

103 Phil. 655

**[ G. R. No. L-11231. May 12, 1958 ]**

**ROSARIO CARBONNEL, PLAINTIFF AND APPELLANT, VS. JOSE PONCIO, RAMON INFANTE, AND EMMA INFANTE, DEFENDANTS AND APPELLEES.**

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

**CONCEPCION, J.:**

The issue in this case is whether the Statute of Frauds is applicable thereto.

Plaintiff Rosario Carbonnel alleges, in her second amended complaint, filed with the Court of First Instance of Rizal, that, on January 27, 1955, she purchased from defendant Jose Poncio, at P9.50 a square meter, a parcel of land of about 195 square meters, more or less, located in San Juan del Monte, Rizal, known as Lot No. 13-B of subdivision plan Psd-19567, and more particularly described in Transfer Certificate of Title No. 5040 (now No. 37842), excluding the improvements thereon; that plaintiff paid P247.26 on account of the price and assumed Poncio's obligation with the Republic Savings Bank amounting to P1,177.48, with the understanding that the balance would be payable upon execution of the corresponding deed of conveyance; that one of the conditions of the sale was that Poncio would continue staying in said land for one year, as stated in a document signed by him (and later marked as Exhibit A), a translation of which was attached to the said complaint; that Poncio refuses to execute the corresponding deed of sale, despite repeated demands; that plaintiff has thereby suffered damages in the sum of P5,000, aside from attorney's fees amounting to P1,000; that Poncio has conveyed the same property to defendants Ramon R. Infante and Emma L. Infante, who knew of the first sale to plaintiff; and that the Infantes had thereby caused damages to plaintiff in the sum of P5,000.

Plaintiff prayed, therefore, that she be declared owner of the land in question; that the sale to the Intfantes be annulled; that Poncio be required to execute the corresponding deed of conveyance in plaintiff's favor; that the Register of Deeds of Rizal be directed to issue the corresponding title in plaintiff's name; and that defendants be sentenced to pay damages.

Defendants moved to dismiss said complaint upon the ground that plaintiff's claim is unenforceable under the Statute of Frauds, and that said pleading does not state facts sufficient to constitute a cause of action. The motion was denied, "without prejudice to considering, when this case is decided on the merits, whether the same falls under the Statute of Frauds."

Thereafter, the Infantes filed an answer denying most of the allegations of said complaint and alleged, by way of special defense, that they purchased the land in question in good faith, for value, and without knowledge of the alleged sale to plaintiff; and that plaintiff's claim is unenforceable under the Statute of Frauds. They, likewise, set up counterclaims for damages.

In his answer, Poncio denied specifically some allegations of said complaint and alleged that he had no knowledge sufficient to form a belief as to the truth of the other averments therein. By way of special defenses, he alleged that he had consistently turned down several offers, made by plaintiff, to buy the land in question, at P15 a square meter, for he believes that it is worth not less than P20 a square meter; that Mrs. Infante, likewise, tried to buy the land at P15 a square meter; that, on or about January 27, 1955, Poncio was advised by plaintiff that should she decide to buy the property at P20 a square meter, she would allow him to remain in the property for one year; that plaintiff then induced Poncio to sign a document, copy of which is probably the one appended to the second amended complaint; that Poncio signed it "relying upon the statement of the plaintiff that the document was a permit for him to remain in the premises in the event that defendant decided to sell the property to the plaintiff at P20 a square meter"; that on January 30, 1955, Mrs. Infante improved her offer and he agreed to sell the land and its improvements to her for P3,535; that Poncio has not lost "his mind," to sell his property, worth at least P4,000, for the paltry sum of P1,177.48, the amount of his obligation to the Republic Savings Bank; and that plaintiff's action is barred by the Statute of Frauds. Poncio similarly set up a counterclaim for damages.

As the case came up for trial, on February 23, 1956, plaintiff introduced the testimony of one Constancio Meonada, who said that he is janitor of the Sto. Domingo Church and a high school, as well as auto-mechanic, graduate; that he has been and still is a paying boarder in plaintiff's house; that Poncio is his townmate, both being from Mahatao, Batanes; that, after making a rough draft, based upon data furnished by plaintiff, he typed Exhibit A, which is in the Batanes dialect; that, thereafter, Poncio came to plaintiff's house, where he was shown Exhibit A; that after the witness had read its contents to Poncio and given him a copy thereof, Poncio signed Exhibit A and so did the plaintiff; that Meonada likewise signed at the foot of Exhibit A, as attesting witness; and that translated freely into English, Exhibit A, reads as follows:

“From this date, January 27, Jose Poncio may stay in this lot that I bought from him until one year without payment. After that one year and he cannot find any place where to transfer his house, he can also stay in this lot and he will pay according to agreement.” (t.s.n., p. 4.)

Then, taking the witness stand, plaintiff testified that she has known Poncio since childhood, he being related to her mother; that Poncio's lot adjoins her lot, in San Juan, Rizal; that one day Poncio told her that he wanted to sell his property; that, after both had agreed on its price, he said that his lot is mortgaged to the Republic Savings Bank; and that, at noon time, on the same day, he came back stating that both would “go to the bank to pay the balance in arrears,” At this juncture, defense counsel moved to strike out the statement of the witness, invoking, in support of the motion, the Statute of Frauds. After an extended discussion, the parties agreed, to submit memoranda and the hearing was suspended. Later on, the lower court issued an order dismissing plaintiff's complaint, without costs, upon the ground that her cause of action is unenforceable under the Statute of Frauds. The counterclaims were, also, dismissed. Hence, this appeal by plaintiff.

We are of the opinion and so hold that the appeal is well taken. It is well settled in this jurisdiction that the Statute of Frauds is applicable only to executory contracts (*Facturan vs. Sabanal*, 81 Phil., 512), not to contracts that are totally or partially performed (*Almirol, et al., vs. Monserrat*, 48 Phil.,

67, 70; Robles vs. Lizarraga Hermanos, 50 Phil., 387; Diana vs. Macalibo, 74 Phil., 70).

“Subject to a rule to the contrary followed in a few jurisdictions, it is the accepted view that part performance of a parol contract for the sale of real estate has the effect, subject to certain conditions concerning the nature and extent of the acts constituting performance and the right to equitable relief generally, of taking such contract from the operation of the statute of frauds, so that chancery may decree its specific performance or grant other equitable relief. It is well settled in Great Britain and in this country, with the exception of a few states, that a sufficient part performance by the purchaser under a parol contract for the sale of real estate removes the contract from the operation of the statute of frauds.” (49 Am. Jur. 722-723.)

In the words of former Chief Justice Moran: “The reason is simple. In executory contracts there is a wide field for fraud because unless they be in writing there is no palpable evidence of the intention of the contracting” parties. The statute has precisely been enacted to prevent fraud.” (Comments on the Rules of Court, by Moran, Vol. III [1957 ed.], p. 178.) However, if a contract has been totally or partially performed, the exclusion of parol evidence would promote fraud or bad faith, for it would enable the defendant to keep the benefits already derived by him from the transaction in litigation, and, at the same time, evade the obligations, responsibilities or liabilities assumed or contracted by him thereby.

For obvious reasons, it is not enough for a party to allege partial performance in order to hold that there has been such performance and to render a decision declaring that the Statute of Frauds is inapplicable. But neither is such party required to establish such partial performance by documentary proof before he could have the opportunity to introduce oral testimony on the transaction. Indeed, such oral testimony would usually be unnecessary if there were documents proving partial performance. Thus, the rejection of any and all testimonial evidence on partial performance, would nullify the rule that the Statute of Frauds is inapplicable to contracts which have been partly executed, and lead to the very evils that the statute seeks to prevent.

“The true basis of the doctrine of part performance according to the overwhelming weight of authority, is that it would be a fraud upon the plaintiff if the defendant were permitted to escape performance of his part of the oral agreement after he has permitted the plaintiff to perform in reliance upon the agreement. The oral contract is enforced in harmony with the principle that courts of equity will not allow the statute of frauds to be used as an instrument of fraud. In other words, the doctrine of part performance was established for the same purpose for which the statute of frauds itself was enacted, namely, for the prevention of fraud, and arose from the necessity of preventing the statute from becoming an agent of fraud for it could not have been the intention of the statute to enable any party to commit a fraud with impunity.” (49 Am. Jur., 725-726; underscoring supplied.)

When the party concerned has pleaded partial performance, such party is entitled to a reasonable chance to establish by parol evidence the truth, of this allegation, as well as the contract itself. “The recognition of the exceptional effect of part performance in taking an oral contract out of the statute of frauds, involves the principle that oral evidence is admissible in such cases to prove both the contract and the part performance of the contract” (49 Am. Jur., 927).

Upon submission of the case, for decision on the merits, the Court should determine whether said allegation is true, bearing in mind that parol evidence is easier to concoct and more likely to be colored or inaccurate than documentary evidence. If the evidence of record fails to prove clearly that there has been partial performance, then the Court should apply the Statute of Frauds, if the cause of action involved falls within the purview thereof. If the Court is, however, convinced that the obligation in question has been partly executed and that the allegation of partial performance was not resorted to as a device to circumvent the Statute, then the same should not be applied.

Apart from the foregoing, there are in the case at bar several circumstances indicating that plaintiff’s claim might not be entirely devoid of factual basis. Thus, for instance, Poncio admitted in his answer that plaintiff had offered several times to purchase his land.

Again, there is Exhibit A, as document signed by the defendant. It is in the Batanes dialect, which, according to plaintiff's uncontradicted evidence, is the one spoken by Poncio, he being a native of said region. Exhibit A states that Poncio would stay in the land sold by him to plaintiff for one year, from January 27, 1955, free of charge, and that, if he cannot find a place where to transfer his house thereon, he may remain in said lot under such terms as may be agreed upon. Incidentally, the allegation in Poncio's answer to the effect that he signed Exhibit A under the belief that it "was a permit for him to remain in the premises in the event" that "he decided to sell the property" to the plaintiff at P20 a sq. m." is, on its face, somewhat difficult to believe. Indeed, if he had not decided as yet to sell the land to plaintiff, who, had never increased her offer of P15 a square meter, there was no reason for Poncio to get said permit from her. Upon the other hand, if plaintiff intended to mislead Poncio, she would have caused Exhibit A to be drafted, probably in English, instead of taking the trouble of seeing to it that it was written precisely in his native dialect, the Batanes. Moreover, Poncio's signature on Exhibit A suggests that he is neither illiterate nor so ignorant as to sign a document without reading its contents, apart from the fact that Meonada had read Exhibit A to him and given him a copy thereof, before he signed thereon, according to Meonada's uncontradicted testimony.

Then, also, defendants say in their brief:

"The only allegation In plaintiff's complaint that bears any relation to her claim that there has been partial performance of the supposed contract of sale, is the notation of the sum of P247.26 in the bank book of defendant Jose Poncio. The noting or jotting down of the sum of P247.26 in the bank book of Jose Poncio does not prove the fact that said amount was the purchase price of the property in question. For all we knew, the sum of P247.26 which plaintiff claims to have paid to the Republic Savings Bank for the account of the defendant, assuming that the money paid to the Republic Sayings Bank came from the plaintiff, was the result of some usurious loan or accommodation, rather than earnest money or part payment of the land. Neither is a competent or satisfactory evidence to prove the conveyance of the land in question the fact that the bank book account of Jose Poncio happens to be in the possession of the plaintiff."

(Defendants-Appellees' brief, pp. 25-26.)

How shall we know why Poncio's bank deposit book is in plaintiff's possession, or whether there is any relation between the P247.26 entry therein and the partial payment of P247.26 allegedly made by plaintiff to Poncio on account of the price of his land, if we do not allow the plaintiff to explain it on the witness stand? Without expressing any opinion on the merits of plaintiff's claim, it is clear, therefore, that she is entitled, legally as well as from the viewpoint of equity, to an opportunity to introduce parol evidence in support of the allegations of her second amended complaint.

Wherefore, the order appealed from is hereby set aside, and let this case be remanded to the lower court for further proceedings not inconsistent with this decision, with the costs of this instance against defendants-appellees.

It is so ordered.

*Paras, C.J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J.B.L., Endencia, and Felix, JJ., concur.*