

**BRICCIO B. TENORIO, PETITIONER, VS. HON. ERNANI CRUZ PAÑO
(DISTRICT JUDGE, CFI-RIZAL, BRANCH XVIII), LAGRIMAS C.
LAGDAMEO, SOL C. LAGDAMEO AND THE HEIRS OF THE LATE
ALFREDO C. L...**

G.R. No. L-48117. November 27, 1986

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari seeking the reversal of: (a) the Order dated January 26, 1978 of the Court of First Instance of Rizal, Q.C. Br. XVIII deferring the resolution of the Motion to Dismiss until the trial on the merits, for the reason that the grounds relied upon were not indubitable (Rollo, p. 56); (b) the Order dated March 20, 1978 denying the Motion for Reconsideration of aforesaid Order (Rollo, pp. 59-60).

The facts of the case are as follows:

Petitioner-developer (CAPITALIST, for short) and respondents-owners entered into a Subdivision Contract, (Annex "A") on October 7, 1956, (pp. 25-28), Rollo); which provides among other things that the CAPITALIST:

(1)

shall have full possession of the land situated in Gumaca, Quezon Province, in order to survey, sub-divide it into commercial and residential lots, and eventually sell them after the introduction of improvements thereon as required by the National Planning Commission as follows:

"a)

The sub-division shall be provided with 10 to 15 meter-wide avenues, but no road shall be less than 10 meters wide.

(b)

The sub-division shall be provided with water and electrical facilities, all at the expense of the CAPITALIST, if the present electrical plant so permits.

(c)

The sub-division shall be provided with an adequate drainage system.

(d)

All other improvements required by the National Planning Commission."

(2)

shall bear all the expenses in connection therewith including payment of real estate taxes and the

above-mentioned impositions while said lots remain unsold and

(3)

shall have full and exclusive power and authority and shall exercise full discretion in the development and sale of the lots in the sub-division including the fixing of the prices thereof.

On the other hand, the OWNERS: (1) shall retain title over the land and all sales shall be made in their names; (2) shall hold in reserve 9,622 sq.m., the location of which shall be determined by both parties and (3) shall receive as fixed participation 40% of the gross receipts of the subdivision based on the actual prices of the sales (Rollo, pp. 26-28).

On September 9, 1977, the private respondents as plaintiffs filed their complaint in Civil Case No. 23788 for accounting, breach of contract and damages and termination of contract against the petitioner before the Court of First Instance of Rizal, Branch I, Quezon City, (p. 19, Rollo) alleging among others that petitioner-developer failed to comply with his obligations embodied in the subdivision contract, specifically, petitioner failed (a) to construct avenues and roads 10 to 15 meters wide with water and electrical facilities and an adequate drainage system; (b) to pay the tax assessments, fees and impositions on the property and (c) to render full accounting of the sales made for the determination the 40% share of the plaintiffs to the gross cash receipts that will accrue to them. (Rollo, pp. 21-22).

Because of the alleged breach, private respondents demand the termination of the contract and the turn over of all torrens titles to the lots, all contracts of sale, records and other pertinent papers and claim P20,000.00 as moral damages, P20,000.00 exemplary damages and P16,000.00 as compensatory damages including attorney's fees and P30,000.00 for unrealized profits. (Rollo, pp. 22-23).

The defendant below upon summons and within the reglementary period to file responsive pleading filed his Motion to Dismiss the complaint on the following grounds: (1) venue is improperly laid; (2) no valid cause of action; and (3) the action is barred by estoppel and laches. (pp. 31-41, Rollo).

On January 26, 1978, respondent Judge in his first assailed Order deferred resolution of the motion to dismiss until the trial on the merits. (Rollo, p. 56).

The petitioner, defendant below, filed his motion for reconsideration of aforesaid Order which motion was denied by respondent Judge in his Order dated March 20, 1978 (Rollo, pp. 59-60).

Hence, this petition.

The private respondents in compliance with the Court's Resolution of June 7, 1978 (Rollo, p. 63) filed their Comment. (Rollo, pp. 67-70).

The First Division of this Court in its Resolution dated July 24, 1978 gave due course to the petition requiring both parties to file simultaneously their respective Memoranda within thirty (30) days from notice. (p. 72, Rollo). Petitioner filed his Memorandum on October 2, 1978 (Rollo, pp. 79-87) while private respondents failed to file their Memorandum.

Hence this case was submitted for decision without private respondents' memorandum in the resolution of November 10, 1978, (Rollo, p. 89).

The main issue in this case is whether or not the action brought by respondent-owners is a real action as contended by the petitioner or a personal action as held by the respondent court. (Order dated March 20, 1978, Rollo, pp. 59-60).

The petition is impressed with merit.

The records show that the property in question is situated in Gumaca, province of Quezon and the subdivision contract upon which the complaint was predicated was also executed in Gumaca, Quezon. As correctly stated by petitioner, although the complaint does not pray explicitly for recovery of possession, such is the necessary consequence of the cancellation or rescission (resolution) of the Subdivision Contract. The termination of said contract entails the delivery of possession of the land, at least the unsold lots to private respondents as well as the Torrens Titles thereof. The demand for damages, aside from being merely incidental to the action, arises from private respondents' interests in the land. Proper venue should therefore be laid in Quezon Province where the land is situated. (Rollo, pp. 83-84).

This issue has already been decided by this Court in an analogous case, *De Jesus v. Coloso* (1 SCRA 274 [1961]) where the Court ruled that where it is alleged that the contract has been breached, a reason for which the other party demands its rescission (resolution) and the return of the property subject thereof, the action is an action for the recovery of the possession of land and in accordance with Section 3 of Rule 5 of the Rules of Court, the action should be filed where the property is situated. This ruling was reiterated in a recent decision of this Court, *Punsalan, Jr. vs. Vda. de Lacsamana* (121 SCRA 336 [1983]).

The rules of venue are dictated by convenience. They are precisely constituted to forestall conflicting decisions by different courts on the issue of ownership and possession. "To sanction respondents' flagrant evasion of the rule on venue of a real action is to tolerate a palpable manipulatory abuse or perversion of the right to litigate." *Lim vs. Argel*, G.R. No. L-42800, July 30, 1979, 92 SCRA 238, 243-244 [1979]).

PREMISES CONSIDERED, the assailed Orders are SET ASIDE, and the complaint is hereby DISMISSED on the ground of improper venue. Costs against private respondents.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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