

LINA MONTILLA, PETITIONER, VS. COURT OF APPEALS AND EMILIO ARAGON, JR., RESPONDENTS.*G.R. No. L-47968. May 09, 1988*

Ponente: NARVASA, J.

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Errors in the application of elementary legal principles — as regards admissions in the pleadings, the Statute of Frauds, promises to sell, and interlocutory orders in relation to res adjudicata — as well as palpable mistakes in factual conclusions - because contrary to or in unaccountable disregard of facts of record, impel reversal of the judgment of the Court of Appeals[1] which affirmed that of the Trial Court.[2]

The proceeding at bar traces its origin to an action initiated in the Court of First Instance of Iloilo on April 27, 1972 by Emilio Aragon, Jr., to compel Lina Montilla to comply with a verbal contract to sell to him a piece of land situated at Poblacion, Iloilo City, known as Lot No. 4 of the Consolidated Subdivision plan (LRC) Psc-11605. In his complaint, Aragon claimed that in the last week of June, 1969, Montilla had orally offered to sell the lot to him at a price of P57,650.00 (at the rate of P50.00 per square meter), the price being payable at any time within a three-year period from June, 1969 provided that Aragon constructed on the lot a house of strong materials and paid a nominal monthly rental in the meantime; but despite Aragon's acceptance of the offer, fulfillment by him of the specified conditions, and his seasonable tender of the purchase price, Montilla had refused to comply with her obligation.

In her answer Montilla categorically denied ever having entered into such an agreement, and set up the affirmative defenses of (1) unenforceability of the alleged agreement under the Statute of Frauds; and (2) failure of the complaint to state a cause of action, no allegation having been made therein of any consideration for the promise to sell distinct and separate from the price, as required by Article 1479 of the Civil Code.

At Montilla's instance, a preliminary hearing was had on her affirmative defenses in accordance with Section 5, Rule 16 of the Rules of Court,[3] "as if a motion to dismiss had been filed." Thereafter, by Order dated December 5, 1972, the Court denied the implicit motion to dismiss, opining that since Montilla's answer "shows that.. (she had) admitted the offer to sell, and plaintiffs desire to buy the land in question," that admission amounted to a ratification of the oral contract to sell and operated to place the case beyond the scope of the Statute of Frauds.

After trial, the Court rendered judgment under date of August 22, 1974 sentencing Montilla "(a) to execute the requisite deed of conveyance of Lot No. 4, covered by Transfer Certificate of Title No. T-29976 in favor of the plaintiff upon full payment by plaintiff to defendant of the total consideration thereof in the aggregate sum of Fifty Seven Thousand Six Hundred Fifty Pesos (P57,650.00); (b) to pay to plaintiff P2,000.00 as attorney's fees, and (c) to pay the costs." This decision, as aforesaid, was affirmed by the Court of Appeals. The latter's adjudgment has, in turn, been duly brought up to this Court by Montilla, on appeal by certiorari under Rule 45 of the Rules of Court. And to the Appellate Court, Montilla ascribes the following errors:

1)

**** holding as correct the trial court's finding that petitioner's answer admitted the existence of the alleged verbal contract to sell the land to respondent Aragon:

2)

**** holding as correct the . . conclusion that for petitioner's failure to file demurrer to or motion for reconsideration of its order of December 5, 1972, the alleged verbal contract became an established fact:" and

3)

failing "to consider and appreciate significant evidences which were deliberately overlooked, misapplied, or misunderstood the trial court."

The record discloses that the imputed errors have indeed been committed, and they are of sufficient gravity to warrant reversal of the judgments in question.

It is, in the first place, difficult to see by what process of ratiocination the Trial Court arrived at the conclusion that Montilla's answer had "admitted the offer to sell." Any such admission is absolutely precluded by the specific and unequivocal denial by Montilla of the claimed verbal contract to sell. She in fact branded the allegations to that effect in the complaint as "outrageously false, fantastically ridiculous and despicable fabrications of plaintiff." Nor may any admission be inferred from the circumstance that Montilla, apart from unqualifiedly denying the contract to sell, had also asserted in her responsive pleading that the contract was unenforceable because violative of the Statute of Frauds and because not supported by any consideration distinct from the price. For while those defenses imply an acceptance by the pleader of the truth of the agreement at which the defenses are directed, the acceptance is at best hypothetical, assumed only for purposes of determining the validity of the defenses, but cannot in any sense be taken as an unconditional and irretrievably binding factual admission. The import of the answer, couched in language that could not be made any plainer, is that there was no verbal contract to sell ever agreed to by Montilla, but that, even assuming hypothetically, or for the sake of argument that there was, the agreement was unenforceable because in breach of the Statute of Frauds. It was therefore reversible error for the Trial Court to have burdened Montilla with an admission of the verbal contract to sell sued upon.

Also tainted by serious error is the ruling that after rendition of the Order of December 5, 1972, denying the motion to dismiss because of Montilla's "admission" of the verbal contract, "the inaction by the defendant in not taking any exception or demurrer thereto by filing a motion for reconsideration or amending her answer for the purpose had the legal effect of making such order binding and conclusive upon her, in contemplation of Rule 131, Section 3 (c), in relation to Rule 39, Section 49 (b) of the Rules of Court."

What the Court is saying is that its interlocutory order of December 5, 1972 had become conclusive,[4] i.e., conclusive on Montilla "with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto.[5] Obviously, it escaped His Honor's attention, or, what would be more regrettable, it was not within his knowledge, that the doctrine of res judicata or bar by prior judgment[6] (or, for that matter, conclusiveness of judgment or estoppel by judgment[7]) has relevance to, and will become operative only on the basis of a final judgment or final order, the qualifying term "final" being used in the sense of "final and executory," i.e.. not only final — because finally disposing of the case and leaving nothing more to be done by the adjudging court relative to its merits, but also executory — because the period for appeal has expired without an appeal having been taken, or an appeal having been perfected, the judgment or order has otherwise attained finality.[8] Quite elementary is that an order such as that rendered on December 5, 1972, being interlocutory,

cannot become final and executory in the sense just described,[9] and cannot bring the doctrine of res adjudicata into play at all. Indeed, the correctness of such an interlocutory order may subsequently be impugned on appeal by any party adversely affected thereby, regardless of whether or not he had presented a motion for the reconsideration thereof, if he has otherwise made of record his position thereon.[10]

Also quite inexplicable is the Trial Court's glossing over the failure of Aragon to identify Montilla during the trial. Aragon's recorded testimony contains the claim that he had "personally met *** Montilla *** sometime in the last week of June, 1969," and that he could identify her. He had thereupon been asked to make the identification, and he had pointed to "a woman *** (in a) brown dress" in the courtroom, stoutly declaring thereafter that he was "quite sure" of his identification, that he was very certain that he was "not mistaken." As it turned out, the person pointed to by him was not Montilla at all, but a lady named Rosario Mendoza Valdez.[11] The Trial Judge however dismissed this embarrassing inability of Aragon to identify Montilla as "innocuous." According to him, "the fact of her being the very person who offered to sell Lot No. 4 to the plaintiff is corroborated not only by the testimonies of Asst. City Fiscal Jose Jacela, Jr. and Enrique Castelo but by the very testimony in court of defendant herself who, when asked by her counsel, admitted she is the defendant in this case." The lack of logic in the Court's reasoning is evident. Montilla's acknowledgment of being the defendant in the case can not in any manner whatsoever be considered an admission that she had gone to see Aragon to offer her property for sale. Non sequitur. Aragon's disconcerting failure to identify Montilla is cogent confutation of his allegation that he personally knew Montilla and had negotiated with her for his purchase of the property in question, and strongly indicative of the inaccuracy of the testimony of the witnesses who corroborated his dubious tale.

There being therefore no admission whatever on Montilla's part of the existence or ratification of the claimed contract to sell, and taking account of her disavowal in her pleadings and in her evidence of that contract, and necessarily of any fulfillment of the terms thereof, it is clear that the action for its enforcement should have been dismissed pursuant to the Statute of Frauds,[12] in relation to Rule 16 of the Rules of Court.[13]

The action is also dismissible upon another legal ground. Assuming arguendo veritability of the oral promise to sell by Montilla, the promise was nevertheless not binding upon her in view of the absence of any consideration therefor distinct from the stipulated price. This is the principle laid down by the second paragraph of Article 1479: "An accepted unilateral promise to *** sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price."

There is another item of proof which the Trial Court completely failed to consider. This is a document marked Exhibit 1, executed by Aragon on July 9, 1969 — some 9 or 10 days after Montilla had supposedly promised to sell the lot in question to him. It reads as follows:

"TO WHOM IT MAY CONCERN:

This is to certify that I promise to abide by the decision of the owners of the Montilla Estate upon which my house is being constructed, in any eventuality.

This is in connection with the kind permission granted me by their authorized representative, Leodegario Manalolo, which I am exceedingly grateful inasmuch as my children could live near their school, the Colegio Sagrado Cora/on de Jesus. I am therefore imploring the consideration of the owners and Mr. Manalolo to give my children ample time to finish their schooling there.

For the duration, I am willing to meet the prescribed rental obligations of said lot."

The document reveals several things. For one, the lot on which Aragon's house was being built was obviously part of the "Montilla estate," and did not as yet belong to any particular heir or person entitled thereto. For another,

Aragon had been given permission by the representative of the estate, Mr. Manaloto, to stay on the lot in consideration of a prescribed rental, and he was imploring said Mr. Manaloto and the owners for leave to stay in the premises until his children could finish their schooling, promising to "meet the prescribed rental obligations." Again, and this is quite significant as regards his claim of a promise to sell by one of the Montillas, since that promise is not referred to or even hinted at in any manner whatsoever, the genuineness of the claim is strongly suspect; for surely, Aragon would never have "implored" for "consideration of the owners and Mr. Manaloto" to stay in the premises until his children could finish their schooling, as lessee, if it be true that he had accepted a promise for the sale thereof to him. The document cannot therefore be interpreted otherwise than as denoting the concession to him of the privilege to build a house on a lot belonging to the Montillas. and a solicitation by him of the owners' permission to lease the lot to him for a longer, and more or less determinable term, and as an implied, though nonetheless clear, negation of any right on his part to purchase the property.

Another document, marked Exhibit 5, further underscores the improbability of Aragon's story. It is a Court Order issued on June 17, 1971 in the judicial proceedings for the settlement of the Montilla Estate, obviously the same "Montilla estate" referred to by Aragon in his certification of July 9, 1969 just described. That Order approved the project of partition of said estate, presented on May 5, 1971: and it states that Lot 4, subject of the case at bar, was adjudicated to Lina Montilla on June 17, 1971, more than two (2) years after she had supposedly offered to sell the property to Aragon. Thus, as already intimated, at the time of the alleged promise to sell, avowedly made in June, 1969, Lot 4 still formed part of the amorphous mass of property constituting the "Montilla estate;" at any rate, that particular lot had not been allotted to Lina Montilla yet. The uncertainty of the eventual ownership of said Lot 4, considered conjointly with the ostensible status of Aragon as a mere supplicant of favors from "the owners of the Montilla estate," make it very improbable indeed that Montilla would personally go to him and promise to sell the lot to him. Incredibly, however, the Trial Court interpreted the document, Exhibit 5, as proof that Lina Montilla, had not only offered to sell to Aragon that particular Lot 4 at a time when it could not yet be known to which heir it would ultimately be allotted, but also made an additional promise that she would make certain that the property would at all events eventually "pertain to her as her share and the corresponding certificate of title issued in her name." A more extreme case of leaning over backwards in stubborn advocacy of a pre-conceived theory can scarcely be found.

On the whole, the evidence adequately demonstrates the falsity of Aragon's claim of an oral promise to sell said Lot No. 4 in his favor, and consequently the unfounded character of his action against Montilla.

WHEREFORE, the Decision of the Court of Appeals dated January 18, 1978 and that of the Court of First Instance dated August 22, 1974 thereby affirmed, are REVERSED AND SET ASIDE, and a new one entered DISMISSING Aragon's complaint, with costs against him.

Cruz, Gancayco, and Griño-Aquino, JJ., concur.

[1] Rendered on Jan. 18. 1978 in CA-G.R. No. 5778-R: Reyes. S.F.. J.. ponente: Puno and Lood. J.J.. concurring.

[2] Rendered on August 22. 1974 in Civil Case No. 8968 by Judge Caslrene C. Veloso.

[3] Sec. 5. Pleading grounds as affirmative defenses. Any of the grounds for dismissal provided for in this rule, except improper venue may be pleaded as an affirmative defense, and a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

[4] One of the instances of conclusive presumptions in Rule 131. explicitly relied upon by the Trial Court, being "The judgment or order of a court, when declared by these rules to be conclusive" (Sec. 3 [c]).

[5] Section 49 (b). Rule 39. also expressly invoked by respondent Judge, sets out the rule of bar by prior judgment or res adjudicata in actions or proceedings in personam. to wit: "The effect of a judgment or final order *** may be *** with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing end under the same title and in the same capacity."

[6] Treated of in sub-sections (a) and (b) of the aforecited Section 49 of Rule 39.

[7] Dealt with in sub-section (c) of Section 49. Rule 39.

[8] Investments, Inc. v. C.A.. G.R. No. 60036. Jan. 27. 1987.

[9] Harrison Foundry & Machinery v. Harrison Foundry Workers Ass'n., 8 SCRA 430: Baulista v. de la Cruz. 9 SCR A 725: Newsweek. Inc. v. IAC. 142SCRA 171.

[10] SEE the Harrison and Newsweek decisions, cited in next preceding footnote, supra.

[11] TSN. Dec. 10. 1973, pp. 108, 110.

[12] Set forth in Article 1403 of the Civil Code which in its paragraph (2). sub-paragraph (c.), provides that an agreement, among others, "for the sale of real property or of an interest therein" "shall be unenforceable by action unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent."

[13] Which states that among the grounds for dismissal of an action at a defendant's instance is that "the claim on which the action or suit is founded is unenforceable under the provisions of the statute of frauds" (Sec. 1 |i|).

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