PERLA SAN LORENZO, PLAINTIFF-APPELLEE, V. SPOUSES NOEL AND LUNINGNING DANAO, DEFENDANTS-APPELLANTS.

Ponente: DE GUIA-SALVADOR, R., J.

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DE GUIA-SALVADOR, R., J.:

Filed pursuant to Rule 41 of the 1997 Rules of Civil Procedure, the instant appeal seeks the reversal of the Decision[1] dated November 23, 2011 of the Regional Trial Court of Masbate City, Branch 46 (or "RTC") in Civil Case No. 6326, the dispositive portion of which reads:

> "WHEREFORE, decision is hereby rendered as follows:
>
> 1.) Ordering the defendants to deliver to the plaintiff the entire five (5) hectares of land specified in the Deed of Absolute Sale dated August 9, 2005;
>
> 2.) Ordering the defendants to pay the plaintiff the amount of P10,000.00 moral damages and P5,000.00 exemplary damages.
>
> No cost.
>
> SO ORDERED."[2]

The Facts

On May 30, 2003, defendants-appellants spouses Noel and Luningning Danao (spouses Danao) purchased a ten (10) hectare parcel of land, covered by Tax Declaration No. 5191, from Jose Zaragoza, Sr.[3] Some three (3) years later, or more particularly on August 9, 2005, the spouses Danao sold the southern half thereof, consisting of five (5) hectares to plaintiff-appellee Perla San Lorenzo (San Lorenzo). As evidence thereof, a Deed of Absolute Sale[4] was executed between the spouses Danao as vendors and San Lorenzo as vendee, describing the land as follows:

> "xxx that certain portion of cogon land together with all the improvements existing thereon located at Sitio Pajo, Barrio Bangon, Aroroy, Masbate, Philippines, more particularly bounded and described as follows:
>
> North- property of Noel B. Danao
> East- property of Emilio Rizo
> South- property of Emiliano Aviso
> West- property of Garcenio Cabiles and Edgardo Tugbo
>
> Area- 5.0000 hectares, more or less
>
> This portion is located on the southern half of the land covered by Tax Declaration No. 5191 in the name of Jose Zaragoza, Sr."[5]

San Lorenzo paid a fixed sum of Sixty Thousand Pesos (P60,000.00) as consideration for the sale.[6]

Meanwhile, San Lorenzo caused the survey of the property and discovered that the parcel of land actually

delivered to her has an area of 4.1401 hectares only.[7] Consequently, on March 19, 2007, San Lorenzo sent a demand letter[8] to Noel Danao requesting for a refund of her "overpayment". As the demand was unheeded,[9] on February 28, 2008, San Lorenzo commenced a Complaint[10]before the RTC for Specific Performance with Recovery of Possession and Ownership with Damages, praying for the delivery of the entire five (5) hectare land specified in the Deed of Absolute Sale, as well as the award of moral and exemplary damages.

On March 26, 2008, the spouses Danao filed their Answer,[11] asserting that what they had sold to San Lorenzo was the southern half of the ten (10) hectare land originally covered by Tax Declaration No. 5191 in the name of Jose Zaragoza, Sr.[12] However, upon verification, it was found out that the actual area of the entire property was not ten (10) hectares, but less than seven (7) hectares.[13] They further asserted that they could not have sold more than the southern half of the land as their intention was to retain for themselves the other half (northern half).[14]

The RTC Decision

On November 23, 2011, the RTC rendered a decision in favor of San Lorenzo, holding the spouses Danao liable to deliver to the former the "entire five (5) hectares of land specified in the Deed of Absolute Sale dated August 9, 2005". The RTC ruled in this wise:

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> "In the instant case, the Court finds that there was a perfected contract of sale of land between the parties. As there was a binding contract of sale, the plaintiff is entitled to the fulfillment of the reciprocal obligation of the defendants as specified in the Deed of Absolute Sale. That is, to deliver to the plaintiff the entire five (5) hectares of land which is the object of sale.
>
> As established by the evidence, of the stipulated five (5) hectares in the Deed of Absolute Sale, what was actually delivered to the plaintiff by the defendants was only 4.1401 hectares. This was shown after the survey was conducted by Engr. Codilla that the total area of the land is only 4.1401 hectares, a difference of 8.599 [sic] (should be .8599) undelivered area.
>
> Defendant's claim that the whole area of his land is not exactly 10 hectares but only 7 hectares is of no moment in as much as under the law, he had the demandable obligation to deliver the property sold which is 5 hectares to the plaintiff."[15]

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The Issues

Aggrieved, spouses Danao timely filed a Notice of Appeal[16] seeking the reversal of the RTC decision on the following grounds:

> I. "THE COURT A QUO ERRED WHEN IT RULED THAT THE OBLIGATION OF THE DEFENDANTS-APPELLANT[S] IS TO DELIVER THE ENTIRE FIVE (5) HECTARES OF LAND SPECIFIED IN THE DEED OF SALE WITHOUT CONSIDERING THE ACTUAL BOUNDARIES OF THE LAND SOLD.
>
> II. THE COURT A QUO ERRED WHEN IT BELIEVED THE VERSION OF THE PLAINTIFF THAT THE AREA DELIVERED BY THE DEFENDANT WAS ONLY 4.1401 HECTARES.
>
> III. THE COURT A QUO ERRED WHEN IT AWARDED THE PLAINTIFF-APPELEE P10,000.00 MORAL DAMAGES AND P5,000.00 EXEMPLARY DAMAGES."[17]

The spouses Danao assert that the property sold to San Lorenzo was only one-half (½) of the parcel of land they

had previously purchased from Jose Zaragoza, Sr. In fact, the Deed of Sale clearly states that the southern-half of the property was sold to San Lorenzo, whereas the northern half was retained by them. They further aver that San Lorenzo's contention that the parcel she purchased has an area of five hectares is borne of the unverified assumption that the area of the original parcel of land was ten (10) hectares.[18] However, the spouses Danao stress that at the time of the sale to San Lorenzo, the original parcel of ten (10) hectares was not yet surveyed, hence, there was no way of knowing the correct and accurate area of the land, from which the division between them and San Lorenzo was made.[19]

On the other hand, San Lorenzo contends that the spouses Danao made the sale on the claim that the entire property had a total area of ten (10) hectares,[20] and that the southern half thereof was to be alloted to her.[21] In fact, the Deed of Absolute Sale specified the area of the parcel subject of the sale to be five (5) hectares and used the word “southern half” to refer to its location.[22] She further avers that the terms of the Deed of Absolute Sale are clear and unambiguous, hence, evidence aliunde cannot be introduced.[23] She likewise argues that assuming that the total area purchased by the spouses Danao from Zaragoza, Sr. turned out to be less than ten (10) hectares, then the formers' remedy is to go after the latter, instead of prejudicing her by reducing her share.[24]

The Court's Ruling

We have judiciously examined the records and found the instant appeal impressed with merit.

The case at bar involves a conflict between the vendee Perla San Lorenzo who insists on the delivery of the entire area as indicated in the Deed of Absolute Sale, and the vendors spouses Danao who assert the delivery of the entire land included within the boundaries as stated in the contract.

In sales involving real estate, the vendor and the vendee are at liberty to choose between two types of pricing agreements, namely, a unit price contract wherein the purchase price is determined by way of reference to a stated rate per unit area (e.g., P1,000 per square meter), or a lump sum contract which states a full purchase price for an immovable, the area of which may be declared based on an estimate or where both the area and the boundaries are stated (e.g., P1 million for 1,000 square meters).[25]

A perusal of the Deed of Absolute Sale reveals that San Lorenzo purchased from the spouses Danao for a lump sum consideration of sixty thousand pesos (P60,000.00), a parcel of cogon land containing an area of “five (5) hectares, more or less, located at the southern half of the land covered by Tax Declaration No. 5191 in the name of Jose Zaragoza, Sr.”[26] The Deed of Absolute Sale further indicates the following boundaries, namely, the properties of Noel B. Danao on the North, Emilio Rizo on the East, Emiliano Aviso on the South and Garcenio Cabiles and Edgardo Tugbo on the West.[27] Evidently, the Deed of Absolute Sale confirms that the parties agreed to a lump sum purchase price of P60,000.00 for the predetermined (albeit unsurveyed) area of five (5) hectares, more or less.

Article 1542 of the Civil Code governs the sale of real property for a lump sum as distinguished from one at the rate of a certain sum for a unit of measure or number, viz:

> “Article 1542. In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or less area or number than that stated in the contract.
>
> The same rule shall be applied when two or more immovables are sold for a single price; but if, besides mentioning the boundaries, which is indispensable in every conveyance of real estate, its area or number should be designated in the contract, the vendor shall be bound to deliver all that is included within said boundaries, even when it exceeds the area or number specified in the contract; and, should he not be able to do so, he shall suffer a reduction in the price, in proportion to what is lacking in the area or number, unless the

> contract is rescinded because the vendee does not accede to the failure to deliver what has been stipulated. (1471)" (Emphasis supplied)

Essentially, Article 1542 provides that if the area of the determinate thing is set forth in the contract, and after delivery, it is found that the actual area included within the boundaries is less than that stipulated, there shall be no decrease in the price, even if the area is smaller than that indicated in the contract.[28] The same Article highlights that what is controlling is the entire land included within the boundaries, regardless of whether the real area should be greater or smaller than that recited in the deed.[29] Accordingly, the vendor is obliged to deliver everything within its boundaries, inasmuch as it is the entirety thereof that distinguishes the determinate object. This is particularly true when the area is described in the Deed of Sale with the phrase "more or less."[30] In fact, in case of conflict between the area and the boundaries, it is the latter which should prevail, following the principle that what really defines a piece of ground is not the area, calculated with more or less certainty, mentioned in its description, but the boundaries therein laid down, as enclosing the land and indicating its limits.[31]

Significantly, it is not of vital consequence that a deed or contract of sale of land should disclose the area with mathematical accuracy. Instead, what is essential is that its extent is objectively indicated with sufficient precision to enable one to identify it. An error as to the area that is not great or sizable is immaterial.[32] What is important is the delivery of all the land included in the boundaries. If this is fulfilled, then there is compliance with the contract and the greater or lesser area is inconsequential, otherwise, there is no faithful compliance with the contract, hence, the second paragraph of the law will apply, thereby entitling the buyer to claim a reduction of the price or rescission of the contract.[33]

Analogous to the instant case is that of Lietz, Inc. vs. Martinez, et al.,[34] wherein the area delivered by the vendor to the vendee was one hectare less than that stipulated in their Deed of Sale. Upon discovery of the discrepancy, the vendee claimed for a reduction of the purchase price which he had already paid for. In denying this relief, the Supreme Court ruled that since the sale between the parties was made for a lump sum, there shall no reduction in the purchase price even if the area delivered to the buyer was less than that stated in the contract. The Supreme Court further stressed that in determining the correct area, the one included within the boundaries shall control over the area indicated in the deed.

However, it bears to note that the rule is not without exception. The use of the phrase "more or less" or other words of similar import in designating quantity, merely covers a reasonable excess or deficiency.[35] "A vendee of land sold in gross or with the description "more or less" with reference to its area does not thereby ipso facto take all risk of quantity in the land."[36] Where the difference between the actual area and that stated in the contract is so great as to cause a substantial error, the contract may be annulled.[37] Thus, in Del Prado vs. Spouses Caballero,[38] it was held that a discrepancy of 10 hectares is sizable and cannot be dismissed as a slight difference in quantity. In contrast, in Esguerra, et al. vs. Trinidad, et al.,[39] and Lietz vs. Martinez, et al.,[40] differences in quantity of a fourth of a fraction and one hectare, respectively, were deemed inconsequential. As in the latter cases, the deficiency in the case at bar consisted of less than one hectare, more specifically .8599 hectares of the total stated area. Clearly, the exception does not apply as the difference is not so great or significant as to warrant the annulment of the Deed of Sale.

In this case, the Deed of Absolute Sale shows that San Lorenzo and the spouses Danao agreed on a sale for a lump sum. In conformity with law and jurisprudence on lump sum sale of real properties, the area of five (5) hectares as recited in the Deed of Absolute Sale is but an approximation, and not an exact measurement.[41] Instead, it is the area of 4.1401 hectares as determined from the Survey Plan which took into account the boundaries of the land that delineates the scope of the sale.[42] Moreover, a deficiency of .8599 hectares is not so significant as to

warrant a reduction in price or to authorize the rescission of the sale. Given the foregoing, the RTC erred in ordering the spouses Danao to deliver the entire five (5) hectare parcel of land. Instead, what the spouses Danao are obliged to deliver to Perla San Lorenzo is all of the actual area, which is 4.1401 hectares of cogon land, included within the boundaries stated in the Deed of Absolute Sale.

WHEREFORE, premises considered, the instant appeal is hereby GRANTED and the assailed Decision of the court a quo is REVERSED AND SET ASIDE. In lieu thereof, another is entered DISMISSING, for lack of merit, plaintiff-appellees' complaint for specific performance with recovery of possession and ownership with damages, docketed as Civil Case No. 6326.

SO . . .

. . . ORDERED.

Garcia and Bueser, JJ., concur.

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[1] Records, pp. 93-95.

[2] Id., p. 95.

[3] Id., p. 79.

[4] Id., pp. 4-5.

[5] Id., p. 4. Emphasis supplied.

[6] Id.

[7] Id., p. 52.

[8] Id., p. 9.

[9] Id., p. 1.

[10] Id., pp. 1-3. The case was docketed as Civil Case No. 6326 for Specific Performance with Recovery of Possession and Ownership with Damages.

[11] Id., pp. 11-13.

[12] Id., p. 11.

[13] Id.

[14] Id., p. 12.

[15] Rollo, p. 31.

[16] Supra note 1, p. 96.

[17] Supra ntoe 15, p. 24.

[18] Id., p. 27.

[19] Id., p. 25.

[20] Id., p. 39.

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[21] Id.

[22] Id., p. 40.

[23] Id.

[24] Id., p. 43.

[25] Del Prado vs. Spouses Caballero, G.R. No. 148225, March 3, 2010, citing Esguerra v. Trinidad, G.R. No. 169890, March 12, 2007.

[26] Supra note 1, p. 4.

[27] Id.

[28] Commentaries and Jurisprudence on the Civil Code of the Philippines. Arturo M. Tolentino. 1992 p. 94.

[29] Esguerra, et al. vs. Trinidad, et al., G.R. No. 169890, March 12, 2007, citing Vide Balantakbo v. Court of Appeals, 319 Phil. 436 (1995).

[30] Id.

[31] Id.

[32] Balantakbo, et al. vs. Court of Appeals, et al., G.R. No. 108515, October 16, 1995, citing Dichoso vs. Court of Appeals and Ramos, 192 SCRA 169, citing Loyola vs. Bartolome, 39 Phil 544 [1919] reiterated in Erico vs. Chigas, 98 SCRA 575 [1980].

[33] Civil Code of the Philippines (Annotated). Edgardo Paras. 1995. p. 170, citing Azarraga vs. Gay, 52 Phil, 599.

[34] Lietz, Inc. vs. Martinez, et al., G.R. No. 122463, December 19, 2005.

[35] Supra note 28, pp. 94-95.

[36] Supra note 29, citing Roble v. Arbasa, 414 Phil. 343 (2001).

[37] Supra note 35.

[38] Supra note 25.

[39] Supra note 29.

[40] Supra note 34.

[41] Supra note 29.

[42] Supra note 32, citing Dichoso vs. Court of Appeals and Ramos, 192 SCRA 169, citing Miguel Semira vs. Court of Appeals and Buenaventura An, G.R. No. 76031, March 2, 1994.

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