

CENON ALBEA, PETITIONER, VS. CARLOS INQUIMBOY AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-1601. May 29, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

Certiorari to review and reverse a decision of the Court of Appeals, which made the following findings, of fact:

"On 13 October 1941, the plaintiff Carlos Inquimboy executed a deed of absolute sale of the lands covered by Transfer Certificate of Title Nos. 15599 and 15600 of the Register of Deeds of Nueva Ecija, for the sum of P4,000 (Exhibit A). On the same date, the defendant, Cenon Albea, executed the document, Exhibit B, in favor of Carlos Inquimboy, in which he recognized that he was indebted to Inquimboy in the sum of P3,000, Philippine currency, and bound himself to pay said sum in the following installments: P2,500.00 on 15 November 1941 and P500 in May, 1942, on the condition that if he should fail to pay the first installment on 15 November 1941, the deed of sale (Exhibit A) of the same date would ipso facto be deemed cancelled and rescinded, and he would execute and deliver to the plaintiff the corresponding deed of cancellation and rescission. He stated in said document that he had filed an application for a loan from the Agricultural and Industrial Bank, Nueva Ecija Branch, for the sum of P10,000, secured by the mortgage of the parcels of land covered by Transfer Certificate of Title No. 17741, 4359, and 3818 of the Register of Deeds of Nueva Ecija, and as additional guaranty, of the parcels of land which were sold to him by Carlos Inquimboy by virtue of Exhibit A. He authorized the cashier of the branch of the Agricultural and Industrial Bank in Nueva Ecija to deduct from the sura to be given to him the amount of P2,500, and deliver it to Inquimboy as partial payment. In case he should fail to comply with his obligation under Exhibit B and if it should be necessary for Inquimboy to resort to the courts, he would pay the sum of P500 as liquidated damages and for attorney's fees, besides the costs. These conditions were accepted by Inquimboy who also signed Exhibit B.

"On 23 February 1944, Carlos Inquimboy filed in the Court of First Instance of Nueva Ecija, a complaint alleging, among other things, that the defendant Cenon Albea had failed to pay him on 15 November 1941, the sum of P2,500 and the other installment of P500 called for by the contract, Exhibit B, in spite of repeated demands. He prayed that the contract of sale, Exhibit A, be rescinded and cancelled and be declared of no further force and effect; that the defendant be ordered to pay the sum of P500 as damages and attorney's fees, and to return to him the Transfer Certificate of Title No. 15599 and 15600 above mentioned, with costs against the defendant.

"The defendant in his answer alleged, among other things; that on 19 July 1939, he sold said parcels of land to the plaintiff for the sum of P4,000 and on the same date the plaintiff executed another document giving the defendant the right to repurchase said parcels of land for the same amount of P4,000 at any time after the expiration of four (4) years from 19 July 1939; that on 13 October 1941, the plaintiff executed a deed of absolute sale in favor of the defendant and on the same date the latter executed the deed, Exhibit B, above mentioned; and that he tendered payment in December 1943 and two times in February 1944.

"The defendant failed to pay the first installment of P2,500 on 15 November 1941 in spite of the demands made by the plaintiff upon him.

"In December, 1943, the defendant made a tender of payment to the plaintiff of the amount mentioned in Exhibit B, which the plaintiff refused to accept as it was too late. Another tender of payment was made in the early part of February, 1944, and on February 13 of the same year. This sum was consigned with the Court.

"There is a question as to whether the defendant has paid the sum of P1,000 upon the execution of the document marked Annex A (pp. 11-17), Record on Appeal, on 19 July 1939 or on a later date. The following words appear at the end of said Annex A:

'(Note) Me comprometo ceder las dos parcelas por tres mil (P3,000) pesos solamente.'

"The plaintiff testified that it was a reduction made by him in favor of the defendant whereas the defendant stated that it was due to the fact that he had paid P1,000. This question of fact, however, is not important for the resolution of this case.

"The defendant failed to obtain a loan from the Agricultural and Industrial Bank, one of the reasons for the failure being that he pointed to the bank inspector a piece of land different from that which he offered as security (bottom of report of agent N. Y. Togore, marked as Exhibit C-1). Furthermore, the payment of the obligation of the defendant to the plaintiff cannot be made dependent upon his ability to obtain a loan from the bank. The insertion of the clause referring to the bank loan was only an indication of where he was going to get the money, but it was not a condition sine qua non for the payment."

To complete the statement of facts it is only necessary to add that the consignment or deposit in court of the sum of P3,000 was made by the defendant (now petitioner) Cenon Albea on March 1st, 1944, when he filed his answer to plaintiff's complaint as appears on page 14 of the record on appeal, wherein he alleged:

"8. That to show the willingness of the cross-plaintiff to pay the whole obligation to the cross-defendant, /he/ now tenders and deposits the sum of P3,000 to this Honorable Court."

Upon those facts the Court of Appeals declared the deed of sale Exhibit A "resolved and of no force and effect" and ordered the defendant Albea to deliver to the plaintiff Inquimboy Transfer Certificates of Title Nos. 15599 and 15600, and to pay to the plaintiff the sum of P500, with costs.

The Court of Appeals applied the ease of *Caridad Estates, Inc. vs. Pablo Santero*, 71 Phil., 114.

The petitioner-appellant, on the other hand, contends that the case applicable is not that relied upon by the Court of Appeals, but that of *Villaruel vs. Tan King*, (43 Phil. 251).

It is necessary to examine the facts of the two cases to determine which of them is applicable to the case at bar.

In the *Caridad Estates* case the plaintiff sold certain lots to the defendant for P30,000, payable as follows: P1,500 on the execution of the agreement; P4,000 in or before December, 1935, P4,500 in or before March 1936, and the remaining balance of P20,000 in ten years, each annual installment to be paid on or before the end of August of each year beginning 1937, with the stipulation that should the vendee fail to make the payments agreed upon within 60 days of the date they fell due, the total balance shall become due and payable and recoverable by an action at law, or the vendor may, at its option, recover possession of the property sold, in which case any and all sums paid by the vendee under the provisions of the contract shall be considered as rental for the use and occupancy of the property. After paying various installments aggregating P7,590, the vendee defaulted in the payment of the subsequent installments, and the vendor rescinded the contract of sale by so notifying the vendee and by selling the property to another party, thereafter instituting an action of unlawful detainer against the vendee to eject him from the property. This Court sustained the action of the vendor. Notwithstanding that the vendee tendered payment to the vendor of the installment in arrears and deposited it in court before the vendor made a demand either judicially or by a notarial act, this Court refused to apply Article 1504 of the Civil Code, on the

ground that it was not applicable because the contract involved was "a sale in installment in which the parties have laid down the procedure to be followed in the event the vendee failed to fulfill his obligation. There is, consequently, no occasion for the application of the requirements of Article 1504."

In the case of *Villaruel vs. Tan King*, supra, the plaintiff sold to the defendant two lots for the sum of P2,700, P1,700 of which was paid upon the signing of the deed of sale and the balance of P1,000 was promised to be paid within one year, as security for which the vendee constituted a mortgage on the same property in favor of the vendor. In other words, the contract was one of absolute sale with mortgage. Upon failure of the defendant to pay the sum of P1,000, the plaintiff brought an action praying that the sale be resolved after returning to the defendant the amount of P1,700 which he had paid as part of the purchase price. This Court 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, which reads as follows:

"Art. 1504. 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 jure, the purchaser may pay even after the expiration of the period, at any time before demand has been made upon him either by suit or by notarial act. After such demand has been made the judge cannot grant him further time."

This Court, quoting with approval Manresa's opinion, held that the demand mentioned in Article 1504 does not refer to a demand for payment, but "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." Inasmuch as the vendee in that case had deposited in court the amount due before the action was commenced, this Court absolved him from the complaint.

The contract Exhibit A involved in the present case, was one of absolute sale whereby the vendor Inquimboy transferred and conveyed his title to the land in question to the vendee Albea to enable the latter to mortgage it together with his other properties to the Agricultural and Industrial Bank and thereby secure the necessary amount with which to pay the purchase price to the vendor. In a separate document (Exhibit B) he agreed to pay that price as follows: P2,500 on or about November 15, 1941, and P500 in May, 1942, with the proviso that should he fail to pay the said sum of P2,500 on or before November 15, 1941, the deed of absolute sale Exhibit A "shall ipso facto be deemed cancelled and rescinded and that I shall execute and give the corresponding deed of cancellation and rescission." In other words, the vendee agreed to retransfer or reconvey the property to the vendor should the former fail to pay the first sum of P2,500 on the date stipulated.

That contract is different from the one involved in the *Garidad Estates* case, in that the latter was not an absolute deed of sale but a mere contract to sell whereby the vendee agreed to pay the purchase price in various installments with the stipulation that, upon failure to pay any installment within 60 days after due date, the vendor may, at its option, recover possession of the property and consider any and all amounts already paid as rental for the use and occupancy of the property. In that case there was no need for the vendee to execute any deed of reconveyance to the vendor because by the said contract to sell the title had not passed to him.

The contract involved in the present case is similar to that involved in *Villaruel vs. Tan King*, in that both contracts were absolute sales which passed title to the vendee, although the purchase price was not fully paid. As in the *Villaruel* case, Article 1504 of the Civil Code is applicable to the present case. Inasmuch as *Canon Albea*, the vendee, offered to pay the purchase price to the vendor before the latter made a demand upon him for the resolution of the contract either by suit or by notarial act, the court is empowered under said article to grant him further time.

We find, however, that the deposit made by Cenon Albea of P3,000 on March 18, 1944, after the present action had been commenced, did not relieve him of liability to pay the purchase price, for the following reasons:

Article 1176 of the Civil Code provides that "if a creditor to whom tender of payment has been made should refuse without reason to accept it, the debtor may relieve himself of liability by the deposit of the thing due." Article 1177 further provides: "In order that the deposit of the thing due may release the obligor, previous notice thereof must be given to the persons interested in the performance of the obligation." Article 1178 requires that the deposit be "accompanied by proof of tender, when required, and of notice of the deposit in other cases." It does not appear that Albea gave previous notice of the deposit to Inquimboy, and the deposit was not accompanied by proof of such notice nor by any proof of tender. He tendered the payment to Inquiraboy in December, 1943, and again on February 18, 1944. Inquimboy refused to accept it on the ground that it was too late and also because it was in Japanese fiat money. But instead of depositing the amount then and there with previous notice to Inquimboy, Albea reported Inquimboy's refusal to accept the Japanese war notes to the Military Police on February 18, 1944, as alleged in paragraph 6 of his cross-complaint, and only deposited said amount in court together with his answer to the complaint "to show his willingness * * * to pay the whole obligation to the cross-defendant." The consignment of payment, not having been made in accordance with law, was not valid and binding against the creditor.

The judgment of the Court of Appeals is modified as follows: The petitioner Cenon Albea is hereby adjudged and ordered to reconvey and deliver to the respondent Carlos Inquimboy the property described in Transfer Certificates of Title Nos. 15959 and 15600 of the Land Records of Nueva Ecija, together with said Certificates, free and clear of any encumbrance, unless within 30 days after entry of final judgment herein, he should pay to the respondent Carlos Inquimboy the purchase price of P3,000, Philippine currency, plus the sum of P500 as liquidated damages and attorney's fees. The petitioner Albea shall pay the costs in the three instances.

Pablo, Bengzon, Tuason, and Reyes, JJ., concur.

Montemayor, J., I concur in the result.

OZAETA, J.:

The Chief Justice and Justices Paras and Padilla concur in this opinion, but being absent on leave on the date of the promulgation hereof, their signatures do not appear above.

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