

SPOUSES VICENTE AND LOURDES PINGOL, PETITIONERS, VS. HON. COURT OF APPEALS AND HEIRS OF FRANCISCO N. DONASCO, NAMELY: MELINDA D. PELAYO, MARIETTA D. SINGSON, MYRNA D. CUEVAS, N...

G.R. No. 102909. September 06, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

An action denominated as one for specific performance and damages was brought by the private respondents against the petitioners before the Regional Trial Court (RTC) of Caloocan City which, after due trial, rendered a decision in favor of the petitioners. On appeal, the respondent Court reversed the trial court's decision.

It is from this judgment that the petitioners have appealed to this Court by way of a petition for review on certiorari.

The material facts of this case are simple and undisputed.

Petitioner Vicente Pingol is the owner of Lot No. 3223 of the Cadastral Survey of Caloocan, with an area of 549 square meters, located at Bagong Barrio, Caloocan City and more particularly described in Transfer Certificate of Title (TCT) No. 7435 of the Registry of Deeds of Caloocan City. On 17 February 1969, he executed a "DEED OF ABSOLUTE SALE OF ONE-HALF (1/2) [OF] AN UNDIVIDED PORTION OF A PARCEL OF LAND" in favor of Francisco N. Donasco which was acknowledged before a notary public. The parcel of land referred to therein is Lot No. 3223 and the pertinent portions of the document read as follows:

"That for and in consideration of the sum of TWENTY THOUSAND AND FIVE HUNDRED THIRTY (P20,530.00) PESOS, Philippine Currency, the VENDOR hereby these presents SELL, CONVEY AND CONVEY by way of Absolute Sale the one-half (½) portion, equivalent to Two Hundred Seventy Four and point Fifty (274.50) square meters, to the VENDEE, the above-mentioned property, his heirs, assigns and successors-in-interest;

That the VENDOR hereby confesses and acknowledges the receipt of TWO THOUSAND (P2,000.00) PESOS from VENDEE as advanced (sic) and partial payment to the above-cited consideration of the Sale herein mentioned, leaving therefor a balance of Eighteen Thousand and Five Hundred Thirty (P18,530) Pesos to be paid in several equal instalments within a period of six (6) years, beginning January, 1970;

That after computing the above-mentioned equal instalments, the VENDEE agrees and undertakes to pay unto the VENDOR a monthly amount equivalent to Two Hundred Fifty Seven (sic) and Thirty Six Centavos (P257.36) within a period of Seventy One (71) months and on the Seven Two [sic] (72) month, the amount of (P257.44) as the last and final instalment thereof;

That the VENDEE agrees that in case of default in the payment of the instalments due the same shall earn a legal rate of interest, and to which the VENDOR likewise agrees;

That the VENDEE undertakes to pay unto the VENDOR the herein monthly instalment within the first five (5) days of each month and the same shall be made available and to be paid at the residence of the VENDOR, payment to be made either directly to the VENDOR, his wife or his authorized representative or factor;

That in case of partition of the above-described property between herein VENDOR and VENDEE, the same shall be divided into two (2) equal parts, the VENDOR gets the corner facing J. De Jesus and Malolos Avenue and the VENDEE shall get the portion with fifteen (15) meters frontage facing J. De Jesus Street only."[1]

Pursuant to the contract, Donasco paid P2,000.00 to Pingol. The one-half portion, designated as Lot No. 3223-A, was then segregated from the mother lot, and the parties prepared a subdivision plan (Exhibit "C") which was approved by the Land Registration Commission.[2]

Francisco Donasco immediately took possession of the subject lot and constructed a house thereon. In January 1970, he started paying the monthly installments but was able to pay only up to 1972.

On 13 July 1984, Francisco Donasco died. At the time of his demise, he had paid P8,369.00, plus the P2,000.00 advance payment, leaving a balance of P10,161.00 on the contract price.[3] Lot No. 3223-A remained in the possession of Donasco's heirs.

On 19 October 1988, the heirs of Francisco Donasco filed an action for "Specific Performance and Damages, with Prayer for Writ of Preliminary Injunction" against the spouses Vicente and Lourdes Pingol (petitioners herein) before the RTC of Caloocan City. The action was docketed as Civil Case No. 13572 and raffled off to Branch 125 of the said court.

In their complaint,[4] the plaintiffs (private respondents herein) averred that after the death of their father, they offered to pay the balance of P10,161.00 plus the stipulated legal rate of interest thereon to Vicente Pingol but the latter rebuffed their offer and has "been demanding for a bigger and unreasonable amount, in complete variance to what is lawfully due and payable." They stated that they had "exerted earnest efforts to forge or reach an amicable and peaceful settlement with the defendants" for the payment of the property in question but to no avail. They further alleged that the defendants were committing "acts of forcible entry and encroachment" upon their land and asked that a writ of preliminary injunction be issued to restrain the defendants from the acts complained of.

Plaintiffs then prayed that the defendants be ordered, inter alia:

"a. x x x to accept the amount of P10,161.00, more or less, plus the stipulated legal rate of interest due thereon, as full and complete payment of the balance for the agreed price/consideration on the one-half (½) portion of the parcel of land x x x; [and]

b. x x x to execute the final deed of sale on the one-half (½) portion of the lot x x x in accordance with the partition reflected in the survey and subdivision plan, x x x ."[5]

In their answer with counterclaim,[6] defendants admitted the execution of the aforementioned deed of sale, the segregation of the portion sold and the preparation and approval of the subdivision plan, but set up the following special and affirmative defenses: (1) the plaintiffs' cause of action had already prescribed; (2) the deed of sale embodied a conditional contract of sale "as the consideration is to be paid on installment basis within a period of six years beginning January, 1970"; (3) the subdivision plan was prepared on the assumption that Francisco Donasco would be able to comply with his obligation; (4) when Francisco died, he had not fully paid the total consideration agreed upon; and (5) considering the breach by Francisco of his contractual obligation way back in 1976, the sale was deemed to have been cancelled and the continuous occupancy of Francisco after 1976 and by his heirs thereafter was by mere tolerance of Vicente Pingol. They then asked that the plaintiffs be ordered to vacate the premises and to pay them attorney's fees and a reasonable compensation for the use of the land.

In their Reply and Answer to Counterclaim,[7] the plaintiffs pointed out that there is no provision in the deed of sale for its cancellation in case of default in the payment of the monthly installments and invoked Article 1592 of the New Civil Code. They specifically denied the allegations in the counterclaim.

The issues having been joined, the case was then tried on the merits.

On 22 January 1990, the trial court rendered a decision[8] dismissing the complaint and ordering the plaintiffs to pay the defendants P350.00 as reasonable monthly rental for the use of the premises from the filing of the complaint, P10,000.00 by way of attorney's fees, and the costs of the suit. It held that: (1) the deed of absolute sale in question, marked and offered in evidence as Exhibit "A," is a contract to sell, not a contract of sale, since Vicente Pingol had no intention to part with the ownership of the lot unless the full amount of the agreed price had been paid; (2) the contract was deemed to have been cancelled from the moment the late father of the plaintiffs defaulted in the payment of the monthly installments; (3) title and ownership over the lot did not pass to Francisco Donasco and his heirs since the contract to sell was never consummated; and (5) assuming, arguendo, that the plaintiffs have a cause of action for specific performance, such action had already prescribed since the complaint was filed only on 19 October 1988 or more than ten years from the time that they could have lawfully demanded performance.[9]

Plaintiffs elevated the case to the Court of Appeals where the appeal was docketed as CA-G.R. CV No. 25967. On 12 November 1991, the said court rendered a decision[10] reversing the appealed decision and decreeing as follows:

"WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE and another one is rendered:

(1) Ordering appellee-vendor Vicente Pingol to accept the sum of P10,161.00, plus the legal interest due thereon from the date of institution of this action on October 19, 1988;

(2) Upholding the validity of the 'DEED OF ABSOLUTE SALE OF ONE-HALF (½) (of) AN UNDIVIDED PORTION OF A PARCEL OF LAND' (Exh. A), and by virtue and on the strength of which declaring the 'Heirs of the Deceased Francisco N. Domingo' as the owners of the 274.50 sq. m. land, denominated as Lot 3223-A, (LRC) Psd-146255 under the technical description (exh. D) and reflected in the Plan of Subdivision Survey which was approved By Commissioner of Land Registration on August 13, 1971 (exh. C), representing one-half portion [of] lot 3223, situated at the corner of Malolos Avenue and G. de Jesus St., Bagong Barrio, Caloocan City, and covered by TCT No. 7435 of the Registry of Deeds of Caloocan City (exh. B); and

(3) Ordering the defendants-appellees to pay the costs.

SO ORDERED."[11]

The Court of Appeals ruled that the deed of sale in question reveals the clear intention of Vicente Pingol to part with the ownership of the one-half portion of the land by way of an absolute sale; that the failure to fully pay the agreed price was not a ground for the cancellation of the sale; and that the plaintiffs' action is imprescriptible since it is akin to an action to quiet title to property in one's possession.[12]

Dissatisfied with the decision of the Court of Appeals, the defendants, hereinafter referred to as the petitioners, filed this petition for certiorari on 9 January 1992. Plaintiffs, hereinafter referred to as the private respondents, filed their comment thereto on 10 September 1992 to which the petitioners filed a reply on 11 November 1992. We gave due course to the petition and required the parties to submit their respective memoranda,[13] which they subsequently complied with.

Petitioners contend that the Court of Appeals erred:

I

IN HOLDING THAT THE DOCUMENT (EXHIBIT "A") DENOMINATED AS 'ABSOLUTE DEED OF SALE OF ONE-HALF (½) OF AN UNDIVIDED PORTION OF A PARCEL OF LAND' IS AN ABSOLUTE DEED OF SALE SUFFICIENT TO CONFER OWNERSHIP ON THE VENDEE AND HIS SUCCESSORS-IN-INTEREST, DESPITE THE FACT THAT BY ITS TERMS AND CONDITIONS, LIKE THE PRICE BEING PAYABLE ON INSTALLMENTS WITHIN A FIXED PERIOD, THE SAME IS A CONDITIONAL DEED OF SALE.

II

IN HOLDING THAT NOTWITHSTANDING THE FACT THAT THE VENDEE FAILED TO COMPLY WITH THE TERMS OF THE CONTRACT (EXHIBIT "A") SPECIFICALLY TO COMPLETE THE PAYMENT OF THE CONSIDERATION ON THE DATE STIPULATED IN THE CONTRACT WHICH WAS SUPPOSED TO BE IN JANUARY 1976, COMPLETE PAYMENT THEREOF CAN STILL BE ENFORCED IN AN ACTION INSTITUTED BY THE HEIRS OF THE VENDEE FILED ON OCTOBER 19, 1988 OR A PERIOD OF MORE THAN TWELVE (12) YEARS FROM THE TIME COMPLETE PAYMENT SHOULD HAVE BEEN MADE;

III

IN HOLDING THAT THE PRIVATE RESPONDENTS' ACTION IS ONE WHICH IS AN OFFER TO COMPLETE THE PAYMENT LEFT UNPAID BY PRIVATE RESPONDENTS' FATHER WHICH DOES NOT PRESCRIBE;

IV

IN HOLDING THAT PRIVATE RESPONDENTS' CAUSE OF ACTION HAS NOT PRESCRIBED."[14]

The decisive issue in this case is whether Exhibit "A" embodies a contract of sale or a contract to sell. The distinction between the two is important for in a contract of sale, the title passes to the vendee upon the delivery of the thing sold, whereas in a contract to sell, by agreement, ownership is reserved in the vendor and is not to pass until the full payment of the price. In a contract of sale, the vendor has lost and cannot recover ownership until and unless the contract is resolved or rescinded, whereas in a contract to sell, title is retained by the vendor until the full payment of the price, such payment being a positive suspensive condition, failure of which is not a breach but an event that prevented the obligation of the vendor to convey title from becoming effective.[15]

A perusal of Exhibit "A" leads to no other conclusion than that it embodies a contract of sale. The plain and clear tenor of the "DEED OF ABSOLUTE SALE OF ONE-HALF (½) [OF] AN UNDIVIDED PORTION OF A PARCEL OF LAND" is that "the VENDOR hereby x x x SELL, CONVEY AND CONVEY by way of Absolute Sale the one-half (½) portion x x x to the VENDEE x x x his heirs, assigns and successors-in-interest." That the vendor, petitioner Vicente Pingol, had that clear intention was further evidenced by his failure to reserve his title thereto until the full payment of the price.

In *Dignos vs. Court of Appeals*,[16] we held that a deed of sale is absolute in nature although denominated as a "Deed of Conditional Sale" where there is no stipulation in the deed that title to the property sold is reserved in the seller until the full payment of the price, nor is there a stipulation giving the vendor the right to unilaterally resolve the contract the moment the buyer fails to pay within a fixed period. Exhibit "A" contains neither stipulation. What is merely stated therein is that "the VENDEE agrees that in case of default in the payment of the instalments due the same shall earn a legal rate of interest, and to which the VENDOR likewise agrees."

Furthermore, as found by the Court of Appeals, the acts of the parties, contemporaneous and subsequent to the contract, clearly show that an absolute deed of sale was intended by the parties and not a contract to sell:

"[P]ursuant to the deed, the vendor delivered actual and constructive possession of the property to the vendee, who occupied and took such possession, constructed a building thereon, had the property surveyed and subdivided and a plan of the property was prepared and submitted to the Land Registration Commission which approved it preparatory to segregating the same and obtaining the corresponding TCT in his name. Since the sale, appellee continuously possessed and occupied the property as owner up to his death on July 13, 1984 and his heirs, after his death, continued the occupancy and possession of the property up to the present. Those contemporaneous and subsequent events are demonstrative acts that the vendor since the sale recognized the vendee as the absolute owner of the property sold. All those attributes of ownership are admitted by defendants in their answer, specifically in paragraphs 7 and 9 of their special and affirmative defenses." [17]

The contract here being one of absolute sale, the ownership of the subject lot was transferred to the buyer upon the actual and constructive delivery thereof. The constructive delivery of the subject lot was made upon the execution of the deed of sale [18] while the actual delivery was effected when the private respondents took possession of and constructed a house on Lot No. 3223-A.

The delivery of the object of the contract divested the vendor of the ownership over the same and he cannot recover the title unless the contract is resolved or rescinded pursuant to Article 1592 of the New Civil Code which provides that:

"In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term."

Both the trial court and the Court of Appeals did not find that a notarial or judicial rescission of the contract had been made. Although Vicente Pingol asserts that he had declared to Francisco Donasco that he was cancelling the contract, he did not prove that his demand for rescission was made either judicially or by a notarial act.

Petitioners fault the respondent Court for holding that the action of the petitioners is not barred by the statute of limitations. They argue that the private respondents' action, being based upon a written contract, has prescribed since it was brought only in 1988 or more than ten years from the time when the latter could have lawfully demanded performance. [19]

We disagree.

Although the private respondents' complaint before the trial court was denominated as one for specific performance, it is in effect an action to quiet title. In this regard, the following excerpt from *Bucton vs. Gabar* [20] is apropos:

"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. v. Fabiana* [103 Phil. 683, 686-87 (1958)], 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."

That a cloud has been cast on the title of the private respondents is indubitable. Despite the fact that the title had been transferred to them by the execution of the deed of sale and the delivery of the object of the contract, the

petitioners adamantly refused to accept the tender of payment by the private respondents and steadfastly insisted that their obligation to transfer title had been rendered ineffective.

A vendee in an oral contract to convey land who had made part payment thereof, entered upon the land and had made valuable improvements thereon, is entitled to bring suit to clear his title against the vendor who had refused to transfer the title to him. It is not necessary that the vendee has an absolute title, an equitable title being sufficient to clothe him with personality to bring an action to quiet title.[21]

Prescription thus cannot be invoked against the private respondents for it is aphoristic that an action to quiet title to property in one's possession is imprescriptible.[22] The rationale for this rule has been aptly stated thus:

"The owner of real property who is in possession thereof may wait until his possession is invaded or his title is attacked before taking steps to vindicate his right. A person claiming title to real property, but not in possession thereof, must act affirmatively and within the time provided by the statute. Possession is a continuing right as is the right to defend such possession. So it has been determined that an owner of real property in possession has a continuing right to invoke a court of equity to remove a cloud that is a continuing menace to his title. Such a menace is compared to a continuing nuisance or trespass which is treated as successive nuisances or trespasses, not barred by statute until continued without interruption for a length of time sufficient to affect a change of title as a matter of law." [23]

Private respondents shall, however, be liable to pay the legal rate of interest on the unpaid balance of the purchase price from the date of default or on 6 January 1976, when the entire balance should have been paid, pursuant to the provision in the deed of sale.

WHEREFORE, except as above modified, the Decision appealed from is hereby AFFIRMED. As modified, the interest on the unpaid balance of P10,161.00, at the legal rate, shall be computed from 6 January 1976. Upon the payment by the private respondents to the petitioners of the said amount and the interest thereon, the latter are ordered to deliver Transfer Certificate of Title No. 7435 to the Register of Deeds of Caloocan City who shall cancel the same and issue two new transfer certificates of title in lieu thereof, one of which shall be in the name of the herein private respondents covering Lot No. 3223-A and the other in the name of the petitioners covering the remainder of the lot.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, Bellosillo, and Quiason, JJ., concur.

[1] Rollo, 23-24.

[2] Id., 18.

[3] Id., 64.

[4] Annex "A" of Petition; Rollo, 17-22.

[5] Id., 21.

[6] Annex "B" of Petition; Rollo, 25-29.

[7] Id., 30-33.

[8] Annex "D" of Petition; Rollo, 34-41. Per Judge Geronimo S. Mangay.

[9] Id., 38-41.

[10] Annex "G" of Petition Id., 60-73. Per Associate Justice Artemon D. Luna, concurred in by Associate Justices Celso L. Magsino and Jainal D. Rasul.

[11] Rollo, 72-73.

[12] Id., 67-71.

[13] Rollo, 97.

[14] Rollo, 8.

[15] Lim vs. Court of Appeals, 182 SCRA 564 [1990]; Jacinto vs. Kaparaz, 209 SCRA 246 [1992]; Visayan Sawmill Co., Inc. vs. Court of Appeals, G.R. No. 83851, 3 March 1993.

[16] 158 SCRA [1988].

[17] Rollo, 68.

[18] Article 1498, New Civil Code.

[19] Article 1144, New Civil Code.

[20] 55 SCRA 499 [1974]; see also, Gallar vs. Husain, 20 SCRA 186 [1967].

[21] Ojeda vs. Ojeda, 461 S.W.2d 487 (Tex. Civ. App. 1970).

[22] Sapto vs. Fabiana, 103 Phil. 683 [1958]; Bucton vs. Gabar, supra; Caragay-Layno vs. Court of Appeals, 133 SCRA 718 [1984]; Coronel vs. Intermediate Appellate Court, 155 SCRA 270 [1987]; Solid State Multi-Products Corp. vs. Court of Appeals, 196 SCRA 630 [1991].

[23] Ford vs. Clendenin, 109 N.E. 124 (N.Y. Ct. App. 1915).

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