

**CONSOLACION DUQUE SALONGA ASSISTED BY HER HUSBAND
WENCESLAO SALONGA, PLAINTIFF-APPELLANT, VS. JULITA B.
FARRALES, AND THE SHERIFF OF OLONGAPO CITY,
DEFENDANTS-APPELLEES.**

G.R. No. L-47088. July 10, 1981

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is an appeal certified to this Court by the Court of Appeals[1] from the decision of the Court of First Instance of Zambales and Olongapo City, Third Judicial District, Branch III, Olongapo City, in Civil Case No. 1144-0, entitled "Consolacion Duque Salonga, assisted by her husband, Wenceslao Salonga, Plaintiff, versus Julita B. Farrales, and The Sheriff of Olongapo City, Defendants," the dispositive part of which reads:

"FOR THE REASONS GIVEN, judgment is hereby rendered dismissing plaintiff's complaint, as well as defendants' counterclaim.

"Costs against plaintiff.

"SO ORDERED."[2]

The records disclose that on January 2, 1973, the appellant, Consolacion Duque Salonga assisted by her husband, filed a complaint against Julita B. Farrales and the Sheriff of Olongapo City with the Court of First Instance of Zambales and Olongapo City, Third Judicial District, Branch III, Olongapo City, seeking the following relief:

"WHEREFORE, plaintiff most respectfully prays for the following relief:

"a) Ordering defendant Julita Farrales to sell to plaintiff the parcel of land containing an area of 156 Square Meters, more or less, where the house of strong materials of plaintiff exists.

"b) Ordering the defendants not to disturb nor interfere in the peaceful possession or occupation of the land by plaintiff, until a final decision is rendered in this case.

"c) Ordering defendants jointly and severally to pay costs; and,

"d) Granting plaintiff such other relief conformable to law, justice and equity.

"Sta. Rita Olongapo City, December 28, 1972."[3]

that on January 9, 1973, plaintiff-appellant, Salonga filed an urgent petition for the issuance of a writ of preliminary injunction which was duly amended on January 16, 1973,[4] with the following prayer:

"WHEREFORE plaintiff, assisted by counsel most respectfully prays the Hon. Court the following relief:

"a) That a restraining order be issued pending resolution of the instant petition for issuance of a Writ of Preliminary Injunction enjoining defendants, particularly the Sheriff of Olongapo City to restrain from

enforcing the Writ of Execution issued in connection with the judgment rendered in Civil Case 650 for ejectment in the City Court of Olongapo City;

"b) That after due hearing of the present amended petition, a Writ of Preliminary Injunction conditioned upon reasonable bond be issued enjoining the defendants, particularly, the Sheriff of Olongapo City, to restrain from enforcing the Writ of Execution issued in connection with the judgment rendered in Civil Case No. 650 for ejectment in the City Court of Olongapo City, in order to maintain the status of the parties; in order to prevent the infliction of irreparable injury to plaintiff and, in order that whatever judgment may be rendered in this case, may not become moot, academic, illusory and ineffectual, and

"c) Granting plaintiff such other relief conformable to law, justice and equity;"

that on January 22, 1973, the court a quo issued an order temporarily restraining the carrying out of the writ of execution issued pursuant to the judgment rendered by the City Court of Olongapo City in Civil Case No. 650, a suit for ejectment filed by defendant-appellee Farrales against five defendants, among whom the herein appellant, Consolacion Duque Salonga;^[5] that on January 23, 1973, defendant-appellee Farrales filed a motion to deny the motion for the issuance of a preliminary injunction for being vague and her answer with counterclaim to the complaint;^[6] that an opposition to the amended petition for the issuance of a writ of preliminary injunction was also filed by the defendant-appellee Farrales on January 25, 1973;^[7] that in an order dated January 20, 1973, the court a quo denied the petition for the issuance of a preliminary injunction and lifted the restraining order issued on January 22, 1973;^[8] that plaintiff-appellant moved for a reconsideration of the order denying the motion for issuance of a preliminary injunction on January 5, 1973;^[9] which was also denied by the court a quo on February 21, 1973;^[10] that after the trial a on the merits of Civil Case No. 1144-0, the trial Court rendered the judgment under review, dismissing plaintiff's complaint;^[11] that on August 13, 1973, the plaintiff, Consolacion Duque Salonga appealed from the said decision to the Court of Appeals;^[12] that on February 25, 1974, the plaintiff-appellant, Consolacion Duque Salonga, filed with the Court of Appeals a motion for the issuance of a writ of preliminary injunction in aid of appeal;^[13] that in a resolution dated March 6, 1974, the Court of Appeals denied the said motion on the ground that "the writ of preliminary injunction prayed for being intended to restrain the enforcement of the writ of execution issued in Civil Case No. 650 for Ejectment, which is not involved this appeal, and there being no justification for the issuance of the writ x x x";^[14] that on January 13, 1975, the defendant-appellee Julita B. Farrales filed a motion to dismiss the appeal on the ground that the appeal has become moot and academic because "the house of the plaintiffs-appellants, subject matter of this appeal was demolished on October 21, 1974, Annex 'A', Sheriff's return and the land where this house was built was delivered to her and she is now the one in possession x x x";^[15] that the plaintiffs-appellants having failed to comment on the said motion to dismiss when required by the Court of Appeals in its resolution dated January 16, 1975;^[16] the Court of Appeals resolved to submit the motion for decision in a resolution dated April 17, 1975;^[17] and that, likewise the plaintiffs-appellants having failed to show cause why the case should not be submitted for decision without the benefit of appellant's reply brief when required to do so in a Court of Appeals resolution dated May 14, 1975;^[18] the Court of Appeals resolved on July 8, 1975 to submit the case for decision without the benefit of appellants' reply brief.^[19]

In a resolution promulgated on September 15, 1977 the Court of Appeals certified the case to the Supreme Court because the issue raised in the appeal is purely legal.^[20]

The plaintiffs-appellants assign the following errors:

"I - THE COURT A QUO SERIOUSLY ERRED IN DISMISSING APPELLANTS' COMPLAINT AND IN DENYING SAID APPELLANTS' RELIEF TO PURCHASE FROM DEFENDANT-APPELLE JULITA FARRALES THE PIECE OF LAND IN QUESTION.

"II - THE COURT A QUO SERIOUSLY ERRED IN NOT APPLYING TO THE SUIT AT BAR, SECTION 6, UNDER ARTICLE II OF THE NEW CONSTITUTION, WHICH CONTROLS DELIMITS AND REGULATES PRO-PERTY RIGHTS AND PRIVATE GAINS."[21]

The main legal question involved in this appeal is whether or not the court a quo erred in dismissing the complaint for specific performance on the ground that there exists no legally enforceable compromise agreement upon which the defendant-appellee Farrales can be compelled to sell the piece of land in question to plaintiff-appellant, Consolacion Duque Salonga.

The facts, as found by the trial court, are:

"At the pre-trial conference, the parties stipulated on the following facts -

"(1) THAT the personal circumstances of the parties as alleged in the complaint are admitted;

"(2) THAT defendant Farrales is the titled owner of a parcel of residential land situated in Sta. Rita, Olongapo City, identity of which is not disputed, formerly acquired by her from one Leoncio Dytuco who, in turn, acquired the same from the corpus Family, of which only 361 square meters, more or less, now actually belong to said defendant after portions thereof had been sold to Marciala Zarsadias, Catalino Pascual and Rosalina Quiocson;" ("Per Deed of Absolute Sale, Exhibit B, the vendee is actually Dionisio Quiocson);

"(3) THAT even prior to the acquisition by defendant Farrales of the land aforesaid, plaintiff was already in possession as lessee of some 156 square meters thereof, on which she had erected a house, paying rentals thereon first to the original owners and later to defendant Farrales;

"(4) THAT, sometime prior to November, 1968, defendant Farrales filed an ejectment case for non-payment of rentals against plaintiff and her husband-jointly with other lessees of other portions of the land, to wit, Jorge Carvajal, Catalino Pascua, Merciala Zarsadias, and the spouses Cesar and Rosalina Quiocson Civil Case No. 650 of the Olongapo City Court, Branch I, in which, on November 20, 1968, and reiterated on February 4, 1970, a decision was rendered in favor of defendant Farrales and ordering the therein defendants, including plaintiff herein and her husband, to vacate the portion occupied by them and to pay rentals in arrears, attorney's fees and costs;

(5) THAT the decision aforesaid was elevated on appeal to the Court of First Instance of Zambales & Olongapo City, Civil Case No. 581-0 thereof, and, in a Decision dated November 11, 1971 of Branch III thereof, the same was affirmed with modification only as to the amount of rentals arrears to be paid;

(6) THAT the affirmatory decision of the Court of First Instance aforesaid is now final and executory, the records of the case had been remanded to the Court for execution, and the corresponding writ of execution had been issued partially satisfied, as far as plaintiff herein is concerned, by the payment of all rentals in arrears although the removal of said plaintiff's house from the land still remains to be carried out by defendant Sheriff; and

"(7) THAT, even before the rendition of the affirmatory decision of the Court of First Instance, by common consent amongst themselves defendant sold to Catalino Pascua, Marciala Zarsadias and the spouses Cesar and Rosalina Quiocson the areas respectively occupied by them; while, with respect to Jorge Carvajal, in a suit thereafter filed between him and defendant Farrales, a compromise agreement was entered into where-under said defendant undertook to pay for Carvajal's house on her land, so that the decision aforesaid is now being executed, as far as ejectment is concerned, only against plaintiff herein." (Pre-Trial Order, May 17, 1973, pp. 2-5)[22]

The lower court explained its conclusion thus:

x x x "From the very allegations of the complaint, it is clearly admitted -

"5. That plaintiff herein, in view of the sale to three tenants - defendants of the portions of land occupied by each of said three tenant-defendants, by defendant Julita B. Farrales, also offered to purchase from said defendant the area of One Hundred Fifty-Six (156) Square Meters, more or less, where plaintiff's house of strong materials exists, but, defendant Julita B. Farrales, despite the fact that said plaintiff's order to purchase was just, fair and reasonable persistently refused such offer, and instead insisted to execute the judgment rendered in the ejectment case, before the City Court of Olongapo City, thru the herein defendant Sheriff of Olongapo City, with the sole and only purpose of causing damage and prejudice to the plaintiff (Complaint, p. 3 italics supplied).

"Being a judicial admission, the foregoing binds plaintiff who cannot subsequently take a position contradictory thereto or inconsistent therewith (Section 2, Rule 129, Rules of Court; McDaniel vs. Apacible, 44 Phil., 248 Cunanan vs. Amparo, 80 Phil., 227). Hence, if plaintiff's offer to purchase was, as aforesaid persistently refused by defendant, it is obvious that no meeting of the minds took place and, accordingly, no contract, either to sell or of sale, was ever perfected between them. This is only firmed up even more by plaintiff's admission on the witness stand that no agreement respecting the purchase and sale of the disputed land was finalized because, while defendant Farrales purportedly wanted payment in cash, plaintiff did not have any money for that purpose and neither were negotiations ever had respecting any possible arrangement for payment in installments. On all fours to the case at bar, therefore, is Velasco et al., vs. Court of Appeals, et al., G.R. NO. L-31018, June 29, 1973, which was a case for specific performance to compel the therein respondent Magdalena Estate, Inc. to sell a parcel of land to petitioner per an alleged contract of sale in which the Supreme Court ruled:

'It is not difficult to glean from the aforequoted averments that the petitioners themselves admit that they and the respondent still had to meet and agree on how and when the down payment and the installment payments were to be paid. Such being the situation, it cannot, therefore be said that a definite and firm sales agreement between the parties had been perfected over the lot in question. Indeed this Court has already ruled before that a definite agreement on the manner of payment of the purchase price is as essential element in the formation of a binding and enforceable contract of sale.'

"Since contracts are enforceable only from the moment of perfection (Articles 1315 and 1475, Civil Code of the Philippines; Pacific Oxygen and Acetylene Co. vs. Central Bank, G.R. NO. L-21881, March 1, 1968; Atkins, Kroll and Co., Inc., vs. B. Cua Hian Teck, G.R. NO. L-9817, January 31, 1958), and there is here no perfected contract at all, it goes without saying that plaintiff has absolutely nothing to enforce against defendant Farrales, and the fact that defendant Farrales previously sold portions of the land to other lessees similarly situated as plaintiff herein, does not change the situation because, as to said other lessees, a perfected contract existed - which is not the case with plaintiff." [23]

The trial court found as a fact that no compromise agreement to sell the land in question was ever perfected between the defendant-appellee as vendor and the plaintiffs-appellants as vendees. [24]

It is elementary that consent is an essential element for the existence of a contract, and where it is wanting, the contract is non-existent. The essence of consent is the conformity of the parties on the terms of the contract, the acceptance by one of the offer made by the other. The contract to sell is a bilateral contract. Where there is merely an offer by one party, without the acceptance of the other, there is no consent. [25]

It appears in this case that the offeree, the defendant-appellee Julita B. Farrales not only did not accept, but rejected the offer of plaintiffs-appellants, spouses Salonga to buy the land in question. There being no consent there is, therefore, no contract to sell to speak of.

Likewise, it must be borne in mind that the alleged compromise agreement to sell the land in question is unenforceable under the Statute of Frauds, [26] and thus, renders all the more ineffective the action for specific

performance in the court a quo

Moreover, as correctly found by the trial court, the plaintiffs-appellants, as lessees, are neither builders in good faith nor in bad faith. Their rights are governed not by Article 448 but by Art. 1678 of the New Civil Code.[27] As lessees, they may remove the improvements should the lessor refuse to reimburse them, but the lessee does not have the right to buy the land.[28]

Anent the appellants' claim that since the appellee sold to the three (3) other defendants in the ejectment suit the three (3) portions of the land in question occupied by them, it follows that "she must also sell that portion of the land where appellants' residential house was found to appellants" is unmeritorious. The trial court correctly ruled that the fact that defendant-appellee sold portions of the land to the other lessees similarly situated as plaintiffs-appellants Salonga does not change the situation because as to said other lessees, a perfected contract of sale existed which, as previously shown, was not the case with the plaintiff.[29]

As to the contention that Sec. 6, Article II of the New Constitution is applicable to the case at bar, it must be remembered that social justice cannot be invoked to trample on the rights of property owners who under our Constitution and laws are also entitled to protection. The social justice consecrated in our constitution was not intended to take away rights from a person and give them to another who is not entitled thereto. Evidently, the plea for social justice cannot nullify the law on obligations and contracts, and is, therefore, beyond the power of the Courts to grant.

There is no showing that the trial court committed any reversible error.

WHEREFORE, the Appeal is DISMISSED for lack of merit and the judgment appealed from is hereby affirmed, without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Guerrero, and Melencio-Herrera, JJ., concur.

[1] Rollo, pp. 53-57. Resolution penned by Justice Pacifico de Castro and concurred in by Justices Jose G. Bautista and Nestor B. Alampay.

[2] Record on Appeal, pp. 73-87; Rollo, p. 15.

[3] Record on Appeal, p. 5; Rollo, p. 15.

[4] Idem, pp. 7-23.

[5] Idem, p. 27.

[6] Idem, pp. 28-33

[7] Idem, p. 33.

[8] Idem, pp. 38-40.

[9] Idem, pp. 41-52.

[10] Idem, pp. 61-65.

[11] Idem, pp. 73-87.

[12] Idem, pp. 87-91.

- [13] Rollo, p. 29.
- [14] Rollo, p. 32.
- [15] Idem, p. 44.
- [16] Idem, p. 48.
- [17] Idem, p. 49.
- [18] Idem, p. 50.
- [19] Idem, p. 51.
- [20] Rollo, pp. 53-57.
- [21] Brief for Plaintiff-Appellants, p. 6, Rollo, p. 40.
- [22] CFI Decision, Record on Appeal, pp. 74-77, Rollo, p. 15.
- [23] Idem, pp. 80-83.
- [24] Arts. 1319, 1475, New Civil Code.
- [25] Gamboa v. Gonzales, 17 Phil. 381.
- [26] Art. 1403, par. (2) Subpar. (e).
- [27] Art. 1678. If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary.
- With regard to ornamental expenses, the lessee shall not be entitled to any reimbursement, but he may remove the ornamental objects, provided no damage is caused to the principal thing, and the lessor does not choose to retain them by paying their value at the time the lease is extinguished.
- [28] Southwestern University v. Salvador, 90 SCRA 318, 329-330.
- [29] CFI Decision, Record on Appeal, p. 83; Rollo, p.15.

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