

FELIPE C. ROQUE, PETITIONER, VS. NICANOR LAPUZ AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-32811. March 31, 1980

Ponente: GUERRERO, J.

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GUERRERO, J.:

Appeal by certiorari from the Resolution of the respondent court[1] dated October 12, 1970 in CA-G.R. No. L-33998-R entitled "Felipe C. Roque, plaintiff-appellee, versus Nicanor Lapuz, defendant-appellant" amending its original decision of April 23, 1970 which affirmed the decision of the Court of First Instance of Rizal (Quezon City Branch) in Civil Case No. Q-4922 in favor of petitioner, and the Resolution of the res-pondent court denying petitioner's motion for reconsi-deration.

The facts of this case are as recited in the decision of the Trial Court which was adopted and affirmed by the Court of Appeals:

"Sometime in 1954, prior to the approval by the National Planning Commission of the consolidation and subdi-vision plan of plaintiff's property known as the Rockville Subdivision, situated in Balintawak, Quezon City, plaintiff and defendant entered into an agreement of sale covering Lots 1, 2 and 9, Block 1, of said property, with an aggregate area of 1,200 square meters, payable in 120 equal monthly installments at the rate of P16.00, P15.00 and P15.00 per square meter, respectively. In accordance with said agreement, defendant paid to plaintiff the sum of P150.00 as deposit and the further sum of P740.56 to complete the payment of four monthly installments co-vering the months of July, August, Sep-tember, and October, 1954. (Exhs. A and B). When the document Exhibit "A" was executed on June 25, 1954, the plan covering plain-tiff's property was merely tentative, and the plaintiff referred to the proposed lots appearing in the tentative plan.

After the approval of the subdivision plan by the Bureau of Lands on January 24, 1955, defendant requested plaintiff that he be allowed to abandon and substitute Lots 1, 2 and 9, the subject matter of their previous agreement, with Lots 4 and 12, Block 2 of the approved subdivision plan, of the Rockville Subdivision, with a total area of 725 square meters, which are corner lots, to which request plaintiff graciously acceded.

The evidence discloses that defendant proposed to plaintiff modification of their previous contract to sell because he found it quite difficult to pay the monthly installments on the three lots, and besides the two lots he had chosen were better lots, being corner lots. In addition, it was agreed that the purchase price of these two lots would be at the uniform rate of P17.00 per square (meter) payable in 120 equal monthly installments, with interest at 8% annually on the balance unpaid. Pur-suant to this new agreement, defendant occu-pied and possessed Lots 4 and 12, Block 2 of the approved subdivision plan, and enclosed them, including the portion where his house now stands, with barbed wires and adobe walls.

However, aside from the deposit of P150.00 and the amount of P740.56 which were paid under their previous agreement, defendant failed to make any further payment on account of the agreed monthly installments for the two lots in dispute, under the new contract to sell. Plaintiff demanded upon defendant not only to pay the stipulated monthly ins-tallments in arrears, but also to make up-to-date his payments, but defendant, instead of complying with the demands, kept on asking for extensions, promising at first that he would pay not only the

installments in arrears but also make up-to-date his payment, but later on refused altogether to comply with plaintiff's demands.

Defendant was likewise requested by the plaintiff to sign the corresponding contract to sell in accordance with his previous commitment. Again, defendant promised that he would sign the required contract to sell when he shall have made up-to-date the stipulated monthly installments on the lots in question, but subsequently backed out of his promise and refused to sign any contract in non-compliance with what he had represented on several occasions. And plaintiff relied on the good faith of defendant to make good his promise because defendant is a professional and had been rather good to him (plaintiff).

On or about November 3, 1957, in a formal letter, plaintiff demanded upon defendant to vacate the lots in question and to pay the reasonable rentals thereon at the rate of P60.00 per month from August, 1955. (Exh. "B"). Notwithstanding the receipt of said letter, defendant did not deem it wise nor proper to answer the same."

In reference to the mode of payment, the Honorable Court of Appeals found -

"Both parties are agreed that the period within which to pay the lots in question is ten years. They however, disagree on the mode of payment. While the appellant claims that he could pay the purchase price at any time within a period of ten years with a gradual pro-portionate discount on the price, the appellee maintains that the appellant was bound to pay monthly installments.

On this point, the trial court correctly held that -

"It is further argued by defendant that under the agree-ment to sell in question, he has the right or option to pay the purchase price at anytime within a period of ten years from 1954, he being entitled, at the same time, to a graduated reduction of the price. The Court is cons-trained to reject this version not only because it is contradicted by the weight of evidence but also because it is not consistent with what is reasonable, plausible and credible. It is highly improbable to expect plaintiff, or any real estate subdivision owner for that matter, to agree to a sale of his land which would be payable anytime in ten years at the exclusive option of the purchaser. There is no showing that defendant is a friend, a relative, or someone to whom plaintiff had to be grateful, as would justify an assumption that he would have agreed to extend to defendant such an extra-ordinary concession. Furthermore, the context of the document, Exhibit "B", not to men-tion the other evidences on records is indicative that the real inten-tion of the parties is for the payment of the purchase price of the lot in question on an equal monthly installment basis for a period of ten years. (Exhibits "A", "II", "J" and "K")."

On January 22, 1960, petitioner Felipe C. Roque (plaintiff below) filed the complaint against defendant Nicanor Lapuz (private respondent herein) with the Court of First Instance of Rizal, Quezon City Branch, for rescission and cancellation of the agreement of sale between them involving the two lots in question and prayed that judgment be rendered ordering the rescission and cancellation of the agreement of sale, the defendant to vacate the two parcels of land and remove his house therefrom and to pay to the plaintiff the reasonable rental thereof at the rate of P60.00 a month from August 1955 until such time as he shall have vacated the premises, and to pay the sum of P2,000.00 as attorney's fees, costs of the suit and award such other relief or remedy as may be deemed just and equitable in the premises.

Defendant filed a Motion to Dismiss on the ground that the complaint states no cause of action, which motion was denied by the court. Thereafter, defendant filed his Answer alleging that he bought three lots from the plaintiff containing an aggregate area of 1,200 sq. meters and previously known as Lots 1, 2 and 9 of Block 1 of Rockville Subdivision at P16.00, P15.00 and P15.00, respectively, payable at any time within ten years. Defendant admits having occupied the lots in question.

As affirmative and special defenses, defendant alleges that the complaint states no cause of action; that the present action for rescission has prescribed; that no demand for payment of the balance was ever made; and that the action

being based on reciprocal obligations, before one party may compel performance, he must first comply what is incumbent upon him.

As counterclaim, defendant alleges that because of the acts of the plaintiff, he lost two lots containing an area of 800 sq. meters and as a consequence, he suffered moral damages in the amount of P200,000.00; that due to the filing of the present action, he suffered moral damages amounting to P100,000.00 and incurred expenses for attorney's fees in the sum of P5,000.00.

Plaintiff filed his Answer to the Counterclaim and denied the material averments thereof.

After due hearing, the trial court rendered judgment, the dispositive portion of which reads:

"WHEREFORE, the Court renders judgment in favor of plaintiff and against the defendant, as follows:

"(a) Declaring the agreement of sale between plaintiff and defendant involving the lots in question (Lots 4 and 12, Block 2 of the approved subdivision plan of the Rockville Subdivision) rescinded, resolved and cancelled;

"(b) Ordering defendant to vacate the said lots and to remove his house therefrom and also to pay plaintiff the reasonable rental thereof at the rate of P60.00 per month from August, 1955 until he shall have actually vacated the premises; and

"(c) Condemning defendant to pay plaintiff the sum of P2,000.00 as attorney's fees, as well as the costs of the suit." (Record on Appeal, p.118)

Not satisfied with the decision of the trial court, defendant appealed to the Court of Appeals. The latter court, finding the judgment appealed from being in accordance with law and evidence, affirmed the same.

In its decision, the appellate court, after holding that the findings of fact of the trial court are fully supported by the evidence, found and held that the real intention of the parties is for the payment of the purchase price of the lots in question on an equal monthly installment basis for the period of ten years; that there was modification of the original agreement when defendant actually occupied Lots Nos. 4 and 12 of Block 2 which were corner lots that commanded a better price instead of the original Lots Nos. 1, 2 and 9, Block 1 of the Rockville Subdivision; that appellant's bare assertion that the agreement is not rescindable because the appellee did not comply with his obligation to put up the requisite facilities in the subdivision was insufficient to overcome the presumption that the law has been obeyed by the appellee; that the present action has not prescribed since Article 1191 of the New Civil Code authorizing rescission in reciprocal obligations upon non-compliance by one of the obligors is the applicable provision in relation to Article 1149 of the New Civil Code; and that the present action was filed within five years from the time the right of action accrued.

Defendant filed a Motion for Reconsideration of the appellate court's decision on the following grounds:

"First - Neither the pleadings nor the evidence, testimonial, documentary or circumstantial, justify the conclusion as to the existence of an alleged subsequent agreement novatory of the original contract admittedly entered into between the parties;

"Second - There is nothing so unusual or extraordinary as would render improbable the fixing of ten years as the period within which payment of the stipulated price was to be payable by appellant;

"Third - Appellee has no right, under the circumstances of the case at bar, to demand and be entitled to the rescission of the contract had with appellant;

"Fourth - Assuming that any action for rescission is available to appellee, the same, contrary to the findings of the decision herein, has prescribed;

"Fifth - Assuming further that appellee's action for rescission, if any, has not yet prescribed, the same is at least barred by laches;

"Sixth - Assuming furthermore that a cause of action for rescission exists, appellant should nevertheless be entitled to the fixing of a period within which to comply with his obligation; and

"Seventh - At all events, the affirmance of the judgment for the payment of rentals on the premises from August, 1955 and the taxing of attorney's fees against appellant are not warranted by the circumstances at bar." (Rollo, pp. 87-88)

Acting on the Motion for Reconsideration, the Court of Appeals sustained the sixth ground raised by the appellant, that assuming that a cause of action for rescission exists, he should nevertheless be entitled to the fixing of a period within which to comply with his obligation. The Court of Appeals, therefore, amended its original decision in the following wise and manner:

"WHEREFORE, our decision dated April 23, 1970 is hereby amended in the sense that the defendant Nicanor Lapuz is hereby granted a period of ninety (90) days from entry hereof within which to pay the balance of the purchase price in the amount of P11,434.44 with interest thereon at the rate of 8% per annum from August 17, 1955 until fully paid. In the event that the defendant fails to comply with his obligation as above stated within the period fixed herein, our original judgment stands."

Petitioner Roque, as plaintiff-appellee below, filed a Motion for Reconsideration; the Court of Appeals denied it. He now comes and appeals to this Court on a writ of certiorari.

The respondent Court of Appeals rationalizes its amending decision by considering that the house presently erected on the land subject of the contract is worth P45,000.00, which improvements introduced by defendant on the lots subject of the contract are very substantial, and thus being the case, "as a matter of justice and equity, considering that the removal of defendant's house would amount to a virtual forfeiture of the value of the house, the defendant should be granted a period within which to fulfill his obligations under the agreement." Cited as authorities are the cases of *Kapisanan Banahaw vs. Dejarne and Alvero*, 55 Phil. 338, 344, where it is held that the discretionary power of the court 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 should be exercised without hesitation in a case where a virtual forfeiture of valuable rights is sought to be enforced as an act of mere reprisal for a refusal of the debtor to submit to a usurious charge, and the case of *Puerto vs. Go Ye Pin*, 47 O.G. 264, holding that to oust the defendant from the lots without giving him a chance to recover what his father and he himself had spent may amount to a virtual forfeiture of valuable rights.

As further reasons for allowing a period within which defendant could fulfill his obligation, the respondent court held that there exists good reasons therefor, having in mind that which affords greater reciprocity of rights (*Ramos vs. Blas*, 51 O.G. 1920); that after appellant had testified that plaintiff failed to comply with his part of the contract to put up the requisite facilities in the subdivision, plaintiff did not introduce any evidence to rebut defendant's testimony but simply relied upon the presumption that the law has been obeyed, thus said presumption had been successfully rebutted as Exhibit "5-D" shows that the road therein shown is not paved. The Court, however, concedes that plaintiff's failure to comply with his obligation to put up the necessary facilities in the subdivision will not deter him from asking for the rescission of the agreement since this obligation is not correlative with defendant's obligation to buy the property.

Petitioner assails the decision of the Court of Appeals for the following alleged errors:

- The Honorable Court of Appeals erred in applying paragraph 3, Article 1191 of the Civil Code which refers to reciprocal obligations in general and, pursuant thereto, in granting respondent Lapuz a period of ninety (90) days

from entry of judgment within which to pay the balance of the purchase price.

- The Honorable Court of Appeals erred in not holding that Article 1592 of the same Code, which specifically covers sales of immovable property and which constitutes an exception to the third paragraph of Article 1191 of said Code, is applicable to the present case.
- The Honorable Court of Appeals erred in not holding that respondent Lapuz cannot avail of the provisions of Article 1191, paragraph 3 of the Civil Code aforesaid because he did not raise in his answer or in any of the pleadings he filed in the trial court the 'question of whether or not he is entitled, by reason of a just cause, to a fixing of a new period.
- Assuming arguendo that the agreement entered into by and between petitioner and respondent Lapuz was a mere promise to sell or contract to sell, under which title to the lots in question did not pass from petitioner to respondent, still the Honorable Court of Appeals erred in not holding that aforesaid respondent is not entitled to a new period within which to pay petitioner the balance of P11,434.44 with interest due on the purchase price of P12,325.00 of the lots.
- Assuming arguendo that paragraph 3, Article 1191 of the Civil Code is applicable and may be availed of by respondent, the Honorable Court of Appeals nonetheless erred in not declaring that said respondent has not shown the existence of a just cause which would authorize said Court to fix a new period within which to pay the balance aforesaid.
- The Honorable Court of Appeals erred in reconsidering its original decision promulgated on April 23, 1970 which affirmed the decision of the trial court.

The above errors may, however, be synthesized into one issue and that is, whether private respondent is entitled to the benefits of the third paragraph of Article 1191, New Civil Code, for the fixing of a period within which he should comply with what is incumbent upon him, and that is to pay the balance of P11,434.44 with interest thereon at the rate of 8% per annum from August 17, 1955 until fully paid since private respondent had paid only P150.00 as deposit and 4 months installments amounting to P740.46, or a total of P890.46, the total price of the two lots agreed upon being P12,325.00.

For his part, petitioner maintains that respondent is not entitled to the benefits of paragraph 3, Article 1191, N.C.C. and that instead, Article 1592 of the New Civil Code which specifically covers sales of immovable property and which constitutes an exception to the third paragraph of Art. 1191 of said Code, is the applicable law to the case at bar.

In resolving petitioner's assignment of errors, it is well that We lay down the codal provisions and pertinent rulings of the Supreme Court bearing on the crucial issue of whether Art. 1191, paragraph 3 of the New Civil Code applies to the case at bar as held by the appellate court and supported by the private respondent, or Art. 1592 of the same Code which petitioner strongly urges in view of the peculiar facts and circumstances attending this case. Article 1191, New Civil Code, provides:

"Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without pre-judice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law."

Article 1592 also provides:

"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."

The controlling and latest jurisprudence is established and settled in the celebrated case of Luzon Brokerage Co., Inc. vs. Maritime Building Co., Inc. and Myers Building Co., G.R. No. L-25885, January 31, 1972, 43 SCRA 93, originally decided in 1972, reiterated in the Resolution on Motion to Reconsider dated August 18, 1972, 46 SCRA 381 and emphatically repeated in the Resolution on Second Motion for Reconsideration promulgated November 16, 1978, 86 SCRA 309, which once more denied Maritime's Second Motion for Reconsideration of October 7, 1972. In the original decision, the Supreme Court speaking thru Justice J.B.L. Reyes said:

"Under the circumstances, the action of Maritime in suspending payments to Myers Corporation was a breach of contract tainted with fraud or malice (*dolo*), as distinguished from mere negligence (*culpa*) "*dolo*" being succinctly defined as a "conscious and intentional design to evade the normal fulfillment of existing obligations" (Capistrano, Civil Code of the Philippines, Vol. 3, page 38), and therefore incompatible with good faith (Castan, Derecho Civil, 7th Ed., Vol. 3, page 129; Diaz Pairo, Teoria de Obligaciones, Vol. 1, page 116).

Maritime having acted in bad faith, it was not entitled to ask the court to give it further time to make payment and thereby erase the default or breach that it had deliberately incurred. Thus the lower court committed no error in refusing to extend the periods for payment. To do otherwise would be to sanction a deliberate and reiterated infringement of the contractual obligations incurred by Maritime, an attitude repugnant to the stability and obligatory force of contracts."

The decision reiterated the rule pointed out by the Supreme Court in Manuel vs. Rodriguez, 109 Phil. 1, p. 10, that:

"In contracts to sell, where ownership is retained by the seller and is not to pass until the full payment of the price, such payment, as we said is a positive suspensive condition, the failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force, in accordance with Article 1117 of the Old Civil Code. To argue that there was only a casual breach is to proceed from the assumption that the contract is one of absolute sale, where non-payment is a resolutory condition, which is not the case."

Continuing, the Supreme Court declared:

"x x x appellant overlooks that its contract with appellee Myers is not the ordinary sale envisaged by Article 1592, transferring ownership simultaneously with the delivery of the real property sold, but one in which the vendor retained ownership of the immovable object of the sale, merely undertaking to convey it provided the buyer strictly complied with the terms of the contract (see paragraph [d], ante, page 5). In suing to recover possession of the building from Maritime, appellee Myers is not after the resolution or setting aside of the contract and the restoration of the parties to the status quo ante, as contemplated by Article 1592, but precisely enforcing the provisions of the agreement that it is no longer obligated to part with the ownership or possession of the property because Maritime failed to comply with the specific condition precedent, which is to pay the installments as they fell due.

The distinction between contracts of sale and contracts to sell with reserved title has been recognized by this

Court in repeated decisions upholding the power of promisors under contracts to sell in case of failure of the other party to complete payment, to extrajudicially terminate the operation of the contract, refuse conveyance and retain the sums or installments already received, where such rights are expressly provided for, as in the case at bar."

In the Resolution denying the first Motion for Reconsideration, 46 SCRA 381, the Court again speaking thru Justice J.B.L. Reyes, reiterated the rule that in a contract to sell, the full payment of the price through the punctual performance of the monthly pay-ments is a condition precedent to the execution of the final sale and to the transfer of the property from the owner to the proposed buyer; so that there will be no actual sale until and unless full payment is made.

The Court further ruled that in seeking to oust Maritime for failure to pay the price as agreed upon, Myers was not rescinding (or more properly, resolving) the contract but precisely enforcing it according to its expressed terms. In its suit, Myers was not seeking restitution to it of the ownership of the thing sold (since it was never disposed of), such restoration being the logical consequence of the fulfillment of a resolutive condition, expressed or implied (Art. 1190); neither was it seeking a declaration that its obligation to sell was extinguished. What is sought was a judicial declaration that because the suspensive condition (full and punctual payment) had not been fulfilled, its obligation to sell to Maritime never arose or never became effective and, therefore, it (Myers) was entitled to repossess the property object of the contract, possession being a mere incident to its right of ownership.

The decision also stressed that "there can be no rescission or resolution of an obligation as yet non-existent, because the suspensive condition did not happen. Article 1592 of the New Civil Code (Art. 1504 of Old Civil Code) requiring demand by suit or notarial act in case the vendor of realty wants to rescind does not apply to a contract to sell or promise to sell, where title remains with the vendor until fulfillment to a positive condition, such as full payment of the price."(Manuel vs. Rodriguez, 109.Phil. 9)

Maritime's Second Motion for Reconsideration was denied in the Resolution of the Court dated November 16, 1978, 86 SCRA 305, where the governing law and precedents were briefly summarized in the strong and emphatic language of Justice Teehankee, thus:

"(a) The contract between the parties was a contract to sell or conditional sale with title expressly reserved in the vendor Myers Building Co., Inc. (Myers) until the suspensive condition of full and punctual payment of the full price shall have been met on pain of automatic cancellation of the contract upon failure to pay any of the monthly installments when due and retention of the sums theretofore paid as rentals. When the vendee, appellant Maritime, willfully and in bad faith failed since March, 1961 to pay the P5,000. -monthly installments notwithstanding that it was punctually collecting P10,000,-monthly rentals from the lessee Luzon Brokerage. Co., Myers was entitled, as it did in law and fact, to enforce the terms of the contract to sell and to declare the same terminated and cancelled.

(b) Article 1592 (formerly Article 1504) of the new Civil Code is not applicable to such contracts to sell or conditional sales and no error was committed by the trial court in refusing to extend the periods for payment.

(c) As stressed in the Court's decision, "it is irrelevant whether appellant Maritime's infringement of its contract was casual or serious" for as pointed out in Manuel vs. Rodriguez, '(I)n contracts to sell, whether ownership is retained by the seller and is not to pass until the full payment of the price, such payment, as we said, is a positive suspensive condition, the failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force x x.'

(d) It should be noted, however, that Maritime's breach was far from casual but a most serious breach of contract x x x

(e) Even if the contract were considered an unconditional sale so that Article 1592 of the Civil Code could be

deemed applicable, Myers' answer to the complaint for interpleader in the court below constituted a judicial demand for rescission of the contract and by the very provision of the cited codal article, 'after the demand, the court may not grant him a new term' for payment; and

(f) Assuming further that Article 1191 of the new Civil Code governing rescission of reciprocal obligations could be applied (although Article 1592 of the same Code is controlling since it deals specifically with sales of real property), said article provides that '(T)he court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period' and there exists no 'just cause' as shown above for the fixing of a further period. x x x"

Under the first and second assignments of error which petitioner jointly discusses, he argues that the agreement entered into between him and the respondent is a perfected contract of purchase and sale within the meaning of Article 1475 of the New Civil Code which provides that "the contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contract."

Petitioner contends that "(n)othing in the decision of the courts below would show that ownership of the property remained with plaintiff for so long as the installments have not been fully paid. Which yields the conclusion that, by the delivery of the lots to defendant, ownership likewise was transferred to the latter." (Brief for the Petitioner, p. 15) And he concludes that the sale was consummated by the delivery of the two lots, the subject thereof, by him to the respondent.

Under the findings of facts by the appellate court, it appears that the two lots subject of the agreement between the parties herein were delivered by the petitioner to the private respondent who took possession thereof and occupied the same and thereafter built his house thereon, enclosing the lots with adobe stone walls and barbed wires. But the property being registered under the Land Registration Act, it is the act of registration of the Deed of Sale which could legally effect the transfer of title of ownership to the transferee, pursuant to Section 50 of Act 496. (Manuel vs. Rodriguez, et al., 109 Phil. 1; Buzon vs. Lichauco, 13 Phil. 354; Tuazon vs. Raymundo, 28 Phil. 635; Worcester vs. Ocampo, 34 Phil. 646). Hence, We hold that the contract between the petitioner and the respondent was a contract to sell where the ownership or title is retained by the seller and is not to pass until the full payment of the price, such payment being a positive suspensive condition and failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force.

In the case at bar, there is no writing or document evidencing the agreement originally entered into between petitioner and private respondent except the receipt showing the initial deposit of P150.00 as shown in Exh. "A" and the payment of the 4-months installment made by respondent corresponding to July, 1954 to October, 1954 in the sum of P740.56 as shown in Exh. "B". Neither is there any writing or document evidencing the modified agreement when the 3 lots were changed to Lots 4 and 12 with a reduced area of 725 sq. meters, which are corner lots. This absence of a formal deed of conveyance is a very strong indication that the parties did not intend immediate transfer of ownership and title, but only a transfer after full payment of the price. Parenthetically, We must say that the standard printed contracts for the sale of the lots in the Rockville Subdivision on a monthly installment basis showing the terms and conditions thereof are immaterial to the case at bar since they have not been signed by either of the parties to this case.

Upon the law and jurisprudence hereinabove cited and considering the nature of the transaction or agreement between petitioner and respondent which We affirm and sustain to be a contract to sell, the following resolutions of petitioner's assignment of errors necessarily arise, and so We hold that:

1. The first and second assignments of errors are without merit.

The overwhelming weight of authority culminating in the *Luzon Brokerage vs. Maritime* cases has laid down the rule that Article 1592 of the New Civil Code does not apply to a contract to sell where title remains with the vendor until full payment of the price as in the case at bar. This is the ruling in *Caridad Estates vs. Santero*, 71 Phil. 120; *Aldea vs. Inquimboy*, 86 Phil. 1601; *Jocson vs. Capitol Subdivision, Inc.*, L-6573, Feb. 28, 1955; *Miranda vs. Caridad Estates*, L-2077 and *Aspuria vs. Caridad Estates*, L-2121, Oct. 3, 1950, all reiterated in *Manuel vs. Rodriguez, et al.*, 109 Phil. 1, L-13435, July 27, 1960.

We agree with the respondent Court of Appeals that Art. 1191 of the New Civil Code is the applicable provision where the obligee, like petitioner herein, elects to rescind or cancel his obligation to deliver the ownership of the two lots in question for failure of the respondent to pay in full the purchase price on the basis of 120 monthly equal installments, promptly and punctually for a period of 10 years.

2. We hold that respondent as obligor is not entitled to the benefits of paragraph 3 of Art. 1191, N.C.C. Having been in default, he is not entitled to the new period of 90 days from entry of judgment within which to pay petitioner the balance of P11,434.44 with interest due on the purchase price of P12,325.00 for the two lots.

Respondent actually paid P150.00 as deposit under Exh. "A" and P740.56 for the 4-months installments corresponding to the months of July to October, 1954. The judgment of the lower court and the Court of Appeals held that respondent was under the obligation to pay the purchase price of the lots in question on an equal monthly installment basis for a period of ten years, or 120 equal monthly installments. Beginning November, 1954, respondent began to default in complying with his obligation and continued to do so for the remaining 116 monthly installments. His refusal to pay further installments on the purchase price, his insistence that he had the option to pay the purchase price anytime in ten years in spite of the clearness and certainty of his agreement with the petitioner as evidenced further by the receipt, Exh. "B", his dilatory tactic of refusing to sign the necessary contract of sale on the pretext that he will sign later when he shall have updated his monthly payments in arrears but which he never attempted to update, and his failure to deposit or make available any amount since the execution of Exh. "B" on June 28, 1954 up to the present or a period of 26 years, are all unreasonable and unjustified which altogether manifest clear bad faith and malice on the part of respondent Lapuz, making inapplicable and unwarranted the benefits of paragraph 3, Art. 1191, N.C.C. To allow and grant respondent an additional period for him to pay the balance of the purchase price, which balance is about 92% of the agreed price, would be tantamount to excusing his bad faith and sanctioning the deliberate infringement of a contractual obligation that is repugnant and contrary to the stability, security and obligatory force of contracts. Moreover, respondent's failure to pay the succeeding 116 monthly installments after paying only 4 monthly installments is a substantial and material breach on his part, not merely casual, which takes the case out of the application of the benefits of paragraph 3, Art. 1191, N.C.C.

At any rate, the fact that respondent failed to comply with the suspensive condition which is the full payment of the price through the punctual performance of the monthly payments rendered petitioner's obligation to sell ineffective and, therefore, petitioner was entitled to repossess the property object of the contract, possession being a mere incident to his right of ownership (*Luzon Brokerage Co., Inc. vs. Maritime Building Co., Inc., et al.*, 46 SCRA 381).

3. We further rule that there exists no just cause authorizing the fixing of a new period within which private respondent may pay the balance of the purchase price. The equitable grounds or considerations which are the basis of the respondent court in the fixing of an additional period because respondent had constructed valuable improvements on the land, that he has built his house on the property worth P45,000.00 and placed adobe stone

walls with barbed wires around, do not warrant the fixing of an additional period. We cannot sanction this claim for equity of the respondent for to grant the same would place the vendor at the mercy of the vendee who can easily construct substantial improvements on the land but beyond the capacity of the vendor to reimburse in case he elects to rescind the contract by reason of the vendee's default or deliberate refusal to pay or continue paying the purchase price of the land. Under this design, stratagem or scheme, the vendee can cleverly and easily "improve out" the vendor of his land.

More than that, respondent has not been honest, fair and reciprocal with the petitioner, hence it would not be fair and reasonable to the petitioner to apply a solution that affords greater reciprocity of rights which the appealed decision tried to effect between the parties. As matters stand, respondent has been enjoying the possession and occupancy of the land without paying the other 116 monthly installments as they fall due. The scales of justice are already tipped in respondent's favor under the amended decision of the respondent court. It is only right that We strive and search for the application of the law whereby every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. (Art. 19, New Civil Code)

In the case at bar, respondent has not acted in good faith. With malice and deliberate intent, he has twisted the clear import of his agreement with the petitioner in order to suit his ends and delay the fulfillment of his obligation to pay the land he had enjoyed for the last 26 years, more than twice the period of ten years that he obliged himself to complete payment of the price.

4. Respondent's contention that petitioner has not complied with his obligation to put up the necessary facilities in the Rockville Subdivision is not sufficient nor does it constitute good reason to justify the grant of an additional period of 90 days from entry of judgment within which respondent may pay the balance of the purchase price agreed upon. The judgment of the appellate court concedes that petitioner's failure to comply with his obligation to put up the necessary facilities in the subdivision will not deter him from asking for the rescission of the agreement since his obligation is not correlative with respondent's obligation to buy the property. Since this is so conceded, then the right of the petitioner to rescind the agreement upon the happening or in the event that respondent fails or defaults in any of the monthly installments would be rendered nugatory and ineffective. The right of rescission would then depend upon an extraneous consideration which the law does not contemplate.

Besides, at the rate the two lots were sold to respondent with a combined area of 725 sq. meters at the uniform price of P17.00 per sq. meter, making a total price of P12,325.00, it is highly doubtful if not improbable that aside from his obligation to deliver title and transfer ownership to the respondent as a reciprocal obligation to that of the respondent in paying the price in full and promptly as the installments fall due, petitioner would have assumed the additional obligation "to provide the subdivision with streets x x x provide said streets with street pavements, concrete curbs and gutters, fillings as required by regulations, adequate drainage facilities, tree plantings, adequate water facilities" as required under Ordinance No. 2969 of Quezon City approved on May 11, 1956 (Answer of Defendant, Record on Appeal, pp. 35-36) which was two years after the agreement in question was entered into in June, 1954.

The fact remains, however, that respondent has not protested to the petitioner nor to the authorities concerned the alleged failure of petitioner to put up and provide such facilities in the subdivision because he knew too well that he has paid only the aggregate sum of P890.56 which represents more or less 7% of the agreed price of P12,325.00 and that he has not paid the real estate taxes assessed by the government on his house erected on the property under litigation. Neither has respondent made any allegation in his Answer and in all his pleadings before the court up to the promulgation of the Resolution dated October 12, 1970 by the Court of Appeals, to the effect that he was entitled to a new period within which to comply with his obligation, hence the Court could not

proceed to do so unless the Answer is first amended. (*Gregorio Araneta, Inc. vs. Philippine Sugar Estates Development Co., Ltd.*, G.R. No. L-22558, May 31, 1967, 20 SCRA 330, 335). It is quite clear that it is already too late in the day for respondent to claim an additional period within which to comply with his obligation.

Precedents there are in Philippine jurisprudence where the Supreme Court granted the buyer of real property additional period within which to complete payment of the purchase price on grounds of equity and justice as in (1) *J.M. Tuazon Co., Inc. vs. Javier*, 31 SCRA 829 where the vendee religiously satisfied the monthly installments for eight years and paid a total of P4,134.08 including interests on the principal obligation of only P3,691.20, the price of the land; after default, the vendee was willing to pay all arrears, in fact offered the same to the vendor; the court granted an additional period of 60 days from receipt of judgment for the vendee to make all installment payments in arrears plus interest; (2) in *Legarda Hermanos vs. Saldaña*, 55 SCRA 324, the Court ruled that where one purchases from a subdivision owner two lots and has paid more than the value of one lot, the former is entitled to a certificate of title to one lot in case of default.

On the other hand, there are also cases where rescission was not granted and no new or additional period was authorized. Thus, in *Caridad Estates vs. Santero*, 71 Phil. 114, the vendee paid, totalling P7,590.00 or about 25% of the purchase price of P30,000.00 for the three lots involved and when the vendor demanded revocation upon the vendee's default two years after, the vendee offered to pay the arrears in check which the vendor refused; and the Court sustained the revocation and ordered the vendee ousted from the possession of the land. In *Ayala y Cia vs. Arcache*, 98 Phil. 273, the total price of the land was P457,404.00 payable in installments; the buyer initially paid P100,000.00 or about 25% of the agreed price; the Court ordered rescission in view of the substantial breach and granted no extension to the vendee to comply with his obligation.

The doctrinal rulings that "a slight or casual breach of contract is not a ground for rescission. It must be so substantial and fundamental to defeat the object of the parties" (*Gregorio Araneta, Inc. vs. Tuazon de Paterno*, L-2886, August 22, 1962; *Villanueva vs. Yulo*, L-12985, Dec. 29, 1959); that "where time is not of the essence of the agreement, a slight delay on the part of one party in the performance of his obligation is not a sufficient ground for the rescission of the agreement" (*Biando vs. Embestro*, L-11919, July 27, 1959; cases cited in *Notes* appended to *Universal Foods Corporation vs. Court of Appeals*, 33 SCRA 1), convince and persuade Us that in the case at bar where the breach, delay or default was committed as early as in the payment of the fifth monthly installment for November, 1954, that such failure continued and persisted the next month and every month thereafter in 1955, 1956, 1957 and year after year to the end of the ten-year period in 1964 (10 years is respondent's contention) and even to this time, now more than twice as long a time as the original period without respondent adding, or even offering to add a single centavo to the sum he had originally paid in 1954 which represents a mere 7% of the total price agreed upon, equity and justice may not be invoked and applied. One who seeks equity and justice must come to court with clean hands, which can hardly be said of the private respondent.

One final point, on the supposed substantial improvements erected on the land, respondent's house. To grant the period to the respondent because of the substantial value of his house is to make the land an accessory to the house. This is unjust and unconscionable since it is a rule in Our law that buildings and constructions are regarded as mere accessories to the land which is the principal, following the Roman maxim "*omne quod solo inadeficatur solo cedit*" (Everything that is built on the soil yields to the soil).

Pursuant to Art. 1191, New Civil Code, petitioner is entitled to rescission with payment of damages which the trial court and the appellate court, in the latter's original decision, granted in the form of rental at the rate of P60.00 per month from August, 1955 until respondent shall have actually vacated the premises, plus P2,000.00 as attorney's fees. We affirm the same to be fair and reasonable. We also sustain the right of the petitioner to the possession of the land, ordering thereby respondent to vacate the same and remove his house therefrom.

WHEREFORE, IN VIEW OF THE FOREGOING, the Resolution appealed from dated October 12, 1970 is hereby REVERSED. The decision of the respondent court dated April 23, 1970 is hereby REINSTATED and AFFIRMED, with costs against private respondent.

SO ORDERED.

Teehankee, Acting C.J., Makasiar, Fernandez, De Castro, and Melencio-Herrera, JJ., concur.

[1] Special Eighth Division, Alvendia, J., ponente, Palma, and A. Reyes, JJ., concurring.

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