

MARTA C. ORTEGA, PLAINTIFF AND APPELLANT, VS. DANIEL LEONARDO, DEFENDANT AND APPELLEE.*G.R. No. 11311. May 28, 1958*

Ponente: BENGZON, J.

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Well known is the general rule in the Statute of Frauds precluding enforcement of oral contracts for the sale of land. Not so well known is the exception concerning partially executed contracts^[1]—at least our jurisprudence offers few, if any, apposite illustrations. This appeal exemplifies such exception.

Alleging partial performance, plaintiff sought to compel defendant to comply with their oral contract of sale of a parcel of land. Upon a motion to dismiss, the Manila court of first instance ordered dismissal following the above general rule.

Hence this appeal. It should be sustained if the allegations of the complaint—which the motion to dismiss admitted—set out an instance of partial performance.

Stripped of non-essentials, the complaint averred that long before and until her house had been completely destroyed during the liberation of the City of Manila, plaintiff occupied a parcel of land, designated as Lot I, Block 3 etc. (hereinafter called Lot I) located at San Andres Street, Malate, Manila; that after liberation she re-occupied it; that when the administration and disposition of the said Lot I (together with other lots in the Ana Sarmiento Estate) were assigned by the Government to the Rural Progress Administration^[1] plaintiff asserted her right thereto (as occupant) for purposes of purchase; that defendant also asserted a similar right, alleging occupancy of a portion of the land subsequent to plaintiff's; that during the investigation of such conflicting interests, defendant asked plaintiff to desist from pressing her claim and definitely promised that if and when he succeeded in getting title to Lot I^[2], he would sell to her a portion thereof with an area of 55.60 square meters (particularly described) at the rate of P25.00 per square meter, provided she paid for the surveying and subdivision of the Lot, and provided further that after he acquired title, she could continue holding the lot as tenant by paying a monthly rental of P10.00 until said portion shall have been segregated and the purchase price fully paid; that plaintiff accepted defendant's offer, and desisted from further claiming Lot I; that defendant finally acquired title thereto; that relying upon their agreement, plaintiff caused the survey and segregation of the portion which defendant had promised to sell, incurring expenses therefor, said portion being now designated as Lot I-E in a duly prepared and approved subdivision plan; that in remodeling her son's house constructed on a lot adjoining Lot I she extended it over said Lot I-B; that after defendant had acquired Lot I plaintiff regularly paid him the monthly rental of P10.00; that in July 1954, after the plans of subdivision and segregation of the lot had been approved by the Bureau of Lands, plaintiff tendered to defendant the purchase price which the latter refused to accept, without cause or reason.

The court below explained in its order of dismissal:

"It is admitted by both parties that an oral agreement to sell a piece of land is not enforceable. (Art. 1403, Civil

Code, Section 21, Rule 123, Rules of Court.) Plaintiff, however, argues that the contract in question, although verbal, was partially performed because plaintiff desisted from claiming the portion of lot I in question due to the promise of defendant to transfer said portion to her after the issuance of title to defendant. The court thinks that even granting that plaintiff really desisted to claim not I on oral promise to sell made by defendant, the oral promise to sell cannot be enforced. The desistance to claim is not a part of the contract of sale of the land. Only in essential part of the executory contract will, if it has already been performed, make the verbal contract enforceable, payment of price being an essential part of the contract of sale."

If the above means that partial performance of a sale contract occurs only when part of the purchase price is paid, it surely constitutes a defective statement of the law. American Jurisprudence in its title "Statute of Frauds" lists other acts of partial performance, such as possession, the making of improvements, rendition of services, payment of taxes, relinquishment of rights, etc.

Thus, it is stated that "The continuance in possession by a purchaser who is already in possession may, in a proper case, be sufficiently referable to the parol contract of sale to constitute a part performance thereof. There may be additional acts, or peculiar circumstances which sufficiently refer the possession to the contract. * * * Continued possession under an oral contract of sale, by one already in possession as a tenant, has been held a sufficient part performance, where accompanied by other acts which characterize the continued possession and refer it to the contract of purchase. Especially is this true where the circumstances of the case include the making of substantial, permanent, and valuable improvements." (49 American Jurisprudence-44)

It is also stated that "The making of valuable permanent improvements on the land by the purchaser, in pursuance of the agreement and with the knowledge of the vendor, has been said to be the strongest and most unequivocal act of part performance by which a verbal contract to sell land is taken out of the statute of frauds, and is ordinarily an important element in such part performance. * * * Possession by the purchaser under a parol contract for the purchase of real property, together with his making valuable and permanent improvements on the property which are referable exclusively to the contract, in reliance on the contract, in the honest belief that he has a right to make them, and with the knowledge and consent or acquiescence of the vendor, is deemed a part performance of the contract. The entry into possession and the making of the improvements are held on amount to such an alteration in the purchaser's position as will warrant the court's entering a degree of specific performance." (49 American Jurisprudence p. 755, 756.)

Again, it is stated that "A tender or offer of payment, declined by the vendor, has been said to be equivalent to actual payment, for the purposes of determining whether or not there has been a part performance of the contract. This is apparently true where the tender is by a purchaser who has made improvements. But the doctrine now generally accepted, that not even the payment of the purchase price, without something more, * * * is a sufficient part performance. (49 American Jurisprudence p. 772.)

And the relinquishment of rights or the compromise thereof has likewise been held to constitute part performance. (See same title sees. 473, 474, 475.)

In the light of the above four paragraphs, it would appear that the complaint in this case described several circumstance indicating partial performance: relinquishment of rights^[1] continued possession, building of improvements, tender of payment plus the surveying of the lot at plaintiff's expense and the payment of rentals.

We shall not take time to discuss whether one or the other or any two or three of them constituted sufficient performance to take the matter away from the operation of the Statute of Frauds. Enough to hold that the combination of all of them amounted to partial performance; and we do so line with the accepted basis of the doctrine, that it would be a fraud upon the plaintiff if the defendant were permitted to oppose performance of his

part after he has allowed or induced the former to perform in reliance upon the agreement. (See 49 American Jurisprudence p. 725.)

The paragraph immediately preceding will serve as our comment on the appellee's quotations from American Jurisprudence itself to the effect that "relinquishment" is not part performance, and that neither "surveying the land"[2] nor tender of payment is sufficient. The precedents hereinabove transcribed oppose or explain away or qualify the appellee's citations. And at the risk of being repetitious we say: granting that none of the three circumstances indicated by him, (relinquishment, survey, tender) would separately suffice, still the combination of the three with the others already mentioned, amounts to more than enough.

Hence, as there was partial performance, the principle excluding parol contracts for the sale of realty, does not apply.

The judgment will accordingly be reversed and the record remanded for further proceedings. With costs against appellee.

Paras, C.J., Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia and Felix, JJ., concur.

[1]See Moran, Rules of Court, 1957 Ed. Vol. 3, p. 178.

[1]Evidently in connection, with purchase of landed estates for re-sale to occupants.

[2]Of about 234 square meters.

[1]An occupant of the landed estate has preference to buy.

[2]Here the survey was at plaintiff's expense and pursuant to their agreement.

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