

ANGELA I. TUASON, PLAINTIFF AND APPELLANT, VS. ANTONIO TUASON, JR., AND GREGORIO ARANETA, INC., DEFENDANTS AND APPELLEES.*G. R. No. L-3404. April 02, 1951*

Ponente: MONTEMAYOR, J.

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In 1941 the sisters Angela I. Tuason and Nieves Tuason de Barreto and their brother Antonio Tuason Jr., held a parcel of land with an area of 64,928.6 sq. m. covered by Certificate of Title No. 60911 in Sampaloc, Manila, in common, each owning an undivided 1/3 portion. Nieves wanted and asked for a partition of the common property, but failing in this, she offered to sell her 1/3 portion. It seems that the objection to dividing the property was that it would lose in value by the proposed partition. The share of Nieves was offered for sale to her sister and her brother but both declined to buy it. The offer was later made to their mother but the old lady also declined to buy, saying that if the property later increased in value, she might be suspected of having taken advantage of her daughter. Finally, the share of Nieves was sold to Gregorio Araneta Inc., a domestic corporation, and a new Certificate of Title No. 61721 was issued in lieu of the old title No. 60911 covering the same property. The three co-owners agreed to have the whole parcel subdivided into small lots and then sold, the proceeds of the sale to be later divided among them. This agreement is embodied in a document (Exh. 6) entitled "Memorandum of Agreement" consisting of ten pages, dated June 30, 1941.

Before, during and after the execution of this contract (Exh. 6), Atty. J. Antonio Araneta was acting as the attorney-in-fact and lawyer of the two co-owners, Angela I. Tuason and her brother Antonio Tuason Jr. At the same time he was a member of the Board of Directors of the third co-owner, Araneta, Inc.

The pertinent terms of the contract (Exh. 6) may be briefly stated as follows: The three co-owners agreed to improve the property by filling it and constructing roads and curbs on the same and then subdivide it into small lots for sale. Araneta Inc. was to finance the whole development and subdivision; it was to prepare a schedule of prices and conditions of sale, subject to the approval of the two other co-owners; it was invested with authority to sell the lots into which the property was to be subdivided, and execute the corresponding contracts and deeds of sale; it was also to pay the real estate taxes due on the property or of any portion thereof that remained unsold, the expenses of surveying, improvements, etc., all advertising expenses, salaries of personnel, commissions, office and legal expenses, including expenses in instituting all actions to eject all tenants or occupants on the property; and it undertook the duty to furnish each of the two co-owners, Angela and Antonio Tuason, copies of the subdivision plans and the monthly sales and rents and collections made thereon. In return for all this undertaking and obligation assumed by Araneta Inc., particularly the financial burden, it was to receive 50 per cent of the gross selling price of the lots, and any rents that may be collected from the property, while in the process of sale, the remaining 50 per cent to be divided in equal portions among the three co-owners so that each will receive 16.33 per cent of the gross receipts.

Because of the importance of paragraphs 9, 11 and 15 of the contract (Exh. 6), for purposes of reference we are reproducing them below:

"(9) This contract shall remain in full force and effect during all the time that it may be necessary for the Party op the Second Part to fully sell the said property in small and subdivided lots and to fully collect the purchase prices due thereon; it being understood and agreed that said lots may be rented while there are no purchasers thereof;

"(11) The Party of the Second Part (meaning Araneta Inc.) is hereby given full power and authority to sign for and in behalf of all the said co-owners of said property all contracts of sale and deeds of sale of the lots into which this property might be subdivided; the powers herein vested to the Party of the Second Past may not be revoked until the purposes of this contract have been fulfilled and carried out, and the Party of the Second Part may, under its own responsibility and risk, delegate any of its powers under this contract to any of its officers, employees or to third persons;

"(15) No co-owner of the property subject-natter of this contract shall sell, alienate or dispose of his ownership, interest or participation tierein without first giving preference to the other co-owners to purchase and acquire the same under the same terms and conditions as those offered by any other prospective purchaser. Should none of the co-owners of the property subject-matter of this contract exercise the said preference to acquire or purchase the same, then such sale to a third party shall be made subject to all the conditions, terms, and dispositions of this contract; provided, the Parties of the First Part (meaning Angela and Antonio) shall be bound by this contract as long as the Party of the Second Part, namely, the Gregorio Araneta, Inc. is controlled by the members of the Araneta family, who are stockholders of the said corporation at the time of the signing of this contract and/or their lawful heirs;"

On September 16, 1944, Angela I. Tuason revoked the powers conferred on her attorney-in-fact and lawyer, J. Antonio Araneta. Then in a letter dated October 19,1946, Angela notified Araneta, Inc. that because of alleged breach of the terms of the "Memorandum of Agreement" (Exh. 6) and abuse of powers granted to it in the document, she had decided to rescind said contract and she asked that the property held in common be partitioned. Later, on November 20,1946, Angela filed a complaint in the Court of First Instance of Manila asking the court to order the partition of the property in question and that she be given 1/3 of the same including rents collected during the time that Araneta Inc., administered said property.

The suit was directed principally against Araneta, Inc. Plaintiff's brother, Antonio Tuason Jr., one of the co-owners evidently did not agree to the suit and its purpose, for he joined Araneta, Inc. as a co-defendant After hearing and after considering the extensive evidence introduced, oral and documentary, the trial court presided over by Judge Emilio Pefia in a long and considered decision dismissed the complaint without pronouncement as to costs. The plaintiff appealed from that decision, and because the property is valued at more than P50,000, the appeal came directly to this Court.

Some of the reasons advanced by appellant to have the memorandum contract (Exh. 6) declared null and void or rescinded are that she had been tricked into signing it; that she was given to understand by Antonio Araneta acting as her attorney-in-fact and legal adviser that said contract would be similar to another contract of subdivision of a parcel into lots and the sale thereof entered into by Gregorio Araneta Inc., and the heirs of D. Tuason, Exhibit "L", but it turned out that the two contracts widely differed from each other, the terms of contract Exh. "L" being relatively much more favorable to the owners therein and less favorable to Araneta Inc.; that Atty. Antonio Araneta was more or less disqualified to act as her legal adviser as he did because he was one of the officials of Araneta Inc., and finally, that the defendant company has violated the terms of the contract (Exh. 6) by not previously showing her the plans of the subdivision, the schedule of prices and conditions of the sale, in not introducing the necessary improvements into the land and in not delivering to her her share of the proceeds of the

rents and sales.

We have examined Exh. "L" and compared the same with the contract (Exh. 6) and we agree with the trial court that in the main the terms of both contracts are similar and practically the same. Moreover, as correctly found by the trial court, the copies of both contracts were shown to the plaintiff Angela and her husband, a broker, and both had every opportunity to go over and compare them and decide on the advisability of or disadvantage in entering into the contract (Exh. 6); that although Atty. Antonio Araneta was an official of the Araneta Inc.; being a member of the Board of Directors of the Company at the time that Exhibit "6" was executed, he was not the party with which Angela contracted, and that he committed no breach of trust. According to the evidence Araneta, Inc. showed to her the plans of the subdivision and all the pertinent papers, and sent to her checks covering her share of the proceeds of the sale but that she refused to receive the same; and that as a matter of fact, at the time of the trial, Araneta Inc., had spent about P117,000 in improvement and had received as proceeds on the sale of the lots the respectable sum of P1,265,538.48. We quote with approval that portion of the decision appealed from on these points:

"The evidence in this case points to the fact that the actuations of J. Antonio Araneta in connection with the execution of exhibit 6 by the parties, are above board. He committed nothing that is violative of the fiduciary relationship existing between him and the plaintiff. The act of J. Antonio Araneta in giving the plaintiff a copy of exhibit 6 before the same was executed, constitutes a full disclosure of the facts, for said copy contains all that appears now in exhibit 6.

"Plaintiff charges the defendant Gregorio Araneta, Inc. with infringing the terms of the contract in that the defendant corporation has failed (1) to make the necessary improvements on the property as required by paragraphs 1 and 3 of the contract; (2) to submit to the plaintiff from time to time schedule of prices and conditions under which the subdivided lots are to be sold; and to furnish the plaintiff a copy of the subdivision plans, a copy of the monthly statement of the sales and rents of the subdivided lots, and a statement of the monthly gross collections from the sale of the property.

"The Court finds from the evidence that the defendant Gregorio Araneta, Incorporated has substantially complied with the obligation imposed by the contract exhibit 6 in its paragraph 1, and that for improvements alone, it has disbursed the amount of P117,167.09. It has likewise paid taxes, commissions and other expenses incidental to its obligations as defined in the agreement.

"With respect to the charge that Gregorio Araneta, Incorporated has failed to submit to plaintiff a copy of the subdivision plans, list of prices and the conditions governing the sale of subdivided lots, and monthly statement of collections from the sale of the lots, the Court is of the opinion that it has no basis. The evidence shows that the defendant corporation submitted to the plaintiff periodically all the data relative to prices and conditions of the sale of the subdivided lots, together with the amount corresponding to her. But without any justifiable reason, she refused to accept them. With the indifferent attitude adopted by the plaintiff, it was thought useless for Gregorio Araneta, Incorporated to continue sending her statement of accounts, checks and other things. She had shown on various occasions that she did not want to have any further dealings with the said corporation. So, if the defendant corporation proceeded with the sale of the subdivided lots without the approval of the plaintiff, it was because it was under the correct impression that under the contract exhibit 6 the decision of the majority co-owners is binding upon all the three.

"The Court feels that rescission of the contract exhibit 6 is not in order. Even granting that the defendant corporation committed minor violations of the terms of the agreement, the general rule is that 'rescission will not be permitted for a slight or casual breach of the contract, but only for such breaches as are so substantial and fundamental as to defeat the object of the parties in making the agreement' (Song Fo & Co. vs. Hawaiian-Philippine Co., 47 Phil. 821)."

As regards improvements, the evidence shows that during the Japanese occupation from 1942 and up to 1946, the Araneta Inc. although willing to fill the land, was unable to obtain the equipment and gasoline necessary for filling the low places within the parcel. As to sales, the evidence shows that Araneta Inc. purposely stopped selling the lots during the Japanese occupation, knowing that the purchase price would be paid in Japanese military notes; and Atty. Araneta claims that for this, plaintiff should be thankful because otherwise she would have received these notes as her share of the receipts, which currency later became valueless.

But the main contention of the appellant is that the contract (Exh. 6) should be declared null and void because its terms, particularly paragraphs 9, 11 and 15 which we have reproduced, violate the provisions of Art. 400 of the Civil Code, which for the purposes of reference we quote below:

"ART. 400. No co-owner shall be obliged to remain a party to the community. Each may, at any time, demand the partition of the thing held in common.

"Nevertheless, an agreement to keep the thing undivided for a specified length of time, not exceeding ten years, shall be valid. This period may be a new agreement."

We agree with the trial court that the provisions of Art. 400 of the Civil Code are not applicable. The contract (Exh. 6) far from violating the legal provision that forbids a co-owner being obliged to remain a party to the community, precisely has for its purpose and object the dissolution of the co-ownership and of the community by selling the parcel held in common and dividing the proceeds of the sale among the co-owners. The obligation imposed in the contract to preserve the co-ownership until all the lots shall have been sold, is a mere incident to the main object of dissolving the co-ownership. By virtue of the document Exh. 6, the parties thereto practically and substantially entered into a contract of partnership as the best and most expedient means of eventually dissolving the co-ownership, the life of said partnership to end when the object of its creation shall have been attained.

This aspect of the contract is very similar to and was perhaps based on the other agreement or contract (Exh. "L") referred to by appellant where the parties thereto in express terms entered into a partnership, although this object is not expressed in so many words in Exh. 6. We repeat that we see no violation of Art. 400 of the Civil Code in the parties entering into the contract (Exh. 6) for the very reason that Art. 400 is not applicable.

Looking at the case from a practical standpoint as did the trial court, we find no valid ground for the partition insisted upon by the appellant. We find from the evidence as was done by the trial court that of the 64,928.6 sq. m. which is the total area of the parcel held in common, only 1,600 sq. m. or 2.5 per cent of the entire area remained unsold at the time of the trial in the year 1947, while the great bulk of 97.5 per cent had already been sold. As well observed by the court below, the partnership is in the process of being dissolved and is about to be dissolved, and even assuming that Art. 400 of the Civil Code were applicable, under which the parties by agreement may agree to keep the thing undivided for a period not exceeding 10 years, there should be no fear that the remaining 1,600 sq. m. could not be disposed of within the four years left of the ten-year period fixed by Art. 400.

We deem it unnecessary to discuss and pass upon the other points raised in the appeal and which counsel for appellant has extensively and ably discussed, citing numerous authorities. As we have already said, we have viewed the case from a practical standpoint, brushing aside technicalities and disregarding any minor violations of the contract, and in deciding the case as we do, we are fully convinced that the trial court and this Tribunal are carrying out in a practical and expeditious way the intentions and the agreement of the parties contained in the contract (Exh. 6), namely, to dissolve the community and co-ownership, in a manner most profitable to the said parties.

In view of the foregoing, the decision appealed from is hereby affirmed. There is no pronouncement as to costs.

So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo and Bautista Angelo, JJ., concur.

PARAS, C. J.:

I certify that Mr. Justice Feria voted to affirm.

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