

ERNESTO FULLERO, PERSEVERANDO FULLERO AND ZENAIDA FULLERO, RESPONDENTS, VS. SPS. ARMINGOL AND LOURDES TEXON. PETITIONERS.

Ponente: VIDAL, M.D., J.

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VIDAL, M.D., J.:

Before Us is a Petition[1] for Review which seeks to set aside the Decision[2] dated 25 May 2004 issued by Judge EUFRONIO K. MARISTELA of the Regional Trial Court (RTC), Fifth Judicial Region, Branch 58 of San Jose, Camarines Sur in Civil Case No. T-983. The said Decision stemmed from the appeal taken by both parties, the Petitioners, Spouses ARMINGOL and LOURDES TEXON (hereinafter Petitioners) and Respondents, ERNESTO FULLERO, PERSEVERANDO FULLERO and ZENAIDA FULLERO (hereinafter Respondents) from the Decision[3] of the Municipal Trial Court (MTC) of Lagonoy, Camarines Sur of the Fifth Judicial Region wherein Respondents instituted a complaint for Ejectment and Damages against the Petitioners. The fallo of the assailed Decision states:

“WHEREFORE, premises considered, judgment is hereby rendered and the decision of the Municipal Trial Court of Lagonoy, Camarines Sur dated December 10, 2003 is hereby ordered MODIFIED by deleting the reimbursement award of Php 78,146.40 and increasing the reasonable rental for the use and occupancy of the premises to Php500.00 per month from June 16, 2003 with interest at 12% per annum from date of extra-judicial demand until the defendants finally vacate the premises and further ordering the defendants to pay to the plaintiffs the sum of Php30,000.00 as attorneys fees in the form of damages. All other aspects of the decision are hereby AFFIRMED.

SO ORDERED.[4]

The subsequent Order[5] dated 26 July 2004 denying the Motion for Reconsideration dispositively provides:

“After an assiduous consideration of the motion for reconsideration filed by the defendants-appellees and comment thereto by the plaintiffs-appellants and the ground raised therein, this court believes and so holds that there is no cogent and justifiable reason to disturb the findings of this court both on legal and factual issues in its decision dated May, 25, 2004 and consequently hereby denies the motion for reconsideration.

SO ORDERED.”

THE FACTS

As synthesized by the Regional Trial Court (RTC) of Camarines Sur, Branch 58:

Plaintiffs Ernesto Fullero, Perseverando Fullero, Zenaida Fullero, together with Honrada Fullero-Ramirez who is not a party in the case, are co-owners of a parcel of land situated at Brgy. Dahat, Lagonoy, Camarines Sur denominated as Lot No. 3278, Pls-920-D, containing an area of 22,225 square meters. The property is declared in the name of Felix Fullero under Tax Declaration No. 3936 for 1997 (Exh. “B”) and Tax Declaration No. 97-09-00047 (Exh. “C”) and real estate taxes thereon paid for 1987 to 2003 (Exh. “D”). Felix Fullero, in

whose name the property is declared, and Juana O. Marcial are the predecessors-in-interest of the plaintiffs and Honrada Fullero-Ramirez.

On February 26, 1995, the defendant Armingol Texon, married to Lourdes Israel-Texon executed a Deed of Agreement stating among others that “ they are staying in the property of the heirs of the late Felix B. Fullero and Juano O. Marcial, with the condition that at any time they tell us to vacate said property, we are willing/agreeable at any time within a reasonable time to prepare to vacate” (Exhibit “H”).

Wanting to take material possession of the property subject of litigation plaintiffs verbally requested defendants to vacate the premises but defendants failed to hid plaintiffs' request. Hence, a formal demand was made by one of the plaintiffs Perseverando M. Fullero in his own behalf and of the other plaintiffs for the defendants to vacate the premises within thirty (30) days from receipt of said formal demand dated March 18, 2003 (Exh.“I”). Despite receipt of the demand to vacate, defendants persistently refused. Thus, the matter was referred to counsel who in a communication dated June 11, 2003 formally demanded once again from the defendant spouses for them to vacate the premises and to pay Php 1,000.00 per month for the use and occupancy of the property from January 2003 until the (sic) they actually vacate the premises (Exh. “J”). The latest formal demand to vacate was received by defendants on June 16, 2003. Still the defendants failed to vacate. Thus, this case was filed by plaintiffs on June 16, 2003 with the court a quo after failing to settle the controversy in the barangay level and for which the Lupong Tagapamayapa issued a Certificate to File Action(Exhibit “L”).

In justification for their persistent refusal to vacate the premises, defendants asseverate that the source of their right of possession is the right of one of the heirs, Honrada Fullero-Ramirez, who is not a party to the case, to dispose her rightful share over the contested property. It appears from her own admission that she constituted the defendants spouses to oversee a portion of the contested property since 1983 and from whom she owed the sum of Php78,146.40 and because of this indebtedness to the defendants-spouses, she promised to execute a deed of sale in favor of the defendants over her share of the contested property. In the meantime, she executed a Memorandum of Agreement(Exhibit “3” with defendant Armingol Texon dated August 1, 2003 where Honrada Fullero-Ramirez used her share as collateral to secure the said indebtedness from the former. In the meantime, defendants built their residential house, planted coconuts and other fruit bearing tree on the property.[6]

Aggrieved by the RTC's Decision and Order supra, the Petitioners come now before Us raising the following assigned errors:

A.

THE HONORABLE COURT ERRED IN MODIFYING THE DECISION OF THE MUNICIPAL TRIAL COURT, WHICH IN EFFECT ORDERS THE DEFENDANTS-PETITIONERS TO VACATE THE SUBJECT PROPERTY [7];]

B.

THE HONORABLE COURT ERRED IN FIXNG THE RENTAL AND USE OF THE SUBJECT PROPERTY IN THE AMOUNT OF P500.00 PER MONTH FROM THE TIME OF DEMAND [8];]

C.

THE HONORABLE COURT ERRED IN AWARDING ATTORNEY'S FEES IN THE AMOUNT OF P30,000.[9]

OUR RULING

The Petition lacks merit.

Anent the 1st assigned error, Petitioners allege that in view of the debt incurred from them by HONRADA FULLERO-RAMIREZ (hereinafter HONRADA), one of the co-owners of the contested property and the sister of the Respondents, they (Petitioners) have right over a portion of the property and entitled to the protection of the law pursuant to Article 493 of the New Civil Code which provides:

Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of alienation or the mortgage with respect to the co-owners shall be limited to the portion, which may be allotted to him in the division upon termination of the co-ownership[10]

Petitioners rely as well on the the Memorandum of Agreement[11] (MOA) dated 3 August 2003 which they executed with HONRADA in claiming that they have the right to possess the subject property as mortgagees or vendees thereof.[12]

We do not agree.

Respondents correctly pointed-out in their Comment[13] that Petitioners could not categorically determine whether HONRADA FULLERO-RAMIREZ sold or mortgaged her share to them (Petitioners). In fact, the MOA supra itself reveal that HONRADA merely recognizes her obligation incurred from the Petitioners in the amount of Seventy two Thousand Pesos (P72,000.00) and, as such, had undertaken to deliver the Deed of Absolute Sale on her share over the portion of the contested property in the event she fails to pay the amount borrowed from the Petitioners. Pertinent portion of the MOA reads:

“xxx xxx

This AGREEMENT entered into by and between:

HONRADA FULLERO-RAMIREZ, of legal age, Filipino, married with a residence and postal address at Legaspi City hereinafter called the FIRST PARTY; and

ARMINGOL TEXON, of legal age, Filipino, married with residence and postal address at Dahat, Lagonoy, Camarines Sur hereinafter called the SECOND PARTY.

That the FIRST PARTY herein is one of the legal heirs of the late SPOUSES FELIX AND ANDAY FULLERO concerning a parcel of coconut land located at Dahat, Lagonoy, Camarines Sur;

xxx xxx

That the FIRST PARTY was (sic) used her share in the said land as collateral for the amount borrowed having an understanding with the SECOND PARTY that failure in her part to pay the said entire amount barrowed will make her obliged to give the SECOND PARTY a portion of lot and at the same time absolute deed of sale will be executed in favor of the latter.

xxx xxx”[14]

Contrary to Petitioners' claim, nowhere in the entire text of the MOA is there a provision constituting them as mortgagees or vendees over a portion of the subject property. In fact, per the MOA, HONRADA FULLERO-RAMIREZ acknowledged her indebtedness to the Petitioners in the amount of P72,000.00 and her undertaking to deliver an Absolute Deed of Sale over her share in the property, which she uses as collateral, in the

event that she fails to pay the said amount.

As a rule, when the terms of a contract are clear and unambiguous as to the intention of the contracting parties, the literal meaning of its stipulations shall control.[15] It is only when the words appear to contravene the evident intention of the parties that the latter shall prevail over the former.[16] The real nature of a contract may be determined from the express term of the agreement[17]

On this score, the pronouncement of the Supreme Court in the case of *Lorenzo Shipping Corp. vs. B.J Marthel International, Inc.* is essentially relevant:

“It is a cardinal rule in interpretation of contracts that if the terms thereof are clear and leave no doubt as to the intention of the contracting parties, the literal meaning shall control.”

Further, as borne out by the records, the RTC took note of the covenant executed by the Petitioners to vacate the premises upon demand, in this wise:

“On February 26, 1995, the defendants admitted in writing that they are “presently staying on the property of the heirs of the late Felix B. Fullero and Juana O. Marcial,” who are the plaintiffs in this case, and that they are willing to vacate “ anytime they tell us” within reasonable time.xxx”[18]

Likewise, the MTC noted as well, the Petitioners' admission to vacate the subject property in its Decision dated 10 December 2003 thus:

“The court further noted that the defendants executed a Deed of Agreement dated February 20, 1995, Exh. “H” wherein they bound themselves to vacate the property anytime within a reasonable time to prepare to vacate. So, the Court is not inclined to believe the allegations of the defendants that they were in possession of the land since 1983. So, from the time the defendants received the demand to vacate on June 16, 2003, their possession of the land has already become illegal.”[19]

Definitely, the Petitioners should not be allowed to negate their undertaking which they voluntarily and freely agreed upon. The explicit ruling of the High Tribunal in the case of *South Pacsem Development, Inc. vs. Court of Appeals*[20] is relevant, thus:

“Under the principle of estoppel, petitioner is precluded from denying the validity of any transaction it had earlier freely and voluntarily entered into. ”

Parenthetically, the court a quo properly decreed in this wise:

In ejectment cases, the only issue for resolution is who is entitled to the material or physical possession of the property involved, independent of any claim of ownership set forth by any party litigants (*GENER VS. DE LEON*, 367 SCRA 631)

Essentially, there is no need to disturb the finding of the lower court absent any showing that it overlooked or misapplied some circumstance in arriving at its conclusion for elementary is the rule that its finding is entitled to highest degree of respect.[21] There are, to be sure, exceptions to the rule but none has been shown to obtain in this case.

A fortiori, the Petitioners reliance in the provision of Art. 493 supra is flawed. The effect to other co-owners of alienation made by co-owner *HONRADA FULLERO-RAMIREZ* will be effective only upon the termination of the co-ownership which Petitioners can not avail at this stage as the co-ownership among the heirs remain existing and has not been shown to be validly terminated.

On this point, the ruling of the High Tribunal in the case of *Bongalon vs. Court of Appeals*[22] is essentially distinctive:

“While each co-owner has full ownership of his part and may alienate it, the alienation affect only the portion which pertains to him in the division upon the termination of the co-ownership.”(underscoring supplied)

Anent the 2nd assigned error, Petitioners insist that they should not be held liable to pay rentals due to the existing contract between them and HONRADA FULLERO-RAMIREZ.[23] With the preceding discussion, there is no reason to disturb the findings of the Court a quo absent any

showing that it was rendered without factual or legal basis. In instant case, the damages that can be validly recovered is the fair rental value or the reasonable compensation for the use and occupation of the property.[24] Accordingly, the award made by the court a quo as rental payments is justified and proper, to wit:

Records and evidence likewise show that the defendants received the extra-judicial demand to vacate the premises occupied by them on June 16, 2003. From then on, defendants stay on the premises becomes illegal. The plaintiffs are consequently entitled to a reasonable compensation or fair rental value for defendants use and occupancy of the premises in the amount of PHP500.00 monthly until they actually vacate the premises (CATUNGAL VS. HAAO, 355 SCRA 29) with an interest due thereon at 12% per annum from the date of extra-judicial demand. [25]

Lastly, on the issue re the propriety in the award of attorney's fee as averred in the 3rd assigned error, the Petitioners allege that attorney's fees must be substantiated to warrant its award.

We agree on this point.

As a matter of sound policy, an award of attorney's fee remains the exception rather than the rule.[26] It is necessary for the court a quo to make express findings of fact and law that would bring the present case to the exception. Otherwise put, the factual or legal justification must be set forth in the text of the decision.[27] It cannot be touched once only in the fallo of the decision, else, the award should be thrown out for being speculative and conjectural.[28]

Otherwise put, the general rule is that attorney's fee can not be recovered as part of damages when stated only in the dispositive portion of the Order, as in this case, because no premium should be placed on the right to litigate.[29] Hence, the award of attorney's fee should be deleted for being improper.

WHEREFORE, premises considered, the instant petition is hereby DENIED. The assailed Decision and Order, supra of the Court a quo are hereby AFFIRMED with MODIFICATION, deleting the award of attorney's fee.

SO ORDERED

Reyes, and Lampas Peralta, JJ., concur.

[1] Rollo, pp.2-10

[2] Rollo, pp.15-20

[3] Rollo, pp.11-14

[4] Rollo, p.20

[5] Rollo, p.33

[6] Rollo, p.16

[7] Rollo, p.2

[8] Rollo,pp.2-3

[9] Rollo,p.3

[10] Rollo,p.6

[11] Rollo,p.63

[12] Rollo,p.5

[13] Rollo,pp.112-114

[14] Rollo,p.63

[15] Cruz vs. Bancom Finance Corporation, 379 SCRA 490

[16] Dela Cruz vs. Dela Cruz 419 SCRA 648

[17] Ibid

[18] Rollo,p.18

[19] Rollo,p.13

[20] 447 SCRA 85

[21] Jostina Cosipe Sigaya, ET AL vs. Diomer Mayuga, ET AL, G.R No. 143254, August 18, 2005

[22] 441 SCRA 553

[23] Rollo,p.8

[24] C & S Fishfarm Corporation vs. Court of Appeals, 394 SCRA 82

[25] Rollo, pp.19-20

[26] Amelia J. De Los Santos vs. Jebsen Maritime, Inc., G.R. No.154185, Nov. 22, 2005

[27] Ibid

[28] Ibid

[29] Francisco vs. Court of Appeals, 401 SCRA 594

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