

JESUS M. GABOYA, AS ADMINISTRATOR OF THE ESTATE OF DON MARIANO CUI, PLAINTIFF-APPELLANT, VS. ANTONIO MA. CUI, MERCEDES CUI-RAMAS AND GIL RAMAS, DEFENDANTS-APPELLEES.

G.R. No. L-19614. March 27, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Direct appeal (before Republic Act 5440) from a decision of the Court of First Instance of Cebu (in its Civil Case No. R-1720) denying resolution of a contract of sale of Lots 2312, 2313 and 2319 executed on 20 March 1946 by the late Don Mariano Cui in favor of three of his children, Antonio Ma. Cui, Mercedes Cui de Ramas and Rosario Cui de Encarnacion, but sentencing the first two, Antonio Cui and Mercedes Cui, to pay, jointly and severally (in solidum), to the Judicial Administrator of the Estate of Mariano Cui (appellant Jesus M. Gaboya) the amount of P100,088.80, with legal interest from the inter-position of the complaint (5 November 1951), plus P5,000.00 attorney's fees and the costs.

The antecedents of the case are stated in the previous decision of this Supreme Court rendered on 31 July 1952, in the case of Antonio and Mercedes Cui vs. Judge Piccio, et al., 91 Phil. 712:

"Don Mariano Cui, widower, as owner of lots Nos. 2312, 2313 and 2319 situated in the City of Cebu, with an area of 152 square meters, 144 square meters and 2,362 square meters, respectively, or a total extension of 2,658 square meters, on March 8, 1946, sold said three lots to three of his children named Rosario C. de Encarnacion, Mercedes C. de Ramas and Antonio Ma. Cui, pro indiviso for the sum of P64,000. Because Rosario C. de Encarnacion for lack of funds was unable to pay her corresponding share of the purchase price, the sale to her was cancelled and the one-third of the property corresponding to her was returned to the vendor. These three lots are commercial. The improvements thereon were destroyed during the last Pacific War so that at the time of the sale in 1946, there were no buildings or any other improvements on them. Because of the sale of these lots pro indiviso and because of the cancellation of the sale to one of the three original vendees, Don Mariano and his children Mercedes and Antonio became co-owners of the whole mass in equal portions. In the deed of sale vendor Don Mariano retained for himself the usufruct of the property in the following words:

'... do hereby sell, transfer, and convey to Messrs. Rosario C. de Encarnacion, Mercedes C. de Ramas and Antonio Ma. Cui, the above-mentioned parcel of land in equal parts, ... and the further consideration, that I, shall enjoy the fruits and rents of the same, as long as my natural life shall last. Granting and conveying unto the said buyers the full right as owners to enjoy the constructive possession of the same, improve, construct and erect a building in the lot, or do whatever they believe to be proper and wise, as long as the same will not impair nor obstruct my right to enjoy the fruits and rents of the same...'

"Subsequently, a building was erected on a portion of this mass facing Calderon street and was occupied by a Chinese businessman for which he paid Don Mariano P600 a month as rental. The date when the building was constructed and by whom do not appear in the record.

"Sometime after the sale to Mercedes and Antonio the two applied to the Rehabilitation Finance Corporation

(RFC) for a loan of P 130,000 with which to construct a 12-door commercial building presumably on a portion of the entire parcel corresponding to their share. In order to facilitate the granting of the loan and inasmuch as only two of the three co-owners applied for the loan, Don Mariano on January 7, 1947, executed an authority to mortgage (Annex U) authorizing his two children co-owners to mortgage his share, the pertinent portion of said authority reading thus:

That by virtue of these presents, I hereby agree, consent, permit and authorize my said co-owners to mortgage, pledge my share so that they may be able to construct a house or building in the said property, provided however, that the rents of the said land shall not be impaired and will always be received by me.'

The loan was eventually granted and was secured by a mortgage on the three lots in question. Don Mariano being included as one of the three mortgagors and signing the corresponding promissory note with his two co-owners. He did not, however, join in the construction of the 12-door commercial building as may be gathered from the 'Convenio de Asignacion de Parte' (Annex V) wherein it was agreed among the three co-owners to assign to Don Mariano that one-third of the whole mass facing Calderon street and on which was erected the building already referred to as being occupied by a Chinese businessman and for which he was paying Don Mariano P600 a month rental. The area of this one-third portion was fixed at 900 square meters approximately one-third of the total area of these three lots. The pertinent portion of this Annex V reads as follows:

'Que como quiera que, la propiedad arriba descrita esta actualmente hipotecada a la Rehabilitation Finance Corporation para garantizar la construction que mis condueños construyeron en la parte que les corresponde;

'Y que como quiera que, el Sr. Don Mariano Cui, uno de los condueños, no ha querido unirse a la construction de dicho edificio, y desea que la parte que le corresponda sea la 1/3 que este dando frente a la Calle Calderon.'

The 12-door commercial building was eventually constructed and the builder-owners thereof Mercedes and Antonio received and continued to receive the rents thereof amounting to P4,800 a month and paying therefrom the installments due for payment on the loan to the Rehabilitation Finance Corporation.

On March 25, 1948, two other children of Don Mariano named Jesus and Jorge brought an action (Civil Case No. 599-R) in the Court of First Instance of Cebu for the purpose of annulling the deed of sale of the three lots in question on the ground that they belonged to the conjugal partnership of Don Mariano and his deceased wife Antonia Perales. Thereafter, plaintiffs Jesus and Jorge applied for the appointment of a receiver to take charge of the lots and of the rentals of the building. This petition was denied on November 8, 1948.

On March 19, 1949, Rosario C. Encarnacion, that daughter of Don Mariano who was one of the original vendees, filed a petition to declare her father incompetent and to have a guardian appointed for his property, in Special Proceeding No. 481-R of the Court of First Instance of Cebu. In May 1949 the petition was granted and Don Mariano was declared incompetent and Victorino Reynes was appointed guardian of his property. Thereafter, the complaint in Civil Case No. 599-R seeking to annul the deed of sale of the three lots in favor of Mercedes and Antonio was amended so as to include as plaintiffs not only the guardian Victorino Reynes but also all the other children of Don Mariano.

On June 15, 1949, guardian Victorino Reynes filed a motion in the guardianship proceedings seeking authority to collect the rentals from the three lots in question and asking the Court to order Antonio and Mercedes to deliver to him as guardian all the rentals they had previously collected from the 12-door commercial building, together with all the papers belonging to his ward. This motion was denied by Judge Piccio in his order of May 12, 1949. The guardian did not appeal from this order.

"On May 22, 1951, Judge Saguin rendered a decision in Civil Case No. 599-R and found that the three lots in question were not conjugal property but belonged exclusively to Don Mariano and so upheld the sale of

two-thirds of said lots to Antonio and Mercedes. The plaintiffs appealed to the Court of Appeals where the case is now pending."

From the Court of Appeals the case was brought to the Supreme Court, and the decision of Judge Saguin upholding the validity of the sale in favor of Antonio and Mercedes Cui was finally affirmed on 21 February 1957, in Cui vs. Cui, 100 Phil.

914.

This third case now before Us was started by the erstwhile guardian of Don Mariano Cui (while the latter was still alive) in order to recover PI 26,344.91 plus legal interest from Antonio Cui and Mercedes Cui (Record on Appeal, pages 2-3) apparently as fruits due to his ward by virtue of his usufruct. The guardian's complaint was supplemented and amplified by a 1957 complaint in intervention (duly admitted) filed by the other compulsory heirs of Mariano Cui, who had died on 29 July 1952, some nine months after the present case was instituted in the court below (Record on Appeal, pages 67-68).

In essence, the complaint alleges that the usufructuary right reserved in favor of Don Mariano Cui extends to and includes the rentals of the building constructed by Antonio Cui and Mercedes Cui on the land sold to them by their father; that the defendants retained those rentals for themselves; that the usufructuary rights of the vendor were of the essence of the sale, and their violation entitled him to rescind (or resolve) the sale. It prayed either for rescission with accounting, or for delivery of the rentals of the building with interests, attorneys' fees and costs (Record on Appeal, pages 12-38).

The amended answer, while admitting the reserved usufruct and the collection of rentals of the building by the defendants, denied that the usufructuary rights included or extended to the said rentals, or that such usufruct was of the essence of the sale; that in fact the vendor (Don Mariano Cui) had waived and renounced the usufruct and that the defendants vendees gave the vendor P400.00 a month by way of aid; that the original complaint having sought fulfillment of the contract, plaintiff can not thereafter seek rescission; that such action is barred by res judicata (on account of the two previous decisions of the Supreme Court) and by extinctive prescription. Defendants counterclaimed for actual and moral damages and attorney's fees.

Plaintiffs denied the allegations in the counterclaim.

From a consideration of the pleadings, the basic and pivotal issue appears to be whether the usufruct reserved by the vendor in the deed of sale, over the lots in question that were at the time vacant and unoccupied, gave the usufructuary the right to receive the rentals of the commercial building constructed by the vendees with funds borrowed from the Rehabilitation and Finance Corporation, the loan being secured by a mortgage over the lots sold. Similarly, if the usufruct extended to the building, whether the failure of the vendees to pay over its rentals to the usufructuary entitled the latter to rescind, or more properly, resolve the contract of sale. In the third place, should the two preceding issues be resolved affirmatively, whether the action for rescission due to breach of the contract could still be enforced and was not yet barred.

The court below declared that the reserved right of usufruct in favor of the vendor did not include, nor was it intended to include, the rentals of the building subsequently constructed on the vacant lots, but that it did entitle the usufructuary to receive a reasonable rental for the portion of the land occupied by the building, which the court a quo fixed at PI,858.00 per month; and that the rentals for the land from November, 1947, when the building was rented, to 29 July 1952, when Don Mariano died, amounted to P100,088.80. It also found no preponderant evidence that the seller, Don Mariano Cui, had ever waived his right of usufruct, as contended by the defendants; and that the Supreme Court, in denying reconsideration of its second (1957) decision (100 Phil. 914), had, like the court of origin, refused to pass upon the extent of the usufructuary rights of the seller, specially

because the present case was already pending in the Court of First Instance, hence no *res judicata* existed. No attorney's fees were awarded to the defendants, but they were sentenced to pay counsel fees to plaintiffs.

Both parties appealed from the decision of the court *a quo*.

We find no error in the decision appealed from. As therein pointed out, the terms of the 1946 deed of sale of the vacant lots in question made by the late Don Mariano Cui in favor of his three children, Rosario, Mercedes and Antonio Cui, in consideration of the sum of P64,000.00 and the reserved usufruct of the said lot in favor of the vendor, as amplified by the deed of 7 January 1947, authorizing Mercedes and Antonio Cui to borrow money, with the security of a mortgage over the entirety of the lots, in order to enable them to construct a house or building thereon -

"provided, however, that the rents of said land shall not be impaired and will always be received by me,"

clearly prove that the reserved usufruct in favor of the vendor, Mariano Cui, was limited to the rentals of the land alone. Had it been designed to include also the rents of the buildings intended to be raised on the land, an express provision would have been included to that effect, since in both documents (heretofore quoted) the possibility of such construction was clearly envisaged and mentioned.

Appellants, however, argue that the terms of the deed constituting the usufruct are not determinative of the extent of the right conferred; and that by law, the enjoyment of the rents of the building subsequently erected passed to the usufructuary, by virtue of Article 571 of the Civil Code of the Philippines (Article 479 of the Spanish Civil Code of 1889) prescribing that:

"Art. 571. The usufructuary shall have the right to enjoy any increase which the thing in usufruct may acquire through accession, the servitudes established in its favor, and, in general, all the benefits inherent therein,"

inasmuch as (in the appellants' view) the building constructed by appellees was an accession to the land.

This argument is not convincing. Under the articles of the Civil Code on industrial accession by edification on the principal land (Articles 445 to 456 of the Civil Code), such accession is limited either to buildings erected on the land of another, or buildings constructed by the owner of the land with materials owned by someone else.

Thus, Article 445, establishing the basic rule of industrial accession, prescribes that -

"Whatever is built, planted or sown on the land of another, and the improvements or repairs made thereon, belong to the owner of the land subject to the provisions of the following articles." (Italics supplied)

while Article 449 states:

He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity." (Italics supplied)

Articles 447 and 455, in turn, treat of accession produced by the landowner's building, planting and sowing "with the materials of another" and when "the materials, plants or seeds belong to a third person " other than the landowner or the builder, planter or sower.

Nowhere in these articles on industrial accession is there any mention of the case of a landowner building on his own land with materials owned by himself (which is the case of appellees Mercedes and Antonio Cui). The reason for the omission is readily apparent: recourse to the rules of accession are totally unnecessary and inappropriate where the ownership of land and of the materials used to build thereon are concentrated on one and the same person. Even if the law did not provide for accession, the landowner would necessarily own the building, because he has paid for the materials and labor used in constructing it We deem it unnecessary to belabor this obvious

point.

There is nothing in the authorities (Manresa, Venean, Santamaria and Borrell) cited by appellants that specifically deals with constructions made by a party on his own land, with his own materials, and at his own expense. The authorities cited merely indicate the application in general of the rules of accession. But as already stated above, the Civil Code itself limits the cases of industrial accession to those involving land and materials belonging to different owners. Anyway, commentators' opinions are not binding where not in harmony with the law itself.

The author that specifically analyses the situation of the usufructuary vis-a-vis constructions made by the landowner with his own materials is Scaevola (Codigo Civil, 2d Edition, pages 288 to 297); and his conclusion after elaborate discussion is that, at the most -

"(b) El nudo propietario no podria, sin el consentimiento del usufructuario, hacer construcciones, plantaciones y siembras en el predio objeto del usufructo; y en el caso de que aquel las consintiese. la utilizacion sera comun en los frutos y productos de lo sembrado y plantado, y con respecto a las construcciones, el usufructuario tendra derecho a la renta que de mutuo acuerdo se fije a las mismas; en su defecto, por la autoridad judicial. " (Author cit., italics supplied)

Scaevola's opinion is entirely in harmony with Article 595 of the Civil Code of the Philippines, prescribing that -

"The owner may construct any works and make any improvements of which the immovable in usufruct is susceptible, or make new plantings thereon if it be rural, provided that such acts do not cause a diminution in the value of the usufruct or prejudice the right of the usufructuary."

Note that if the income from constructions made by the owner during the existence of the usufruct should be held to accrue automatically to the usufructuary under Article 571, such improvements could not diminish the value of the usufruct nor prejudice the right of the usufructuary; and the qualifications by Article 595 on the owner's right to build would be redundant. The limitations set by Article 595 to the construction rights of the naked owner of the land are evidently premised upon the fact that such constructions would necessarily reduce the area of the land under usufruct, for which the latter should be indemnified. This is precisely what the court a quo has done in sentencing the appellee owners of the building to pay to the usufructuary a monthly rent of P1,758.00 for the area occupied by their building, after mature consideration of the rental values of lands in the neighborhood.

Additional considerations against the thesis sustained by appellants are (1) that the amount invested in the building represents additional capital of the landowners not foreseen when the usufruct was created; and (2) that no landowner would be willing to build upon vacant lots under usufruct if the gain therefrom were to go to the usufructuary while the depreciation of the value of the building (as distinguished from the necessary repairs) and the amortization of its cost would burden exclusively the owner of the land. The unproductive situation of barren lots would thus be prolonged for an indefinite time, to the detriment of society. In other words, the rule that appellants advocate would contradict the general interest and be against public policy,

Appellants urge, in support of their stand, that the loan for the construction of the building was obtained upon the security of a mortgage not only upon the share of appellees but also upon the undivided interest of Don Mariano Cui in the lots in question. That factor is irrelevant to the ownership of the building, because the money used for the building was loaned exclusively to the appellees, and they were the ones primarily responsible for its repayment. Since the proceeds of the loan was exclusively their property,[1] the building constructed with the funds loaned is likewise their own. A mortgagor does not become directly liable for the payment of the loan secured by the mortgage, in the absence of stipulation to that effect; and his subsidiary role as guarantor does not entitle him to the ownership of the money borrowed, for which the mortgage is mere security.

We agree with the trial court that there was no adequate proof that the vendor, Don Mariano Cui, ever renounced his usufruct. The alleged waiver was purely verbal, and is supported solely by the building testimony of Antonio Cui, one of the alleged beneficiaries thereof. As agratuitous renunciation of a real right over immovable property that was created by public document, the least to be expected in the regular course of business is that the waiver should also appear in writing. Moreover, as pointed out in the appealed decision (Record on Appeal, page 184, et seq.), in previous pleadings sworn to by Antonio Cui himself, in Civil Case No. 599 and Special Proceeding 481-R of the Cebu Court of First Instance (Exhibits "I", "J", and "20-A"), he and his sister Mercedes had contended that Don Mariano Cui had been receiving from them P400.00 per month as the value of his usufruct, and never claimed that the real right had been renounced or waived. The testimony of Antonio Cui on the alleged waiver, given after the usufructuary had been declared incompetent and could no longer contradict him, is obviously of negligible probative value.

Turning now to the second issue tendered by herein appellants, that non-compliance with the provisions concerning the usufruct constituted sufficient ground for the rescission (oi. „solution) of the sale under the tacit resolutive condition established by Article 1191 of the Civil Code. What has been stated previously in discussing the import of Don Mariano's usufruct shows that alleged breach of contract by the appellees Antonio and Mercedes Cui could only consist in their failure to pay to the usufructuary the rental value of the area occupied by the building constructed by them. But as the rental value in question had not been ascertained or fixed either by the parties or by the court, prior to the decision of 31 October 1961, now under appeal, nor had Don Mariano Cui, or anyone else in his behalf, made any previous demand for its payment' the default, if any, can not be exclusively blamed upon the defendants-appellees. Hence, the breach is not "so substantial and fundamental as to defeat the object of the parties in making the agreement"[2] as to justify the radical remedy of rescission. This Court, in *Banahaw, Inc. vs. Dejarme*, 55 Phil. 338. ruled that -

"... Under the third paragraph of Article 1124[3] of the Civil Code, the court is given a discretionary' power to allow a period within which a person in default may be permitted to perform the stipulation upon which the claim for resolution of the contract is based. The right to resolve or rescind a contract for nonperformance of one of its stipulations is, therefore, not absolute."

We have stated "the default, if any", for the reason that without previous ascertainment of the exact amount that the defendants-appellees were obligated to turn over to the usufructuary by way of reasonable rental value of the land occupied by their building, said parties can not be considered as having been in default (*mora*) for failure to turn over such monies to the usufructuary. "*Ab illiquido non fit mora*", this principle has been repeatedly declared by the jurisprudence of Spanish Supreme Court (*v. Manresa*, Commentaries to the Spanish Civil Code (5th Ed), Vol. 8, No. 1, page 134) that is of high persuasive value in the absence of local adjudications on the point

"No puede estimarse que incurre en *mora* el obligado al pago de cantidad mientras esta no sea liquida, y tenga aquel conocimiento por virtud de requerimiento o reclamacion judicial de lo que debe abonar" (Sent. TS of Spain. 13 July 1904)

"Segun tiene declarado esta sala con repeticion, no se puede establecer que hay *morosidad*, ni condenar por tal razon al abono de intereses, cuando no se conoce la cantidad liquida reclamable" (Sent. TS of Spain, 29 November 1912)

"... es visto que no existiendo obligacion de entregar cantidad hasta tanto que se liquide, no puede estimarse, segun jurisprudencia, que los recurridos incurran en *mora*, y por tanto que hayan de pagar intereses legales de la cantidad que en su caso resulte." (Sent. TS of Spain, 29 April 1914)

In the absence of default on the part of the defendants-vendees, Article 1592 of the Civil Code of the

Philippines,[4] that is invoked by appellants in support of their alleged right to rescind the sale, is not applicable: for said article (which is a mere variant of the general principle embodied in Article 1191, of the same Code) presupposes default of the purchasers in the fulfillment of their obligations. As already noted, no such default or breach could occur before liquidation of the usufructuary's credit; and the time for paying such unliquidated claim can not be said to have accrued until the decisions under appeal was rendered, fixing the rental value of the land occupied by the building.

The filing of the initial complaint by Victorino Reynes, then guardian of the late Don Mariano in 1951, seeking to recover P126,344.91 plus interest, did not place appellees in default, for that complaint proceeded on the theory that the usufructuary was entitled to all the rentals of the building constructed by the appellees on the lot under usufruct; and as We have ruled, that theory was not legally tenable. And the 1957 complaint in intervention, seeking rescission of the sale as alternative remedy, was only interposed after the death of the usufructuary in 1952, and the consequent extinction of the usufruct, conformably to Article 603, paragraph (1), of the Civil Code.

It is also urged by the appellants that the usufruct was a condition precedent to the conveyance of ownership over the land in question to herein appellees, and their failure to comply with their obligations under the usufruct prevented the vesting of title to the property in said appellees. We need not consider this argument, since We have found that the usufruct over the land did not entitle the usufructuary to either the gross or the net income of the building erected by the vendees, but only to the rental value of the portion of the land occupied by the structure (in so far as the usufructuary was prevented from utilizing said portion), and that rental value was not liquidated when the complaints were filed in the court below; hence, there was no default in its payment. Actually, this theory of appellants fails to take into account that Don Mariano could not retain ownership of the land and, at the same time, be the usufructuary thereof. His retention of the usufructuary rights in itself imports that he was no longer its owner. For usufruct is essentially *jus in re aliena*; and to be a usufructuary of one's own property is in law a contradiction in terms, and a conceptual absurdity.

The decision (Exhibit "30") as well as the resolution of this Court upon the motion to reconsider filed in the previous case (100 Phil. 914) refusing to adjudicate the usufructuary rights of Don Mariano in view of the pendency of the present litigation (Exhibit "22") amply support the trial court's overruling of the defense of *res judicata*.

Summing up, We find and hold:

- (1) That the usufructuary rights of the late Don Mariano Cui, reserved in the deed of sale (Exhibit "A" herein), was over the land alone and did not entitle him to the rents of the building later constructed thereon by defendants Mercedes and Antonio Cui at their own expense.
- (2) That said usufructuary was entitled only to the reasonable rental value of the land occupied by the building aforementioned.
- (3) That such rental value not having been liquidated until the judgment under appeal was rendered, Antonio and Mercedes Cui were not in default prior thereto, and the deed of sale was, therefore, not subject to rescission.
- (4) That, as found by the court below, the reasonable rental value of the land occupied by the defendants' building totalled P 100,088.80 up to the time the usufructuary died and the usufruct terminated.
- (5) That pursuant to Articles 2208 (No. 11), 2210 and 2213 of the Civil Code,⁵ the trial court had discretion to equitably award legal interest upon said sum of P100,088.80, as well as P5,000.00 attorneys' fees, considering that defendants Cui have enjoyed the said rental value of the land during all these years.

WHEREFORE, finding no reversible error in the appealed decision, the same is hereby affirmed. Costs against appellant-intervenors, Jesus Ma. Cui, Jose Ma. Cui, Serafin Ma. Cui, Jorge Ma. Cui, Rosario Cui de Encarnacion, Precilla C. Velez, and Lourdes C. Velez.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Teehankee, Barredo, Villamor and Makasiar, JJ., concur.

Ruiz Castro and Fernando, JJ., did not take part.

[1] "ART. 1953. A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay the creditor an equal amount of the same kind and quality."

[2] Banahaw, Inc. vs. Dejarnie. 55 Phil. 338; Song Fo & Co. vs. Hawaiian Philippine Co., 47 Phil. 821, 827.

[3] Now Article 1191, Civil Code of the Philippines.

[4] "ART. 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term."

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