

IRINEO FACUNDO, PLAINTIFF AND APPELLANT, VS. VALENTIN R. LIM ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-2622. February 28, 1950*

Ponente: REYES, J.

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The appellant Irineo Facundo was the registered owner of a house and lot located at No. 603 Zamora St., Pasay (now Rizal City), in the province of Rizal. By a document executed on January 29, 1944 (Exhibit A), appellant agreed to sell the said property to Hilaria Uy Isabelo for P130,000 "Philippine currency," of which P20,000 was paid to him in check on that same occasion, the check being later cashed by him at the bank, while the remaining P110,000 was to be payable within thirty days from the date of the document. In the same document, appellant named C. S. Gonzales & Co. as his broker in the transaction, and as is usual in these cases, the broker had the corresponding deed of absolute sale (Exhibit B) prepared for the signature of the vendor. As Hilaria Uy Isabelo was, according to her, buying the property not for herself but for the herein appellee Valentin R. Lira, the latter was the one named vendee in the deed. The deed also expressed the price of the sale in terms of "lawful circulating currency." Such as it was, the deed was signed by appellant in the office of the broker on February 18, 1944, upon receipt by him of the balance of the agreed purchase price, less P28,000 which was deducted therefrom to wipe out a mortgage in favor of the Luzon Surety Company. The deed appears to have been acknowledged before a notary public.

Agreeably with the terms of the deed, which permitted the seller to occupy the property as tenant for one year, free of charge for the first two months and for a monthly rental of P100 for the succeeding months, appellant remained in the premises as tenant and paid in cash an advanced rental for five months corresponding to the period from April 18 to September 18, 1944, and thereafter, by means of a postal money order, the advanced rental for another five months' period ending on February 18, 1945.

Because of appellant's failure to pay subsequent rentals, the appellee brought suit to eject him from the premises and a judgment to vacate was rendered against him, which has already become final.

Following the filing of the ejection suit against him, appellant countered by instituting the present action for the annulment of the deed of sale on the ground of fraud, alleging that he had been induced to sign the said deed through the misrepresentations of Mr. Gonzales of the C. S. Gonzales & Co., who assured him, so it is alleged, that the said deed contained the same terms and conditions as the document Exhibit A when such was not the fact since the vendee was changed from Hilaria Uy Isabelo to Valentin R. Lira, and the denomination of the purchase price from "Philippine currency" to "lawful circulating currency." At the trial appellant sought to amplify the ground for annulment by trying to prove duress or intimidation with testimony to the effect that at the time he signed Exhibit B in the office of the broker he noted that there was a Japanese military officer just outside the room.

The trial court gave no credence to plaintiff's allegation of fraud and intimidation and rendered judgment

dismissing the complaint with costs. From this judgment plaintiff took an appeal and, because of the amount involved, the case has been elevated to this Court.

We find no merit in the appeal.

Appellant claims that he has been deceived and intimidated into signing the deed of sale in question. But his evidence is far from sufficient to establish that claim. Indeed, the preponderance of evidence is to the contrary. And while appellant complains that the trial judge merely copied his conclusions of fact from the pleading and memorandum of the appellee, thereby insinuating that the trial judge had not personally-studied the evidence in the case, the record shows that the said judge heard all the evidence. And we find that his findings of fact are in accord therewith.

Not much weight can be accorded to appellant's declaration that he signed the deed without reading the same. Appellant was neither illiterate nor ignorant. It is, therefore, not reasonable to suppose that he would sign a contract involving a large sum without first being certain that it expressed his true will. His allegation that he was not able to read the contract because he did not have his glasses with him, even when reinforced with counsel's argument that appellant's eyesight had been weakened by the lack of necessary vitamins during the Japanese occupation, is but a flimsy excuse for this belated effort on his part to get out of the deal. We see nothing that would have prevented him from sending for his glasses before closing the transaction, and his own evidence also shows that he was joined by his son, who is a lawyer, in the office of the broker on the occasion when the contract was signed.

Furthermore, we can not believe that appellant would have withheld his signature to the contract just because the vendee had been changed from Hilaria Uy Isabelo to Valentin R. Lim and the denomination of the purchase price from "Philippine currency to "lawful circulating currency." That is on the supposition that he had really not been apprised of those changes. It should be noted that appellant was selling his property through a real estate broker and could not have been particular about the identity of the buyer because the transaction was for cash. It was the price he was getting for his property and not the person of the buyer that he was interested in. Whosoever was acquiring the property was of no concern to him provided he was paid the price previously agreed upon. And with respect to the change in the denomination of the purchase price from "Philippine currency" to "lawful circulating currency," it is a matter of common knowledge that at the time the transaction in question was had (February 18, 1944) the Japanese military notes were in Manila and suburbs the only currency in general circulation, and the broker testified that according to custom in real estate transactions in those days, the terms "Philippine currency," "lawful circulating currency," and other similar expressions were taken to mean the Japanese military notes. And to show that appellant was not really concerned with the denomination of the currency and also that he could not have expected to be paid P130,000 in genuine Philippine money instead of the same amount of the same amount of Japanese military notes, we have it as a proven fact that when he signed the first contract (the agreement to sell) he received P20,000 in check as part of the consideration for which he must have received at the bank where he cashed it the same amount of Japanese military notes, it being also a well-known fact that in those days the banks were already making their payments exclusively in that currency. Therefore, if appellant was really not agreeable to the price as fixed in that currency, he should have returned the check or the proceeds thereof to the broker and informed him that the consideration for the sale was meant to be P130,000 in genuine Philippine money. But this he did not do.

Appellant also claims that he was constrained to accept the Japanese military notes because his son had called his attention to the presence of a member of the Japanese military police just outside of the office of the broker where the transaction took place. In other words, he claims that his consent to the contract was vitiated by fear or intimidation. However, not only was the alleged presence of the "kempei" denied by the broker but it is not even

mentioned in appellant's original and amended complaint. This theory of intimidation came up for the first time during the hearing. And while appellant, corroborated by his son, testified on the presence of a member of the Japanese military police outside of the office of the broker, that fact was categorically denied by the witnesses for the appellee. In the circumstances, it is hard to believe that appellant had really been intimidated into signing the deed of sale or into receiving the consideration therefor, for, if that were the fact, he would surely have set it up in his complaint.

Appellant also claims that Hilaria Uy Isabelo and Valentin R. Lim, as aliens, could not legally acquire real property in this country, so that the trial court erred in not permitting questions tending to establish their nationality as Chinese. But it will be noted that there is no allegation in the complaint on this point. The complaint is for the annulment of a deed, predicated solely on the ground of fraud. The nationality of the vendee and his consequent lack of right to acquire real property were not put in issue in the action. The questions propounded by appellant's counsel in that connection were therefore irrelevant and hence properly denied.

The point is also made that the pre-war assessed value of the property in question was P31,510 and that, according to the broker Gonzales, the value of real estate in Manila had risen from five to ten times the pre-war assessment, so that it is not likely that appellant would have been willing to sell his property for P130,000.00 in Japanese military notes, specially because at that time one Pedro Armenia had offered to buy it for P300,000.00. But even supposing that the broker's rough estimate of the rise in value of real estate in 1944 would apply to this particular piece of property, still, considering that the transaction under consideration had its inception in January of that year when the rise in value would naturally be around the lower estimate or five times the pre-war assessment, appellant's property would, on that basis, be worth only in the neighborhood of P150,000 in Japanese military notes, or one-sixth greater than the price fixed in the deed of sale. And then it should also be remembered that properties are not always sold at their market value, for much depends upon the circumstances of the seller. In the present case, it would appear that the seller was indebted to the Luzon Surety Company in the sum of P28,000, a debt which was wiped out by the application of part of the purchase price paid by the buyer, and it would also appear that the vendor was in need of a house where he could live because he made it a condition of the deed of sale that he should be allowed to occupy the property as tenant for one year, free of charge for the first two months and for a monthly rental of P100 thereafter. The low rental stipulated might give some indication as to the real value of the property and might also have been one of the factors which induced appellant to part with his property at the price fixed in the deed. The nature of the proof adduced in connection with Armenia's offer to buy the property for P300,000 is not such as to produce the conviction that such an offer was really made and that the same was rejected.

On the whole, we think that appellant's conduct in connection with this transaction belies the claim that he has been deceived or intimidated into signing the deed of sale Exhibit B. He accepted without protest the first payment of P20,000 by check for which check he must have received from the drawee bank the same amount in Japanese military notes. He allowed his indebtedness to the Luzon Surety Co. and the broker's fee to be paid out of the purchase price paid by the vendee at the time of the signing of the deed. He signed the deed and did not withhold its delivery despite his alleged non-conformity to the purchase price fixed therein in Japanese military notes. Lastly, he occupied the property as a mere tenant by paying rent to the vendee, thus impliedly admitting that he was no longer the owner thereof. Not until he had been ordered to vacate the property and the judgment of ouster become final did it occur to him to come to court and ask for the annulment of the deed of sale on the flimsy pretext, not supported by convincing proof, that he had been deceived or intimidated into signing the same. Clearly, the action is without merit.

Wherefore, the judgment appealed from is affirmed, with costs against the appellant.

Moran, C. J., Ozaeta, Bengzon, Padilla, Tuason, Montemayor, and Torres, JJ., concur.

Paras, Feria and Pablo, JJ., no part.

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