

**FELINO SIMPAO, JR., AND GUILLERMA MENDOZA,
PETITIONERS-APPELLANTS, VS. REMIGIO M. LILLES AND ANGELITA
DIZON, AND HON. RICARDO P. TENSUAN, IN HIS CAPACITY AS
PRESIDING JUDGE, BRA...**

G.R. No. L-29662. July 30, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

On June 1, 1965 the spouses Remigio Lilies and Angelita Dizon, owners of a residential lot at the La Vista Subdivision, Quezon City, together with the house situated thereon, entered into a "contract to sell" the same to the spouses Felino Simpao, Jr. and Guillerma Mendoza for and in consideration of the sum of P150,000.00. The terms of payment and other conditions agreed upon are as follows:

- "1. The sum of One Hundred Twenty Thousand Six Hundred Fifty (P120,650.00) Pesos (P58,650 + 32,000.00 + P30,000.00), immediately upon the signing of this Agreement.
2. The balance of Twenty Nine Thousand Three Hundred Fifty (P29,350.00) Pesos within six (6) months from date hereof, without interest, and if not so paid, then it shall earn interest at the rate of twelve (12%) per cent per annum until fully paid;
3. The VENDEES hereby assume the payment of the loan of the VENDORS in favor of the BANCO FILIPINO effective from its inception as if they were the original borrowers, which assumption will be officially transmitted for approval to said Bank upon the execution of the Deed of Sale, at which time, the fixed deposit of the VENDORS will be officially trans-ferred to the VENDEES;
4. The VENDEES may take immediate possession of subject premises.
5. As soon as the said balance of P29,350.00 is fully paid, the VENDORS will execute a document sufficient in law to fully transfer ownership, subject of course to the assumption of the said loan by the herein VENDEES, to which they are fully agreeable;
6. If the said balance is not paid on the date herein specified, and without prejudice to its earning the interest herein-mentioned, then this Agreement shall become null and void, and the VENDEES shall vacate the pre-mises within ninety (90) days from said violation and forfeit the sum of P2,000.00 as liquidated damages, and the VENDORS will return the P60,000.00 of the P62,000.00 within six (6) months from the time the VENDEES have fully vacated the subject premises and the above-mentioned loan shall continue in the name of the herein VENDORS as if this Contract to Sell has never been executed."

The initial payment was made, leaving the balance of P29,350.00 which was to be paid within six months, or until December 1, 1965. Possession of the property was thereupon delivered to the vendees. When they defaulted in respect of the said balance after it became due the vendors notified them in writing to vacate the premises, and then filed an action for unlawful detainer on February 22, 1967 in the City Court of Quezon City where it was docketed as Civil Case No. II-14989.

On March 16, 1967 the defendants filed a motion to dismiss, challenging the jurisdiction of the Quezon City Court on the following grounds:

- (a) Petitioners' (defendants) possession exceed the period of one year;
- “(b) That the case is one of simple possession and not that of unlawful detainer;
- “(c) That the subject matter in controversy is beyond the jurisdiction of the Court because the amount involves the sum (sic) of P150,000.00 more or less; and
- “(d) For the court to take jurisdiction of the case could be abetting the multiplicity of suits.”

The motion to dismiss was denied, as was the defendants' subsequent motion for reconsideration, whereupon they filed a petition for certiorari and prohibition with preliminary injunction in the Court of First Instance of Quezon City.

On December 13, 1967 the said Court dismissed the petition and ruled that the City Court had jurisdiction to take cognizance of the unlawful detainer suit. It is from the order of dismissal that the defendants came up to this Court for review.

Inasmuch as the issue of jurisdiction was raised in a motion to dismiss, without the answer having yet been filed and before evidence as to any facts which might be alleged by way of defenses had been received, the said issue must be resolved on the basis of the averments in the complaint alone.

The appellants contend that since the "contract to sell" is annexed to the complaint and constitutes the actionable document on which it is predicated, and since under the said document "there are rights to be determined and obligations to be performed by both contracting parties enforceable only thru and within the jurisdiction of a Court of First Instance", the unlawful detainer suit is not the proper remedy and their petition for certiorari and prohibition should have been given due course by the Court of First Instance.

A reading of the complaint as well as of the stipulations in the contract between the parties yields no support for the contention. The contract did not transfer ownership of the property to the appellants. Besides being denominated a mere "contract to sell," it provides that "the vendees hereby offer to buy," and that it is only upon payment of the balance of the purchase price that "the vendors will execute a document sufficient in law to fully transfer ownership." The contract then goes on to say that if the said balance is not paid on the date specified, "then this agreement shall become null and void, and the vendees shall vacate the premises within 90 days from said violation." Even the return of the amount already paid in cash by the vendees is not a pre-requisite to their obligation to vacate, but is to be effected only within six months after the premises are fully vacated.

These terms of the contract, with respect to the appellants' tenure of occupancy, are clear and unequivocal. All that need be alleged, as they are alleged in the complaint, is that the appellants defaulted in the payment of the balance of P29,350; that demand to vacate was served upon them; that they refused to do so; and that the action was filed within one year from the time the appellants' possession became unlawful. The situation is undeniably within the scope of Section 1 of Rule 70, which provides:

"SEC. 1. Who may institute proceedings, and when. - Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a landlord, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such landlord, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper inferior court against the person or persons unlawfully withholding or depriving of possession, or

any person or persons claiming under them, for the restitution of such possession, together with damages and costs. The complaint must be verified.

The provisions of this rule shall not apply to cases covered by the Agricultural Tenancy Act."

If, as the appellants point out, there are rights and/or obligations of the parties which should be determined before they may be ejected, they certainly do not appear in the complaint; and if at all, they must be raised in the answer so that the City Court may consider, first, whether or not they are beyond its jurisdiction to resolve; and second, whether or not they are so inextricably connected with the summary question of material possession involved in the unlawful detainer suit as to divest said Court of jurisdiction to hear and decide the same.

It is not correct to say, as the appellants do say in their brief, that the appellees have in effect unilaterally declared the contract to sell as null and void, contrary to the principle that rescission of a contract must be judicially authorized. Here the so-called nullity - or automatic resolution - of the contract is expressly stipulated by the parties upon the happening of a certain contingency, namely, the non-payment of the balance of the purchase price upon due date; and since the contingency has occurred the demand to vacate is in reality by way of enforcing what has been agreed upon.

Wherefore, the order appealed from is affirmed, with costs.

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

Dizon, J., on leave.

Teehankee, J., concurs in a separate opinion.

Makasiar, J., concurs in this opinion and in the concurring opinion of Mr. Justice Teehankee.

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