

## **ALEJANDRA BUGARIN VDA. DE SARMIENTO, PLAINTIFF AND APPELLEE, VS. JOSEFA R. LESACA, DEFENDANT AND APPELLANT.**

*G.R. No. L-15385. June 30, 1960*

Ponente: BAUTISTA ANGELO, J.

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### **BAUTISTA ANGELO, J.:**

On December 31, 1949, plaintiff filed a complaint in the Court of First Instance of Zambales praying for the rescission of the contract of sale executed between her and defendant for failure of the latter to place the former in the actual physical possession of the lands she bought.

After issues were joined, the parties submitted the case for decision upon the following stipulation of facts: that on January 18, 1949, plaintiff bought from defendant two parcels of land for P5,000; that after the sale, plaintiff tried to take actual physical possession of the lands but was prevented from doing so by one Martin Deloso who claims to be the owner thereof; that on February 1, 1949, plaintiff instituted an action before the Tenancy Enforcement Division of the Department of Justice to oust said Martin Deloso from the possession of the lands, which action she later abandoned for reasons known only to her; that on December 12, 1949, plaintiff wrote defendant asking the latter either to change the lands sold with another of the same kind and class or to return the purchase price together with the expenses she had incurred in the execution of the sale, plus 6 per cent interest; and that since defendant did not agree to this proposition as evidenced by her letter dated December 21, 1949, plaintiff filed the present action.

On April 11, 1957, the trial court rendered judgment declaring the deed of sale entered into between plaintiff and defendant rescinded, and ordering the latter to pay the former the sum of P5,000, representing the purchase price of the lands, plus the amount of P50.25 which plaintiff spent for the execution and registration of the deed of sale, with legal interest on both sums from January 18, 1949. Defendant, in due time, appealed to the Court of Appeals, but the case was certified to us on the ground that the questions involved are purely legal.

The first issue posed by appellant is whether the execution of the deed of sale in a public document (Exhibit A) is equivalent to delivery of possession of the lands sold to appellee thus relieving her of the obligation to place appellee in actual possession thereof.

Articles 1461 and 1462 of the old Civil Code provide:

"Art. 1461. The vendor is bound to deliver and warrant the thing which is the subject-matter of the sale."

"Art. 1462. The thing sold shall be deemed delivered when the vendee is placed in the control and possession thereof.

"If the sale should be made by means of a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the subject-matter of the contract unless the contrary appears or is clearly to be inferred from such instrument."

From the above it is clear that when a contract of sale is executed the vendor is bound to deliver to the vendee the

thing sold by placing the vendee in the control and possession of the subject-matter of the contract. However, if the sale is executed by means of a public instrument, the mere execution of the instrument is equivalent to delivery unless the contrary appears or is clearly to be inferred from such instrument.

The question that now arises is: Is there any stipulation in the sale in question from which we can infer that the vendor did not intend to deliver outright the possession of the lands to the vendee? We find none. On the contrary, it can be clearly seen therein that the vendor intended to place the vendee in actual possession of the lands immediately as can be inferred from the stipulation that the vendee "takes actual possession thereof \* \* \* with full rights to dispose, enjoy and make use thereof in such manner and form as would be most advantageous to herself." The possession referred to in the contract evidently refers to actual possession and not merely symbolical inferable from the mere execution of the document.

Has the vendor complied with this express commitment? She did not. As provided in Article 1462, the thing sold shall be deemed, delivered when the vendee is placed in the control and possession thereof, which situation does not here obtain because from the execution of the sale up to the present the vendee was never able to take possession of the lands due to the insistent refusal of Martin Deloso to surrender them claiming ownership thereof. And although it is postulated in the same article that the execution of a public document is equivalent to delivery, this legal fiction only holds true when there is no impediment that may prevent the passing of the property from the hands of the vendor into those of the vendee. This is what we said in a similar case:

"The Code imposes upon the vendor the obligation to deliver the thing sold. The thing is considered to be delivered when it is placed in the hands and possession of the vendee.' (Civ. Code, art. 1462.) It is true that the same article declares that the execution of a public instrument is equivalent to the delivery of the thing which is the object of the contract, but, in order that this symbolic delivery may produce the effect of tradition, it is necessary that the vendor shall have had such control over the thing sold that, at the moment of the sale, its material delivery could have been made. It is not enough to confer upon the purchaser the ownership and right of possession. The thing sold must be placed in his control. When there is no impediment whatever to prevent the thing sold passing into the tenancy of the purchaser by the sole will of the vendor, symbolic delivery through the execution of a public instrument is sufficient. But if, notwithstanding the execution of the instrument, the purchaser cannot have the enjoyment and material tenancy of the thing and make use of it himself or through another in his name, because such tenancy and enjoyment are opposed by the interposition of another will, then fiction yields to reality—the delivery has not been effected." (Addison vs. Felix and Tioco, 38 Phil., 404; See also Garchitorena vs. Almeda, 48 Off. Gaz., No. 8, 3432; 3437)

The next question to resolve is: Can plaintiff rescind the contract of sale in view of defendant's failure to deliver the possession of the lands?

We are inclined to uphold the affirmative. While defendant contends that rescission can be availed of only in the cases enumerated in Articles 1291 and 1292 of the old civil Code and being: a subsidiary remedy (Article 1294) it can only be resorted to when no other remedy is available, yet we agree with plaintiff's contention that this action is based on Article 1124 of the same Code, which provides:

"ART. 1124. The right to resolve reciprocal obligations, in case one of the obligors should fail to comply with that which is incumbent upon him, is deemed to be implied.

"The person prejudiced may choose between exacting the fulfillment of the obligation or its resolution with indemnity for losses and payment of interest in either case. He may also demand the resolution of the obligation even after having elected its fulfillment, should the latter be found impossible."

Undoubtedly, in a contract of purchase and sale the obligation of the parties is reciprocal, and, as provided by the law, in case one of the parties fails to comply with what is incumbent upon him to do, the person prejudiced may

either exact the fulfillment of the obligation or rescind the sale. Since plaintiff chose the latter alternative, it cannot be disputed that her action is in accordance with law.

"We agree with the trial court that there was no fraud in the transaction in question but rather a non-fulfillment by the plaintiff-appellee C. N. Hodges of his obligation, as vendor, to deliver the things, which were the subject-matter of the contract, to the defendant-appellant Albeto Granada, as purchaser thereof (article 1461, Civil Code), and place them in the latter's control and possession (article 1462, Civil Code) which was not done. Inasmuch, as the obligations arising from the contract of purchase and sale, Exhibit A, which was entered into by the plaintiff-appellee and the defendant-appellant, are reciprocal, and the former had failed to comply with that which was incumbent upon him, the latter has the implied right to resolve them, and he may choose between exacting from the vendor the fulfillment of the obligation or its resolution with indemnity for damages and payment of interest in either case (article 1124, Civil Code). Inasmuch as the defendant-appellant had chosen to rescind the aforesaid contract of purchase and sale in his cross-complaint, there arose the necessity, on the part of the plaintiff-appellee, to return the purchase price with interest thereon, and on the part of the defendant-appellant, to restore the things which were the subject-matter thereof, in case he had received them (article 1295, Civil Code)." (Hodges vs. Granada, 59 Phil., 429, 482; See also Pabalan vs. Velez, 22 Phil., 29; Addison vs. Felix and Tioco, supra; Rodriguez vs. Flores, 43 Off. Gaz., No. 6, 2247.)

Wherefore, the decision appealed from is affirmed, with costs against defendant-appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

Labrador, J., took no part.

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