

## **CARLOS GABILA, PLAINTIFF-APPELLANT, VS. PABLO PEREZ, RAMON PEREZ & MERCEDES PEREZ, DEFENDANTS-APPELLEES.**

*G.R. No. L-29541. January 27, 1989*

Ponente: GRIÑO-AQUINO, J.

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### **GRIÑO-AQUINO, J.:**

This is an appeal from a decision of the Court of First Instance of Davao dated January 21, 1961 dismissing plaintiff-appellant's complaint, which the Court of Appeals certified to this Court because only a question of law is involved.

On September 16, 1948, in the City of Davao, defendants-appellees Pablo, Ramon and Mercedes, all surnamed Perez, executed in favor of plaintiff-appellant Carlos Gabila, a Deed of Sale of a parcel of land registered in the name of their deceased father Mariano Perez under Transfer Certificate of Title No. 899 of the Registry of Deeds of Davao, which they inherited upon his demise. The Deed of Sale (Exh. A) reads:

"KNOW ALL MEN BY THESE PRESENTS:

"This CONTRACT, made and executed in the place and date mentioned hereinbelow by and between PABLO PEREZ, married; RAMON PEREZ, married, Filipino citizen, and MERCEDES PEREZ, married, Filipina, all of legal age, and all residents of Bunawan, Davao City, Philippines, hereinafter referred to as the VENDORS, and CARLOS S. GABILA, also of legal age, married to Leonarda P. Gabila and a resident of Ponciano St., Davao City, Philippines, hereinafter referred to as the VENDEE, witnesseth:

"WHEREAS, the VENDORS are the owners of one parcel of agricultural land situated in Bunawan, City of Davao, Philippines, with all the improvements, which is more particularly bounded and described as follows:

"A parcel of land (Lot No. 603 of the cadastral survey of Davao, Cadastral Case No. 1, G.L.R.O. Cadastral Record No. 317), situated in the municipality of Davao. Bounded on the NW. and NE. by Lot No. 511; on the SE. by the Licanan River and Lot No. 602; and on the W. by Lot No. 502 and the Bunawan River, containing an area of eighty-one thousand nine hundred and three square meters (81, 903), more or less."

their ownership thereto being evidenced by Transfer Certificate of Title No. 899 of the Office of the Register of Deeds of Davao, issued in the name of the deceased, MARIANO PEREZ, the father of the VENDORS, who died on October 11, 1942 and the herein vendors inherited said land from their deceased father, being the legitimate children;

"WHEREAS, the VENDEE has agreed to purchase the above-described property and the VENDORS have agreed to sell the same to the VENDEE, subject to the terms and conditions hereinbelow specified;

"NOW, THEREFORE, for and in consideration of the sum of TWO THOUSAND FIVE HUNDRED PESOS (P2,500.00) Philippine Currency, to be paid in the manner hereinbelow specified, the VENDORS hereby sell, transfer and convey unto the said VENDEE, his heirs, executors, administrators and assigns, the above-described one parcel of land, together with the buildings and improvements thereon, belonging to the VENDORS, the aforementioned sum of P2,500.00 shall be paid in the manner as follows:

a)

P1,500.00 - Philippine Currency, upon the signing of this contract;

b)

The balance of P1,000.00, Philippine Currency, to be paid in ten (10) monthly installments of ONE HUNDRED PESOS (P100.00) each, the first installment to become due and payable on October 14, 1948, and the succeeding monthly installments to be paid on the same date every month thereafter until the total amount is fully paid.

"It is hereby agreed, covenanted and stipulated by and between the parties hereto that the Vendors will execute immediately an Extra-Judicial Partition of all the properties of their deceased father, and pay the corresponding estate and inheritance taxes so that the above-described title could be cancelled and in its stead a new Transfer Certificate of Title be issued in favor of the Vendee.

"It is finally agreed, covenanted and stipulated that immediately upon the execution of this document, the VENDEE takes immediate possession of the property sold and will harvest the improvements inside of this land.

"IN WITNESS WHEREOF, the parties hereto have hereunto set their hands this 16th day of September, 1948 at Davao City, Philippines." (Underscoring ours.) (p. 1, Folder of Exhibits.)

The Deed of Sale was duly signed and ratified before Notary Public Isidro Bastida of Davao City on the same date, September 16, 1958, and possession of the land was immediately delivered to the vendee. The monthly installments of the price of the sale were completely paid in due time. However, the vendors took no steps to comply with their promise to execute an extrajudicial partition of their father's properties so that his title to the land in question can be transferred in their names and from them, to the vendee Gabila.

So, on August 28, 1958, Gabila filed this action praying that the defendants be ordered:

- 1) To execute an extra-judicial partition of all the properties of their deceased father or otherwise settle his estate and pay the corresponding estate and inheritance taxes, and execute the requisite instruments for the registration and transfer of the title to him; and
- 2) To pay him P1,000 as attorney's fees and expenses of the suit, plus costs.

The defendants alleged in their Answer that the deed of sale was intended merely to guarantee a loan of P2,500 contracted by one of the defendants; that Mercedes Perez, one of the vendors, was a minor when the deed of sale was made; that the deed of sale was not approved by the Secretary of Agriculture; and, that the consideration of P2,500 was unconscionable.

In Reply, the plaintiff alleged that at the time of the execution of the deed of sale, Mercedes Perez stated that she was of age, and plaintiff had no reason to doubt that statement. But, assuming that she was under age at the time, she ratified the sale by her failure to repudiate it in due time; that the allegation that the deed was only a guarantee for a P2,500 loan was not true because a part of the purchase price was paid to the defendants in ten (10) monthly installments; that the price agreed upon in 1948 was fair and reasonable; and, that the approval of the sale by the Secretary of Agriculture and Natural Resources was not necessary.

After several continuances, the case was set for trial on November 12, 1960. Neither defendants nor their counsel appeared despite due notice. For that reason, the lower court allowed the plaintiff to adduce evidence ex parte before a commissioner.

On January 21, 1961, the trial court rendered the assailed decision, dismissing the complaint. It held that the defendants could not be ordered to execute an extrajudicial partition of all the properties of their deceased father because the properties to be partitioned are not identified in the complaint, and, the defendants can no longer partition the land described in TCT No. 899, because it has been sold to the plaintiff. The court held that the extrajudicial partition of the property should have been done at the time of the sale, in the same instrument (Record on Appeal, pp. 20-21).

The appeal is meritorious. This action is not one for specific performance of the sale of the property to the appellant, for the sale had been consummated by the payment of the price to the vendors-appellees as stipulated in the deed, and by the delivery of the peaceful possession of the land to the plaintiff-vendee. What the plaintiff seeks merely is the transfer of the title of the land in his name.

It is indubitable that the appellant, as vendee of the land, has a right to receive, and the appellees the corresponding obligation to transfer to him, not only the possession and enjoyment of the land but also the certificate of title. The trial court recognized that right of the appellant, but it professed to be helpless to enforce it. In dismissing his complaint and, in effect, denying him a remedy, the trial court forgot a maxim which is as old as the law itself: *Ubi jus ibi remedium*. Where there is a right, there is a remedy (Ballentine's Law Dictionary, 1948 Ed., p. 1307).

The defendants-appellees, as the only legal heirs of their father, the deceased Mariano Perez, became the owners of the property in question upon his demise. The rights to the succession were transmitted to them from the moment of his death (Art. 77, Civil Code).

Their sale to the appellant of the property described in TCT No. 899, which they inherited from their father put an end to their co-ownership over it (Art. 1082 Civil Code). Consequently there is no further need for them to partition it, the purpose of partition being to separate, divide, and assign a thing held in common among those to whom it may belong (Art. 1079, Civil Code). The trial court correctly observed that the defendants-appellees may no longer partition the land in question because they had already sold it.

A careful examination of the deed of sale (Exh. A) reveals that it also serves the purpose of an affidavit of adjudication of the lot in question to the defendants-appellees as heirs of the former owner Mariano Perez. Their declaration therein that the registered owner of the land described in TCT No. 899, Mariano Perez, who died on October 11, 1942, is the father of the vendors, that "the Vendors inherited said land from their deceased father, being the legitimate children" and that "the Vendors are the owners" of said land (Exh. A) is, in effect, an adjudication of the land to themselves. Such adjudication renders the stipulation in the deed of sale that "the Vendors will execute immediately an Extrajudicial Partition of all the properties of their deceased father" (Exhibit A-1), superfluous and unnecessary. It may be overlooked or deemed not written at all.

All that needs to be done now is to register on the TCT No. 899 of the late Mariano Perez the deed of sale (Exh. A) which may also be treated as an affidavit of adjudication of the land to the vendors in order that their father's title may be cancelled and a new one can be issued to their vendee, Carlos Gabila.

WHEREFORE, the appealed decision is hereby set aside. The defendants-appellees, if they have not done so yet, are ordered to surrender and/or deliver TCT No. 899 to the plaintiff-appellant in order that the latter may present it to the Register of Deeds of Davao for cancellation upon the registration of the Deed of Sale dated September 16, 1948 made in his favor by the appellees. The Register of Deeds of Davao shall thereupon cancel said TCT No. 899 of the late Mariano Perez and issue a new title in the name of the plaintiff-appellant Carlos Gabila, subject to a lien in favor of any deprived heirs under Rule 74 of the Rules of Court. The defendants-appellees are ordered to pay the estate and inheritance taxes, if any, and they should present proof of such payment to the Register of

Deeds within sixty (60) days after the finality of this decision.

**SO ORDERED.**

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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