months went by, however, without the Torrens title being forthcoming, the defendant became impatient and repeatedly demanded that the plaintiffs should produce the title to the land. Finally on September 27, 1921, Agapito Zialcita, in a written communication to the attorney of Josefa Arias y Fernandez, promised to return to Josefa Arias y Fernandez the P3,000 which had been received from her "if within the month of February, 1922, we do not succeed in delivering to Josefa Arias the Torrens title to the property in Parañaque, Rizal, which has been promised to her in sale." (Exhibit 1.)

The defendant, Josefa Arias, seems to have accepted this offer as affording a satisfactory solution of the case, and we think that the rights of both the parties in respect to the sale of the land were definitively fixed thereby. Whatever the conditions and understanding may have been prior thereto, they were in our opinion thereafter bound by this agreement as to the time within which the certificate of title should be forthcoming.

It will be noted that by the agreement last above referred to, the plaintiffs were bound to supply the Torrens title within the month of February, 1922, and if they should not be able to comply with that condition, they were obligated to return the P3,000 which had been received in part payment. When the last day of February, 1922, arrived, the plaintiffs tendered to the defendant the Torrens certificate of title which is in evidence as Exhibit B. This certificate is in

proper form and in all respects regular (with the exception of the point presently to be mentioned) and was issued on February 16, 1922, by the Chief of the Land Registration Office upon the order of the Judge of First Instance of Rizal. The defendant, however, who had already vacated the land, refused to accept the certificate of title thus tendered and to conclude the transaction for the purchase of the property, on the ground that said certificate had been prematurely issued, and that the judgment upon which it was issued had not become final at the time of the tender.

The facts relating to this point are that the decision adjudicating the title of the property to the petitioners in the registration proceeding was made on December 28, 1921. On January 20, 1922, notice of this decision was served upon the opponents, Abdon Cruz and Pascual Cortes. On February 14 thereafter said opponents entered an exception to said judgment and made a motion for a new trial. This motion was denied on February 18, and notification of the order denying the new trial was effected upon the opponents on February 28.

From this it will be seen that on February 28 the time had not yet expired within which the opponents might have tendered a bill of exceptions and prosecuted an appeal to this court. It is a further fact that an attempt was later made to get the court to allow a bill of exceptions in behalf of said opponents, but the court then refused to sign the bill tendered on the ground that the time therefor had passed. No further steps were taken looking towards the prosecution of an appeal, and in due time the judgment became in fact final.

It is well to state that Judge Llorente, presiding in the Court of First Instance of Rizal, entered an order on February 10, 1922, for the issuance of the certificate of title, and, as already stated, the certificate of title (Exhibit B) was issued by the Chief of the Land Registration on February 16, pursuant to that order. However, when the motion for a new trial was made on February 14, by the opponents, Judge Llorente immediately entered an order revoking his previous order for the issuance of the title, but by some inadvertence or other the certificate of title was nevertheless issued.

From the foregoing it will be seen that when the period expired within which the plaintiffs had obligated themselves to have a certificate of title

forthcoming, the proceedings for the registration of the land were not yet concluded, and it was still within the power of the opponents to prolong the litigation by an appeal to the Supreme Court, as they in fact attempted, though unsuccessfully, to do.

Upon this state of facts we are of the opinion that the plaintiffs have not complied with the condition expressed in the letter Exhibit 1, namely, to produce a Torrens title by the end of February, 1922. Where a purchase of land is conditioned upon the supplying of a Torrens title by the seller, the purchaser cannot be compelled to accept a certificate such as Exhibit B in this case, issued upon a judgment that had not yet become final. One who stipulates for a Torrens title means to receive a title in respect to which all opposition has been overcome. He cannot be forced to shoulder a lawsuit. It may be very true that the opposition made in this case was without merit, but on that question we need not enter. We simply hold that a vendor of land who stipulates to supply a Torrens title within a stipulated period must produce and tender within that period a document which rests upon a conclusive adjudication that has become final in every sense.

The judgment appealed from will be affirmed, with costs against the appellants. So ordered.

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