

## **FILEMON PACIA, PLAINTIFF AND APPELLEE, VS. PEDRO SANTOS AND JOSE CUIZON, DEFENDANTS AND APPELLANTS.**

*G.R. No. L-22068. November 20, 1924*

Ponente: OSTRAND, J.

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### **OSTRAND, J.:**

This is an appeal from a judgment of the Court of First Instance of Pampanga, ordering the defendants jointly and severally to pay to the estate of the deceased Tomas Pacia the sum of P19,000, with legal interest on the sum of P6,500 from the first of July, 1921, and on the sum of P12,500 from the first of January, 1922. From this judgment the defendants Pedro Santos and Jose Cuizon appeal and make four assignments of error, all of which relate to questions of fact.

The plaintiff is the administrator of the estate mentioned and in his complaint alleges that by public document executed on September 29, 1920, Tomas Pacia sold to the defendants Pedro Santos, Pablo Panganiban and Jose Cuizon 43 hectares of land for the sum of P25,000 payable in three installments; the first installment of P4,000 to be paid at the time of the execution of the document; the second installment of P8,500 and the third of P12,500 to be paid on July 1, 1921, and January 1, 1922, respectively; that the said defendants had paid only the first installment and the sum of P2,000 on the second installment but had failed to pay the balance. The plaintiff therefore prayed judgment for the sum of P19,000 with interest at the rate of 12 per cent per annum and for the further sum of P17,000 as damages and attorneys' fees.

The defendant Pedro Santos in his answer admits that the contract was executed as alleged in the complaint, but sets up as a special defense that there was an agreement among the defendants to the effect that Pablo Panganiban and Jose Cuizon were to pay all of the first and second installments of the purchase price and that, Pedro Santos., had already paid P7,082.5 for improvements made on the land; that, furthermore, the defendants did not obtain their possession of the land from the vendor Tomas Pacia but from Mateo Legaspi, Fortunato Carreon and Jose Termulo, who held a lease on the land and who assigned said lease to the defendant Pedro Santos and certain other persons who are not parties in the present case.

The defendants Pablo Panganiban and Jose Cuizon in their answer admit that the document of September 29, 1920, was executed as alleged in the complaint and that of the purchase price stated in the document only P6,000 has been paid.

The defendant Cuizon alleges as a special defense that he never gave his consent to the contract evidenced by the document mentioned and that it was made without his knowledge.

The defendant Pablo Panganiban sets up as a special defense that at the time of entering into the contract the vendor Tomas Pacia maliciously concealed from him the fact that the land in question was leased to other persons for the term of ten years and that if this fact had been disclosed to him he would not have entered into the contract. It appears from the evidence that the document in question (Exhibit A) was prepared by the notary public before whom it was acknowledged, with the assistance of the defendant Santos. Through an oversight the document was

signed only by the vendor Tomas Pacia and was not signed by the purchasers, the herein defendants; but it appears from the testimony of the notary public that all of the defendants were present when the document was executed and that they gave their consent to all of the provisions of the contract. It further appears that the defendants made partial payments on the purchase price and that they took possession of the land.

In regard to the lease referred to in the special defenses of Santos and Panganiban, it appears that several years previous to the sale Tomas Pacia leased the land to Mateo Legaspi, Fortunato Carreon and Jose Termulo, but that on the 7th of August, 1920, the defendant Santos obtained an assignment of the lease and succeeded to the rights of the lessees. There also appears to have been an understanding among the defendants to the effect that all of them were to participate in the rights so acquired, and the evidence is conclusive that they entered into possession of the land and have not been disturbed in such possession since the execution of the deed in their favor by Tomas Pacia. It is therefore clear that, the special defense of Santos and Panganiban to the effect that they did not obtain their possession of the land through that deed is of no avail. They were aware of all the circumstances before entering into the agreement with Pacia and, as already stated, their possession since then has been quiet and undisturbed.

Neither is there any merit in Santos' other special defense that he had an agreement with his codefendants that he would be relieved from his share of the payments of the purchase price in consideration of his paying for the improvements to be made on the land. Pacia was not a party to that agreement and was not bound thereby. Moreover, Exhibit B, a letter written by Santos to Panganiban and in which he asks the latter to furnish the sum of P4,000 to be used for repairs and improvements of the fish-pond tends to cast doubt on the existence of the agreement mentioned.

The defendant Cuizon's special defense that he was not present at the execution of the deed and did not give his consent thereto is not sustained by the evidence. Even assuming, for the sake of the argument, that the notary public who prepared the document was mistaken in his statement that Cuizon was present and agreed to its terms, the letter of July 28, 1921, written by Cuizon to the plaintiffs' lawyer Sofronio Hernandez (Exhibit C) shows sufficiently that 'he was a party to the agreement and considered himself bound thereby.

The only question remaining for consideration is whether there was a sufficient part performance of the contract of sale to take the agreement for the payment of the purchase price out of the statute of frauds. As to this there can be no doubt. The vendor fully performed his part of the contract and it is well settled that the statute is no bar to an action for the price of land actually conveyed where the deed has been accepted. (27 C. J. and numerous authorities there cited.)

The judgment appealed from is affirmed, with the costs against the appellants. So ordered.

Johnson, Street, Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.

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