

ANTONIO G. DE SANTOS, PETITIONER AND APPELLANT, VS. CITY OF MANILA AND ARELLANO UNIVERSITY, INC., RESPONDENTS AND APPELLEES.

G.R. No. L-21677. June 29, 1972

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petitioner-appellant seeks the review by certiorari of a decision dated July 11, 1963 of the Court of Appeals, in CA-G.R. No. 29354-R, which affirmed that of the Court of First Instance of Manila in Civil Case No. 39730.

The facts as found by the appellate court are as follows:

"On October 1, 1958, a contract of exchange was made and entered into by and between the City of Manila and the Arellano University, Inc., in accordance with, and by virtue of, Resolution No. 442 of the Municipal Board of Manila, adopted on August 15, 1958, and approved by the City Mayor on August 22, 1958, whereby five parcels of land of the City of Manila (Lots 1, 2, 3, 4 and 5, Psu-167195) containing an aggregate area of 2458.3 square meters, more or Less, were exchanged for three parcels of land of the Arellano University, Inc. (Lots 4-A, 9-A, and 10-A, Psd-53347) containing an aggregate area of 2171.4 square meters, more or less, which were needed for the construction of the Azcarraga (now Claro M. Recto) Extension.

"On account of said contract of exchange, (the present) action was brought on March 25, 1959, by Antonio G. de Santos, plaintiff, against the City of Manila and the Arellano University, Inc., defendants, (1) to declare the said contract of exchange null and void insofar as Lot No. 1 of Psu-167195 is concerned; (2) in the event that the validity of said contract is sustained, to declare Lot 1 subject to plaintiff's right of redemption within 30 days from the written notice of such exchange; and (3) in the event that said Lot 1 be declared not to belong to the City of Manila, to enjoin the said City, 'in the event that it finally acquires the aforesaid property, to respect plaintiff's right of preemption.'

"Defendant University filed answer with counterclaim for P5,000.00 'for services of counsel to protect its interests and defend this suit against the unfounded complaint of plaintiff.'

"Defendant City also filed answer, alleging that it is the owner of the lot in question, Lot No. 1 of Psu-167195, and that plaintiff has no preferential or better right than defendant Arellano University to acquire said lot by preemption, legal redemption, sale, exchange or other form of acquisition.

"The lot under controversy — Lot No. 1 Psu-167195 — contains 221.50 square meters. It was a part of the partially dried bed of the Estero de San Miguel or Sampaloc, and is situated south of Lot No. 4, Block 2646, Manila Cadastre, which contains an area of 1460 square meters and which was acquired by plaintiff on January 31, 1958 from Enrique C. Lopez (Exh. F). It also adjoins the properties belonging to the Arellano University, Inc..

"By letter of May 14, 1957, the City of Manila advised the Arellano University, Inc., that about 2,400 square meters of its site on Legarda Street were needed by the City for the construction of Azcarraga extension. This letter was answered on May 21, 1957, with the proposition that in exchange for said 2,400 square meters, the

City cede to the University the esteros adjoining the Arellano site, on the basis of 2 square meters of the estero (filled) for every square meter of the Arellano land, or in case of unfilled esteros, on the basis of 3 to 1 (Exh. 2). The negotiations culminated in the passage of the aforementioned Resolution No. 442 followed by the execution of the contract of exchange sought to be annulled.

"Upon the other hand, Enrique C. Lopez, predecessor-in-interest of plaintiff Antonio G. de Santos, having been advised that his property, Lot 4, Block 2646, would be affected by the widening of Legarda St., Sampaloc, and that the necessary area (56 sq. m.) would be expropriated, wrote the City Engineer under date of August 8, 1957, proposing that the required area 'be exchanged with the City property back of my same Lot 4, Block 2646. * * * The City property at the back of my lot, I am referring to, is at present a part of the Estero de San Miguel' (Exh. E). This letter of Mr. Lopez was coursed through official channels, and the City Appraisal Committee stated that the exchange of the lot of Mr. Enrique C. Lopez affected by the widening of Legarda St., with the lot (around 190 sq. m.) formerly a part of the abandoned estero bed 'may be made on the basis of meter for meter, the excess area in favor of the City to be paid for at the rate of P45.00 per square meter' (Exh. E-3). The papers were then forwarded to the City Mayor by the City Engineer per indorsement of April 15, 1958 (Exh. E-6). Meanwhile, on January 31, 1958, the aforesaid Lot 4, Block 2646, Manila Cadastre, was exchanged by Mr. Enrique C. Lopez for 6 parcels of land situated in Jose Abad Santos belonging to the herein plaintiff, a copy of the deed of exchange being Exhibit F. By letter dated February 25, 1959 (Exh. J-1), the City Mayor informed plaintiff, in effect, that his Office approved an indorsement of the Officer in charge of the Department of Engineering and Public Works of the City (Exh. J-2) wherein it was recommended that 'action on the claim of Dr. Antonio Santos as successor-in-interest of Mr. Lopez be held in abeyance,' for the reasons stated therein, to wit:

'Azcarraga Extension was planned long before the war. It is considered as a major thoroughfare to bypass Legarda. After the war, with the creation of the National Planning Commission, Azcarraga Extension was again incorporated in their plans so that the opening of Azcarraga Extension from Mendiola to the Rotonda is being given great importance. Azcarraga Extension passes thru the property of the Arellano University and the San Beda College on which we have an expropriation proceedings against the College. The expropriation case is now in court and the chances are great that we will win the case.

'There were plans before to widen Legarda to relieve traffic on this street, but in view of the tremendous cost of expropriation involved and in view of the proposed opening of the Azcarraga Extension, negotiations for the widening of Legarda Street even on a piece-meal basis were suspended temporarily.

'In view of the above, any exchange now involving the widening of Legarda Street with any property that the City has, should be held in abeyance. On the other hand, efforts should be concentrated on the acquisition of properties along Azcarraga Extension because of its prime importance for lessening traffic on Legarda without widening it.' "

After hearing, the trial court on March 7, 1961 rendered judgment for the defendants holding that plaintiff has no right to exercise any right of pre-emption or redemption over the lot in question; denying the alternative cause of action for annulment of the deed of exchange on the ground that such an issue cannot be raised by plaintiff, who is not a proper party in interest; dismissing the complaint; and directing plaintiff to pay defendant Arellano University the sum of P5,000.00 as attorney's fees, with costs against the plaintiff (Annex "E", pp. 67-76, ROA).

On appeal by plaintiff, the Court of appeals affirmed on July 11, 1963 the above decision of the trial court (Annex "A", pp. 24-32, rec.).

Hence, this present petition for review by certiorari.

The assignment of errors posed by petitioner-appellant in his brief boils down to two issues: (1) whether or not petitioner-appellant has any right of pre-emption or redemption over Lot No. 1 of Psu-167195, or, as an

alternative cause of action, to seek the annulment of the deed of exchange executed by and between respondent-appellees; and (2) whether or not the award of P5,000.00 as attorney's fees in favor of Arellano University is justified.

Petitioner-appellant has no right to pre-empt or redeem the lot in question as adjoining owner under the pertinent provision of law on the matter, Article 1622 of the new Civil Code, thus:

"Art. 1622. Whenever a piece of urban land is so small and so situated that a major portion thereof cannot be used for any practical purpose within a reasonable time, having been bought merely for speculation, is about to be re-sold, the owner of any adjoining land has a right of pre-emption at a reasonable price.

"If the re-sale has been perfected, the owner of the adjoining land shall have a right of redemption, also at a reasonable price.

"When two or more owners of adjoining lands, wish to exercise the right of pre-emption or redemption, the owner whose intended use of the land in question appears best justified shall be preferred."

The aforequoted provision grants to the adjacent owner the right of pre-emption under paragraph one, if the urban land is about to be re-sold, and the right of redemption under paragraph two, if the re-sale has been perfected. The exercise of either right, however, is premised on the existence of two conditions, namely: (1) the piece of urban land is so small that it cannot be used for any practical purpose within a reasonable time; and (2) such small urban land was bought merely for speculation.[1]

In the instant case, petitioner-appellant had neither alleged in his complaint nor proved; either that Lot No. 1 of Psu-167195 "is so small and so situated that a major portion thereof cannot be used for any practical purpose"; or that it has "been bought merely for speculation"; or that it "is about to be re-sold." On the contrary, the Court of Appeals found that Lot No. 1 is a portion of a partially dried bed of Estero de San Miguel or Sampaloc, which finding of fact is conclusive. The City of Manila did not acquire it by purchase. The Court of Appeals likewise determined that said Lot No. 1 is also adjacent to the lots of the defendant-appellee University, which determination is beyond review by US. It is not disputed that the aforesaid lot in controversy consists of 221.50 square meters, more or less, an area bigger than the average of lots in Manila as found by the trial court. Besides, it is alleged by respondent-appellee Arellano University that, as an educational institution whose present site is not enough for its needs, it can devote said parcel of land to serve public interest (Annex "B", p. 58, ROA), which intended use entitles the University to preference under the last paragraph of Article 1622 aforecited. These facts alone would be sufficient to negate any claim that the area of the controverted urban lot is so small and so situated that a major portion thereof may not be used for any practical purpose within a reasonable time. Respondent-appellee City of Manila, as owner, exchanged the disputed lot and other lots belonging to it, with those of respondent-appellee Arellano University, because the former needed portions of properties of the latter for the Azcarraga (now Claro M. Recto) Street extension; and such an exchange would not necessitate disbursements of funds by respondent-appellee City of Manila. And it has not been alleged nor shown, either, that respondent-appellee City of Manila had the intention then to sell the said property.[2] Consequently, petitioner-appellant is not entitled to the benefits of Article 1622 above-cited.

Petitioner-appellant contends that he is entitled to pre-empt or to redeem Lot No. 1 of Psu-167195 under precedents and established policy of respondent-appellee City of Manila. The latter, however, maintains that said alleged precedents and policy are at most only recommendatory to its Municipal Board. At any rate, all that petitioner-appellant presented on this point were communications between City of Manila officials and his predecessor-in-interest, Enrique Lopez, regarding the latter's proposal to exchange his lot which may be affected by the widening of Legarda Street with City property, a part of the Estero de San Miguel which includes the

controverted lot. If any right, therefore, were at all acquired by petitioner-appellant from Enrique Lopez, it was but the right to pursue the latter's claim to its legitimate end. However, as stated in the portion of the appellate court's decision aforequoted, action on this matter was held in abeyance, as the extension of Azcarraga Street was given priority over the widening of Legarda Street. It, thus, becomes obvious that the basis of petitioner-appellant's claim failed to materialize. On the other hand, negotiations between respondent-appellees, which antedated the claims of Enrique Lopez and petitioner-appellant, were carried out successfully and culminated in the passage of Resolution No. 442 of the Municipal Board of respondent-appellee City of Manila followed by the execution of the contract of exchange between respondents-appellees. As a necessary consequence, the nebulous right of pre-emption or redemption of petitioner-appellant completely vanished.

A person, who is not a party obliged principally or subsidiarily under a contract, may exercise an action for nullity of the contract if he is prejudiced in his rights with respect to one of the contracting parties, and can show detriment which would positively result to him from the contract in which he had no intervention.[3]

The said contract of exchange is not detrimental to the right or interest of petitioner-appellant; because he has neither the right of pre-emption nor redemption over the disputed lot. Petitioner-appellant, therefore, cannot legally seek the annulment of said deed of exchange.

Petitioner-appellant contests the award of attorney's fees on the ground that it is not sound policy to place a penalty on the right to litigate. However, the award of attorney's fees is a matter essentially discretionary with the trial court. Paragraph 4 of Article 2208, Civil Code, authorizes such an award, since the instant action is clearly unfounded, and no abuse of discretion having been shown, the award should not be disturbed.[4]

WHEREFORE, the appealed decision is hereby affirmed, and the appeal is hereby dismissed, with costs against petitioner-appellant.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, and Antonio, JJ., concur.

[1] De la Cruz vs. Cruz, L-27759, Apr. 17, 1970, 32 SCRA 307, 311; Sorrente vs. Court of Appeals, L-17343, Aug. 31, 1963, 62 O.G. 7013, 8 SCRA 750, 755-756.

[2] De la Cruz vs. Cruz, *supra*; Soriente vs. Court of Appeals, *supra*.

[3] Teves vs. People's Homesite & Housing Corporation, L-21498, June 27, 1968, 23 SCRA 1141, 1147-1148; Ibañez vs. Hongkong & Shanghai Bank, Feb. 26, 1912, 22 Phil. 572.

[4] De la Cruz vs. L-27759, Apr. 17, 1970, 32 SCRA 307, 313; Lopez, et. al. vs. Gonzaga, et. al., L-18788, Jan. 31, 1964, 10 SCRA 167, 180; Francisco vs. GSIS, L-18287, March 30, 1963, 7 SCRA 577, 587; Heirs of Justiva, et. al. vs. Gustilo, et. al., L-16396, Jan. 31, 1963, 7 SCRA 72, 73-74.

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