

**SPS. FORTUNATO SANTOS AND ROSALINDA R. SANTOS,
PETITIONERS, VS. COURT OF APPEALS, SPS. MARIANO R. CASEDA
AND CARMEN CASEDA, RESPONDENTS.**

G.R. No. 120820. August 01, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari is the decision of the Court of Appeals, dated March 28, 1995, in CA-G.R. CV No. 30955, which reversed and set aside the judgment of the Regional Trial Court of Makati, Branch 133, in Civil Case No. 89-4759. Petitioners (the Santoses) were the owners of a house and lot informally sold, with conditions, to herein private respondents (the Casedas). In the trial court, the Casedas had complained that the Santoses refused to deliver said house and lot despite repeated demands. The trial court dismissed the complaint for specific performance and damages, but in the Court of Appeals, the dismissal was reversed, as follows:

“WHEREFORE, in view of the foregoing, the decision appealed from is hereby REVERSED and SET ASIDE and a new one entered:

“1. GRANTING plaintiffs-appellants a period of NINETY (90) DAYS from the date of the finality of judgment within which to pay the balance of the obligation in accordance with their agreement;

“2. Ordering appellees to restore possession of the subject house and lot to the appellants upon receipt of the full amount of the balance due on the purchase price; and

“3. No pronouncement as to costs.

“SO ORDERED.”[1]

The undisputed facts of this case are as follows:

The spouses Fortunato and Rosalinda Santos owned the house and lot consisting of 350 square meters located at Lot 7, Block 8, Better Living Subdivision, Paranaque, Metro Manila, as evidenced by TCT (S-11029) 28005 of the Register of Deeds of Paranaque. The land together with the house, was mortgaged with the Rural Bank of Salinas, Inc., to secure a loan of P150,000.00 maturing on June 16, 1987.

Sometime in 1984, Rosalinda Santos met Carmen Caseda, a fellow market vendor of hers in Pasay City and soon became very good friends with her. The duo even became kumadres when Carmen stood as a wedding sponsor of Rosalinda's nephew.

On June 16, 1984, the bank sent Rosalinda Santos a letter demanding payment of P16,915.84 in unpaid interest and other charges. Since the Santos couple had no funds, Rosalinda offered to sell the house and lot to Carmen. After inspecting the real property, Carmen and her husband agreed.

Sometime that month of June, Carmen and Rosalinda signed a document, which reads:

“Received the amount of P54,100.00 as a partial payment of Mrs. Carmen Caseda to the (total) amount of 350,000.00 (house and lot) that is own (sic) by Mrs. Rosalinda R. Santos.

(Mrs.) (Sgd.) Carmen Caseda

direct buyer

Mrs. Carmen Caseda

“(Sgd.) Rosalinda Del R. Santos

Owner

Mrs. Rosalinda R. Santos

House and Lot

Better Living Subd. Parañaque, Metro Manila
Section V Don Bosco St.”[2]

The other terms and conditions that the parties agreed upon were for the Caseda spouses to pay: (1) the balance of the mortgage loan with the Rural bank amounting to P135,385.18; (2) the real estate taxes; (3) the electric and water bills; and (4) the balance of the cash price to be paid not later than June 16, 1987, which was the maturity date of the loan.[3]

The Casedas gave an initial payment of P54,100.00 and immediately took possession of the property, which they then leased out. They also paid in installments, P81,696.84 of the mortgage loan. The Casedas, however, in 1987. Notwithstanding the state of their finances, Carmen nonetheless paid in March 1990, the real estate taxes on the property for 1981-1984. She also settled the electric bills from December 12, 1988 to July 12, 1989. All these payments were made in the name of Rosalinda Santos.

In January 1989, the Santos, seeing that the Casedas lacked the means to pay the remaining installments and/or amortization of the loan, repossessed the property. The Santos then collected the rentals from the tenants.

In February 1989, Carmen Caseda sold her fishpond in Batangas. She then approached petitioners and offered to pay the balance of the purchase price for the house and lot. The parties, however, could not agree, and the deal could not push through because the Santos wanted a higher price. For understandably, the real estate boom in Metro Manila at this time, had considerably jacked up realty values.

On August 11, 1989, the Casedas filed Civil Case No. 89-4759, with the RTC of Makati, to have the Santos execute the final deed of conveyance over the property, or in default thereof, to reimburse the amount of P180,000.00 paid in cash and P249,900.00 paid to the rural bank, plus interest; as well as rentals for eight months amounting to P32,000.00, plus damages and costs of suit.

After trial on the merits, the lower court disposed of the case as follows:

“WHEREFORE, judgment is hereby ordered:

- (a) dismissing plaintiff's (Casedas') complaint; and
- (b) declaring the agreement marked as Annex "C" of the complaint rescinded. Costs against plaintiffs.

“SO ORDERED.”[4]

Said judgment of dismissal is mainly based on the trial court's finding that:

“Admittedly, the purchase price of the house and lot was P485,385.18, i.e. P350,000.00 as cash payment and P135,385.18, assumption of mortgage. Of it plaintiffs [Casedas] paid the following: (1) P54,100.00 down payment; and (2) P81,694.64 installment payments to the bank on the loan (Exhs. E to E-19) or a total of P135,794.64. Thus, plaintiffs were short of the purchase price. They cannot, therefore, demand specific performance.”[5]

The trial court further held that the Casedas were not entitled to reimbursement of payments already made, reasoning that:

“As, earlier mentioned, plaintiffs made a total payment of P135,794.64 out of the purchase price of P485,385.18. The property was in plaintiffs' possession from June 1984 to January 1989 or a period of fifty-five months. During that time, plaintiffs leased the property. Carmen said the property was rented for P25.00 a day or P750.00 a month at the start and in 1987 it was increased to P2,000.00 and P4,000.00 a month. But the evidence is not precise when the different amounts of rental took place. Be that as it may, fairness demands that plaintiffs must pay defendants for their exercise of dominical rights over the property by renting it to others. The amount of P2,000.00 a month would be reasonable based on the average of P750.00, P2,000.00, P4,000.00 lease-rentals charged. Multiply P2,000.00 by 55 months, the plaintiffs must pay defendants P110,000.00 for the use of the property. Deducting this amount from the P135,794.64 payment of the plaintiffs on the property, the difference is P25,794.64. Should the plaintiffs be entitled to a reimbursement of this amount? The answer is in the negative. Because of failure of plaintiffs to liquidated the mortgage loan on time, it had ballooned from its original figure of P135,384.18 as of June 1984 to P337,280.78 as of December 31, 1988. Defendants [Santoses] had to pay the last amount to the bank to save the property from foreclosure. Logically, plaintiffs must share in the burden arising from their failure to liquidate the loan per their contractual commitment. Hence, the amount of P25,794.64 as their share in the defendants' damages in the form of increased loan-amount, is reasonable.”[6]

On appeal, the appellate court, as earlier noted, reversed the lower court. The appellate court held that rescission was not justified under the circumstances and allowed the Caseda spouses a period of ninety days within which to pay the balance of the agreed purchase price.

Hence, this instant petition for review on certiorari filed by the Santoses.

Petitioners now submit the following issues for our consideration:

WHETHER OR NOT THE COURT OF APPEALS HAS JURISDICTION TO DECIDE PRIVATE RESPONDENT'S APPEAL INTERPOSING PURELY QUESTIONS OF LAW.

WHETHER THE SUBJECT TRANSACTION IS NOT A CONTRACT OF ABSOLUTE SALE BUT A MERE ORAL CONTRACT TO SELL IN WHICH CASE JUDICIAL DEMAND FOR RESCISSION (ART. 1592,[7] CIVIL CODE) IS NOT APPLICABLE.

ASSUMING ARGUENDO THAT A JUDICIAL DEMAND FOR RESCISSION IS REQUIRED, WHETHER PETITIONERS' DEMAND AND PRAYER FOR RESCISSION CONTAINED IN THEIR ANSWER FILED

BEFORE THE TRIAL SATISFIED THE SAID REQUIREMENT.

WHETHER OR NOT THE NON-PAYMENT OF MORE THAN HALF OF THE ENTIRE PURCHASE PRICE INCLUDING THE NON-COMPLIANCE WITH THE STIPULATION TO LIQUIDATE THE MORTGAGE LOAN ON TIME WHICH CAUSED GRAVE DAMAGE AND PREJUDICE TO PETITIONERS, CONSTITUTE SUBSTANTIAL BREACH TO JUSTIFY RESCISSION OF A CONTRACT TO SELL UNDER ARTICLE 1191[8] (CIVIL CODE).

On the first issue, petitioners argue that, since both the parties and the appellate court adopted the findings of trial court,[9] no questions of fact were raised before the Court of Appeals. According to petitioners, CA-G.R. CV No. 30955, involved only pure questions of law. They aver that the court a quo had no jurisdiction to hear, much less decide, CA-G.R. CV No. 30955, without running afoul of Supreme Court Circular No. 2-90 (4) [c].[10]

There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain set of facts, and there is a question of fact when the doubt or difference arises as to the truth or falsehood of the alleged facts.[11] But we note that the first assignment of error submitted by respondents for consideration by the appellate court dealt with the trial court's finding that herein petitioners got back the property in question because respondents did not have the means to pay the installments and/or amortization of the loan.[12] The resolution of this question involved an evaluation of proof, and not only a consideration of the applicable statutory and case laws. Clearly, CA-G.R. CV No. 30955 did not involve pure questions of law, hence the Court of Appeals had jurisdiction and there was no violation of our Circular No. 2-90.

Moreover, we find that petitioners took an active part in the proceedings before the Court of Appeals, yet they did not raise there the issue of jurisdiction. They should have raised this issue at the earliest opportunity before the Court of Appeals. A party taking part in the proceedings before the appellate court and submitting his case for as decision ought not to later on attack the court's decision for want of jurisdiction because the decision turns out to be adverse to him.[13]

The second and third issues deal with the question: Did the Court of Appeals err in holding that a judicial rescission of the agreement was necessary? In resolving both issues, we must first make a preliminary determination of the nature of the contract in question: Was it a contract of sale, as insisted by respondents or a mere contract to sell, as contended by petitioners?

Petitioners argue that the transaction between them and respondents was a mere contract to sell, and not a contract of sale, since the sole documentary evidence (Exh. D, receipt) referring to their agreement clearly showed that they did not transfer ownership of the property in question simultaneous with its delivery and hence remained its owners, pending fulfillment of the other suspensive conditions, i.e., full payment of the balance of the purchase price and the loan amortizations. Petitioners point to *Manuel v. Rodriguez*, 109 Phil. 1 (1960) and *Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.*, 43 SCRA 93 (1972), where we held that Article 1592 of the Civil Code is inapplicable to a contract to sell. They charge the court a quo with reversible error in holding that petitioners should have judicially rescinded the agreement with respondents when the latter failed to pay the amortizations on the bank loan.

Respondents insist that there was a perfected contract of sale, since upon their partial payment of the purchase price, they immediately took possession of the property as vendees, and subsequently leased it, thus exercising all the rights of ownership over the property. This showed that transfer of ownership was simultaneous with the delivery of the realty sold, according to respondents.

It must be emphasized from the outset that a contract is what the law defines it to be, taking into consideration its essential elements, and not what the contracting parties call it.[14] Article 1458[15] of the Civil Code defines a

contract of sale. Note that the said article expressly obliges the vendor to transfer ownership of the thing sold as an essential element of a contract of sale. This is because the transfer of ownership in exchange for a price paid or promised is the very essence of a contract of sale.[16] We have carefully examined the contents of the unofficial receipt, Exh. D, with the terms and conditions informally agreed upon by the parties, as well as the proofs submitted to support their respective contentions. We are far from persuaded that there was a transfer of ownership simultaneously with the delivery of the property purportedly sold. The records clearly show that, notwithstanding the fact that the Casedas first took then lost possession of the disputed house and lot, the title to the property, TCT No. 28005 (S-11029) issued by the Register of Deeds of Parañaque, has remained always in the name of Rosalinda Santos.[17] Note further that although the parties had agreed that the Casedas would assume the mortgage, all amortization payments made by Carmen Caseda to the bank were in the name of Rosalinda Santos.[18] We likewise find that the bank's cancellation and discharge of mortgage dated January 20, 1990, was made in favor of Rosalinda Santos.[19] The foregoing circumstances categorically and clearly show that no valid transfer of ownership was made by the Santos to the Casedas. Absent this essential element, their agreement cannot be deemed a contract of sale. We agree with petitioners' averment that the agreement between Rosalinda Santos and Carmen Caseda is a contract to sell. In contracts to sell, ownership is reserved by the vendor and is not to pass until full payment of the purchase price. This we find fully applicable and understandable in this case, given that the property involved is a titled realty under mortgage to a bank and would require notarial and other formalities of law before transfer thereof could be validly effected.

In view of our finding in the present case that the agreement between the parties is a contract to sell, it follows that the appellate court erred when it decreed that a judicial rescission of said agreement was necessary. This is because there was no rescission to speak of in the first place. As we earlier pointed out, in a contract to sell, title remains with the vendor and does not pass on to the vendee until the purchase price is paid in full. Thus, in a contract to sell, the payment of the purchase price is a positive suspensive condition. Failure to pay the price agreed upon is not a mere breach, casual or serious, but a situation that prevents the obligation of the vendor to convey title from acquiring an obligatory force.[20] This is entirely different from the situation in a contract of sale, where non-payment of the price is a negative resolutive condition. The effects in law are not identical. In a contract of sale, the vendor has lost ownership of the thing sold and cannot recover it, unless the contract of sale is rescinded and set aside.[21] In a contract to sell, however, the vendor remains the owner for as long as the vendee has not complied fully with the condition of paying the purchase price. If the vendor should eject the vendee for failure to meet the condition precedent, he is enforcing the contract and not rescinding it. When the petitioners in the instant case repossessed the disputed house and lot for failure of private respondents to pay the purchase price in full, they were merely enforcing the contract and not rescinding it. As petitioners correctly point out, the Court of Appeals erred when it ruled that petitioners should have judicially rescinded the contract pursuant to Articles 1592 and 1191 of the Civil Code. Article 1592 speaks of non-payment of the purchase price as a resolutive condition. It does not apply to a contract to sell.[22] As to Article 1191, it is subordinated to the provisions of Article 1592 when applied to sales of immovable property.[23] Neither provision is applicable in the present case.

As to the last issue, we need not tarry to make a determination of whether the breach of contract by private respondents is so substantial as to defeat the purpose of the parties in entering into the agreement and thus entitle petitioners to rescission. Having ruled that there is no rescission to speak of in this case, the question is moot.

WHEREFORE, the instant petition is GRANTED and the assailed decision of the Court of Appeals in CA-G.R. CV No. 30955 is REVERSED and SET ASIDE. The judgment of the Regional Trial Court of Makati, Branch 133, with respect to the DISMISSAL of the complaint in Civil Case No. 89-4759, is hereby REINSTATED. No pronouncement as to costs.

SO ORDERED.

Mendoza,(Acting Chairman), Buena, and De Leon, Jr., JJ., concur.
Bellosillo, (Chairman), J., on official leave.

[1] Rollo, pp. 77-78.

[2] Exhibit “D,” Records, p. 119.

[3] Id. at 215.

[4] Rollo, p. 109.

[5] Rollo, p. 107.

[6] Rollo, p. 108.

[7] “ART. 1592. 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 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 notarial act. After the demand, the court may not grant him a new term.”

[8] “ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

“The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

“The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

“This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.”

[9] Rollo, p. 13.

[10] “4. Erroneous Appeals. - An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed.

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[c] Raising issues purely of law in the Court of Appeals, or appeal by wrong mode. - If an appeal under Rule 41 is taken from the Regional Trial Court to the Court of Appeals and therein the appellant raises only questions of law, the appeal shall be dismissed, issues purely of law not being reviewable by said Court. So, too, if an appeal is attempted from the judgment rendered by a Regional Trial Court in the exercise of its appellate jurisdiction by notice of appeal, instead of by petition for review, the appeal is inefficacious and should be dismissed.”

[11] Dela Torre v. Pepsi Cola Products Phils. Inc., 298 SCRA 363, 373 (1998); Commissioner of Internal Revenue v. Court of Appeals, 298 SCRA 83, 91 (1998).

[12] CA Rollo, p. 27.

[13] Tijam v. Sibonghanoy, 23 SCRA 29, 35-36 (1968).

[14] Quiroga v. Parsons Hardware Co., 38 Phil. 501 (1918).

[15] “ART. 1458. By contract of sale one of the contracting parties obligates himself to transfer the ownership of an to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

“A contract of sale may be absolute or conditional.”

[16] Schmid & Oberly, Inc. v. RJL Martinez Fishing Corp., 166 SCRA 493, 501 (1988) citing Commissioner of Internal Revenue v. Constantino, 31 SCRA 779, 785 (1970); Ker & Co., Ltd., v. Lingad, 38 SCRA 524, 530 (1971) citing Salisbury v. Brooks, 94 SE 117 (1917).

[17] Exhibit “A”, Records, pp. 112-115.

[18] Exhibit “E”, Id. p. 120; Exhibits “E-1” to “E-17”, Id. pp. 121-129.

[19] Exhibit “3”, Id. at 164.

[20] Ong v. Court of Appeals, 310 SCRA 1, 10 (1999) citing Agustin v. Court of Appeals, 186 SCRA 375 (1990); Roque v. Lapuz, 96 SCRA 741 (1980), Manuel v. Rodriguez, 109 Phil. 1 (1960).

[21] TOLENTINO, V CIVIL CODE 24 (1992)

[22] Luzon Brokerage Co, Inc. v. Maritime Building Co., Inc., 43 SCRA 93, 104 (1972).

[23] Villaruel v. Tan King, 43 Phil. 251, 255 (1922).

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