

ALFREDO D. TALOSIG, PETITIONER, VS. JULIANA PULANCO VDA. DE NIEBA, THE HONORABLE COURT OF APPEALS, RESPONDENTS.*G.R. No. L-29557. February 29, 1972*

Ponente: REYES, J.B.L., J.

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Petition for certiorari to review the decision of the Court of Appeals, affirming that of the Court of First Instance of Quezon City, in its Civil Case No. Q-6320, which ordered the defendant therein, herein petitioner Alfredo D. Talosig, to pay the plaintiff therein, now private respondent Juliana Pulanco Vda. de Nieba (a) the balance of the purchase price of a house and rights to lot No.11, Block 5, of Magdalena Estates, Inc., with legal interest, and (b) the costs; but denied: (1) the recovery by the plaintiff of 26 square meters in another lot (No. 13), (2) the reimbursement of the down and installment payments on said lot 11 and (3) disallowed recovery of attorney's fees, due to lack of evidence.

To completely meet the issues (to be discussed later) raised in the petition, a recital, at the outset, of the allegations of the complaint and the answer, is in order.

The complaint filed by plaintiff Juliana Pulanco Vda. de Nieba with the trial court alleged, inter alia, and in a repetitious and somewhat haphazard manner, that she was the grantee, in a contract to sell, of Lots 11 and 13, Block No. 5, Quezon City, executed in her favor by the owner, Magdalena Estates, Inc.; that she entered into a "good understanding" with defendant Talosig for the transfer to him of her rights over Lot 11 "with the assurance and promise" of Talosig to reimburse to her the down and installment payments she had already made to Magdalena Estates, Inc., upon approval of their deed of assignment and transfer by Magdalena Estates, Inc., and for Talosig to assume payment of the balance of the consideration for the contract to sell; that Nieba and Talosig executed a deed of assignment and transfer over Lot 11 on 6 December 1952, which was approved by Magdalena Estates, Inc. on the same day; that both parties also agreed that Talosig shall pay P2,400.00 for the improvements, consisting of a house and coconuts, on Lot 11 and assume a mortgage on the house in the sum of P800.00; that Talosig redeemed the mortgage but did not pay the P2,400.00; that Nieba demanded the reimbursement of P1,184.00 which she had paid as down payment and installment payments to Magdalena Estates, Inc. before the execution of the deed of assignment and transfer; that she demanded payment of the amount of P2,400.00 as the purchase price for the house and coconut trees; that she also demanded the delivery and possession of the 26 square-meter portion of Lot 13, said portion being occupied by the house and toilet; that Talosig promised to pay a monthly rent of P2.00 for the said 26 square-meter portion; and that all of these demands and undertakings Talosig failed and refused to pay or comply with.

In answer to the complaint, Talosig denied having entered into the "good understanding" alleged by Nieba; denied having promised to reimburse the down and installment payments; and denied having agreed to pay the house and coconut trees for P2,400.00 or to assume payment of the mortgage on the house. As special and affirmative defenses, Talosig alleged that he is the absolute and exclusive owner of Lot 11, as evidenced by Transfer Certificate of Title No. 32544 of Quezon City; that he is also the owner of the 26 square-meter portion of Lot 13

and the house thereon, having purchased these properties from the plaintiff, as evidenced by a Deed of Sale, dated 17 December 1952. A copy of this deed was annexed to the answer. Talosig further alleged that the agreements alleged by Nieba in her complaint are not enforceable under the Statute of Frauds.

After trial, the Court of First Instance rendered judgment as stated at the beginning of this decision. Defendant Talosig appealed to the Court of Appeals, but the appealed judgment was sustained with slight modification, by decreasing the balance of the purchase price for the house and rights to Lot 11 from P1,970.90 to P1,870.00.

Briefly stated, the Court of Appeals found, as did the Court of First Instance, that on 6 December 1952 plaintiff Nieba executed a deed of assignment and transfer over Lot No. 11, Block No. 5, PSC-788-Q.C., in favor of defendant Talosig, subject to the terms and conditions embodied therein; and on 17 December 1952, Nieba sold her house to Talosig for P3,850.00, per a deed of sale that they executed. Talosig tendered some payments. The factual issue was whether these payments constituted full payment or not of the price agreed upon.

Talosig claimed that he had fully paid the price in the sum of P3,850.00 in the following manner: by paying plaintiff's account with Magdalena Estates, Inc. in the sum of P1,671.50; by paying the plaintiff prior to the execution of the contract of sale the sum of P1,035 and P800.00; and by paying the plaintiff after the execution of the contract of sale the sum of P344.00.

The Court of Appeals found it clear from the records that the sum of P1,671.50 was paid, not by defendant Talosig, but by plaintiff Nieba to Magdalena Estates, Inc. It also found that defendant had actually paid the total sum of P1,980.00, which is deductible from the consideration of the sale in the amount of P3,850.00, resulting in an unpaid balance of P1,870.00.

On the first assigned error, it is contended that the deed of sale, copy of which was annexed to Talosig's answer to the complaint, is an actionable document that, not having been denied under oath by Nieba, is deemed admitted, under Section 8, Rule 8, of the Rules of Court; wherefore, the Court of Appeals, under Section 7, Rule 130, of the Rules, allegedly erred in considering parol evidence to vary and overcome the terms of the deed of sale, stipulating that the house was already paid for in the sum of P3,850.00 at the time the deed was executed. The contention is untenable, not only because Talosig failed to object to the parol evidence introduced by Nieba, and such failure constituted a waiver to the admissibility of said parol evidence,[1] but also because Nieba's payments for the land to the Magdalena Estates were evidenced by receipts (Exhibits "B" to "B-28"), as stated by the Court of Appeals in its decision.

Another argument of petitioner is to the effect that the deed of sale should have been given more weight than the oral testimony of respondent Nieba. The premises of the argument involve appreciation of evidence, which is within the domain of the Court of Appeals, for its findings of fact are not reviewable by the Supreme Court.[2]

In the second assignment of error, the Court of Appeals allegedly erred in disregarding the Statute of Frauds. The issue, was not raised before said court; hence, it is also deemed waived.[3]

In the third error assigned, it is claimed that the trial court had no jurisdiction over the case because the complaint did not seek to enforce any perfected contract, so that the action was not for specific performance, but for collection of the total claim of only P4,384.00, an amount not cognizable by the Court of First Instance; and, in the last assigned error, it is urged that the complaint did not state a cause of action for recovery of possession of the 26 square-meter portion of Lot 13.

The complaint, the main allegations of which were hereinbefore recounted, did allege that the petitioner and the respondent entered into perfected contracts, such as the "good understanding" for the reimbursement by the former of certain accounts paid by the latter to Magdalena Estates, Inc.; the agreement for the former to assume

payment of the balance of the consideration for the contract to sell; and the agreement of petitioner to pay for the improvements and to assume a mortgage on the house. The third assigned error was, therefore, based on the erroneous premise of a supposed non-perfection of the contracts, the truth being that the complaint did allege perfected, albeit not consummated, agreements. The complaint plainly sought specific performance of petitioner's undertakings.

The lack of a cause of action for the recovery of a 26-square-meter portion of Lot 13, for failure of the complaint to state when a demand for it was made by Nieba upon Talosig, did not divest the trial court of its jurisdiction. For a cause of action, or lack of it, does not affect the authority of a court to hear and decide a given case, as long as the court has jurisdiction over its subject matter, over the parties, and, in actions in rem, over the res.^[4] At any rate, even if the complaint did not allege a cause of action for the recovery of the said portion of Lot 13, petitioner has no ground for assigning it as error, because the appealed judgment actually did not grant recovery thereof in favor of plaintiff.

For the foregoing reasons, the decision under review is hereby affirmed, with costs against petitioner Talosig.

Concepcion, C.J., Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Castro, J., did not take part.

[1] *Marella vs. Reyes*, 12 Phil. I; *Abrenica vs. Gonda*, 34 Phil. 739; *Legarda Koh vs. Ongsiako*, 36 Phil. 185; *Beam vs. Yatco*, 82 Phil. 30.

[2] *Hodges vs. People*, 68 Phil. 178; *Chan vs. CA*, L-27488, 30 June 1970, 33 SCRA 737.

[3] *Coingco vs. Flores*, 82 Phil. 284, 287.

[4] *Republic vs. Venturanza, et al.*, L-20417, 30 May 1966, 17 SCRA 322.

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