

J.M. TUASON & CO., INC., PLAINTIFF-APPELLANT, VS. LIGAYA JAVIER, DEFENDANT-APPELLEE.

G.R. No. L-28569. February 27, 1970

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

This appeal, taken by plaintiff J.M. Tuason & Co., Inc., from a decision of the Court of First Instance of Rizal, has been certified to Us by the Court of Appeals, only questions of law being raised therein.

The record shows that, on September 7, 1954, a contract was entered into between the plaintiff, on the one hand, and defendant-appellee, Ligaya Javier, on the other, whereby plaintiff agreed to sell, transfer and convey to the defendant a parcel of land known as Lot No. 28, Block No. 356, PSD 30328, of the Sta. Mesa Heights Subdivision, for the total sum of P3,691.20, with interest thereon at the rate of ten (10) per centum a year, payable as follows: P396.12 upon the execution of the contract and P43.92 every month thereafter, for a period of ten (10) years. The sixth paragraph of said contract provided that:

"x x x In case the party of the SECOND PART fails to satisfy any monthly installments, or any other payments herein agreed upon, he is granted a month of grace within which to make the retarded payment, together with the one corresponding to the said month of grace; it is understood, however, that should the month of grace herein granted to the party of the SECOND PART expire without the payments corresponding to both months having been satisfied, an in-terest of 10% per annum will be charged on the amount he should have paid; it is understood further, that should a period of 90 days elapse, to begin from the expiration of the month of grace herein mentioned, and the party of the SECOND PART has not paid all the amounts he should have paid with the corresponding interest up to that date, the party of the FIRST PART has the right to declare this contract cancelled and of no effect, and as consequence thereof, the party of the FIRST PART may dispose of the parcel or parcels of land covered by this contract in favor of other persons, as if this contract had never been entered into. In case of such cancellation of this contract, all the amounts paid in accordance with this agreement together with all the improvements made on the premises, shall be considered as rents paid for the use and occupation of the above mentioned premises, and as payment for the damages suffered by fail-ure of the party of the SECOND PART to fulfill his part of the agreement; and the party of the SECOND PART hereby re-nounces all his right to demand or reclaim the return of the same and obliges himself to peacefully vacate the premises and deliver the same to the party of the FIRST PART."

Upon the execution of the contract and the payment of the first installment of P396.12, the defendant was placed in possession of the land. Thereafter and until January 5, 1962, she paid the stipulated monthly installments which, including the initial payment of P396.12, aggregated P4,134.08. Subsequently, however, she defaulted in the payment of said installments, in view of which, on May 22, 1964, plaintiff informed her by letter that their contract had been rescinded. Defendant having thereafter failed or refused to vacate said land, on July 9, 1964, plaintiff commenced the present action against her, in the Court of First Instance of Rizal. After alleging substantially the foregoing fact, plaintiff prayed in its complaint that the aforementioned contract be declared validly rescinded and that the defendant and all persons claiming under her be ordered to deliver to the plaintiff

the lot in question, with all the improvements thereon, and to pay a monthly rental of P40.00, from January 5, 1962, until the property shall have been surrendered to the plaintiff, as well as all costs. Admitting that she had defaulted in the payment of the stipulated monthly installments, from January 5, 1962, defendant alleged in her answer that this fact "was due to unforeseen circumstances"; that she is "willing to pay all arrears in installments under the contract" and had "in fact offered the same to the plaintiff"; and that said contract "can not be rescinded upon the unilateral act of the plaintiff." At a pre-trial conference held before said court, the following facts were - in the language of the decision appealed from - agreed upon between the parties:

"x x x that since January 5, 1962, up to the present, the defendant has failed to pay the monthly installments called for in the contract to sell; that in view of the failure of the defendant to pay her installment payments since January 5, 1962, the plaintiff rescinded the contract pursuant to the provision thereof; that after the filing of the complaint, defendant in an attempt to arrive at a compromise agreement with the plaintiff, offered to pay all the installment payments in arrears, the interest thereon from the time of default of payment, reasonable attorney's fees, and the costs of suit; that said offer was repeated by the defendant in writing on December 1, 1964, and also during the pre-trial conference of this case, but said offer was turned down by the plaintiff."

The case having been submitted for decision upon the foregoing stipulation, said court, applying Art. 1592 of our Civil Code, rendered its aforementioned decision, the dispositive part of which reads:

"WHEREFORE, judgment is hereby rendered, declaring that the contract to sell has not yet been rescinded, and ordering the defendant to pay to the plaintiff within sixty (60) days from receipt hereof all the installment payments in arrears together with interest thereon at 10% per annum from January 5, 1962, the date of default, attorney's fees in the sum of P1,000.00, and the costs of suit. Upon payment of same, the plaintiff is ordered to execute in favor of the defendant the necessary deed to transfer to the defendant the title to the parcel of land in question, free from all liens and encumbrances except those provided for in the contract, all expenses which may be incurred in said transfer of title to be paid by the defendant."

Hence, this appeal by plaintiff, based mainly upon the alleged erroneous application to the case at bar of said Art. 1592, pursuant to which:

"In the sale of immovable property, even though it may have been stipulated that upon the 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."

Plaintiff maintains that this provision governs contracts of sale, not contracts to sell, such as the one entered into by the parties in this case. Regardless, however, of the propriety of applying said Art. 1592 thereto, We find that plaintiff herein has not been denied substantial justice, for, according to Art. 1234 of said Code:

"If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee."

In this connection, it should be noted that, apart from the initial installment of P396.12, paid upon the execution of the contract, on September 7, 1954, the defendant religiously satisfied the monthly installments accruing thereafter, for a period of almost eight (8) years, or up to January 5, 1962; that, although the principal obligation under the contract was P3,691.20, the total payments made by the defendant up to January 5, 1962, including stipulated interest, aggregated P4,134.08; that the defendant has offered to pay all of the installments overdue including the stipulated interest, apart from reasonable attorney's fees and the costs; and that, accordingly, the trial court sentenced the defendant to pay all such installments, interest, fees and costs. Thus, plaintiff will thereby recover everything due thereto, pursuant to its contract with the defendant, including such damages as the former may have suffered in consequence of the latter's default. Under these circumstances, We feel that, in the interest

of justice and equity, the decision appealed from may be upheld upon the authority of Art. 1234 of the Civil Code.[1]

WHEREFORE, said decision is hereby affirmed, without special pronouncement as to costs in this instance.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

[1] Sevilla v. Court of Appeals, L-22012, April 28, 1969.

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