

KALAMBOAN HOUSING PROJECT HOMEOWNERS ASSOCIATION, INC., REPRESENTED BY ITS PRESIDENT BALTAZAR BUSTILLO, PLAINTIFF-APPELLEE, VS. ISABELO AYADE, SANCH A. DONGUILA AND RACHEL ISAB...

Ponente: CAMELLO, J.

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CAMELLO, J.:

This appeal impugns the Decision dated 14 September 2009[1] of Branch 31 of the Regional Trial Court of Tagum City[2] in Civil Case No. 3825 for annulment of the deed of absolute sale and declaration of nullity of TCT. No. T-182882 and damages.

The records yield these facts:

When Christ the King Hospital was still in operation in the late 1970s, its employees union, Christ the King Employees Union – FFW (CKHEU-FFW), acquired a 70,000 square meter parcel of land for its housing project called the Kalamboan Housing Project at La Filipina, Tagum, Davao.[3] The seven-hectare lot was subdivided into residential lots with uniform areas of 425 square meters each, a road network and some open spaces centrally located in the housing project.[4] A portion of the subdivided lot with an area of 5,445 square meters was segregated and separately titled in the name of the CKHEU-FFW under Transfer Certificate of Title No. T-35685.[5] This portion of the lot is denominated as Lot 1-B-3-C.

From 1992 to 2005, structures were built within Lot 1-B-3-C by the Kalamboan Housing Project Homeowners Association, Inc. including a chapel, a purok stage, a purok center, a basketball court, a volleyball court, and a day-care center.[6]

On 08 December 2008, defendant Isabelo Ayade, Jr., as president of the CKHEU-FFW, sold the entire Lot 1-B-3-C to defendants Sancha Donguila and Rachel Isabel Fuentes.[7] Consequently, TCT No. T-182882[8] was issued on 07 March 2003 in the name of these vendees.

On 08 November 2008, plaintiff Homeowners Association filed a Complaint against defendants Ayade, Donguila and Fuentes for annulment of the deed of absolute sale and declaration of nullity of TCT No. T-182882 plus damages. Plaintiff claimed that Lot 1-B-3-C is an “open space” which is defined under Section 1 of Presidential Decree No. 1216 as “an area reserved exclusively for parks, playgrounds, recreational uses, schools, roads, places of worship, hospitals, health centers, barangay centers, and other similar facilities and amenities.” Plaintiff argued that being an open space, Lot 1-B-3-C is beyond the commerce of man.

Plaintiff further claimed that on 24 February 1994, the CKHEU-FFW, represented by defendant Isabelo Ayade, Jr., donated a portion of Lot 1-B-3-C of TCT No. T-35685 to the plaintiff, represented by Purok Chairman Baltazar Bustillo. The Deed of Donation[9] executed on 24 February 1992 which was confirmed by the Sangguniang Barangay of Magugpo, Tagum, Davao through Resolution 394-S-93 dated 12 April 1993.[10]

Plaintiff alleged that defendant Ayade attempted to dispose of Lot 1-B-3-C, but he was ordered by the Regional

Officer of the Housing and Land Use Regulatory Board (HLURB) to cease and desist from selling the lot within the open space until and unless expressly permitted by the HLURB or with the conformity of the duly organized homeowners association, or in the absence of such organization, by majority of the lot buyers.[11]

In their Answer,[12] defendants claimed that CKHEU-FFW is not an owner or developer of a subdivision project so as to put it under the coverage of P.D. No. 957 and P.D. No. 1216. They alleged that the members of plaintiff were former members of CKHEU-FFW who acquired their respective residential lots from the registered owners. They alleged that CKHEU-FFW did not develop the area occupied by the plaintiff, and that the apparent creation of a subdivision was not at the instance of CKHEU-FFW, but through the collective effort of the members of plaintiff. They insisted that Lot 1-B-3-C was never intended to be an open space of any subdivision project and the requirement of an open space does not apply in this case.[13]

Defendants admitted, though, that on 24 February 1992, defendant Ayade, in his capacity as President of CKHEU-FFW executed a Deed of Donation in favor of the purok residents of Purok Kalamboan represented by Baltazar Bustillo donating 1,794 sq. m. portion of Lot 1-B-3-C.[14] They were quick to add that the deed of donation was with the condition that the donees will take charge of the processing of the certificate of title both to the area donated and the remaining area for the donors. Defendants claimed that the donees failed to comply with the condition, but still after another negotiation, the remaining members of the CKHEU-FFW agreed to give the 3,196 sq. m. portion of Lot 1-B-3-C to the members of the plaintiff, but the latter did not accept the offer as they wanted to take the entire area of Lot 1-B-3-C.[15]

Defendants further claimed that CKHEU-FFW, being the registered owner of Lot 1-B-3-C, has the absolute right to convey and dispose of the lot for its own convenience.[16] Thus, they asked the court a quo to dismiss the case.

After trial, the court a quo rendered a Decision[17] and decreed:

WHEREFORE, in view of the foregoing, judgment is hereby rendered:

- Declaring the Deed of sale of the land, covered by TCT No. T-182882 in the name of CKHEU-FFW, dated December 8, 2002, executed by defendant Isabelo S. Ayade in favor of Sancha A. Donguila and Rachel Isabel Fuentes, over Lot 1-B-3-C Psd-11-010003 as NULL and VOID for being a simulated sale and an unauthorized one;

- Declaring Transfer certificate of Title No. T-182882 registered in the name of Sancha A. Donguila and Rachel Isabel Fuentes as NULL and VOID. The Register of Deeds is directed to cancel Transfer Certificate of Title No. T-182882 and to reinstate Transfer Certificate of Title No. T-35685 under the name of Christ the King Hospital Employees Union-FFW.

- Directing the Register of Deeds to annotate in the reinstated Transfer Certificate of Title No. T-35685 the fact that Lot 1-B-3-C, covered by the title, is an open space and as such, it cannot be disposed of pursuant to Section 22 of PD 957 and Section 31 of PD 957 as amended by Section 2 of PD 1216.

No pronouncement as to costs.

SO ORDERED.[18]

On 01 December 2009, defendants Ayade and Donguila filed a Motion for Partial Reconsideration,[19] alleging that the reserve area for open space is only 3,196 square meters, more or less, according to the survey made by

Engr. Leonardo Busque, and thus, the balance of 2,000 square meters, more or less, must remain with the defendants.[20]

On 02 December 2009, defendant Fuentes filed a Motion for Reconsideration, claiming that the 14 October 2009 Decision is not in accordance with the facts, law, and jurisprudence on the matter. She insisted that she bought the lot in good faith relying on the legal authority of the persons who executed the sale and on the authenticity of the title which was presented to her.

On 17 February 2010, plaintiff filed its Comment/Opposition to the motion for reconsideration.[21]

In an Order dated 14 October 2010,[22] the court a quo denied the motions of all the defendants for lack of merit.

On 11 November 2010, defendants filed a Notice of Appeal,[23] which the court a quo gave due course in an Order dated 15 November 2011.[24]

Defendants-appellants now ascribed to the court a quo three (3) errors, to wit:

- THE COURT A QUO ERRED IN DECLARING THE SUBJECT DEED OF SALE AS NULL AND VOID.

- THE COURT A QUO ERRED IN DECLARING TRANSFER CERTIFICATE OF TITLE NO. T-182882 AS NULL AND VOID.

- THE COURT A QUO ERRED IN DIRECTING THE REGISTER OF DEEDS TO ANNOTATE IN THE REINSTATED TRANSFER CERTIFICATE OF TITLE NO. T-35685 THE FACT THAT LOT 1-B-3-C, COVERED BY THE TITLE, IS AN OPEN SPACE AND AS SUCH, IT CANNOT BE DISPOSED OF PURSUANT TO SECTIONS 22 AND 31 OF PD 957 AS AMENDED BY SECTION 2 OF PD 1216.[25]

The appeal must fail.

Article 1458 of the Civil Code provides:

By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

A contract of sale may be absolute or conditional.

As defined, the essential elements of sale are: (a) Consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; (b) Determinate subject matter; and, (c) Price certain in money or its equivalent.[26]

In this case, the questioned Deed of Absolute Sale dated 08 December 2002 involving Lot 1-B-3-C covered by TCT No. T-35685 was executed by defendant-appellant Isabelo Ayade, as President and representative of CKHEU-FFW, in favor of defendant-appellant Sancha Donguila for the 4,645 sq. m. portion of the lot and defendant-appellant Rachel Isabel Fuentes for the 800 sq. m. portion of the lot.

Defendants-appellants claimed that defendant-appellant Isabelo Ayade was duly authorized to sell the subject lot to defendants-appellants Donguila and Fuentes by CKHEU-FFW through Board Resolution No. 7, Series of 1995.

A close reading of the purported Board Resolution, however, reveal that it does not explicitly or impliedly authorize defendant-appellant Ayade “to sell” the property covered by TCT No. T-35685. It only mentions an authority given to defendant-appellant Ayade “to facilitate the transfer of Transfer Certificate of Title No.

T-35685 containing an area of Five Thousand Four Hundred Forty Five (5,445) square meters.”[27]

Articles 1874 and 1878 of the Civil Code provide:

Art. 1874. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void.

Art. 1878. Special powers of attorney are necessary in the following cases:

x x x

(5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;

x x x

The Supreme Court in *Dizon v. Court of Appeals*[28] is instructive, to wit:

When the sale of a piece of land or any interest thereon is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void. Thus the authority of an agent to execute a contract for the sale of real estate must be conferred in writing and must give him specific authority, either to conduct the general business of the principal or to execute a binding contract containing terms and conditions which are in the contract he did execute. A special power of attorney is necessary to enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration. The express mandate required by law to enable an appointee of an agency (couched) in general terms to sell must be one that expressly mentions a sale or that includes a sale as a necessary ingredient of the act mentioned. For the principal to confer the right upon an agent to sell real estate, a power of attorney must so express the powers of the agent in clear and unmistakable language. When there is any reasonable doubt that the language so used conveys such power, no such construction shall be given the document.

[Emphasis supplied.]

Besides, there is no mention in Board Resolution No. 7 of the names or persons and/or members of the Board of Directors of CKHEU-FFW, who were present and who voted during the passage of the Resolution which was allegedly held on 17 September 1995 in the residence of defendant-appellant Donguila. Thus, Board Resolution No. 7 presented as “Exhibit 3” in the court a quo cannot be the basis of defendant-appellant Ayade’s written authority to sell the Lot 1-B-3-C. Consequently, in the absence of the essential element of consent of CKHEU-FFW, defendants-appellants Donguila and Fuentes failed to validly acquire the lot.

Aside from this lack of consent, the subject matter of the contract of sale is beyond the commerce of man.

From the very start, plaintiff-appellee alleged that Lot 1-B-3-C is an open space as evidenced by the Subdivision Plan presented as Exhibit “D-1” in the court a quo. This was supported by the Affidavit of Leonardo Busque, the Geodetic Engineer who surveyed the seven-hectare lot covered by TCT No. T-32851 and subdivided it into 110 residential lots with road networks including one centrally located Lot 1-B-3-C with an area of 5,445 square meters.[29] This was corroborated by the Affidavit of Almaquio Pañamogan, the President of CKHEU-FFW from 1975 to 1979 when CKHEU-FFW purchased the seven-hectare lot for its housing project – the Kalamboan Housing Project. He asserted that the open space or Lot 1-B-3-C was purposely allocated for community facilities in compliance with the mandatory requirements of PD Nos. 957 and 1216.

For their part, defendants-appellants initially alleged that CKHEU-FFW is not an owner or developer of a subdivision project, a status that will place it under the coverage of P.D. Nos. 957 and 1216. They alleged that the members of plaintiff Homeowners Association were former members of CKHEU-FFW who acquired their respective residential lots from the registered owners. They insisted that CKHEU-FFW did not develop the area

occupied by the plaintiff Homeowners Association, and that the apparent creation of a subdivision was not at the instance of CKHEU-FFW, but through the collective effort of the members of plaintiff Homeowners Association. Thus, they claimed that Lot 1-B-3-C was never intended to be an open space of any subdivision project and the requirement of an open space does not apply in this case.

In this appeal, however, defendants-appellants seem to have abandoned their earlier position on the role of CHKEU-FFW in the development of the Kalamboan Housing Project. Instead, they argued that the subdivision plan which designated Lot 1-B-3-C as open space is not valid since it was not conformed to by the CKHEU-FFW. They pointed out that no resolution was ever passed by the Board of Directors of CKHEU-FFW which approved the designation of Lot 1-B-3-C as open space and that there was signature above the term “with my conformity” in the subdivision plan.

Records indeed show that the CHKEU-FFW purchased the seven-hectare lot for its Kalamboan Housing Project, which was intended as a subdivision for its members. Under the circumstances, the provisions of PD No. 957 as amended by PD No. 1216 applies.

PD No. 1216[30] which amended Section 31 of PD No. 957,[31] mandates that the developer of a subdivision shall reserve thirty percent (30%) of the gross area for open space. The term “open space” shall mean an area reserved exclusively for parks, playgrounds, recreational uses, schools, roads, places of worship, hospitals, health centers, barangay centers and other similar facilities and amenities.

In this case, Lot 1-B-3-C has been regarded by the members of plaintiff-appellee as an open space. Thus, when defendant-appellant Ayade attempted to subdivide and sell part of the open space, plaintiff-appellee sought recourse from the Office of the HLURB, which through its Officer-In-Charge George Martinez, ordered defendant-appellant Ayade to cease and desist from subdividing and selling the open space (Lot 1-B-3-C, Psd-11-010003).[32] This HLURB Order was issued on 30 July 1991. Then, since 1992 to 2005, structures were built within Lot 1-B-3-C by plaintiff-appellee for the benefit of all its members including a chapel, a purok stage, a purok center, a basketball court, a volleyball court, and a day-care center.[33] There is no doubt therefore that Lot 1-B-3-C has been intended and utilized as open space for the recreational and communal amenities of the homeowners. Being an open space, Lot 1-B-3-C is clearly beyond the commerce of man.

Defendants-appellants still argued that if Lot 1-B-3-C is beyond the commerce of man, how come a portion of the lot was donated by CKHEU-FFW in February 1992? Defendants-appellants pointed out that plaintiff-appellee's claim that Lot 1-B-3-C is beyond commerce of man is contradictory to its other claim the same lot was donated by CKHEU-FFW to the homeowners.

Defendants-appellants missed the point. The last two paragraphs of Section 2 of P.D. No. 1216 further provide:

These areas reserved for parks, playgrounds and recreational use shall be non-alienable public lands, and non-buildable. The plans of the subdivision project shall include tree planting on such parts of the subdivision as may be designated by the Authority.

Upon their completion as certified to by the Authority, the roads, alleys, sidewalks and playgrounds shall be donated by the owner or developer to the city or municipality and it shall be mandatory for the local governments to accept provided, however, that the parks and playgrounds may be donated to the Homeowners Association of the project with the consent of the city or municipality concerned. No portion of the parks and playgrounds donated thereafter shall be converted to any other purpose or purposes.

[Emphasis supplied.]

The law clearly and expressly provides that while the area reserved for parks, playgrounds and recreational use

shall be non-alienable public lands, it may be donated to the Homeowners Association of the project. This is what CHKEU-FFW did in February 1992. CHKEU-FFW represented by defendant-appellant Ayade executed a Deed of Donation in favor of the plaintiff-appellee represented by Purok Chairman Baltazar Bustillo. The Deed of Donation³⁴ executed on 24 February 1992 which was confirmed by the Sangguniang Barangay of Magugpo, Tagum, Davao through Resolution 394-S-93 dated 12 April 1993.

It is important to note that defendants-appellants Ayade and Donguila even acceded, in their Motion for Partial Reconsideration of the assailed decision, to the fact of a reserved area for open space within the Kalamboan Housing Project although they insisted that only the 3,196 square meters, more or less, should be considered an open space.[35]

Records demonstrate that when Almaquio Pañamogan, then President of CKHEU-FFW, initiated the purchase of the seven-hectare lot for its Kalamboan Housing Project, the entire Lot 1-B-3-C was purposely allocated for recreational and communal facilities in compliance with the mandatory requirements of PD Nos. 957 and 1216. It was not clearly explained, however, why defendant-appellant Ayade, as President of CKHEU-FFW, donated only a 1,794 sq. m. portion of Lot 1-B-3-C in February 1992, and later admittedly agreed to give the 3,196 sq. m. portion of Lot 1-B-3-C to the homeowners when the original intention was to allot the entire area of Lot 1-B-3-C as an open space.

It is not also difficult to dismiss the assertion of defendant-appellant Fuentes, in her Motion for Reconsideration, that she acted in good faith when she purchased the 800 sq.m. portion of Lot 1-B-3-C as she only relied on the legal authority of the persons who executed the sale and on the authenticity of the title which was presented to her. The claim of defendant-appellant Fuentes is belied by the undisputed fact that since 1992 to 2005, structures were built within Lot 1-B-3-C by the members of the Kalamboan Housing Project Homeowners Association, Inc. including a chapel, a purok stage, a purok center, a basketball court, a volleyball court, and a day-care center.³⁶ Had defendant-appellant Fuentes been diligent and prudent enough to protect her interest, she would not have entered into a contract of sale, in December 2008, of the lot visibly intended and used as open space for plaintiff-appellee's recreational and communal facilities.

Under the circumstances, the Deed of Absolute Sale dated 08 December 2008 is void; it produced no legal effects and transmitted no rights whatsoever. Consequently, TCT No. 182882 issued to defendants-appellants Donguila and Fuentes by virtue of the Deed of Absolute Sale dated 08 December 2008 is likewise void.

The court a quo correctly declared the Deed of Absolute Sale dated 08 December 2008 null and void, along with Transfer Certificate of Title No. T-182882.[37] It also correctly directed the Registry of Deeds for Tagum City to annotate in the reinstated Transfer Certificate of Title No. T-35685 the fact that Lot 1-B-3-C, covered by the title, is an open space, which cannot be disposed of pursuant to Section 22 and 31 of PD No. 957 as amended by Section 31 of PD No. 1216.

All told, the court a quo neither erred nor abused its discretion in issuing the assailed Decision dated 14 October 2009 and Order dated 14 October 2010.

FOR THESE REASONS, the appealed Decision is AFFIRMED in full.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Lopez and Inting, JJ., concur.

[1] Records, pp. 293-297.

[2] Judge Danilo C. Belo, presiding.

[3] See Affidavit of Almaquio Pañamogan; Records, pp. 46-47. See also Sketch Pan; Records, p. 48.

[4] Subdivision Plan of Lot 1-B-3; Annex “B”; Records, p. 12. See Affidavit of Geodetic Engineer Leonardo Busque; Annex “C”; Records, p. 14.

[5] Annex “A”; Records, pp. 9-11.

[6] See Exhs. “E” to “E-4”; Records, pp. 15-16.

[7] See Deed of Absolute Sale; Exh. “I”; Records, pp. 22-23.

[8] Exh. “J”; Records, p. 24.

[9] Annex “E”; Records, pp. 17-18.

[10] Exh. “G”; Records, p. 147.

[11] See Letter dated 27 June 1991 by George Martinez, Officer-In-Charge; Records, pp. 19-20; See also Letter dated 30 July 1991; Records, p. 21.

[12] Answer with Counterclaims and Special and Affirmative Defenses filed by defendants Isabelo Ayade and Sancha Donguila; Records, pp. 32-40; Answer with Counterclaim filed by defendant Rachel Isabel Fuentes; Records, pp. 59-66.

[13] Records, pp. 36-38.

[14] Records, p. 33.

[15] Records, pp. 33-34.

[16] Records, p. 38.

[17] Records, pp. 293-297.

[18] Records, p. 297.

[19] Records, pp. 299-300.

[20] Records, p. 299.

[21] Records, pp. 322-325.

[22] Records, pp. 336-337.

[23] Records, pp. 338-339.

[24] Records, p. 345.

[25] Rollo, p. 22.

[26] *Akang v. Municipality of Isulan, Sultan Kudarat*, G.R. No. 186014, 26 June 2013.

[27] Records, p. 72.

[28] G.R. No. 122544 & 124741, 28 January 2003.

[29] Exh. “D”; Records, p. 14.

[30] Defining “Open Space” in Residential Subdivision and Amending Section 31 of Presidential Decree No. 957 Requiring Subdivision Owners to Provide Road, Alleys, Sidewalks and Reserve Open Space for Parks or Recreational Use. It took effect immediately on 14 October 1977.

[31] Regulating the Sale of Subdivision Lots and Condominiums Providing Penalties for Violations Thereof. It took effect upon its approval on 12 July 1976.

[32] See Letter dated 27 June 1991 and 30 July 1991; Records, pp. 19-20 and 21.

[33] See Exhs. “E” to “E-4”; Records, pp. 15-16.

[34] Annex “E”; Records, pp. 17-18.

[35] Records, p. 299.

[36] See Exhs. “E” to “E-4”; Records, pp. 15-16.

[37] See *Cabalu v. Tabu*, G.R. No. 188417, 24 September 2012.

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