

SEN PO EK MARKETING CORPORATION, PETITIONER, VS. TEODORA PRICE MARTINEZ, JUANITO TIU UYPING, JR., NELSON TIU UYPING LEONCIO TIU UYPING, RESPONDENTS.

G.R. No. 134117. February 09, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review on certiorari assailing the Decision[1] and Resolution[2] dated October 13, 1997 and May 18, 1998, respectively, of the Court of Appeals[3] which reversed and set aside the Decision[4] of the Regional Trial Court (RTC) of Palo, Leyte, Branch 8, rescinding the Deed of Absolute Sale over two (2) parcels of land executed by private respondent Teodora P. Martinez in favor of private respondent brothers Juanito, Nelson and Leoncio, all surnamed Tiu Uyping and declaring that petitioner Sen Po Ek Marketing Corporation (hereafter Sen Po Ek) has the first preference to buy said land.

The pertinent facts are:

Sofia P. Martinez was the registered owner of two (2) parcels of land, known as Lot Nos. 50 and 106 of the Tacloban City Cadastre, located at No. 84 Justice Romualdez St., formerly Gran Capitan, Tacloban City. The said parcels of land are covered and described by Transfer Certificate of Title (TCT) No. 2915.[5]

On October 25, 1961, Sofia leased the lots to Yu Siong, father of the president and stockholders of petitioner Sen Po Ek for a period of ten (10) years.[6] The lease contract required the lessee to construct a commercial building on the leased property which shall become the property of Sofia upon the expiration of the lease. The building which was constructed sometime in 1963 was declared, for taxation purposes, in the name of petitioner Sen Po Ek under Tax Declaration No. 19487.

On October 25, 1971, the contract of lease expired.

On September 20, 1973, the lease contract[7] was renewed between Sofia and Yu Siong's wife, Lim Hua, who succeeded him, as lessee, upon his death. Said contract explicitly states that "as of October 1, 1973, the lessor shall be the absolute owner of a building located at Lot Nos. 50 and 106 of the Tacloban Cadastre."[8] The lease underwent several renewals. The last written contract of lease was executed on March 24, 1982 for a term of five (5) years expiring on January 1, 1987.[9]

Meantime, Sofia sold the lots and the building to her daughter, private respondent Teodora P. Martinez. The deed of sale was executed sometime in 1979 but was notarized only on November 5, 1985.[10]

After the lease contract expired in January 1987, it was no longer renewed by the parties. Petitioner Sen Po Ek, however, continued to possess and occupy the leased properties, and regularly paid the monthly rentals to Sofia until her death in August 1989. After the latter's death, the rentals were paid to the heirs of Sofia through private respondent Teodora P. Martinez.

On November 11, 1989, Teodora sent a letter to petitioner Sen Po Ek informing it of her intention to sell the leased premises and authorizing Mrs. Remedios Petilla to negotiate the sale "with any and all interested parties." [11] The letter reads, viz.:

"Quezon City
November 11, 1989

SIN [sic] PO EK COMMERCIAL
Tacloban City

Gentlemen:

Please take notice that we are selling the two (2) lots, including the building hereon, covered by Transfer Certificate of Title No. T-2915, with a total area of Three Hundred Thirteen (313) square meters, situated at Tacloban City and presently occupied by your establishment.

Please contact Mrs. REMEDIOS L. PETILLA who is authorized to negotiate the sale with any and all interested parties.

Cordially yours,
(sgd.) TEODORA P. MARTINEZ"

But petitioner Sen Po Ek received the letter only on December 12, 1989. [12] It sought to purchase the properties at six thousand pesos (P6,000.00) per square meter, and the Yu Sions were able to contact private respondent Teodora P. Martinez who advised them to formalize the offer of petitioner Sen Po Ek in writing. This was done in a letter dated December 27, 1989 by Consorcio Yu Siong. [13]

Meantime, sometime in December 1989, private respondent Juanito Tiu Uyyping, Jr. was informed by a certain Mr. Militante that the subject leased premises were for sale and that the sale was being brokered by Mrs. Remedios Petilla. [14] Juanito contacted his two (2) other brothers, and together, they went to the office of Governor Leopoldo Petilla, the husband of Remedios Petilla, and inquired about the property. [15]

On January 9, 1990, petitioner Sen Po Ek filed a verified complaint against Teodora in the RTC of Palo, Leyte, for the annulment of the Deed of Sale executed by her mother, Sofia, in her favor and notarized on November 5, 1985. Petitioner invoked its alleged right of first refusal or preferential right to buy the leased premises based on Republic Act (R.A.) No. 1162, [16] as amended, in relation to Presidential Decree (P.D.) No. 1517. [17]

On January 12, 1990, Teodora sold the property to the respondent Tiu Uyyping brothers. [18] As a result, TCT No. T-32239 [19] was issued in the names of Juanito Tiu Uyyping, Nelson Tiu Uyyping and Leoncio Tiu Uyyping. On March 5, 1990, an amended complaint [20] was filed to include the respondents Tiu Uyyping brothers and also praying for the nullity of the second sale transaction.

On February 27, 1992, the trial court rendered a decision in favor of petitioner Sen Po Ek, the dispositive portion of which reads, viz.:

"WHEREFORE, upon the preponderance of evidence this Court renders judgment in favor of the plaintiffs [sic] SEN PO EK MARKETING CORPORATION represented by Consorcio Yusiong, and against the defendants –

- Declaring, as ordering the rescission of the Deed of Absolute Sale executed by defendant Teodora P. Martinez on 12 January 1990 in favor of the brother defendants Juanito Tiu Uyyping Jr., Nelson Tiu Uyyping and Leoncio Tiu Uyyping, Exhibit '2';
- Declaring that the plaintiffs [sic] have a first preference to buy Lot Nos. 50 and 106 of the Tacloban Cadastre

as well as the building erected thereon as of December, 1989, hence, commanding defendant Teodora P. Martinez and her brothers and sisters to sell the aforementioned properties to the plaintiff corporation at the price of Six Thousand (P6,000.00) Pesos per square meter as offered in the letter dated 11 November 1989 and as appearing to have been quoted by Teodora P. Martinez' agent, Mrs. Remedios L. Petilla;

- Ordering the defendant Teodora P. Martinez to return to his [sic] co-defendants Tiu Uyping brothers the sum of EIGHT HUNDRED THOUSAND (P800,000.00) Pesos, appearing to be the total selling price of the property in question;

- Ordering defendant Teodora P. Martinez to pay the plaintiff corporation the sum of TEN THOUSAND PESOS (P10,000.00) in the concept of attorney's fees and THREE THOUSAND PESOS (P 3,000.00) in that of litigation expenses.

Costs of this suit jointly and severally against all defendants.

SO ORDERED."[21]

Private respondents appealed from the said decision to the Court of Appeals.

On October 13, 1997, the Court of Appeals rendered a decision reversing the trial court. It held:

"It is noteworthy that although the CORPORATION included the sale by Sofia of the subject property to her daughter, Teodora, as one of the deeds it prayed to be declared void or annulled the trial court did not nullify the deed. It, therefore, remains valid and binding. And, indeed, the trial court could not have granted what was prayed for, notwithstanding the late notarization of the deed and its other perceived defects, not only because neither Sofia nor her heirs complained, and on the contrary, the said heirs acknowledged its validity, but more importantly, a contract is valid in whatever form it may have been entered into unless form is essential for its validity, which is not so in this case. The Corporation's protestation that the sale is invalid since it was not informed of it, has no basis in law.

"Being the owner of the property in suit, Teodora had the right to exercise all the attributes of ownership, to wit: jus possidendi, jus utendi, jus fruendi, jus abutendi, jus disponendi and jus vindicandi. With respect to jus disponendi, she may dispose of the property to whomsoever and in whatsoever manner and for whatever consideration she wishes, although at a loss or even for free and no one can complain, except as may otherwise be provided by law, like the limitations on donation and in the case of sale, the right of pre-emption of an adjoining owner and the right of first refusal under the Urban Land Reform Law (P.D. No. 1517) when the area is proclaimed as an urban land reform zone.

"In the case on hand, the appellee Corporation is neither an adjoining owner of the property in suit nor a qualified tenant of a residential land in a duly proclaimed urban land reform zone, there being no proof of such proclamation in Tacloban City. Its claim to first priority to buy the disputed property is merely derived from the following postulation:

'We believe that in this particular case, plaintiff-appellee should be accorded the first priority to buy the questioned properties, being its actual possessor and occupant. Even under equal circumstances, plaintiff-appellee should have been given the preference to purchase the property over third persons. More so, in this case for the plaintiff-appellee accepted the offer to buy for an amount more than double the price for which defendants-appellant Uyping brothers paid the same properties for.'

"The claim is, however, utterly bereft of any foundation in law. It is noteworthy that the Corporation does not cite any specific piece of legislation or even any decisional law that is supportive of its stance. This is simply because there is none. Deserving of some examination, if at all, is only the last part of the Corporation's formulation, to wit: that it accepted Teodora's offer to sell.

"Teodora, however, made no offer to sell the property, much less to the Corporation in particular. She merely

gave notice to the Corporation of her intention to sell. x x x x x x x x

"Clearly, no offer to sell was made. If ever there was any semblance of an offer, it was merely for the Corporation to contact Mrs. Remedios Petilla who was authorized to negotiate the sale 'with any and all interested parties.' But the Corporation did not promptly react. On the contrary, the Uypings, upon learning somehow that the property was up for sale, were the ones who immediately made inquiries from Governor Leopoldo Petilla, the husband of Remedios, and, thereupon, made an offer to buy. Still, to be considerate to the Corporation, which was a long-time lessee of the property, the Governor called up its representative, Alfredo Yu Siong, to find out if they were interested in buying the property but after mulling over the matter for sometime, Alfredo informed the Governor that they were not interested. So, on December 23, 1989, Teodora accepted the offer of the Uypings and executed in their favor the Option to Purchase after the latter had paid her one-half of the agreed purchase price of P800,000.00. Then on January 12, 1990, upon payment of the balance of P400,000.00, she executed the corresponding deed of absolute sale.

"The Corporation discredits the testimony of Governor Petilla in this regard and, not without malediction asks, 'Is it because Gov. Petilla is a lawyer, and consequently is more eloquent in narrating defendants-appellants distorted version of the facts?' For being a lawyer and, hence, an officer of the court, we readily give full faith and credence to the testimony of Governor Petilla as against Alfredo Yu Siong's whom we found to be lying through his teeth for, in his testimony on April 26, 1991, he declared that upon receiving Teodora's notice of intention to sell, he and his brother, Consorico Yu Siong, went to see Mrs. Petilla at Palo, Leyte, because they know that the Petillas reside there.

"x x x x x x x x

"But on December 6, 1991, in rebutting Governor Petilla's testimony, he perjuriously executed a turn about and declared that he did not go to the Governor's residence in Palo as he did not know that they reside there.

"x x x x x x x x

"In any event, even if Teodora's letter of November 11, 1989, were construed as an offer or promise to sell the property to the Corporation, the latter did not thereby acquire any enforceable or actionable right for the simple reason that the letter did not quote any price and is, therefore, not the offer contemplated by law. In this regard, Article 1479 of the Civil Code provides:

`Art. 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

`An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.'

"Thus, although the Yu Siong brothers and sisters, who own the Corporation, allegedly decided among themselves to buy the property upon receipt of Teodora's letter on December 12, 1989, still Consorcio and Alfredo Yu Siong had to seek out Mrs. Remedios Petilla, about three (3) to four (4) days thereafter, to find out the selling price.

"x x x x x x x x

"But Consorcio and Alfredo Yu Siong could not make any decision on the price without first consulting their brothers and sisters. After the consultation, they sent Alfredo to Manila to see Teodora, who was residing there, to clarify if she was really selling the property.

"x x x x x x x x

"Alfredo allegedly met with Teodora on December 26, 1989, who told him to reduce into writing their offer to buy.

"x x x x x x x x

"On December 27, 1989, Consorcio Yu Siong wrote their letter of acceptance and on December 28, sent it by registered mail to Teodora in Quezon City with a copy furnished Remedios Petilla in Palo, Leyte. Teodora received the letter on January 12, 1990 while Remedios got her copy on January 2, 1990.

"But the letter of acceptance was too late since, as aforesated, on December 23, 1989, Teodora already executed an option to purchase in favor of the Uypings upon her receipt of their initial payment of P400,000.00. It bears stressing in this connection that Teodora's notice of intention to sell became an offer to sell to the Corporation only on December 15 or 16, 1989, (three or four days after it received the notice on December 12, 1989) when Mrs. Remedios Petilla quoted the price of P6,000.00 per square meter to Consorcio and Alfredo Yu Siong. However, the latter did not then signify their acceptance and, instead, according to Consorcio himself, they took their time to make up their minds. In the interim, Teodora committed to sell to the Uypings on December 23, 1989. At that point in time, there could not have been any perfected contract between Teodora and the Corporation since there was no meeting of the minds between them on the consideration. As Article 1475 of the Civil Code provides:

'Art. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.'

"At most, there was only an offer or promise to sell which was not binding on Teodora as it was not then accepted, and even if accepted, the acceptance was not supported by a consideration distinct from the promise. Teodora was, therefore, at complete liberty to convey the property to the Uypings.

"And when Alfredo Yu Siong went to see her on December 26, 1989, pleading that they be allowed to buy the property, she refused, telling him that she had already committed it to other people. Thus, she was surprised to receive in January 1990, a letter from the Corporation offering to buy the property for P6,000.00 per square meter.

"Understandably, Alfredo Yu Siong gave the lie to Teodora's testimony.

x x x x x x x x

"He even went further to flatly contradict and make a liar out of his own brother, Consorcio Yu Siong, by asserting that in their meeting with Mrs. Remedios Petilla on December 15 or 16, 1989, they already agreed on the latter's price quotation of P6,000.00 per square meter.

x x x x x x x x

"Alfredo Yu Siong, however, is hopelessly wanting in credibility. As we pointed out earlier, he caught himself in irretrievable inconsistency in his attempt to discredit Governor Petilla. Now, he can not even spare his own brother from his penchant for prevarication for the sake of advancing their cause.

"From our viewpoint, the Corporation, upon the instigation of Alfredo Yu Siong, conceived of the plot of belatedly offering to buy the property in suit at P6,000.00 per square meter, or the total price of P1,878,000.00 in order to make the accepted offer of the Uypings in the amount of P800,000.00 appear a pittance, in a calculated move to start a lawsuit and thereby prolong their stay on the premises. So far, they have succeeded. But to us, it is downright unthinkable that Teodora could have agreed to back out from her commitment to the Uypings. That is too foolhardy an adventure to go into and too farfetched to merit belief.

"To repeat, under the facts, no contractual or juridical relation whatsoever has been established between Teodora and the Corporation as seller and buyer, respectively, of the property in dispute. Even the trial court conspicuously failed to point out any. Nonetheless, it inscrutably ordered the `rescission' of the deed of absolute sale between Teodora and the Uypings, and `commanded' Teodora and her brothers and sisters to sell the property to the Corporation on the basis of Article 19 of the Civil Code.

x x x x x x x x

"We are at a loss as to why the court below decreed the rescission of the deed of sale between Teodora and the Uypings when the Corporation prayed for the declaration of its nullity and/or annulment. There is a whale of a difference between rescission and declaration of nullity or annulment of contracts. The grounds for the first are those enumerated in Article 1381 of the Civil Code while those for the second are found in Article 1409 while the grounds for annulment are stated in Article 1390. In any case violation of Article 19 of the same Code is not a ground for rescission, declaration of nullity or annulment. The appealed judgment has, therefore, no leg both in fact and in law to stand on."[22]

The dispositive portion of the foregoing decision reads, thus:

"WHEREFORE, the appealed decision is REVERSED and SET ASIDE, and another is rendered DISMISSING the complaint of plaintiff-appellee CORPORATION, with costs against the latter."[23]

Petitioner Sen Po Ek moved for reconsideration of the decision of the Court of Appeals, but the latter denied the motion.[24]

Hence, this petition.

Petitioner Sen Po Ek raises the following issues:

"I

WHETHER OR NOT THE COURT OF APPEALS HAS DECIDED IN A WAY NOT IN ACCORD WITH LAW AND JURISPRUDENCE, DISREGARDING CLEAR EVIDENCE ON RECORD, WHEN IT HELD THAT THE SALE OF THE PROPERTY IN QUESTION BY THE LATE SOFIA MARTINEZ TO HER DAUGHTER TEODORA WAS VALID, AND NOT VOID AS FOUND BY THE TRIAL COURT.

"II

WHETHER OR NOT THE COURT OF APPEALS HAS DECIDED ARBITRARILY AND CAPRICIOUSLY, IN A WAY NOT IN ACCORD WITH JUSTICE AND EQUITY, WHEN IT HELD THAT THE PETITIONER HAS NO LEGAL AND EQUITABLE RIGHT TO PURCHASE THE PROPERTY IN QUESTION, AS AGAINST THE TIU UYPINGS.

"III

WHETHER OR NOT THE COURT OF APPEALS HAS DECIDED ARBITRARILY AND CAPRICIOUSLY IN A WAY NOT IN ACCORD WITH LAW AND JURISPRUDENCE, IN UPHOLDING THE VALIDITY OF THE DEED OF SALE BETWEEN TEODORA AND THE TIU UYPINGS.

"IV

WHETHER OR NOT THE COURT OF APPEALS HAS ACTED ARBITRARILY AND CAPRICIOUSLY IN GIVING TOO MUCH WEIGHT TO THE TESTIMONY OF RESPONDENTS' WITNESS LEOPOLD PETILLA AND DISCREDITING THAT OF PETITIONER'S ALFREDO YU SIONG, CONSIDERING THAT THE FORMER DID NOT EVEN HAD [sic] THE LEGAL AUTHORITY TO SELL OR NEGOTIATE

THE SALE OF THE PROPERTY IN QUESTION."[25]

We deny the petition.

First. Private respondent Teodora P. Martinez had the right, as lawful owner of the leased premises, to sell the same to private respondent Tiu Uyying brothers.

The first sale between mother and daughter, Sofia and Teodora, was void for being fictitious. Under Art. 1409 (2) of the New Civil Code, one type of contract which can be declared void and inexistent is that which is absolutely simulated or fictitious, and this was established by several badges of simulation proving that the sale between Sofia and Teodora was not intended to have any legal effect between them.[26]

Immediately suspect is the Contract of Sale itself which was executed sometime in 1979 but was notarized only on November 5, 1985, six (6) years later. Said sale all the more inspires doubt when upon close reading of the lease contracts executed thereafter, Teodora signed not as owner but merely as an instrumental witness.

If Teodora was really the owner of the leased premises as transferee-vendee under the 1979 Deed of Sale, she should have signed in that capacity and not in any other. Moreover, this clearly indicates that Sofia retained enjoyment and control of the leased premises as lessor-owner thereof so much so that Teodora never asserted her alleged right of ownership over the leased premises. Indeed the most protuberant index of simulation is the absence of an attempt in any manner in the past of the alleged vendee-owner to exercise his rights as such over the subject property.[27]

Finally, Sofia continued receiving the rentals until her demise in August 1989. This was admitted by Teodora herself during the trial:

Q – So, the rentals were actually intended and received by Sofia P. Martinez?

A – Yes, sir.

Q – And it was at this happening that Sofia Martinez have been receiving the rentals in the year 1979 when you were already allegedly the owner up to her death in August, 1989? Is that correct?

A – Yes, sir, it was Sofia Martinez.[28]

The combination of all of these events leads one to the inescapable conclusion that the first sale transaction was absolutely simulated, hence void.

Nonetheless, the sale between private respondents Teodora P. Martinez and the Tiu Uyying brothers, is valid.

Teodora, as only one of the co-heirs of Sofia, had no authority to sell the entire lot to the Tiu Uyying brothers. She can only sell her undivided portion of the property. Thus, when she sold the leased premises to private respondent brothers Tiu Uyying, the sale is unenforceable having been entered into by Teodora in behalf of her co-heirs who, however, gave no authority or legal representation. However, such a contract is susceptible of ratification.[29] In this case, the ratification came in the form of "Confirmation of Sale of Land and Improvements"[30] executed by the other heirs of Sofia.[31] Since the sale by private respondent Teodora Martinez of the leased premises to private respondents Tiu Uyying brothers was ratified by her co-heirs, then the sale is considered valid and binding.

Second. Petitioner Sen Po Ek does not have a right of first refusal to assert against private respondents. Neither any law nor any contract grants it preference in the purchase of the leased premises.

Petitioner cites P.D. No. 1517, R.A. No. 1162 and Article 1622 of the New Civil Code, but they are not applicable

to the case at bar. P.D. No. 1517, otherwise known as "The Urban Land Reform Act", pertains to areas proclaimed as urban land reform zones. Lot Nos. 50 and 106 are both located in Tacloban City, which has not been declared as an urban land reform zone. R.A. No. 1162, on the other hand, only deals with expropriation of parcels of land located in the City of Manila, which the leased premises are not. Finally, Article 1622 of the New Civil Code, which provides that:

"Whenever a piece of urban land which is so small and so situated that a major portion thereof cannot be used for any practical purpose within a reasonable time, having been bought merely for speculation, is about to be re-sold, the owner of the adjoining land shall have the right of redemption, also at a reasonable price.

When two or more owners of adjoining lands wish to exercise the right of pre-emption or redemption, the owner whose intended use of the land in question appears best justified shall be preferred,"

only deals with small urban lands that are bought for speculation where only adjoining lot owners can exercise the right of pre-emption or redemption. Petitioner Sen Po Ek is not an adjoining lot owner, but a lessee trying to buy the land that it was leasing.

Indeed the right of first refusal may be provided for in a lease contract.[32] However in this case, such right was never stipulated in any of the several lease contracts between petitioner and Sofia. Petitioner claims that it was Teodora herself who assured them that they can have the first priority to buy the subject parcels of land, but there is absolutely no proof of this. Such grant of the right of first refusal must be clearly embodied in a written contract, but there is none in the present case.

WHEREFORE, the petition is hereby DENIED. No costs.

SO ORDERED.

Bellosillo, Mendoza, Quisumbing, and Buena, JJ., concur.

[1] In CA G.R. CV No. 37957, Rollo pp. 53-72.

[2] Rollo, p. 75.

[3] Third Division composed of Associate Justices Gloria C. Paras, Lourdes K. Tayao-Jaguros, and Salvador J. Valdez, Jr., who is the ponente of the assailed decision.

[4] Dated February 27, 1992 and penned by Judge Teofilo R. Redubla, Rollo, pp. 78-85.

[5] Marked as Exhibit "O."

[6] Rollo, p. 172.

[7] Id., p. 174.

[8] Ibid.

[9] Id., pp. 180-182.

[10] Rollo, pp. 183-184.

[11] Id., p. 185.

[12] TSN dated February 21, 1991, p. 16.

[13] Exhibit "K".

[14] TSN dated July 5, 1991, p. 12.

[15] Id., pp. 14-15.

[16] "An Act providing for the expropriation of landed estates or haciendas or lands which formed part thereof in the City of Manila, their subdivision into small lots, and the sale of such lots at cost or their lease on reasonable terms, and for other purposes."

[17] "Urban Land Reform Act."

[18] Original Records, pp. 43-44.

[19] Id., p. 85.

[20] Id., pp. 20-26.

[21] Rollo, p. 85.

[22] Decision of the Court of Appeals, pp. 7-19, Rollo, pp. 59-71.

[23] Id., p. 72.

[24] Id., p. 75-76.

[25] Memorandum dated October 14, 1999, p. 7, Rollo, p. 308.

[26] *Suntay v. Court of Appeals*, 251 SCRA 430, 452 (1995).

[27] Id., p. 450.

[28] TSN dated May 10, 1991, p. 52.

[29] Article 1403, New Civil Code.

[30] Original Records, pp. 41-A, 42.

[31] Frank Max Martinez and Milagros Reid in their own behalf and as Attorneys in Fact of Ethel Martinez Rivers and Walter S. Martinez.

[32] *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*, 264 SCRA 483, 505 (1996).

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