

RAMON PASCUAL, PLAINTIFF AND APPELLANT, VS. REALTY INVESTMENT, INC., DEFENDANT AND APPELLEE.

G.R. No. L-4002. May 12, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Plaintiff filed an action in the Court of First Instance of Manila to compel the defendant to sell to him a parcel of land with an area of 450 square meters, more or less, upon prior payment of the purchase price at the rate of P25 per square meter.

Plaintiff alleges that since 1912 he has occupied said parcel of land as tenant while the same was still under the administration of Angel Tuason; that in 1941, said property was transferred to the defendant to be subdivided and sold to the public; that when plaintiff came to know that the property was for sale he offered to buy it from the defendant, and the latter, through its manager, one Mr. Aquino, verbally agreed to sell the same to the plaintiff provided that he would agree to pay the price at the rate of P15 per square meter; that the plaintiff agreed to pay the price fixed by the defendant which however failed to perfect the sale and Instead asked for more time to prepare the necessary papers; that in February 1948, the defendant increased the price to P25 per square meter to which increase the plaintiff agreed, but this notwithstanding the defendant failed to carry out the sale. Hence this action.

Instead of answering the complaint, defendant filed a motion to dismiss on the ground that "whatever cause of action is alleged therein the same is unenforceable under the provisions of the statute of frauds". Defendant contends that the purpose of the action is to compel the said defendant to execute a deed of sale of a parcel of land on a supposed verbal agreement to sell and inasmuch as under section 21(e), rule 123, of the Rules of Court, an agreement to sell real property should be made in writing, or at least it should appear in a note or a memorandum, in order that a suit based thereon may be enforceable, the present action cannot be maintained and should be dismissed.

The court granted the motion and, accordingly, dismissed the complaint without pronouncement as to costs. The case is now before this Court in view of the appeal interposed by the plaintiff.

After a careful perusal of the allegations of the complain, we are of the opinion that the lower court did not err in dismissing the complaint for the reason that the purpose of this action is to enforce an alleged verbal agreement to sell to the plaintiff a parcel of land which is claimed to have been occupied by the plaintiff as a tenant since 1912, it appearing that under the statute of frauds said verbal agreement cannot be enforced, nor evidence thereon presented, because it has not been made in writing, nor does it appear in a note or memorandum, as required by said statute (Rule 123, section 21(e), Rules of Court).

But plaintiff contends that this transaction does not come under the statute of frauds in view of the fact that (1) he took possession of the property as a consequence of the verbal contract to sell he had with the defendant, and (2) he has made substantial improvements thereon upon the realisation that he had already acquired the right to

purchase the same by virtue of said agreement. And this is so, he contends, because where there is a partial performance of the contract to sell, or where possession of the land has been taken by a purchaser and improvements thereon made as a consequence of said contract to sell, the rule prohibiting the presentation of oral evidence does not apply because the statute does not render the contract void or without effect but merely unavailable for the purpose of enforcing the contract itself.

The theory advanced by counsel would be tenable if the requisite facts that would take this case out of the rule were present, for then it will be considered as one of those cases that are excepted from the operation of the statute; but no such facts appear in the complaint, as can be seen from a perusal thereof. Thus, while it is alleged that plaintiff has occupied the land since 1912, there is nothing alleged therein to the effect that he has taken possession thereof. In view of a supposed verbal contract he had with the defendant to purchase it, nor is there any allegation that he has made improvements thereon because and as a consequence of said supposed contract to sell. This case having been dismissed on a mere motion to dismiss, the merits of the order of the court can only be gauged upon a consideration of the allegations appearing in the complaint, and upon no other. We agree with counsel that where a parol contract of sale is adduced not for the purpose of enforcing it, but as a basis of tins possession of the person claiming to be the owner of the land, the statute of frauds is not applicable (*Almirol et al., vs. Monserrat*, 48 Phil., 67), in the same way that it does not apply to contracts which are either totally or partially performed upon the theory that there is a wide field for the commission of frauds in executory contracts which can only be prevented by requiring them to be in writing, a fact which is reduced to a minimum in executed contracts because the intention of the parties become apparent by their execution (*Hernandez vs. Andal*, 44 Off. Gaz., (No. 8), 2672. *III Moran on the Rules of Court*, 3rd ed., pp. 181-182). But, as we have already pointed out, this situation does not here obtain for the reason that the complaint does not contain the requisite allegations. On the contrary, it alleges that plaintiff occupied the land as a tenant since 1912. There is, therefore, no room for the application of the theory advanced by counsel for the appellant.

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

Paras, C.J., Feria, Pablo, Bengzon, Montemayor, and Labrador, JJ., concur.

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