

REALTY INVESTMENTS, INC. AND PEOPLES BANK & TRUST COMPANY, PLAINTIFFS AND APPELLANTS, VS. MARIANO VILLANUEVA ET AL., DEFENDANTS. MARIA PASTRANA AND PRUDENCIO CASTRENCE, APPELLEES.

G.R. No. L-1949. October 31, 1949

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from an order of the Court of First Instance of Rizal, Rizal City Branch, dismissing the above entitled case as to Maria D. Pastrana and her husband, Prudencio Castrence, with costs, upon motion of these defendants. The other defendants did not file any motion to dismiss.

The defendants are several, majority of whom bought lots from the plaintiff, the rest being subsequent purchasers. The plaintiff's causes of action against them are separate and distinct from one another save for the fact that the lots involved are in the same subdivision belonging to the plaintiff and the issues are identical in their essential features. In this decision we shall state only the facts as they relate to Maria D. Pastrana and her husband.

According to the amended complaint, plaintiff Realty Investments, Inc. is the registered owner of the Valhalla Gardens Subdivision situated in Rizal City and mortgaged to the Peoples Bank & Trust Company. On May 8, 1941, Maria D. Pastrana bought from the plaintiff one lot known as 262-VV, with a house of strong materials erected thereon, for P7,200, and paid P700 on account of the purchase price upon the execution of the deed of sale. The deed provided that the purchaser should pay to the vendor at its principal office in Manila the balance of P6,500, together with interest thereon at 10 per cent per annum, a monthly installment of not less than P85.93, beginning with the 31st of that month until she should have completed payment of the purchase price. It was further provided, among other conditions, that should the purchaser fail to make any of the payments due under the contract within 30 days after due date, all the unpaid balances would automatically become due and demandable in their entirety and the owner could, at its option, "either (a) consider this contract as rescinded, in which case the owner shall be at liberty to dispose of the property to any other person in the same manner as if this contract had never been made, and all sums of money paid hereunder shall be considered and treated as rents for use of the said property, the purchaser hereby waiving all right to ask for or demand the return thereof and agreeing to peaceably vacate the said property, or (b) repossess and sell the property at public or private sale and recover the balance of the purchase price and other amounts due after applying thereto the proceeds of such sale, together with reasonable attorney's fees."

Defendant Maria D. Pastrana had paid eight installments totalling P687.44, (of which P426.10 was applied to interest and P261.34 to principal, leaving a balance on her contract of the sum of P6,238.14), when the war between the United States and Japan broke out. On account of the war payments were interrupted, the plaintiff's office having been closed and its officers, being American citizens, interned.

In 1944, Maria D. Pastrana paid to the Enemy Property Custodian, Japanese Imperial Army in the Philippines, the

remaining unpaid installments, after which, on the 21st of October of that year, the Register of Deeds of then Greater Manila, defendant Mariano Villanueva, cancelled the plaintiff's title with respect to lot 262-VV and issued to this defendant Transfer Certificate of Title No. 75513.

The complaint, after setting forth the above facts, and others not essential for the determination of this appeal, prays the Court to declare as due and payable on account of the purchase price the sum of P6,238.14; to declare null and void the purported sale executed by the Japanese Military authorities; to declare that plaintiff is the legal owner of lot 262-VV; and to order the Register of Deeds to reinstate plaintiff's title to said lot, "or in the alternative, order payment to the Realty Investments, Inc. * * * by defendant Maria D. Pastrana of the sum of P6,238.14 for lot 262-VV with the stipulated interest from April 1, 1945." It is also prayed that in the event of default in such payment, plaintiff Realty Investments, Inc. be adjudged entitled to the restoration of the premises as well as to reasonable rentals for the period during which defendants were in possession thereof.

The motion to dismiss is premised on the moratorium proclaimed in Executive Order No. 25 as amended by Executive Order No. 32. Judge Bienvenido A. Tan in granting the motion relied on *Luis General vs. Hon. Jose de Venecia*, 78 Phil., 780, cited by the defendants in support of their motion.

In *Ricardo Medina vs. Ambrosio Santos*, 78 Phil., 464, it was held that a case for the recovery of a truck with prayer for payment of its value in case the truck was not returned, could proceed notwithstanding the moratorium law. The Court observed that the indemnity sought was a subsidiary liability and would not come into being unless and until decision was rendered against the defendants for such payment. In *Moya vs. Barton*, 79 Phil., 14, the Court said that when the cause of action was in part covered by the moratorium and in part not, it was not unjust to render judgment for the payment of the entire obligation with the understanding that execution with respect to the amounts that full due before March 10, 1945, would be stayed. And in *Alejo vs. Gomez*, L-1969, May 30, 1949[1], the Court ruled that suit for unlawful detainer and rents in arrears was not affected by the moratorium, the recovery of the unpaid rentals, it was said, being accessory to the main action.

A close examination of plaintiffs' allegations and prayer will disclose that the primary object of the action is to obtain a determination of the validity of the payments made by the defendants to the Japanese Alien Property Custodian, and of the title issued in pursuance of those payments. The case was improperly dismissed.

In the case at bar, the money judgment prayed for is not even an accessory or subsidiary to the main action. It is an alternative remedy and as such is contingent upon the defendants' unwillingness or inability to permit the cancellation of the title issued to them and to surrender the land. Whereas in an unlawful detainer suit, the defendant has no escape from the payment of the back rentals if he loses, the payment of money in the instant case rests on defendants' own choice between the two remedies demanded by the plaintiffs.

The case of *De Venecia vs. General*, ante, is easily distinguishable from this, in that the former was an action on a promissory note stripped of all other objectives, principal, accessory, subsidiary or alternative. *Maa Sugar Central Co. vs. Conrado Barrios*, 79 Phil., 666, is also unavailing to the defendants. That action, like *General vs. De Venecia*, had for its sole object the enforcement of a monetary obligation.

As a final word, let it be noted that the moratorium orders were conceived exclusively for the benefit of debtors in the strict sense of the term; i.e. for the suspension of payments in money during the time of financial distress occasioned by the late war. They were not intended to suspend other rights of action. And, as moratorium is in derogation of the protection against the impairment of the obligations ob contract and other constitutional guarantees, justified only as an emergency measure, Executive Orders Nos. 25 and 32 are rigidly to be confined to cases which embrace only matters falling within the scope of their express purpose.

The appealed order is reversed and the respondent Judge is ordered to proceed with the trial of the case on the merits, with costs of this appeal against the appellees.

Moran, C.J., Ozaeta, Paras, Bengzon, Padilla, Reyes, and Torres, JJ., concur.

[1] 83 Phil., p. 969.

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