SALVADOR ADORABLE AND LIGAYA ADORABLE, PETITIONERS, VS. COURT OF APPEALS, HON. JOSE O. RAMOS, FRANCISCO BARENG AND SATURNINO BARENG, RESPONDENTS.

G.R. No. 119466. November 25, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review under Rule 45 of the decision[1] of the Court of Appeals, dated January 6, 1995, sustaining the dismissal by Branch 24 of the Regional Trial Court, Echague, Isabela, of the complaint filed by petitioners, spouses Salvador and Ligaya Adorable, for lack of cause of action.

The facts are as follows:

Private respondent Saturnino Bareng was the registered owner of two parcels of land, one identified as Lot No. 661-D-5-A, with an area of 20,000 sq. m., covered by TCT No. T-162837, and the other known as Lot No. 661-E, with an area of 4.0628 hectares, covered by TCT No. T-60814, both of which are in San Fabian, Echague, Isabela. Petitioners were lessees of a 200 sq.m. portion of Lot No. 661-D-5-A.

On April 29, 1985, Saturnino Bareng and his son, private respondent Francisco Bareng, obtained a loan from petitioners amounting to twenty six thousand pesos (P26,000), in consideration of which they promised to transfer the possession and enjoyment of the fruits of Lot No. 661-E.

On August 3, 1986, Saturnino sold to his son Francisco 18,500 sq.m. of Lot No. 661-D-5-A. The conveyance was annotated on the back of TCT No. T-162873. In turn, Francisco sold on August 27, 1986 to private respondent Jose Ramos 3,000 sq.m. of the lot. The portion of land being rented to petitioners was included in the portion sold to Jose Ramos. The deeds of sale evidencing the conveyances were not registered in the office of the register of deeds.

As the Barengs failed to pay their loan, petitioners complained to Police Captain Rodolfo Saet of the Integrated National Police (INP) of Echague through whose mediation a Compromise Agreement was executed between Francisco Bareng and the Adorables whereby the former acknowledged his indebtedness of P56,385.00 which he promised to pay on or before July 15, 1987. When the maturity date arrived, however, Francisco Bareng failed to pay. A demand letter was sent to Francisco Bareng, but he refused to pay.

Petitioners, learning of the sale made by Francisco Bareng to Jose Ramos, then filed a complaint with the Regional Trial Court, Branch 24, Echague, Isabela for the annulment or rescission of the sale on the ground that the sale was fraudulently prepared and executed.

During trial, petitioners presented as witness Jose Ramos. After his testimony, the next hearing was set on August 4 and 5, 1990. On said hearing dates, however, petitioners were absent. The trial court therefore ordered the presentation of evidence for petitioners terminated and allowed private respondents to present their evidence ex parte. On February 15, 1991, the trial court rendered judgment dismissing the complaint for lack of cause of

action, declaring the contract of sale between Francisco Bareng and Jose Ramos valid and ordering Francisco Bareng to pay the amount he owed petitioners.

On appeal, the Court of Appeals affirmed the decision of the Regional Trial Court, with modification as to the amount of Francisco Bareng's debt to petitioners.

Hence, this petition for review, raising the following issues: (1) whether the Court of Appeals erred in dismissing the complaint for lack of cause of action; (2) whether petitioners enjoyed legal preference to purchase the lots they lease; and (3) whether the Court of Appeals erred in sustaining the lower court's order terminating petitioners' presentation of evidence and allowing private respondents to present their evidence ex parte.

In sustaining the decision of the trial court dismissing the complaint for lack of cause of action, the Court of Appeals premised its decision on Rule 3, §2 of the former Rules of Court which provided:

Parties in interest. — Every action must be prosecuted and defended in the name of the real party in interest. All persons having an interest in the subject of the action and in obtaining the relief demanded shall be joined as plaintiffs. All persons who claim an interest in the controversy or who are necessary to a complete determination or settlement of the questions involved therein shall be joined as defendants.

A real party in interest is one who would be benefited or injured by the judgment, or who is entitled to the avails of the suit. "Interest," within the meaning of this rule, should be material, directly in issue and to be affected by the decree, as distinguished from a mere incidental interest or in the question involved.[2] Otherwise put, an action shall be prosecuted in the name of the party who, by the substantive law, has the right sought to be enforced.[3]

Petitioners anchor their interest on their right as creditors of Francisco Bareng, as well as on their claim of preference over the sale of the contested lot.[4] They contend that the sale between Francisco Bareng and Jose Ramos prejudiced their interests over the property as creditors of Francisco Bareng. Moreover, they claim that, under Commonwealth Act No. 539, they have a preferential right, as tenants or lessees, to purchase the land in question.

The petition has no merit.

First. We hold that, as creditors, petitioners do not have such material interest as to allow them to sue for rescission of the contract of sale. At the outset, petitioners' right against private respondents is only a personal right to receive payment for the loan; it is not a real right over the lot subject of the deed of sale.

A personal right is the power of one person to demand of another, as a definite passive subject, the fulfillment of a prestation to give, to do, or not to do. On the other hand, a real right is the power belonging to a person over a specific thing, without a passive subject individually determined, against whom such right may be personally exercised.[5] In this case, while petitioners have an interest in securing payment of the loan they extended, their right to seek payment does not in any manner attach to a particular portion of the patrimony of their debtor, Francisco Bareng.

Nor can we sustain petitioners' claim that the sale was made in fraud of creditors. Art. 1177 of the Civil Code provides:

The creditors, after having pursued the property in possession of the debtor to satisfy their claims, may exercise all the rights and bring all the actions of the latter for the same purpose, save those which are inherent in his person; they may also impugn the actions which the debtor may have done to defraud them. (Emphasis added)

Thus, the following successive measures must be taken by a creditor before he may bring an action for rescission

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of an allegedly fraudulent sale: (1) exhaust the properties of the debtor through levying by attachment and execution upon all the property of the debtor, except such as are exempt by law from execution; (2) exercise all the rights and actions of the debtor, save those personal to him (accion subrogatoria); and (3) seek rescission of the contracts executed by the debtor in fraud of their rights (accion pauliana). Without availing of the first and second remedies, i.e., exhausting the properties of the debtor or subrogating themselves in Francisco Bareng's transmissible rights and actions, petitioners simply undertook the third measure and filed an action for annulment of the sale. This cannot be done.

Indeed, an action for rescission is a subsidiary remedy; it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same.[6] Thus, Art. 1380 of the Civil Code provides:

The following contracts are rescissible:

. . . .

(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;

Petitioners have not shown that they have no other means of enforcing their credit. As the Court of Appeals pointed out in its decision:

In this case, plaintiffs-appellants had not even commenced an action against defendants-appellees Bareng for the collection of the alleged indebtedness. Plaintiffs-appellants had not even tried to exhaust the property of defendants-appellees Bareng. Plaintiffs-appellants, in seeking for the rescission of the contracts of sale entered into between defendants-appellees, failed to show and prove that defendants-appellees Bareng had no other property, either at the time of the sale or at the time this action was filed, out of which they could have collected this (sic) debts.

Second. Nor do petitioners enjoy any preference to buy the questioned property. In Aldecoa v. Hongkong and Shanghai Banking Corporation,[7] it was held that in order that one who is not obligated in a contract either principally or subsidiarily may maintain an action for nullifying the same, his complaint must show the injury that would positively result to him from the contract in which he has not intervened, with regard at least to one of the contracting parties.

Petitioners attempt to establish such legal injury through a claim of preference created under C.A. No. 539, the pertinent provision of which provides:

SEC. 1. The President of the Philippines is authorized to acquire private lands or any interest therein, through purchase or expropriation, and to subdivide the same into home lots or small farms for resale at reasonable prices and under such conditions as he may fix to their bona fide tenants or occupants or to private individuals who will work the lands themselves and who are qualified to acquire and own lands in the Philippines.

This statute was passed to implement Art. XIII, §4 of the 1935 Constitution which provided that "The Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals." It is obvious that neither under this provision of the former Constitution nor that of C.A. No. 539 can petitioners claim any right since the grant of preference therein applies only to bona fide tenants, after the expropriation or purchase by the government of the land they are occupying.[8] Petitioners are not tenants of the land in question in this case. Nor has the land been acquired by the government for their benefit.

Third. Finally, we hold that no error was committed by the Court of Appeals in affirming the order of the trial court terminating the presentation of petitioners' evidence and allowing private respondents to proceed with theirs because of petitioners' failure to present further evidence at the scheduled dates of trial.

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Petitioners contend that since their counsel holds office in Makati, the latter's failure to appear at the trial in Isabela at the scheduled date of hearing should have been treated by the court with a "sense of fairness."[9]

This is more a plea for compassion rather than explanation based on reason. We cannot find grave abuse of discretion simply because a court decides to proceed with the trial of a case rather than postpone the hearing to another day, because of the absence of a party. That the absence of a party during trial constitutes waiver of his right to present evidence and cross-examine the opponent's witnesses is firmly supported by jurisprudence.[10] To constitute grave abuse of discretion amounting to lack or excess of jurisdiction, the refusal of the court to postpone the hearing must be characterized by arbitrariness or capriciousness. Here, as correctly noted by the Court of Appeals, petitioners' counsel was duly notified through registered mail of the scheduled trials.[11] His only excuse for his failure to appear at the scheduled hearings is that he "comes from Makati." This excuse might hold water if counsel was simply late in arriving in the courtroom. But this was not the case. He did not appear at all.

WHEREFORE, the petition for review is DENIED, and the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Justice Eugenio S. Labitoria and concurred in by Justices Pedro A. Ramirez and Quirino D. Abad Santos, Jr.

[2] 1 VICENTE J. FRANCISCO, THE REVISED RULES OF COURT IN THE PHILIPPINES 209 (1973).

[3] Id, at 211.

[4] Rollo, p. 10.

[5] 4 ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 94 (1991), citing 3 SANCHEZ ROMAN 6, 8.

[6] Civil Code, Art. 1383.

[7] 22 Phil. 572 (1912).

[8] See Santiago v. Cruz, 98 Phil. 168 (1955); Juat v. Land Tenure Administration, 110 Phil. 970 (1961); Antonel v. Land Tenure Administration, 133 Phil 530 (1968); Cruz v. Franco, 146 Phil. 554 (1970); Enriquez, et al. v. Panlilio, et al. 95 Phil. 403 (1954).

[9] Rollo, p. 17.

[10] See De Rapisura v. Nicolas, 16 SCRA 798 (1966); Jalover v. Ytoriaga, 80 SCRA 101 (1977).

[11] Rollo, p.44.

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