

RODRIGO ENRIQUEZ, ET AL., PLAINTIFFS AND APPELLANTS, VS. SOCORRO A. RAMOS, DEFENDANT AND APPELLEE.

G.R. No. L-18077. September 29, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an action for foreclosure of a real estate mortgage.

It is alleged that on November 24, 1958 defendant purchased from plaintiffs 20 parcels of land located in Quezon City and covered by transfer certificates of title for the amount of P235,056.00 of which only the amount of P35,056.00 was paid on the date of sale, the balance of P200,000.00 being payable within two years from the date of sale, with 6% interest per annum during the first year, of the remainder to draw 12% interest per annum if paid thereafter, provided that at least P100,000.00 should be paid during the first year, otherwise the whole unpaid balance would become immediately demandable; that to secure the payment of the balance of P200,000.00 defendant executed a mortgage in favor of plaintiff upon the 20 parcels of land sold and on a half interest over a parcel of land in Bulacan which was embodied in the same deed of sale; that said deed of sale with mortgage was registered in the Office of the Registers of Deeds of Quezon City and Pampanga; and that as defendant broke certain stipulations contained in said deed of sale with mortgage, plaintiffs instituted the present foreclosure proceedings.

Defendant set up as affirmative defense that the contract mentioned in the complaint does not express the true agreement of the parties because certain important conditions agreed upon were not included therein by the counsel who prepared the contract; that the stipulation that was omitted from the contract was the promise assumed by plaintiffs that they would construct roads in the lands which were to be subdivided for sale on or before January, 1959; that said condition was not placed in the contract because, according to plaintiffs' counsel, it was a superfluity, inasmuch as there is an ordinance in Quezon City which requires the construction of roads in a subdivision before lots therein could be sold; and that, upon the suggestion of plaintiffs' counsel, their promise to construct the roads was not included in the contract because the ordinance was deemed part of the contract. Defendant further claims that the true purchase price of the sale was not P235,056.00 but only P185,000.00, the difference of P50,000.00 being the voluntary contribution of defendant to the cost of the construction of the roads which plaintiffs assumed to do as abovementioned.

After the reception of the evidence, the trial court sustained the contention of defendant and dismissed the complaint on the ground that the action of plaintiffs was premature. It found that plaintiffs really assumed the construction of the roads as a condition precedent to the fulfillment of the obligation stipulated in the contract on the part of defendant, and since the same has not been undertaken, plaintiffs have no cause of action. In due time, plaintiffs have appealed.

The evidence of record discloses the following facts: On November 6, 1956, plaintiffs entered into a contract of conditional sale with one Pedro del Rosario covering a parcel of land in Quezon City described in Transfer

Certificate of Title No. 11483 which has a total area of 77,772 square meters in consideration of a purchase price of P10.00 per square meter. To guarantee the performance of the conditions stipulated therein a performance bond in the amount of P100,000.00 was executed by Pedro del Rosario. Del Rosario was given possession of the land for development as a subdivision at his expense. He undertook to pay for the subdivision survey, the construction of roads, the installation of light and water, and the income tax plaintiffs may be required to pay arising from the transaction, in consideration of which Del Rosario was allowed to buy the property for P600,000.00 within a period of two years from November 6, 1956 with the condition that, upon his failure to pay said price when due, all the improvements introduced by him would automatically become part of the property without any right on his part to reimbursement and the conditional sale would be rescinded.

Unable to pay the consideration of P600,000.00 as agreed upon, and in order to avoid court litigation, plaintiffs and Del Rosario, together with defendant Socorro A. Ramos, who turned out to be a partner of the latter, entered into a contract of rescission on November 24, 1958. To release the performance bond and to enable defendant to pay some of the lots for her own purposes, plaintiffs allowed defendant to buy 20 of the lots herein involved at the rate of P16.00 per square meter on condition that she will assume the payment of P50,000.00 as her share in the construction of roads and other improvements required in the subdivision. This situation led to the execution of the contract of sale Exhibit A subject of the present foreclosure proceedings.

The main issues posed in this appeal are: (1) Is the purchase price of the 20 lots bought by defendant from plaintiffs the sum of P185,000.00, as claimed by defendant, or P235,056.00, as claimed by plaintiffs; and (2) Was an oral agreement, coetaneous to the execution of the contract of sale, entered into between the parties to the effect that plaintiffs would undertake the construction of the roads on the lots sold before defendant could be required to comply with her financial obligation?

Defendant contends that the contract of sale Exhibit A does not express the true agreement of the parties because certain important conditions agreed upon were not included therein by plaintiffs' counsel among which is the promise assumed by plaintiffs that they would undertake to construct the roads that may be required in the subdivision subject of the sale on or before January, 1959; that said condition was not placed in the contract because plaintiffs' counsel said that it was a superfluity inasmuch as there was then in Quezon City an ordinance which requires the construction of roads in a subdivision before the lots therein could be sold; and that, upon the suggestion of plaintiffs' counsel, such commitment was not included in the contract because the ordinance aforesaid was already deemed to be part of the contract.

Plaintiffs, on the other hand, dispute the above contention arguing that there was no such oral agreement or understanding because all that was agreed upon between the parties was already expressed and included in the contract of sale Exhibit A executed between the parties and since defendant failed to pay the balance of her obligation within the period stipulated, the whole obligation became due and demandable thus giving plaintiffs the right to foreclose the mortgage in accordance with law.

After considering and evaluating the evidence submitted by both parties, the court a quo found defendant's contention well-taken, thereby concluding that the action of plaintiffs was premature. In reaching this conclusion the court a quo made the following comment:

"* * * The Court is of the opinion that the construction of the roads was a condition precedent to the enforcement of the terms of Exhibit A, particularly the foreclosure of mortgage, for the reason that the subdivision regulations of Quezon City requires, as a matter of law, that the sellers of lands therein to be converted into subdivision lots must construct the roads in said subdivision before the lots could be sold. The requirement must have been uppermost in the mind of the parties in this case which led to the execution of the so-called 'Explanation' (Exhibit 3) wherein it is stated that the sum of P50,000.00 was a contribution of the

herein defendant for the construction of the roads which the plaintiffs would undertake 'in accordance with the provisions of the City Ordinance of Quezon City' (Exhibit 3). It is to be noted that Exhibit 3 was executed on November 24, 1958, the very day when Exhibit A was also executed. Exhibit 3 also proves that the purchase price is not, as appearing in the deed of sale with mortgage, Exhibit A, actually P235,000.00 but only P185,000.00 which would approximately be the price of the entire area of the land sold at the rate of P16.00 per square meter."

We find no error in the conclusion reached by the court a quo for indeed that is the condition to be expected by a person who desires to purchase a big parcel of land for purposes of subdivision. In a subdivision the main improvement to be undertaken before it could be sold to the public is feeder roads as otherwise it would be inaccessible and valueless and would offer no attraction to the buying public. And so it is correct to presume, as the court a quo did, that when the sale in question was being negotiated the construction of roads in the prospective subdivision must have been uppermost in the mind of defendant for her purpose in purchasing the property was to develop it into a subdivision. That such requirement was uppermost in the mind of defendant is proven by the execution by the plaintiffs of the so-called "Explanation" (Exhibit 3) on the very day the deed of sale was executed wherein it was stated that the sum of P50,000.00 was advanced by defendant as her contribution to the construction of the roads which plaintiffs assumed to undertake "in accordance with the provisions of the City Ordinance of Quezon City." It is to be noted that said document specifically states that the amount of P50,000.00 should be deducted from the purchase price of P235,056.00 appearing in the deed of sale, and this is a clear indication that the real purchase price is only P185,000.00, as claimed by defendant, which would approximately be the price of the entire area of the land at the rate of P16.00 per square meter.

A circumstance which lends cogency to defendant's claim that the commitment of plaintiffs to construct the roads was not inserted in the contract because of the assurance made by their counsel that it would be a superfluity is the fact that in Quezon City there was really an ordinance which requires the construction of roads in a subdivision before lots therein could be sold, and considering that this assurance came from the very counsel who prepared the document who even intimated that the ordinance was deemed part of the contract, defendant must have agreed to the omission relying on the good faith of plaintiffs and their counsel. At any rate, the execution of the document Exhibit 3 clarifies whatever doubt may have existed with regard to the true terms of the agreement on the matter.

It is argued that the court a quo erred in allowing the presentation of parole evidence to prove that a contemporaneous oral agreement was also reached between the parties relative to the construction of the roads for the same is in violation of our rule which provides that when the terms of an agreement had been reduced to writing it is to be considered as containing all that has been agreed upon and that no evidence other than the terms thereof can be admitted between the parties (Section 22, Rule 123). This rule, however, only holds true if there is no allegation that the agreement does not express the true intent of the parties. If there is and this claim is put in issue in the pleadings, the same may be the subject of parole evidence (*Idem.*). The fact that such failure has been put in issue in this case is patent in the answer wherein defendant has specifically pleaded that the contract of sale in question does not express the true intent of the parties with regard to the construction of the roads.

It appearing that plaintiffs have failed to comply with the condition precedent relative to the construction of the roads in the subdivision in question, it follows that their action is premature as found by the court a quo. The failure of defendant to pay the realty and income taxes as agreed upon, as well as to register the mortgage with respect to the Bulacan property, aside from being minor matters, appear sufficiently explained in the brief of defendant-appellee.

Wherefore, the decision appealed from is affirmed, with costs against appellants.

Bengzon, C. J., Padilla, Labrador, Reyes, J. B. L., Paredes, Dizon, and Makalintal, JJ., concur.

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