

A. A. ADDISON, PLAINTIFF AND APPELLANT, VS. MARCIANA FELIX AND BALBINO TIOCO, DEFENDANTS AND APPELLEES.*G.R. No. 12342. August 03, 1918*

Ponente: FISHER, J.

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By a public instrument dated June 11, 1914, the plaintiff sold to the defendant Marciana Felix, with the consent of her husband, the defendant Balbino Tioco, four parcels of land, described in the instrument. The defendant Felix paid, at the time of the execution of the deed, the sum of P3,000 on account of the purchase price, and bound herself to pay the remainder in installments, the first of P2,000 on July 15, 1914, the second of P5,000 thirty days after the issuance to her of a certificate of title under the Land Registration Act, and further, within ten years from the date of such title, P10 for each cocoanut tree in bearing and "P5 for each such tree not in bearing, that might be growing on said four parcels of land on the date of the issuance of title to her, with the condition that the total price should not exceed P85,000. It was further stipulated that the purchaser was to deliver to the vendor 25 per centum of the value of the products that she might obtain from the four parcels "from the moment she takes possession of them until the Torrens certificate of title be issued in her favor."

It was also covenanted that "within one year from the date of the certificate of title in favor of Marciana Felix, this latter may rescind the present contract of purchase and sale, in which case Marciana Felix shall be obliged to return to me, A. A. Addison, the net value of all the products of the four parcels sold, and I shall be obliged to return to her, Marciana Felix, all the sums that she may have paid me, together with interest at the rate of 10 per cent per annum."

In January, 1915, the vendor, A. A. Addison, filed suit in the Court of First Instance of Manila to compel Marciana Felix to make payment of the first installment of P2,000, demandable, in accordance with the terms of the contract of sale aforementioned, on July 15, 1914, and of the interest in arrears, at the stipulated rate of 8 per cent per annum. The defendant, jointly with her husband, answered the complaint and alleged by way of special defense that the plaintiff had absolutely failed to deliver to the defendant the lands that were the subject matter of the sale, notwithstanding the demands made upon him for this purpose. She therefore asked that she be absolved from the complaint, and that, after a declaration of the rescission of the contract of the purchase and sale of said lands, the plaintiff be ordered refund the P3,000 that had been paid to him on account, together with the interest agreed upon, and to pay an indemnity for the losses and damages which the defendant alleged she had suffered through the plaintiff's nonfulfilment of the contract.

The evidence adduced shows that after the execution of the deed of sale the plaintiff, at the request of the purchaser, went to Lucena, accompanied by a representative of the latter, for the purpose of designating and delivering the lands sold. He was able to designate only two of the four parcels, and more than two-thirds of these two were found to be in the possession of one Juan Villafuerte, who claimed to be the owner of the parts so occupied by him. The plaintiff admitted that the purchaser would have to bring suit to obtain possession of the land (sten. notes, record, p. 5). In August, 1914, the surveyor Santamaria went to Lucena, at the request of the

plaintiff and accompanied by him, in order to survey the land sold to the defendant; but he surveyed only two parcels, which are those occupied mainly by the brothers Leon and Julio Villafuerte. He did not survey the other parcels, as they were not designated to him by the plaintiff. In order to make this survey it was necessary to obtain from the Land Court a writ of injunction against the occupants, and for the purpose of the issuance of this writ the defendant, in June, 1914, filed an application with the Land Court for the registration in her name of the four parcels of land described in the deed of sale executed in her favor by the plaintiff. The proceedings in the matter of this application were subsequently dismissed, for failure to present the required plans within the period of the time allowed for the purpose.

The trial court rendered judgment in behalf of the defendant holding the contract of sale to be rescinded and ordering the return to the plaintiff of the P3,000 paid on account of the price, together with interest thereon at the rate of 10 per cent per annum. From this judgment the plaintiff appealed.

In decreeing the rescission of the contract, the trial judge rested his conclusion solely on the indisputable fact that up to that time the lands sold had not been registered in accordance with the Torrens system, and on the terms of the second paragraph of clause (h) of the contract, whereby it is stipulated that " * * * within one year from the date of the certificate of title in favor of Marciana Felix, this latter may rescind the present contract of purchase and sale * * *."

The appellant objects, and rightly, that the cross complaint is not founded on the hypothesis of the conventional rescission relied upon by the court, but on the failure to deliver the land sold. He argues that the right to rescind the contract by virtue of the special agreement not only did not exist from the moment of the execution of the contract up to one year after the registration of the land, but does not accrue until the land is registered. The wording of the clause, in fact, substantiates the contention. The one year's deliberation granted to the purchaser was to be counted "from the date of the certificate of title * * *." Therefore the right to elect to rescind the contract was subject to a condition, namely, the issuance of the title. The record shows that up to the present time that condition has not been fulfilled; consequently the defendant cannot be heard to invoke a right which depends on the existence of that condition. If in the cross-complaint it had been alleged that the fulfillment of the condition was impossible for reasons imputable to the plaintiff, and if this allegation had been proven, perhaps the condition would have been considered as fulfilled (arts, 1117, 1118, and 1119, Civ. Code); but this issue was not presented in the defendant's answer.

However, although we are not in agreement with the reasoning found in the decision appealed from, we consider it to be correct in its result. The record shows that the plaintiff did not deliver the thing sold. With respect to two of the parcels of land, he was not even able to show them to the purchaser; and as regards the other two, more than two-thirds of their area was in the hostile and adverse possession of a third person.

The Code imposes upon the vendor the obligation to deliver the thing sold. The thing is considered to be delivered when it is placed "in the hands and possession of the vendee." (Civ. Code, art. 1462.) It is true that the same article declares that the execution of a public instrument is equivalent to the delivery of the thing which is the object of the contract, but, in order that this symbolic delivery may produce the effect of tradition, it is necessary that the vendor shall have had such control over the thing sold that, at the moment of the sale, its material delivery could have been made. It is not enough to confer upon the purchaser the ownership and the right of possession. The thing sold must be placed in his control. When there is no impediment whatever to prevent the thing sold passing into the tenancy of the purchaser by the sole will of the vendor, symbolic delivery through the execution of a public instrument is sufficient. But if, notwithstanding the execution of the instrument, the purchaser cannot have the enjoyment and material tenancy of the thing and make use of it himself or through another in his name, because such tenancy and enjoyment are opposed by the interposition of another will, then fiction yields to

reality—the delivery has not been effected.

As Dalloz rightly says (Gen. Rep., vol. 43, p. 174) in his commentaries on article 1604 of the French Civil Code, "the word 'delivery' expresses a complex idea * * * the abandonment of the thing by the person who makes the delivery and the taking control of it by the person to whom the delivery is made."

The execution of a public instrument is sufficient for the purposes of the abandonment made by the vendor, but it is not always sufficient to permit of the apprehension of the thing by the purchaser.

The supreme court of Spain, interpreting article 1462 of the Civil Code, held in its decision of November 10, 1903, (Civ. Rep., vol. 96, p. 560) that this article "merely declares that when the sale is made through the means of a public instrument, the execution of this latter is equivalent to the delivery of the thing sold: which does not and cannot mean that this fictitious tradition necessarily implies the real tradition of the thing sold, for it is incontrovertible that, while its ownership still pertains to the vendor (and with greater reason if it does not), a third person may be in possession of the same thing; wherefore, though, as a general rule, he who purchases by means of a public instrument should be deemed * * * to be the possessor in fact, yet this presumption gives way before proof to the contrary."

It is evident, then, in the case at bar, that the mere execution of the instrument was not a fulfillment of the vendor's obligation to deliver the thing sold, and that from such nonfulfillment arises the purchaser's right to demand, as she has demanded, the rescission of the sale and the return of the price. (Civ. Code, arts. 1506 and 1124.)

Of course if the sale had been made under the express agreement of imposing upon the purchaser the obligation to take the necessary steps to obtain the material possession of the thing sold, and it were proven that she knew that the thing was in the possession of a third person claiming to have property rights therein, such agreement would be perfectly valid. But there is nothing in the instrument which would indicate, even implicitly, that such was the agreement. It is true, as the appellant argues, that the obligation was incumbent upon the defendant Marciana Felix to apply for and obtain the registration of the land in the new registry of property; but from this it cannot be concluded that she had to await the final decision of the Court of Land Registration, in order to be able to enjoy the property sold. On the contrary, it was expressly stipulated in the contract that the purchaser should deliver to the vendor one-fourth "of the products * * * of the aforesaid four parcels from the moment when she takes possession of them until the Torrens certificate of title be issued in her favor." This obviously shows that it was not foreseen that the purchaser might be deprived of her possession during the course of the registration proceedings, but that the transaction rested on the assumption that she was to have, during said period, the material possession and enjoyment of the four parcels of land.

Inasmuch as the rescission is made by virtue of the provisions of law and not by contractual agreement, it is not the conventional but the legal interest that is demandable.

It is therefore held that the contract of purchase and sale entered into by and between the plaintiff and the defendant on June 11, 1914, is rescinded, and the plaintiff is ordered to make restitution of the sum of P3,000 received by him on account of the price of the sale, together with interest thereon at the legal rate of 6 per cent per annum from the date of the filing of the complaint until payment, with the costs of both instances against the appellant. So ordered.

Torres, Johnson, Street, Malcolm, and Avanceña, JJ., concur.

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