

NIEVES VDA. DE GONZALEZ MONDRAGON, PLAINTIFF AND APPELLANT, VS. ROMAN SANTOS, DEFENDANT AND APPELLEE.*G. R. No. L-1724. October 12, 1950*

Ponente: TUASON, J.

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This action was commenced in the Court of First Instance of Manila to rescind a deed of sale, Annex A, and to sentence the defendant to execute a deed of reconveyance of the land sold and to deliver to the plaintiff 15,000 cavanes of palay, or to pay the value thereof, for every crop year beginning 1941-42. It was further prayed "that for the restitution of that part of the selling price received by the plaintiff under the deed of sale, Exhibit A, the Court fix such reasonable amount in present legal tender as would be equitable or legal equivalent of P454,789.79 in Japanese military notes." As an alternative to rescission, it was prayed that the defendant be ordered and to pay the plaintiff P35,921.27 with legal interest from the date of the filing of the original complaint until fully paid.

After the trial was closed the plaintiff filed a third amended complaint, in conformity with the evidence adduced, to recover other parcels which, it is alleged, were not included in the contract but had been taken possession of by the defendant.

It is not necessary to detail the facts. The following highlights of the case will suffice as convenient background for this decision.

It appears that Don Joaquin Gonzalez Mondragon, who died on December 16, 1940 in Manila, left a large tract of land known as Hacienda Esperanza, situated in three municipalities of Pangasinan and covered by five certificates of titles. The deceased had executed a will and codicil in which he provided for the distribution and disposition of his estate among his widow, Doña Nieves Balmori Vda. de Gonzalez Mondragon, the plaintiff herein, and various children. To his widow, the testator devised 33/34 of the hacienda, among other legacies.

In 1941, the widow and her children made a partition of the inheritance, allotting to each heir separate and specific portions but leaving pro-indiviso the residential lots and roads in the barrios situated within the estate. They employed a surveyor, and a sub-division plan, introduced in evidence as Exhibit 10, was drawn, on which the area of the widow's approximately one-third share was stated to be 1,023 hectares.

Subsequent to the partition, negotiations were started, or resumed, for the purchase by Don Roman Santos, the defendant, of the plaintiff's share and those of her children who were willing to sell. Offers and counter-offers were made until, finally, the parties closed the deal and executed the deed Exhibit *A, or "1" on August 5, 1941. The pertinent provisions of the deed read:

"Nosotros, Nieves Balmori Vda. de Gonzalez, Joaquin P. Gonzalez, casado con Filomena Pacheco, Esperanza Gonzalez, casada con Marcel Peyronnet, Roberto V. Gonzalez, casado con Katherine G. McCracken, Enrique F. Gonzalez, casado con Luisa Tapales, Asuncion H. Gonzalez, casado con Cristina Soriano, Antonio F. Gonzalez, casado con Mercedes Ugarte, y Remedios Gonzalez, casada con Thomas O'Brien, todos los cuales son mayores de edad, residentes en la ciudad de Manila y ciudadanos filipinos, con excepcion de Esperanza y

Remedios Gonzalez, que por razon de matrimonlo son, respectivamente, de ciudadania francesa y americana, mas adelante designados como los Vendedores, en consideracion de la suma total de Novecientos Cuarenta y Tres Mil Quinientos Pesos P943,500 de la cual Cuatrocientos Sesenta Mil Pesos P460,000 corresponden a Nieves B. Yda. de Gonzalez Mondragon, P61,000 a cada uno de los Vendedores Vicente, Antonio y Remedios Gonzalez, 60,000 a Joaquin Gonzalez, Enrique y Asuncion Gonzalez, cuyo precio sera pagadero en los terminos que mas adelante se especifican, hacemos constar por la presente que vendemos, cedemos y traspasamos, en absoluto y a perpetuidad, a Roman Santos, casado con Juliana Andres, filipino, y residente en el municipio de Navotas, provincia de Rizal, mas adelante designado como el Comprador, to do su derecho, interes y participacion en la Hacienda Esperanza, ubicada en los municipios de Umingan, San Quintin y Santa Maria, de la provincia de Pangasinan, con todos sus edificios, mejoras y pertenencias, incluyendo toda la cosecha no levantada y semillas existentes en la Hacienda, todo el ajuar de la Casa-Hacienda de la propiedad de la Vendedora Nieves B. Vda. de Gonzalez Mondragon, el truck Ford, y la planta electrica, todo litro de carga y gravamen, excepto como aqui se especifica mas adelante."

Sometime after the sale, a new survey was made and the new plan gave the area of the plaintifffs approximately one-third share of the hacienda as 1,091.24 instead of 1,023.

It was the restoration of the difference between these two figures or the payment of its equivalent in cash that the first complaint was filed, it being alleged that the plaintiff had sold her land on the basis of P450 per hectare. Explaining why, she signed the deed without objecting to the form in which it was written, the plaintiff declared that she did not read the document because she was then sick suffering from a heart ailment. The defendant countered with the allegation that he bought all the plaintiff's right and interest to and in the hacienda for a lump sum and not for a specified price for each hectare, as the plaintiff claims.

The last preceding paragraph states in a nut shell the pivotal issue, the resolution of which will decide the rest, except the question as to the inclusion or non-inclusion in the sale of Lot No. 4397-A, and barrio lots and roads, which question will be taken up separately.

Article 1469 and Article 1471, first paragraph, of the Civil Code read:

"Art. 1469. The obligation to deliver the thing sold includes that of placing in the control of the vendee all that is mentioned in the contract, according to the following rules:

"If the sale of immovable property should be made with a statement of its area, at the rate of a certain price for a unit of measure or number, the vendor shall be obliged to deliver to the vendee, if the latter should require it, all that may have been mentioned in the contract; but, should this be not possible, the vendee may choose between a proportional reduction of the price or the rescission of the contract, provided that, in the latter case, the decrease in the area be not less than one-tenth of that attributed to the immovable.

"The same shall be done, even when the area is the same, if any part of the immovable is not of the quality stated in the contract.

"The rescission, in this case, shall only take place at the will of the vendee, when the inferior value of the thing sold exceeds one-tenth of the price agreed upon.

"Art. 1471. In the sale of an immovable, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the same, although there be a greater or less area or number than that stated in the contract."

It is admitted that if the contract is to be construed by the language used in the deed of conveyance, the plaintiff can not recover. It is also admitted that "as a general rule, by virtue of Section 22 of Rule 123 of the Rules of Court, Exhibit A may be considered as containing the real agreement between the parties." But it is contended that

"Exhibit A does not express the true intent and agreement of the parties therein and that the appellant's consent thereto was given through mistake and error," in that she believed "that in signing that deed she was conveying 1,023 hectares only." This, as stated, is the gravamen of the appellant's complaint.

The trial court made light of the plaintiff's evidence, underlining the fact that the sale was not arrived at in haste. It particularly took note of the circumstance that the plaintiff was surrounded by her children and co-vendors, all of whom are highly intelligent, cultured and experienced in business. Said the court with whom we agree:

"As may be seen from the above, the deed of sale was not prepared hurriedly contrary to the uncorroborated assertion of witness Roberto Gonzalez to the effect that the deed of sale was prepared in twelve or fourteen hours. Some of the vendors, children of the plaintiff, had, as the above evidence shows, all the opportunity to know the contents of the deed while yet in the process of preparation as well as after it was put in final form. One of the vendors, Roberto Gonzalez, testified that he noted that the area and price per unit of measure were not stated in the contract and said that he had called the attention of Atty. Ramon Diokno to this fact but that the latter explained that there was no time to include all those datos in the document. The above-quoted testimonies of the defendant and Arsenio Santos, however, belie completely such assertion. The other vendors present on the occasion of the drafting of the document raised no voice of protest against the wording of the same. Not one demanded that the deed be revised to state that the sale was being made at so much per hectare, if that were really the real intent and agreement of the parties. The Court does not hesitate to state that plaintiff's co-vendors, her children, are all men and women of high intelligence and of business acumen. Why not one of them had noticed the supposed variance between the wording of the final draft and their alleged agreement is indeed incomprehensible to the Court. The only plausible explanation for their silence must be that the deed, as finally drafted, expresses the real; and true agreement they had with the defendant.

"Then came the signing of the deed of sale Exhibit 1 or A, on August 5, 1941. Don Roberto Gonzalez, one of the vendors, first secured the Signature thereon of the defendant who was then in his office at 105 Plaza Sta. Cruz. After the defendant had signed it, he issued the checks corresponding to each of the vendors, giving the said checks to Deogracias Matias, then Assistant Manager of the Rizal Surety & Insurance Co., for delivery to the vendors upon their signing the deed of sale, after which Don Roberto Gonzalez, accompanied by Deogracias Matias and the notary public, Conrado Carlos, proceeded in Son Roberto's car to the house of the plaintiff located at Calle Donata for the signing of the said document by the vendors. It was 12 noon when the three arrived at the house of the plaintiff. The plaintiff was then celebrating her birthday. Her children and co-vendors and other close relatives of the family were in attendance. After lunch, the co-vendors of the plaintiff took turns in reading the document brought by the notary public. After reading it plaintiff's co-vendors signed, one after the other, the document Exhibit A. After her children had signed it, the document was taken to the plaintiff who was then at a certain table where she read the original, before signing the same. She foregoing facts have been fully established by the following testimony of the notary public Conrado Carlos who ratified the deed;

* * * * *

"Admitting for the sake of argument that the plaintiff did not read the deed of sale before she signed it, the fact remains that her children, her co-vendors, read it before they affixed their respective signatures thereon. If it were true that what they were selling to the defendant were some determinate hectares and not their respective entire participations and interests in the Hacienda Esperanza for a lump sum, the Court sees no reason why not one of them had noticed such material defect in the deed and called the attention of their mother to that fact. The document in question is an important one indeed. It involves a considerable amount of money, almost a million. Anyone in place of the vendors would have taken the utmost care in the perusal of the document before signing the same. But all of them signed it without any one raising a voice of protest against the way it was drafted. Considering the high intelligence the social prestige and business talent of the plaintiff and her children may it now be successfully contended that their intention was not what their words express in said

document?

* * * * *

"After a careful scrutiny of the evidence adduced by the parties in support of their conflicting contentions, as well as of the circumstances above mentioned, the court, in the light of the above-quoted judicial rulings, has reached the conclusion that the preponderant evidence is adverse to the plaintiff and in favor of the contentions of the defendant. Even the plaintiff herself and her son Roberto Gonzalez admit, at least impliedly, that she was selling her entire participation in the Hacienda Esperanza and that the exact area of her participation was still uncertain at the time the sale was consummated."

These findings are borne out by the weight of the direct testimony. They also draw support from the extraneous facts.

Among other things, it may be pointed out that the plaintiff's children's portions of the hacienda were, as they testified, sold for P400 a hectare only. It does not appear that these portions were inferior to their mother's in quality. Again the lands conveyed were admittedly not wholly first class, yet there does not seem to have been any attempt or conversation about finding or figuring out how much land was first class, how much is second, and how much was third. It would seem unusual that the buyer should have been willing to pay as much for the second and third class parts of the farm as for the parts of the more fertile kind if the sale had been made by the standard asserted in the complaint, i. e., for a specified sum for one unit of measure. Also of significance is the detail that included in the sale were buildings, an electric plant and other improvements, and the standing crop, for none of which was a separate price fixed. Besides there were residential lots in barrios occupied by tenants and barrio roads or streets all of which by the terms of the deed were embraced in the conveyance. Last but not least, there was no talk or proposal by either party for a re-survey of the land after the sale in order that the total amount to be paid upon the signing of the deed might be increased or reduced according as the new measurement would show a surplus or a deficiency. In fact, there is no indication that either of the parties even thought of such a survey for such purpose before or after the sale was effected.

The plaintiff has the burden of proof to overcome the strong presumption that the document she and her co-sellers signed expressed their true intention. Our view of the plaintiff's evidence is that it is neither pro dominant nor conclusive. The best that can be said in its favor is that it does not rule out the opposite theory. Much less does it establish, in order to show that the mistake was mutual, that the buyer shared the vendors' intention and belief that the sale was by the hectare and not for a sum in gross as stated in the document of sale.

The plaintiff's evidence being as it is, the integrity of the document Exhibit A will, of necessity, have to be maintained and equitable relief denied. This would be true even if there were doubts. Decisions of this Court and of American courts abound in favor of the salutary doctrine that contracts solemnly and deliberately entered into may not be overturned by inconclusive proof or by reason of mistakes of one of the parties to which the other in no way has contributed.

Moran's Comments on the Rules of Court, Vol. III, p. 195, summing up the rulings laid down in various decisions of this Court and one of the United States Supreme Court, says "Relief by way of reformation of a written agreement will not be granted unless the proof of mutual mistake is of the clearest and most satisfactory character. The amount of evidence necessary to sustain a prayer for relief where it is sought to impugn a fact in a document is always more than a mere preponderance of the evidence."

In the case of *Joaquin vs. Mitsumine*, (34 Phil. 858), this Court held that "An alleged defect in a contract perfectly valid and binding on its face, must be conclusively proved. The validity and fulfillment of contracts can not be left to the will of one of the parties."

In the case of *Irureta Goyena vs. Tambunting*, (1 Phil. 490), it appeared that the defendant bought a piece of land and agreed to pay \$3,200 for it. It so happened that the land was less than what the parties supposed, and the buyer refused to pay the price agreed upon unless the corresponding reduction was made. The Court, speaking through Mr. Justice Willard, dismissed the purchaser's plea, saying: "Whether evidenced by a public instrument or a private document, the contract is what the words of the parties indicate. It will not avail the defendant to say, 'But my intention was not what my words express.' The defendant bought a specific article and agreed to pay \$3,200 for it. The fact that the article is not as large as he thought it was does not relieve him from the necessity of paying that price. It was just such cases as this that Article 1471, was intended to cover. If the defendant Intended to buy by the meter,"he should have so stated in the contract." (Italics ours.)

It is to be noted that in the last-cited case, the mistake was caused, intentionally or innocently, by the agent of the plaintiff who was favored by the shortage, whereas in the case *atrbar* the error was in the plan of the plaintiff herself who was prejudiced by the excess.

Calculated to prevent litigation, the above rule is bottomed on sound public policy. The law abhors law suits, and litigation! Would be fostered if contracts of sale were to be overturned on slight or uncertain evidence. The only way in which such litigations could be minimized if not entirely prevented is by holding the parties conclusively bound by the terms of the agreement as expressed in the writing, unless the contrary is shown by clear proof.

We are inclined to agree with the plaintiff that the parties had before them Exhibit 10, the erroneous petition plan, when the sale price was discussed and agreed upon. It was natural and to be expected that the buyer should want to know the size and quantity of the property of which he knew little and in which he was to invest nearly a million pesos. There is little doubt in our mind that the price of the land per hectare was thoroughly considered if not fixed.

These phases of the transaction may well have induced in the sellers the distinct impression that the sale was by the hectare. The vehemence with which the plaintiffs cause was presented and urged is testimony to a sincere conviction.

But one must labor unsuccessfully to put into these talks a deeper meaning than that of preliminaries to the final shape given to the deal. As preliminaries their only role is to illustrate the final agreement in case of obscurity. The overall criterion by which the parties are to be governed is, by all standards, what they actually reduced to writing.

The haggling over and evaluation of the price of one unit of measure was resorted to merely as a means to an end. The end was the final agreement transmitted, to be put in final form, to the lawyer of both parties' choice, who had had no part in, and was unaware of, the Initial and succeeding deliberations that lied to the final result.

It seems plain from all the attending circumstances that the dominant and paramount thought in the minds of the parties during and at the end of the negotiation was a sale of the entire property owned by the sellers for a gross amount. Not only does this conclusion tally with the explicit and categorical language of the deed of conveyance, drawn by an able and neutral attorney in close consultations with the defendant and some of the plaintiff's children, but the form of the sale as thus finally drifted and sealed and signed was by far the more convenient to all concerned. In a sale involving an extensive agricultural estate containing undetermined lots of different classes, unappraised improvements, barrio lots and roads and standing crop, it was well-nigh difficult, not to say impossible, to conclude a transaction technically and strictly by the hectare. Such form of sale would leave the parties in uncertainty on the amount to be added to or taken from the price in the ensuing re-adjustment in the event of discrepancy In the assumed area. Such form of sale would be fraught as the parties sought to have realized, with extreme difficulties and harrassing controversies.

For the reasons stated, the excess in the area shown in the plan Exhibit 10 can not operate to change the contract. The error, the possibility of which neither party could have ignored, was a hazard which they must be presumed to have assumed. The hazard was not one-sided but worked both ways. The share of each of the plaintiff's children who sold their own holdings was believed to contain 150 hectares but on a re-survey turned out to have a superficial area of only 140 hectares.

After all, the surplus, considered in relation to the total area which the tract was supposed to have, was far from excessive, well within the range of ordinary contingency which parties to a 1,000,000 peso deal may be expected to risk.

On the third amended complaint, the facts are that the defendant entered upon the possession of Lot No. 4397-A, measuring 43 hectares, which is separate and distinct from the plaintiff's one-third share, and of the residential lots and roads in the barrios which were still undivided among the heirs. Lot No. 4397-A, nevertheless, was included in Transfer Certificate of Title 1886, in the name of the plaintiff, which was delivered to the purchaser by her.

Were these items comprised in the sale? The plaintiff answers No and the defendant answers Yes.

The discussion and authorities cited in connection with the main controversy apply with equal force to this one. The recital in the deed of sale, that the vendors conveyed *Modo su derecho, interes, y participacion en la Hacienda Esperanza*," literally and properly construed, was a conveyance of the whole estate in the property in the absence of any limitations denoting intent to convey a less interest. We think this proposition is too plain to require argument.

Significantly, the third amended complaint was filed only after the termination of the hearing, on April 14, 1947, more than six years after the first complaint was docketed. This long delay, unaccompanied by any showing that the plaintiff was ignorant of the defendant's possession of the subject-matter of the last amended complaint, detracts from the merit of this cause of action.

The mere fact that Lot No. 4397-A had been assigned to the plaintiff by her children in lieu of her usufructuary right as surviving spouse is insufficient to negative the plain meaning of Exhibit A. The property was at her free disposal.

Similarly, the plaintiff had exclusive right to sell her share in the residential lots and roads in the barrios within the Hacienda although they were still pro-indiviso. As a matter of fact, she was selling only her right and interest in these lots and roads and not any specific parts thereof.

The judgment dismissing the complaint will be affirmed with costs.

Ozaeta, Paras, Pablo, Montemayor, and Reyes, JJ., concur.

BENGZON, J., dissenting:

I dissent, because the plaintiff has sufficiently proved that the parties had agreed to the sale of the land at P450 per hectare, both being of the belief that her share in the Hacienda Esperanza had an area of 1023 hectares only.

As the land, upon resurvey, proved to be much more, article 1470 of the old civil code applies, and should afford plaintiff appropriate relief.

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