

FELIX BUCTION AND NICANORA GABAR BUCTION, PETITIONERS, VS. ZOSIMO GABAR, JOSEFINA LLAMOSO GABAR AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-36359. January 31, 1974

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal from the decision of the Court of Appeals in CA-G.R. No. 49091-R, dated January 10, 1973, reversing the judgment of the trial court and dismissing the complaint filed by herein petitioners, and from the said appellate court's resolution, dated February 5, 1973, denying petitioners' motion for reconsideration.

The facts of the case, as found by the trial court, which have not been disturbed by respondent Court of Appeals, are as follows:

"Plaintiff Nicanora Gabar Bucton (wife of her co-plaintiff Felix Bucton) is the sister of defendant Zosimo Gabar, husband of his co--defendant Josefina Llamoso Gabar.

"This action for specific performance prays, inter-alia, that defendants-spouses be ordered to execute in favor of plaintiffs a deed of sale of the western half of a parcel of land having an area of 728 sq. m. covered by TCT No. II (from OCT No. 6337) of the office of the Register of Deeds of Misamis Oriental.

"Plaintiffs' evidence tends to show that sometime in 1946 defendant Josefina Llamoso Gabar bought the above-mentioned land from the spouses Villarin on installment basis, to wit, P500 down, the balance payable in installments. Josefina entered into a verbal agreement with her sister-in-law, plaintiff Nicanora Gabar Bucton, that the latter would pay one-half of the price (P3,000) and would then own one-half of the land. Pursuant to this understanding Nicanora on January 19, 1946 gave her sister-in-law Josefina the initial amount of P1,000, for which the latter signed a receipt marked as Exhibit A.

"Subsequently, on May 2, 1948 Nicanora gave Josefina P400. She later signed a receipt marked as Exhibit B.

"On July 30, 1951 plaintiffs gave defendants P1,000 in concept of loan, for which defendant Zosimo Gabar signed a receipt marked as Exhibit E.

"Meanwhile, after Josefina had received in January, 1946 the initial amount of P1,000 as above stated, plaintiffs took possession of the portion of the land indicated to them by defendants and built a modest nipa house therein. About two years later plaintiffs built behind the nipa house another house for rent. And, subsequently, plaintiffs demolished the nipa house and in its place constructed a house of strong materials, with three apartments in the lower portion for rental purposes. Plaintiffs occupied the upper portion of this house as their residence, until July, 1969 when they moved to another house, converting and leasing the upper portion as a dormitory.

"In January, 1947 the spouses Villarin executed the deed of sale of the land above-mentioned in favor of defendant Josefina Llamoso Gabar, Exhibit I, to whom was issued on June 20, 1947 TCT No. II, cancelling OCT No. 6337. Exhibit D.

"Plaintiffs then sought to obtain a separate title for their portion of the land in question. Defendants repeatedly declined to accommodate plaintiffs. Their excuse: the entire land was still mortgaged with the Philippine National Bank as guarantee for defendants' loan of P3,500 contracted on June 16, 1947. Exhibit D-1.

"Plaintiffs continued enjoying their portion of the land, planting fruit trees and receiving the rentals of their buildings. In 1953, with the consent of defendants (who were living on their portion), plaintiffs had the entire land surveyed and subdivided preparatory to obtaining their separate title to their portion. After the survey and the planting of the concrete monuments defendants erected a fence from point 2 to point 4 of the plan, Exhibit I, which is the dividing line between the portion pertaining to defendants, Exhibit I--1, and that pertaining to plaintiffs, Exhibit I-2.

"In the meantime, plaintiffs continued to insist on obtaining their separate title. Defendants remained unmoved, giving the same excuse. Frustrated, plaintiffs were compelled to employ Atty. Bonifacio Regalado to intercede; counsel tried but failed. Plaintiffs persevered, this time employing Atty. Aquilino Pimentel, Jr. to persuade defendants to comply with their obligation to plaintiffs; this, too, failed. Hence, this case, which has cost plaintiffs P1,500 in attorney's fees.

"Defendants' evidence - based only on the testimony of defendant Josefina Llamoso Gabar - denies agreement to sell to plaintiffs one-half of the land in litigation. She declared that the amounts she had received from plaintiff Nicanora Gabar Bucton - first, P1,000, then P400 - were loans, not payment of one-half of the price of the land (which was P3,000). This defense is devoid of merit.

"When Josefina received the first amount of P1,000 the receipt she signed, Exhibit A, reads:

'Cagayan, Mis. Or.
January 19, 1946.

'Received from Mrs. Nicanora Gabar the sum of one thousand (P1,000) pesos, victory currency, as part payment of the one thousand five hundred (P1,500.00) pesos, which sum is one-half of the purchase value of Lot No. 337, under Torrens Certificate of Title No. 6337, sold to me by Mrs. Carmen Roa Villarin.

“(Sgd.) Josefina Ll. Gabar”

On the basis of the facts quoted above the trial court on February 14, 1970, rendered judgment the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered for plaintiffs:

“1) Ordering defendants within thirty days from receipt hereof to execute a deed of conveyance in favor of plaintiffs of the portion of the land covered by OCT No. II, indicated as Lot 337-B in the Subdivision Plan, Exhibit I, and described in the Technical Description, Exhibit I-2; should defendants for any reason fail to do so, the deed shall be executed in their behalf by the Provincial Sheriff of Misamis Oriental or his Deputy;

“2) Ordering the Register of Deeds of Cagayan de Oro, upon presentation to him of the above-mentioned deed of conveyance, to cancel TCT No. II and in its stead to issue Transfer Certificates of Title, to wit, one to plaintiffs and another to defendants, based on the subdivision Plan and Technical Description above-mentioned; and ordering defendants to present and surrender to the Register of Deeds their TCT No. II so that the same may be cancelled; and

"3) Ordering defendants to pay unto plaintiffs attorney's fees in the amount of P1,500 and to pay the costs.

""SO ORDERED."

Appeal was interposed by private respondents with the Court of Appeals, which reversed the judgment of the trial court and ordered petitioners' complaint dismissed, on the following legal disquisition:

"Appellees' alleged right of action was based on the receipt (Exh. A) which was executed way back on January 19, 1946. An action arising from a written contract does not prescribe until after the lapse of ten (10) years from the date the action accrued. This period of ten (10) years is expressly provided for in Article 1144 of the Civil Code.

"From January 19, 1946 to February 15, 1968, when the complaint was filed in this case, twenty-two (22) years and twenty-six (26) days had elapsed. Therefore, the plaintiffs' action to enforce the alleged written contract (Exh. A) was not brought within the prescriptive period of ten (10) years from the time the cause of action accrued.

"The land in question is admittedly covered by a torrens title in the name of Josefina Llamoso Gabar so that the alleged possession of the land by the plaintiffs since 1947 is immaterial because ownership over registered realty may not be acquired by prescription or adverse possession (Section 40 of Act 496).

"It is not without reluctance that in this case we are constrained to sustain the defense of prescription, for we think that plaintiffs really paid for a portion of the lot in question pursuant to their agreement with the defendants that they would then own one-half of the land. But we cannot apply ethical principles in lieu of express statutory provisions. It is by law provided that:

'ART. 1144. The following actions must be brought within ten years from the time the right of action accrues:

- Upon a written contract;
- Upon an obligation created by law;
- Upon a judgment.'

"If eternal vigilance is the price of safety, one cannot sleep on one's right and expect it to be preserved in its pristine purity."

Petitioners' appeal is predicated on the proposition that as owners of the property by purchase from private respondents, and being in actual, continuous and physical possession thereof since the date of its purchase, their action to compel the vendors to execute a formal deed of conveyance so that the fact of their ownership may be inscribed in the corresponding certificate of title, had not yet prescribed when they filed the present action.

We hold that the present appeal is meritorious.

1. There is no question that petitioner Nicanora Gabar Bucton paid P1,500.00 to respondent Josefina Gabar as purchase price of one-half of the lot now covered by TCT No. II, for respondent Court of Appeals found as a fact "that plaintiffs really paid for a portion of the lot in question pursuant to their agreement with the defendants that they would own one-half (1/2) of the land." That sale, although not consigned in a public instrument or formal writing, is nevertheless valid and binding between petitioners and private respondents, for the time-honored rule is that even a verbal contract of sale of real estate produces legal effects between the parties.[1] Although at the time said petitioner paid P1,000.00 as part payment of the purchase price on January 19, 1946, private respondents were not yet the owners of the lot, they became such owners on January 24, 1947, when a deed of sale was executed in their favor by the Villarin spouses. In the premises, Article 1434 of the Civil Code, which provides that "[w]hen a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee," is applicable.[2] Thus, the payment by petitioner Nicanora Gabar Bucton of P1,000.00 on January 19, 1946, her second payment of P400.00 on May 2, 1948, and the compensation, up to the amount of P100.00 (out of the P1,000.00-loan obtained by private respondents from petitioners on July 30, 1951), resulted in the full payment of the purchase price and the consequential acquisition by petitioners of ownership over one-half of the lot. Petitioners therefore became owners of the one-half portion of the lot in question by virtue of a sale which, though not evidenced by a formal

deed, was nevertheless proved by both documentary and parole evidence.

2. The error of respondent Court of Appeals in holding that petitioners' right of action had already prescribed stems from its belief that the action of petitioners is based on the receipt Exh. "A" which was executed way back on January 19, 1946, and, therefore, in the view of said appellate court, since petitioners' action was filed on February 15, 1968, or after the lapse of twenty-two (22) years and twenty-six (26) days from the date of said document, the same is already barred according to the provisions of Article 1144 of the New Civil Code. The aforecited document (Exh. "A"), as well as the other documents of similar import (Exh. "B" and Exh. "E"), are the receipts issued by private respondents to petitioners, evidencing payments by the latter of the purchase price of one-half of the lot.

The real and ultimate basis of petitioners' action is their ownership of one-half of the lot coupled with their possession thereof, which entitles them to a conveyance of the property. In *Sapto, et al. vs. Fabiana*,^[3] this Court, speaking thru Mr. Justice J.B.L. Reyes, explained that under the circumstances no enforcement of the contract is needed, since the delivery of possession of the land sold had consummated the sale and transferred title to the purchaser, and that, actually, the action for conveyance is one to quiet title, i.e., to remove the cloud upon the appellee's ownership by the refusal of the appellants to recognize the sale made by their predecessors. We held therein that " * * * it is an established rule of American jurisprudence (made applicable in this jurisdiction by Art. 480 of the New Civil Code) that actions to quiet title to property in the possession of the plaintiff are imprescriptible (44 Am. Jur. p. 47; *Cooper vs. Rhea*, 29 L. R. A. 930; *Inland Empire Land Co. vs. Grant County*, 138 Wash. 439, 245 Pac. 14).

"The prevailing rule is that the right of a plaintiff to have his title to land quieted, as against one who is asserting some adverse claim or lien thereon, is not barred while the plaintiff or his grantors remain in actual possession of the land, claiming to be owners thereof, the reason for this rule being that while the owner in fee continues liable to an action, proceeding, or suit upon the adverse claim, he has a continuing right to the aid of a court of equity to ascertain and determine the nature of such claim and its effect on his title, or to assert any superior equity in his favor. He may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right. But the rule that the statute of limitations is not available as a defense to an action to remove a cloud from title can only be invoked by a complainant when he is in possession. One who claims property which is in the possession of another must, it seems, invoke his remedy within the statutory period.' (44 Am. Jur., p. 47)"

The doctrine was reiterated recently in *Gallar vs. Husain, et al.*, ^[4] where We ruled that by the delivery of the possession of the land, the sale was consummated and title was transferred to the appellee, that the action is actually not for specific performance, since all it seeks is to quiet title, to remove the cloud cast upon appellee's ownership as a result of appellant's refusal to recognize the sale made by his predecessor, and that as plaintiff-appellee is in possession of the land, the action is imprescriptible. Considering that the foregoing circumstances obtain in the present case, We hold that petitioners' action has not prescribed.

WHEREFORE, the decision and resolution of respondent Court of Appeals appealed from are hereby reversed, and the judgment of the Court of First Instance of Misamis Oriental, Branch IV, in its Civil Case No. 3004, is revived. Costs against private respondents.

Zaldivar, (Chairman), Fernando, Barredo, Fernandez, and Aquino, JJ., concur.

[1] *Couto vs. Cortes*, 8 Phil., 459, 460 (1907); *Guerrero vs. Miguel*, 10 Phil., 52, 53 (1908).

[2] *Llacer vs. Munoz de Bustillo, et al.*, 12 Phil., 328, 334; *Inquimboy vs. Paez Vda. de Cruz*, 108 Phil., 1054,

1057; *Castrillo, et al. vs. Court of Appeals, et al.*, March 31, 1964, 10 SCRA 549, 553; *Estoque vs. Pajimula*, L-24419, July 15, 1968, 24 SCRA 59, 62.

[3] 103 Phil., 683, 686-87.

[4] L-20954, May 24, 1961, 20 SCRA 186, 191. See also *Castrillo, et al. vs. Court of Appeals, et al.* *ibid.*

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