

ANTONIO ENRIQUEZ DE LA CAVADA, PLAINTIFF AND APPELLEE, VS. ANTONIO DIAZ, DEFENDANT AND APPELLANT.

G.R. No. 11668. April 01, 1918

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was instituted by the plaintiff for the purpose of requiring the defendant to comply with a certain "contract of option" to purchase a certain piece or parcel of land described in said contract and for damages for a noncompliance with said contract. After the close of the trial the Honorable James A. Ostrand, judge, rendered a judgment the dispositive part of which is as follows:

"Wherefore, it is hereby ordered and adjudged that the defendant, within the period of thirty days from the date upon which this decision becomes final, convey to the plaintiff a good and sufficient title in fee simple to the land described in decrees Nos. 13909 and 13919 of the Court of Land Registration, upon payment or legal tender of payment by said plaintiff of the sum of thirty thousand pesos (P30,000) in cash, and upon said plaintiff giving security approved by this court for the payment within the term of 6 years from the date of the conveyance for the additional sum of forty thousand pesos (P40,000) with interest at the rate of 6 per cent per annum.

"It is further ordered and adjudged that in the event of the failure of the defendant to execute the conveyance as aforesaid, the plaintiff have and recover judgment against him, the said defendant, for the sum of twenty thousand pesos (P20,000), with interest at the rate of six per cent (6 per cent per annum from the date upon which the conveyance should have been made). It is so ordered."

From that judgment the defendant appealed and made several assignments of error.

It appears from the record that on the 15th day of November, 1912, the defendant and the plaintiff entered into the following "contract of option:"

"(Exhibit A.)

"CONTRACT OF OPTION.

"I, the undersigned, Antonio Diaz, of legal age, with personal registration certificate Number F-855949, issued at Pitogo, Tayabas, January 16, 1912, and temporarily residing in Manila, P.I., do hereby grant an option to Antonio Enriquez to purchase my hacienda at Pitogo consisting of 100 and odd hectares, within the period necessary for the approval and issuance of a Torrens title thereto by the Government for which he may pay me either the sum of thirty thousand pesos (P30,000), Philippine currency, in cash, or within the period of six (6) years, beginning with the date of the purchase, the sum of forty thousand pesos (P40,000), Philippine currency, at six per cent interest per annum, with due security for the payment of the said P40,000 in consideration of the sale to him of my property described as follows, to wit:

"About one hundred hectares of land in Pitogo, Tayabas, containing about 20,000 coconut trees and 10,000

nipa-palm trees, all belonging to me, which I hereby sell to Antonio Enriquez de la Cavada for seventy thousand pesos, under the conditions herein specified.

"I declare that Antonio Enriquez is the sole person who has, and shall have, during the period of this option, the right to purchase the property above-mentioned.

"I likewise declare that Antonio Enriquez shall be free to resell the said property at whatever price he may desire, provided that he should comply with the stipulations covenanted with me.

"In witness of my entire conformity with the foregoing, I hereunto affix my signature, in Manila, P. I., this 15th day of November, 1912.

(Sgd.) "Antonio Diaz.

"Signed in the presence of:

(Sgd.) "J. Valds Diaz."

"(Exhibit B.)

"P. I., November 15, 1912.

"Sr. Don Antonio Diaz,

"Calle Victoria, No. 125, W. C.,

Manila, P. I.

"Dear Sir: I have the honor to inform you that, in conformity with the letter of option in my favor of even date, I will buy your coconut plantation in Pitogo, containing one hundred hectares, together with all the coconut and nipa-palm trees planted thereon, under the following conditions :

"1. I shall send a surveyor to survey the said property, and to apply to the Government for a Torrens title therefor, and, if the expenses incurred for the same should not exceed P1,000, I shall pay the P500 and you the other P500; Provided, however, that you shall give the surveyor all necessary assistance during his stay at the hacienda.

"2. I shall pay the purchase price to you in conformity with our letter of option of this date, and after the Torrens title shall have been officially approved.

"Yours respectfully,

(Sgd.) "A. Enriquez.

"I acknowledge receipt of, and conform with, the foregoing.

(Sgd.) "Antonio Diaz."

It appears from the record that soon after the execution of said contract, and in part compliance with the terms thereof, the defendant presented two petitions in the Court of Land Registration (Nos. 13909 and 13919), each for the purpose of obtaining the registration of a part of the "Hacienda de Pitogo." Said petitions were granted, and each parcel was registered and a certificate of title was issued for each part under the Torrens system to the defendant herein. Later, and pretending to comply with the terms of said contract, the defendant offered to transfer to the plaintiff one of said parcels only, which was a part of said "hacienda." The plaintiff refused to accept said certificate for a part only of said "hacienda" upon the ground (a) that it was only a part of the "Hacienda de Pitogo," and (b) under the contract (Exhibits A and B) he was entitled to a transfer to him all of said "hacienda."

The theory of the defendant is that the contract of sale of said "Hacienda de Pitogo" included only 100 hectares,

more or less, of said "hacienda," and that by offering to convey to the plaintiff a portion of said "hacienda" composed of "100 hectares, more or less," he thereby complied with the terms of the contract. The theory of the plaintiff is that he had purchased all of said "hacienda," and that the same contained, at least, 100 hectares, more or less. The lower court sustained the contention of the plaintiff, to wit, that the sale was a sale of the "Hacienda de Pitogo" and not a sale of a part of it, and rendered a judgment requiring the defendant to comply with the terms of the contract by transferring to the plaintiff, by proper deeds of conveyance, all of said "hacienda," or to pay in lieu thereof the sum of P20,000 damages, together with 6 per cent interest from the date upon which said conveyance should have been made.

After issue had been joined between the plaintiff and defendant upon their pleadings, they entered into the following agreement with reference to the method of presenting their proof:

"The attorneys for the parties in this case make the following stipulations:

"1. Each of the litigating parties shall present his evidence before Don Felipe Canillas, assistant clerk of the Court of First Instance of Manila, who, for such purpose, should be appointed commissioner.

"2. Said commissioner shall set a day and hour for the presentation of the evidence above-mentioned, both oral and documentary, and in the stenographic notes shall have record entered of all objections made to the evidence by either party, in order that they may afterwards be decided by the court.

"3. The transcription of the stenographic notes, containing the record of the evidence taken, shall be paid for in equal shares by both parties.

"4. At the close of the taking of the evidence, each of the parties shall file his brief in respect to such evidence, whereupon the case as it then stands shall be submitted to the decision of the court.

"The parties request the court to approve this agreement in the part thereof which refers to the proceedings in this case.

"Manila, P. I., December 21, 1914.

(Sgd.) "Antonio V. Herrero. (Sgd.) Alfredo Chicote.

" Approved:

(Sgd.) "Geo. R. Harvey,

"Judge."

Said agreement was approved by the lower court, and proof was taken in accordance therewith. The defendant-appellant now alleges, giving several reasons therefor, that the proof was improperly practiced, and that the judge was without authority to decide the cause upon proof taken in the manner agreed upon by the respective parties. The defendant-appellant makes no contention that he was not permitted to present all the proof he desired to present. He makes no contention that he has been prejudiced in any manner whatsoever by virtue of the method agreed upon for taking the testimony.

There is nothing in the law nor in public policy which prohibits the parties in a civil litigation from making the agreement above quoted. While the law concedes to parties litigant, generally, the right to have their proof taken in the presence of the judge, such a right is a renounceable one. In a civil action the parties litigant have a right to agree, outside of the court, upon the facts in litigation. Under certain conditions the parties litigant have a right to take the depositions of witnesses and submit the sworn statements in that form to the court. The proof, as it was submitted to the court in the present case, by virtue of said agreement, was, in effect, in the form of a deposition of the various witnesses presented. Having agreed to the method of taking the proof, and the same having been

taking in compliance with said agreement, it is now too late, there being no law to the contrary, for them to deny and repudiate the effect of their agreement. (Biunas vs. Mora, R. G. No. 11464, March 11, 1918; Behr vs. Levy Hermanos, R. G. No. 12211, March 19, 1918.[1])

Not only is there no law prohibiting the parties from entering into an agreement to submit their proof to the court in civil actions as was done in the present case, but it may be a method highly convenient, not only to the parties, but to busy courts. The judgment of the lower court, therefore, should not be modified or reversed on account of the first assignment of error.

In the second assignment of error, the appellant alleges (a) that the lower court committed an error in declaring the contract (Exhibits A and B) a valid obligation, for the reason that it had not been admitted in evidence, and (b) that the same was null for a failure of consideration. Upon the first question, an examination of the proof shows that said contract (Exhibits A and B) was offered in evidence and admitted as proof without objection. Said contract was, therefore, properly presented to the court as proof. Not only was the contract before the court by reason of its having been presented in evidence, but the defendant himself made said contract an integral part of his pleadings. The defendant admitted the execution and delivery of the contract, and alleged that he made an effort to comply with its terms. His only defense is that he sold to the plaintiff a part of the "hacienda" only and that he offered, in compliance with the terms of the contract, to convey to the plaintiff all of the land which he had promised to sell.

With reference to the second objection, to wit, that there was no consideration for said contract it may be said (a) that the contract was for the sale of a definite parcel of land; (b) that it was reduced to writing; (c) that the defendant promised to convey to the plaintiff said parcel of land; (d) that the plaintiff promised to pay therefor the sum of P70,000 in the manner prescribed in said contract; (e) that the defendant admitted the execution and delivery of the contract and alleged that he made an effort to comply with the same (par. 3 of defendant's answer) and requested the plaintiff to comply with his part of the contract; and (f) that no defense or pretention was made in the lower court that there was no consideration for his contract. Having admitted the execution and delivery of the contract, having admitted an attempt to comply with its terms, and having failed in the court below to raise any question whatsoever concerning the inadequacy of consideration, it is rather late, in the face of said admissions, to raise that question for the first time in this court. The only dispute between the parties in the lower court was whether or not the defendant was obligated to convey to the plaintiff all of said "hacienda." The plaintiff insisted that his contract entitled him to a conveyance of all of said "hacienda." The defendant contended that he had complied with the terms of his contract by offering to convey to the plaintiff a part of the said "hacienda" only. That was the only question presented to the lower court and that was the only question decided.

A promise made by one party, if made in accordance with the forms required by the law, may be a good consideration (causa) for a promise made by another party. (Art. 1274, Civil Code.) In other words, the consideration (causa) need not pass from one to the other at the time the contract is entered into. For example, A promises to sell a certain parcel of land to B for the sum of P70,000. If A, by virtue of the promise of B to pay P70,000, promises to sell said parcel of land to B for said sum, then the contract is complete, provided they have complied with the forms required by the law. The consideration need not be paid at the time of the promise. The one promise is a consideration for the other. Of course, A cannot enforce a compliance with the contract and require B to pay said sum until he has complied with his part of the contract. In the present case, the defendant promised to convey the land in question to the plaintiff as soon as the same could be registered. The plaintiff promised to pay to the defendant P70,000 therefor in accordance with the terms of their contract. The plaintiff stood ready to comply with his part of the contract. The defendant, even though he had obtained a registered title to said parcel of land, refused to comply with his promise. All of the conditions of the contract on the part of the

defendant had been concluded, except delivering the deeds of transfer. Of course, if the defendant had been unable to obtain a registration of his title, or if he had violated the terms of the alleged optional contract by selling the same to some other person than the plaintiff, then he might have raised the objection that he had received nothing from the plaintiff for the option which he had conceded. That condition, of course, would have presented a different question from the one which we have before us. The said contract (Exhibits A and B) was not, in fact, an "optional contract" as that phrase is generally used. Reading the said contract from its four corners it is clearly an absolute promise to sell a definite parcel of land for a fixed price upon definite conditions. The defendant promised to convey to the plaintiff the land in question as soon as the same was registered under the Torrens system, and the plaintiff promised to pay to the defendant the sum of P70,000, under the conditions named, upon the happening of that event. The contract was not, in fact, what is generally known as a "contract of option." It differs very essentially from a contract of option. An optional contract is a privilege existing in one person, for which he had paid a consideration, which gives him the right to buy, for example, certain merchandise of certain specified property, from another person, if he chooses, at any time within the agreed period, at a fixed price. The contract of option is a separate and distinct contract from the contract which the parties may enter into upon the consummation of the option. A consideration for an optional contract is just as important as the consideration for any other kind of contract. If there was no consideration for the contract of option, then it cannot be enforced any more than any other contract where no consideration exists. To illustrate, A offers B the sum of P100,000 for the option of buying his property within the period of 30 days. While it is true that the conditions upon which A promises to buy the property at the end of the period mentioned are usually fixed in the option, the consideration for the option is an entirely different consideration from the consideration of the contract with reference to which the option exists. A contract of option is a contract by virtue of the terms of which the parties thereto promise and obligate themselves to enter into another contract at a future time, upon the happening of certain events, or the fulfillment of certain conditions.

Upon the other hand, suppose that the defendant had complied with his part of the contract and had tendered the deeds of transfer of the "Hacienda de Pitogo" in accordance with its terms and had demanded the payments specified in the contract, and the plaintiff refused to comply—what then would have been the rights of the defendant? Might he not have successfully maintained an action for the specific performance of the contract, or for the damages resulting from the breach of said contract? When the defendant alleged that he had complied with his part of the contract (par. 3 of defendant's answer) and demanded that the plaintiff should immediately comply with his part of the same, he evidently was laying the foundation for an action for damages, the nullification or a specific compliance with the contract.

The appellant contends that the contract which he made was not with the plaintiff but with Rosenstock, Elser & Co. That question was not presented in the court below. The contract in question shows, upon its face, that the defendant made the same with the plaintiff. Not having raised the question in the court below, and having admitted the execution and delivery of the contract in question with the plaintiff, we are of opinion that his admission is conclusive upon that question (par. 1 of special defense of defendant's answer) and need not be further discussed.

The appellant further contends that the action was premature, for the reason that the plaintiff had not paid nor offered to pay the price agreed upon, under the conditions named, for the land in question. That question was not raised in the court below, which fact, ordinarily, would be a sufficient answer to the contention of the appellant. It may be added, however, that the defendant could not demand the payment until he had offered the deeds of conveyance, in accordance with the terms of the contract. He did not offer to comply with the terms of his contract. True it is that he offered to comply partially with the terms of the contract, but not fully. While the payment must be simultaneous with the delivery of the deeds of conveyance, the payment need not be made until

the deed of conveyance is offered. The plaintiff stood ready and willing to perform his part of the contract immediately upon the performance on the part of the defendant. (Arts. 1258 and 1451 of Civil Code.)

In the fifth assignment of error the appellant contends that the lower court committed an error in not declaring that the defendant was not obligated to sell the "Hacienda de Pitogo" to the plaintiff "por incumplimiento, renuncia, abandono y negligencia del mismo demandante, etc." (For nonfulfillment, renunciation, abandonment and negligence of plaintiff himself, etc.) That question was not presented to the court below. But even though it had been the record shows that the plaintiff, at all times, insisted upon a compliance with the terms of the contract on the part of the defendant, standing ready to comply with his part of the same.

The appellant contends in his sixth assignment of error that the plaintiff had not suffered the damages complained of, to wit, in the sum of "P20,000. The only proof upon the question of damages suffered by the plaintiff for the noncompliance with the terms of the contract in question on the part of the defendant is that the plaintiff, in contemplation of the compliance with the terms of the contract on the part of the defendant, entered into a contract with a third party to sell the said "hacienda" at a profit of P30,000. That proof is not disputed. . No attempt was made in the lower court to deny that fact. The proof shows that the person with whom the plaintiff had entered into a conditional sale of the land in question had made a deposit for the purpose of guaranteeing the final consummation of that contract. By reason of the failure of the defendant to comply with the contract here in question, the plaintiff was obliged to return the sum deposited by said third party with a promise to pay damages. The record does not show why the plaintiff did not. ask for damages in the sum of P30,000. He asked for a judgment only in the sum of P20,000. He now asks that the judgment of the lower court be modified and that he be given a judgment for P30,000. Considering the fact that he neither asked for a judgment for more than P20,000 nor appealed from the judgment of the lower court, his request now cannot be granted. We find no reason for modifying the judgment of the lower court by virtue of the sixth assignment of error.

In the seventh assignment of error the appellant contends that the contract of sale was not in effect a contract of sale. He alleges that the contract was, in fact, a contract by virtue of which the plaintiff promised to find a buyer for the parcel of land in question; that the plaintiff was not in fact the purchaser; that the only obligation that the plaintiff assumed was to find some third person who would purchase the land from the defendant. Again, it would be sufficient to say, in answer to that assignment of error, that no contention of that nature was presented in the court below, and for that reason it is improperly presented now for the first time. In addition, however, it may be added that the defendant, in his answer, admitted that he not only sold the land in question, but offered to transfer the same to the plaintiff, in compliance with the contract. (See answer of defendant.)

In the eighth assignment of error the appellant contends that the lower court committed an error in its order requiring him to convey to the plaintiff the "Hacienda de Pitogo," for the reason that the plaintiff had not demanded a transfer of said property, and for the additional reason that a portion of said "hacienda" had already been sold to a third person. With reference to the first contention, the record clearly shows that the plaintiff was constantly insisting upon a compliance with the terms of the contract, to wit, a conveyance to him of the "Hacienda de Pitogo" by the defendant. Naturally, he refused, under the contract, to accept a conveyance of a part only of said "hacienda." With reference to the second contention, it may be said that the mere fact that the defendant had sold a part of the "hacienda" to other persons, is no sufficient reason for not requiring a strict compliance with the terms of his contract with the plaintiff, or to answer in damages for his failure. (Arts. 1101 and 1251 of the Civil Code.)

In view of all of the foregoing, and after a consideration of the facts and the law applicable thereto, we are persuaded that there is no reason given in the record justifying a modification or reversal of the judgment of the lower court. The same is, therefore, hereby affirmed, with costs. So ordered.

Arellano, C.J., Torres, Street, Malcolm, and Fisher, JJ., concur.

[1] Not reported.

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