

RODRIGO ENRIQUEZ, AUREA SORIANO DE DIZON AND URBANO DIZON, JR., PLAINTIFFS-APPELLANTS, VS. SOCORRO A. RAMOS, DEFENDANT-APPELLEE.

G.R. No. L-23616. September 30, 1976

Ponente: CASTRO, C.J.

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CASTRO, C.J.:

This case is a direct appeal from an order of the Court of First Instance of Rizal (Quezon City) dated December 3, 1963, reversing its decision dated October 8, 1963 in favor of the plaintiffs-appellants Rodrigo Enriquez, Aurea Soriano de Dizon and Urbano Dizon, Jr., in civil case Q-7229, an action for foreclosure of real estate mortgage.

This is the second time that the herein party litigants have come to this Court on basically the same causes of action affect-ing the same deed of sale with real estate mortgage covenanted between them.

In Rodrigo Enriquez, et al. vs. Socorro A. Ramos (G.R. L-18077, September 29, 1962), the plaintiffs-appellants averred that on November 24, 1958 they sold to the defendant-appellee Socorro A. Ramos 20 subdivision lots in Quezon City for the sum of P235,056 of which only P35,056 had been paid. The balance of P200,000 was to be liquidated within two years from the date of the execution of the deed of sale, with interest at six percent for the first year and twelve percent thereafter until fully paid. To secure the payment of that balance, the defendant-appellee executed in the same document a deed of mortgage in favor of the vendors on several parcels of land variously situated in Quezon City, Pampanga and Bulacan. The deed of mortgage embodies certain stipulations which the plaintiffs-appellants invoked, thus:

“During the term and existence of this mortgage, the Mortgagor shall duly pay and discharge, at her expense, and on their maturity, all lawful taxes or assessments levied or assessed upon the mortgaged property; in default thereof the Mortgagee may pay and discharge such taxes or assessments and insure the security of the property, and any and all sums so paid by the Mortgagee shall be repayable on demand with interest at 6% per annum and be a lien on the property here-in mortgaged.

“x x x

"If for any reason the mortgage cannot be registered, then the whole obligation shall immediately become due and demandable.

"In the event that the Mortgagor should fail to pay the amount secured by this mortgage or any part thereof in accordance with the terms and conditions herein set forth, or should she fail to perform any of the conditions stipulated herein, the Mortgagee shall have the right x x x to foreclose this mortgage extrajudicially, and to that end the Mortgagee is hereby appointed the attorney-in-fact of the Mortgagor, with full power of substitution, to enter upon and take possession of the mortgaged property without the order of any court or any authority other than that herein granted, and to sell and dispose of the same to the highest bidder at public auction after the publication of notice, in accordance with the provisions of Act No. 3135 of the Philippine Legislature, as amended."

According to the plaintiffs-appellants in L-18077, the defendant-appellee violated the terms of their agreement in the following respects:

1. In spite of repeated demands, the defendant-appellee refused to pay the sum of P200,000 within the stipulated period;
2. The mortgage on the Bulacan property was never registered; and
3. The realty tax for 1959 on the lots mortgaged were not paid by the defendant-appellee.

This Court upheld the findings and conclusions of the trial court which ruled that the actual price of the lots sold to the defendant-appellee was only P185,056 instead of P235,056, and that only if and when the roads shall have been constructed pursuant to the ordinances of Quezon City "may the period of two years specified in the contract begin to run." These conclusions were arrived at on account of a private deed entitled "Explanation" in which the plaintiffs-appellants certified that of the consideration of P235,056 appearing in the questioned deed of sale with mortgage, P50,000 "represent contribution of Mrs. Socorro A. Ramos for the construction of roads, which we will undertake in accordance with the provisions of the City Ordinances of Quezon City."

With reference to the non-payment of the 1959 realty tax and the non-registration of the mortgaged Bulacan estate, this Court held that "aside from being minor matters, [they] appear sufficiently explained in the brief of defendant-appellee." In her brief in L-18077, the defendant-appellee had stated that she applied her backpay certificates to the payment of her realty and income taxes but as she had not yet received said certificates the payment of the taxes was delayed. On the other hand, the registration of the Bulacan property could not be undertaken because it was then still registered in both her name and in the name of a co-owner. The defendant-appellee promised that she would pay the taxes in due time and under-take the needed segregation and the annotation of the lien of the mortgage on the Bulacan property as soon as the vendors proceeded with the construction of the roads on the purchased lots.

Now, returning to the case at bar, the plaintiffs-appellants charged on May 4, 1963 before the Court of First Instance of Rizal (Quezon City) that the defendant-appellee has not yet paid the sum of P200,000 despite the fact that the roads on the questioned lots were completed on May 9, 1960; that the mortgage on the Bulacan property has not yet been registered; and that the realty taxes corresponding to the years 1959 to 1963 on the mortgaged lots had not been paid.

The defendant-appellee admits that she has not paid the realty taxes and has not registered the mortgage on the Bulacan property, but argues that in L-18077 these matters were considered minor ones and also sufficiently explained by her, invoking the rule of *res judicata*. The defendant-appellee likewise does not dispute her non-payment of the sum of P200,000; she contends, however, that the roads have not yet been completed in accordance with Ordinance No. 2969 of Quezon City, the pertinent portions of which state:

"SEC. 10. The following subdivision improvements shall be constructed or provided in accordance with the plans and/or specifications as adopted by the Administrative Agency.

"(a) Street pavements. - All streets shall be paved. Water-bound macadam pavements on a suitable base shall be considered the minimum standard or pavement that shall be used.

"(b) Curbs and gutters. - All streets shall be provided with concrete curbs and gutters.

"(c) Filling. - The subdivision shall be filled up to the grade as may be required by the Administrative Agency.

"(d) Drainage facilities. - The subdivision shall be provided with adequate drainage facilities as approved by the Administrative Agency.

“(e) Tree Plantings. - The subdivider shall plant and grow shade trees, if none are yet existing for the purpose of this requirement, on the side or sides of every lot adjacent to streets about three (3) meters from the street line, with a maximum spacing of ten (10) meters.

“(f) Water facilities. - The subdivider shall provide the subdivision with adequate water facilities.”

According to the defendant-appellee, the roads in question cannot be considered completed because the plaintiffs-appellants have not yet planted trees nor put up water facilities as required by the foregoing ordinance. Neither may said roads be considered completed in the legal sense until their construction has been accepted by the Capital City Planning Commission which was designated to implement Ordinance 2969. Moreover, even if the roads in question have already been constructed in accordance with the mentioned ordinance, still her obligation to pay the sum of P200,000 has not yet arisen as no previous notice and demand for payment has been made on her.

We find the posture of the defendant-appellee to be untenable.

1. It is true that in L-18077 this Court held that the non-payment of the 1959 realty tax as well as the non-registration of the mortgaged Bulacan estate by the defendant-appellee were minor matters aside from being sufficiently explained by her. That pronouncement, however, should be taken in the light of the environmental milieu under which L-18077 was decided. The non-payment of the realty tax for a year and the non-registration of the mortgaged property within a reasonable time after the execution of a contract may be considered minor matters, particularly where, in addition, the failure to do so was sufficiently explained, and the mortgagor promised this Court that positive remedial action would be taken. The opinion of this Court cannot however be taken as a license for the continued non-fulfillment by the defendant-appellee of her contractual obligations. It was far from the intention of this Court to allow or enable the litigants to utilize its decision as an instrument whereby solemnly covenanted obligations could be avoided. In such situation, the continued violation by the defendant-appellee of the express terms of her contract can no longer be countenanced. As it is, not only has the defendant-appellee failed to perform the mentioned obligations, but she has likewise entirely failed to deliver to the plaintiffs-appellants the sum of P50,000 which she promised to contribute to the latter for the construction of the roads on her lots in accordance with the ordinances of Quezon City. The deed of sale with mortgage makes it the express duty of the defendant-appellee to pay the realty taxes on the mortgaged lots, to register the mortgaged estates, and to contribute P50,000 for the construction of roads on the purchased lots. By its express terms, if the defendant-appellee failed to fulfill these conditions her entire obligation was to become immediately due and demandable and the mortgagee would have the option to foreclose the mortgage. These terms of the contract have the force of law between the parties thereto.[1]

2. On the issue of whether the construction of the questioned roads has already been completed in accordance with the ordinances of Quezon City, the evidence adduced below sufficiently supports the plaintiffs-appellants' position.

At the trial below, the plaintiffs-appellants adduced the testimonies of two witnesses, Oscar Delfin and Atty. Gelacio L. Dimaano (plaintiffs-appellants' counsel). Delfin testified that he was a construction superintendent of Wendel Construction Co., Inc. which was contracted to open up roads on the lots in question; that his outfit undertook the building of the said roads in accordance with the ordinances of Quezon City, having laid out "type B gutters, concrete curbs, pavement made of Vituminous macadam asphalt;" that construction commenced on November 2, 1959 and was completed on May 9, 1960 for the sum of P100,000 which has already been paid by the plaintiffs-appellants; that while the construction was in progress, the defendant-appellee visited the worksite two or three times and inspected the work being done; and that the certificate of turn-over of the roads was given by the president of his firm to the plaintiffs-appellants. Dimaano, in the main, corroborated Delfin's testimony,

and added that under the mentioned deed of sale with mortgage, the attorney's fees in case of litigation would be 10% of the amount due.

At the trial below, the defendant-appellee, pursuant to a partial stipulation of facts, presented a letter dated May 9, 1963 of the Acting City Engineer of Quezon City which states the following:

"This is in reply to your letter dated May 3, 1969 requesting inspection of the Mindanao Avenue Subdivision, Quezon City, in which you have purchased thirty-one (31) lots.

"In that connection, I wish to advise you that an ocular inspection has already been made by a representative of this Office and his report points out that said subdivision is already provided with curbs and gutters together with drainage facilities. The roads have already been asphalted but no final test, verification and approval have been undertaken by this Office.

"It was revealed also that water and lighting system have not yet been installed thereat."

In connection with the aforequoted letter, the parties stipulated that the "test, verification and approval mentioned in Exhibit 1-A is required only when the roads of the subdivision and easements are to be donated to the City Government, and there is no law as to when the roads of any subdivision are to be donated (to the) City Government." This stipulation was arrived at after the counsel for the defendant-appellee had conferred with a representative of the Quezon City Engineer's Office.

On the basis of the foregoing items of evidence, not contradicted by the defendant-appellee, the completion of the roads in question must be regarded as having been sufficiently established.

3. The defendant-appellee, however, argues that the said roads "are not yet completed in the technical, legal sense. This is because the final say or acceptance by the Administrative Agency was not yet secured." This posture is inordinately technical and also is devoid of merit. There is nothing at all in Ordinance 2969 of Quezon City which makes the acceptance by the said agency a condition precedent before a street in Quezon City may be considered constructed in accordance with Ordinance 2969.

4. The planting of trees and the installation of water facilities required by section 10 of Ordinance 2969, *supra*, which the defendant-appellee says must first be made before the roads in question may be considered legally completed are matters which could not have been conceivably within the contemplation of the parties. In the first place, these activities involve a substantial outlay of funds which, by its very nature, should have been unavoidably referred to in the mentioned "Explanation." In the second place, the said requirements are imposed on the subdivision owner, and it is obvious from this Court's decision in L-18077 that it was the defendant-appellee who intended to develop the purchased lots into a subdivision. Thus, this Court said in L-18077:

"We find no error in the conclusion reached by the court a quo for indeed that is the condition to be expected by a person who desires to purchase a big parcel of land for purposes of subdivision. In a subdivision the main improvement to be undertaken before it could be sold to the public is feeder roads as otherwise it would be inaccessible and valueless and would offer no attraction to the buying public. And so it is correct to presume, as the court a quo did, that when the sale in question was being negotiated, the construction of roads in the prospective subdivision must have been uppermost in the mind of defendant for her purpose in purchasing the property was to develop it into a subdivision...."

In the third place, no evidence has been adduced which would show that the planting of trees and the putting up of water facilities were within the contemplation of the parties when they were negotiating for the purchase of the lots in question. And in the fourth place, there is nothing in Ordinance 2969 which would indicate that a street

may be considered completed only when trees are planted on both sides of the street and water facilities are built on the subdivision. These activities are definitely segregable from the laying out and construction of roads and cannot be deemed included within the scope of the latter.

5. As to the alleged lack of previous notice of completion and demand for payment, the filing of the case below is sufficient notice to the defendant-appellee of the completion of the roads in question and of the plaintiffs-appellants' desire to be paid the purchase price of the questioned lots. The effect of such demand retroacts to the day of the constitution of the defendant-appellee's obligation. Thus, Article 1187 provides that "The effects of a conditional obligation to give, once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation...." The contracted obligation of the defendant-appellee under the facts of the case at bar was to pay the balance of P200,000 within two years from the date the roads in question are completed.

ACCORDINGLY, the order of the court a quo dated December 3, 1963 is set aside, and judgment is hereby rendered ordering the defendant-appellee to pay to the plaintiffs-appellants, within ninety (90) days from the finality of this decision, the following:

1. The sum of P200,000 representing the unpaid balance of her contractual obligation;
2. Interest thereon, as stipulated in the deed of sale with mortgage, at the rate of 6% per annum from May 9, 1960 up to May 9, 1961, and, thereafter, 12% interest per annum until the principal amount shall have been fully paid;
3. An amount equivalent to 5% of the mortgage indebtedness as attorney's fees; and
4. The costs.

Should the defendant-appellee fail to pay the aforementioned mortgage indebtedness within the period granted in this decision, the properties mortgaged shall be sold at public auction and the proceeds thereof shall be applied to the satisfaction of this judgment and the costs of the auction sale. Costs against the defendant-appellee. The motion of Guillermo N. Pablo "to join defendant-appellee as co-party" is denied.

Makasiar, Muñoz Palma, and Martin, JJ., concur.

Teehankee, J., in the result.

[1] Consolidated Textile Mills, Inc. vs. Reparations Commission, L-23859, February 22, 1968; Lazo vs. Republic Surety & Ins. Co., Inc., L-27365, Jan. 30, 1970; Art. 1306, New Civil Code.

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