

MANUEL B. RUIZ, PLAINTIFF AND APPELLANT, VS. J. M. TUASON AND CO., INC., ET AL., DEFENDANTS AND APPELLEES.*G. R. No. L-18692. January 31, 1963*

Ponente: BAUTISTA ANGELO, J.

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Manuel B. Ruiz brought an action before the Court of First Instance of Manila praying (a) that J. M. Tuason & Co., Inc. and the sheriff of Quezon City be enjoined from executing the writ of execution issued in Civil Case No. Q-3492 against Sixto M. Cacho but which is being enforced against him by ejecting him from the property in question and demolishing the house erected thereon, and (b) that J. M. Tuason & Co., Inc. be ordered to execute a final deed of sale in his favor of a parcel of land with an area of 420 sq. m. upon payment by him of the purchase price at the rate of P7.00 per sq. m. and to consider the sum of P855.00 already paid by him to defendant Florencio Deudor as partial payment thereof.

Florencio Deudor, one of the defendants, filed a motion to dismiss on the grounds that (1) the venue of action is improperly laid, (2) plaintiff has no cause of action against said defendant; and (3) plaintiff's cause of action, if any, has prescribed. Defendant J. M. Tuason & Co., Inc., in turn filed a motion for bill of particulars.

Disregarding plaintiff's opposition to the motion to dismiss and while the motion for bill of particulars was pending consideration, the court a quo, on March 11, 1961, issued an order dismissing the case on the ground that, the property in question being situated in Quezon City, and the action being one affecting real property or involving title thereto, the venue of action is improperly laid. His motion for reconsideration having been denied, plaintiff interposed the present appeal.

The case having been dismissed on the basis of a mere motion to dismiss, the only facts that may be considered for the purpose of this appeal are those alleged in the complaint. The pertinent facts may be stated as follows:

"That * * * defendant Florencio Deudor was * * * the absolute owner and possessor of a piece of land situated in Barrio Tatalon, Quezon City, Philippines, containing an area of * * * 210,000 square meters, covered by a possessory information title in the name of his deceased father, Telesforo Deudor, * * *.

"That * * * said Florencio Deudor, in consideration of the sum of * * * P4,800.00, * * * by way of absolute sale, sold, transferred and conveyed unto Severino G. Navarro, Jose Dinglasan and Teofilo P. Bantug, * * * a portion of land referred to in the next preceding paragraph, which portion is more particularly described as follows, to wit:

(A parcel of land known as Lot No. 72 on subdivision Plan, Psu _____ situated in the Barrio of Tatalon, Quezon City; Bounded on the North by Lot No. 74; on the East by Lot No. 73; on the South by Quezon Blvd., and on the West by Road;—Hunters ROTC Ave., * * *.

"That * * * after the sale aforesaid * * * said vendee, Jose Dinglasan, took possession of his portion of the land sold containing an area, of 420 square meters, and built two houses of strong materials thereon declared for purposes of taxation in his name, under Tax No. 11876 and Tax No. 11935, both of Quezon City, * * *.

"That sometime in * * * 1950, Jose Dinglasan tried to make payments on the balance of the purchase price of the land aforesaid, but * * * Florencio Deudor refused to accept said payment because there was then pending an action (Civil Case No. Q-135) before the Court of First Instance of Rizal, Quezon City Branch, involving the ownership of the parcel of land referred to above, and of which the lot bought by Jose Dinglasan is a part, * * *.

"That in Civil Case No. Q-135 above referred to, together with Civil Case Nos. Q-139, 174, 177 and 186 of the same Court, * * * after a * * * joint trial the parties thereto, * * * on March 16, 1953, entered into a 'Compromise Agreement', * * * paragraph 7 of which provides:

'SEVENTH. That the sales of the property rights claimed by the DEUDORS, are described in the lists submitted by them to the Owners which are attached hereto marked Annexes "B" and "C" and made a part hereof. Whatever amounts may have been collected by the DEUDORS on account thereof, shall be deducted from the total sum of P1,201,063.00 to be paid to them. It shall be the joint and solidary obligation of the DEUDORS to make the buyers of the lots purportedly sold by them to recognize the title of the Owners over the property purportedly bought by them, and to make them sign, whenever possible, new contracts of purchase for said property at the current prices and terms specified by the Owners in their sales of lots to their subdivision known as "Sta. Mesa Heights Subdivision." The DEUDORS hereby advise the OWNERS that the buyers listed in Annex "B" herein with the annotation "continue" shall buy the lots respectively occupied by them and shall sign new contracts, but the sums already paid by to the DEUDORS amounting to P134,922.84 (subject to verification by the Court) shall be credited to the buyers and shall be deducted from the sums to be paid to the DEUDORS by the OWNERS. The DEUDORS also advise the OWNERS that the buyers listed in Annex "C" herein with the annotation "Refund" have decided not to continue with their former contracts of purchase with the DEUDORS and the sums already paid by them to the DEUDORS totalling P101,182.42 (subject to verification by the Court) shall be refunded to them by the Owners and deducted from the sums that may be due the DEUDORS from the OWNERS.'

"That in the list of purchasers * * * the name of Jose Dinglasan appears in Number 13 thereof, who has paid the amount of P865.00 * * *.

"That our Honorable Supreme Court in the case of Lucina Evangelista vs. Deudor, et al., 106 Phil., 17, promulgated on September 10, 1959, ruled and held that, by the said Compromise Agreement, a sort of contractual relation has existed between * * * J. M. Tuason & Co., Inc., and the purchasers of the land from the 'Deudors' as regards the sales of their respective lots, and that J. M. Tuason & Co., Inc. assumed certain obligations in favor of said purchasers, among whom is Jose Dinglasan, * * *.

"That * * * Jose Dinglasan sold, transferred and conveyed unto the spouses Sixto M. Cacho and Julita de Jesus, all his rights and interests over the portion of land of 420 square meters referred to above, including all the improvements thereon, * * * who in turn sold, transferred and conveyed unto appellant all their rights and interest in the portion of land of 420 square meters * * *.

"That immediately after said transfer, * * * herein, plaintiff took possession of said portion of land and the improvements thereon, in the concept of an owner thereof, * * *.

"That the subject property corresponds to a portion of Lot No. 10, Block No. 504 of the Subdivision plan of J. M. Tuason & Co., Inc., * * * located in Barrio Mataiahib, Tatalon, Quezon City and covered by TCT No. 1267 of the Register of Deeds of Quezon City.

"That * * * plaintiff made a demand upon J. M. Tuason & Co., Inc., through its agent and administrator Gregorio Araneta, Inc., to execute a new contract in his favor of the subject property * * * at P7.00 per square meter pursuant to paragraph 7 of the Compromise Agreement but * * * Tuason & Co., through its agent Gregorio

Araneta, Inc., refused to do so; * * * that plaintiff was and is always ready and willing to pay * * * the price of the lot in question * * * at the rate of P7.00 per square meter.

"That * * * Tuason & Co., on November 20, 1958 , filed an action * * * against Sixto M. Cacho in the Court of First instance of Rizal, Quezon City Branch IV, docketed as Civil Case No. Q-3492, wherein a judgment by default was rendered against Sixto Cacho * * *.

"That * * * J. M. Tuason & Co, secured a writ of execution of the aforementioned judgment by default against said Sixto M. Cacho in said Civil Case No. Q-3492, dated May 20, 1959, and armed with said writ, and with the aid of the defendant Sheriff of Quezon City, now threatens, and is about, to eject herein plaintiff from the property in question and demolish his houses therein, including the house where he is now living * * *.

"That the execution of the judgment against Sixto M. Cacho in Civil Case No. Q-3492 will * * * cause irreparable injury * * * and injustice to the plaintiff * * *."

Appellant contends that the present action is transitory because it is one for specific performance and its object is to compel J. T. Tuason & Co., Inc. to execute a final deed of sale of the property in question in favor of appellant founded upon compliance with the compromise agreement wherein said company recognized the sale made by Florencio Deudor of said property in favor of one Jose Dinglasan who, in the same agreement, was recognized by the company as a purchaser who had already made partial payment of the purchase price of the land.

This contention has no merit. Although appellant's complaint is entitled to be one for specific performance, yet the fact that he asked that a deed of sale of a parcel of land situated in Quezon City be issued in his favor and that a transfer certificate of title covering said land be issued to him shows that the primary objective and nature of the action is to recover the parcel of land itself because to execute in favor of appellant the conveyance requested there is need to make a finding that he is the owner of the land which in the last analysis resolves itself into an issue of ownership. Hence, the action must be commenced in the province where the property is situated pursuant to Section 3, Rule 5, of the Rules of Court, which provides that actions affecting title to or recovery of possession of real property shall be commenced and tried in the province where the property or any part thereof lies. This contention finds support in the following authorities:

"An action by which plaintiff seeks to have it adjudged that he is the owner of an undivided third of mining; property, and to have defendants directed to execute to him a conveyance thereof, is within Code Civ. Proc. Section 392, providing that actions for recovery of real property or of an interest therein, or for the determination of such interest, must be tried in the country in which the subject of the action is situated." (McFarland vs. Martin, et al., 78 P. 239).

"Suit by purchaser for ascertainment of amount due on contract and for vendors' execution of deed on payment thereof hold suit for specific performance, triable where land was situated." (Kopke vs. Carlson, et al., 276 P. 606)

It should further be noted that among the reliefs prayed for in the complaint is the prayer that defendants J. M. Tuason & Co., Inc. and the sheriff of Quezon City be enjoined from executing the writ of execution issued by the court of first instance of said city in Civil Case No. Q-3492 wherein said sheriff is allegedly trying to enforce against appellant by ejecting him and demolishing the house he has on the land- located in Quezon City, which claim necessarily involves a determination of ownership and possession of said property as a preliminary step to determining the validity of the writ of execution. The complaint having been filed in the Court of First Instance of Manila it is apparent that venue is improperly laid. This is in accordance with the, rule that if an action necessarily involves a determination of an interest in land, the suit must be brought in the place where the land is situated. The fact that an injunction is sought as an ancillary to the principal action does not make the case transitory or

personal.

"The primary object of a suit for injunction is determinative on the question of venue. If the suit necessarily involves a determination of an interest in land, the suit must be brought in the country where the land lies. * * * The fact that an injunction is sought as relief ancillary to the main suit does not make it transitory," (92 C.J.S., pp.)

Wherefore, the order appealed from is affirmed. No costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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