

EUSEBIO MANUEL, PLAINTIFF AND APPELLANT, VS. EULOGIO RODRIGUEZ, SR., ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 13435. July 27, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Eusebio Manuel appeals from the judgment of the Court of First Instance of Rizal, promulgated on October 31, 1957, dismissing his complaint.

Questions of law and of fact are involved, but the property being worth over P2,000,000.00, the appeal was directly taken to this Court.

The complaint seeks to have plaintiff Eusebio Manuel declared absolute owner of Lot 51, Plan Psu-32606, situated in San Mateo, Rizal; to compel defendants to execute a deed of absolute sale of said lot in favor of said plaintiff and to receive the unpaid balance of the purchase price thereof; and to declare the subsequent sales of said lot null and void and to cancel the transfer certificates of title issued to the transferees. The cross-claim by defendant Eulogio Rodriguez against his co-defendant Dolores Vda. de Landahl (as Administratrix of the intestate estate of John Landahl having been dismissed, and there being no appeal therefrom, the facts pertaining thereto will be omitted.

It appears that Januaria Rodriguez was the original registered owner of a big tract of land (part of which is the land, in question), embraced by Transfer Certificate of Title No. 8821 of the Register of Deeds of Rizal. In 1924, Januaria Rodriguez ceded and transferred said land to the Payatas Subdivision Inc., to be administered by said firm, subdivided, sold, leased or otherwise disposed of (Exhibit "A"-1). Defendant-appellee Eulogio Rodriguez was then the Secretary-Treasurer of said Payatas Subdivision Inc.

Sometime in April, 1926, plaintiff-appellant offered to buy the lot in question (about 248,310 sq. meters in area). The Company agreed to sell said lot (Lot 51) for P2,240 in cash, or by installments with 10% interest (Exhibit "C"). Plaintiff-appellant made a counter-offer for P2,000, which the Payatas Subdivision accepted, provided it was paid in cash (Exhibit "E"). Plaintiff-appellant wanted to pay in installments, and on August 2, 1926, the Company wrote him that it was agreeable to a down-payment of P1,500, the balance to be paid within 9 to 10 months without interest, or if the down-payment be less than P1,500, with interest at 10% on the balance (Exhibit "F"). Plaintiff-appellant then requested that the down-payment be reduced to P1,300, and through the intercession of defendant-appellee Eulogio Rodriguez, Sr., who was plaintiff-appellant's friend, this was granted. After making the initial payment of P1,300, a provisional receipt was issued, which, on August 25, 1926, was substituted by the official receipt sent by Casiano M. de Vera, the Company's bookkeeper (Exhibits "G" & "G"-1). Soon after, plaintiff-appellant was placed in the possession of the lot.

It also appears that plaintiff-appellant did not make any payments within the 9 to 10-month period mentioned in Exhibit "F", so that on April 30, 1928, the Payatas Subdivision Inc. sent him a letter urging immediate payment of his unpaid account with the Company, which, including interest, amounted to P819.23, and asking him to answer

within 10 days (Exhibit "H"). Thereafter, plaintiff-appellant made another payment of P300 for which a receipt dated June 20, 1928 was issued to him (Exhibit "I"). So far as the record discloses, this appears to be the last payment made by plaintiff-appellant on Lot 51, the property in question. On April 24, 1929, the Payatas Subdivision Inc. sent plaintiff-appellant a detailed statement of his unpaid account which, including interest and taxes, amounted to P596.21, urging immediate payment thereof, so that title could be transferred to him as per agreement, and requesting answer within 10 days (Exhibit "J"). Still, plaintiff-appellant did not pay his account, despite the fact that thereafter, on several occasions, the Company sent to his residence its acting secretary, Conrado Vicente, to collect the balance.

Defendants-appellees advance the theory that in view of plaintiff-appellant's repeated default in paying his outstanding account, the Payatas Subdivision Inc. then considered his contract cancelled and extinguished, and the amounts already paid (P1,600), forfeited to the Company, the transaction being merely a contract to sell or promise to sell; that sometime in 1939, the Payatas Subdivision Inc., having sold all its properties (except some properties it was administering for Januaria Rodriguez), was extrajudicially dissolved, but its papers of dissolution were lost or destroyed during the war; that after said dissolution, all unsold properties belonging to Januaria Rodriguez were returned to her.

Sometime in 1941, Januaria Rodriguez, who was the aunt of defendant-appellee Eulogio Rodriguez, sold several properties to the latter, including Lot 51 in question, in consideration of the monthly advances, support, services, care, maintenance, medical expenses, etc. which she received from the said Eulogio Rodriguez (Exhibit "U"). Pursuant to such sale, Transfer Certificate of Title No. 44709 was issued to Eulogio Rodriguez, Sr. (Exhibit 21-a).

Likewise, it appears that on February 4, 1941, Eulogio Rodriguez, Sr., then Mayor of Manila, instructed his secretary to write plaintiff-appellant to urge him to pay his unsettled account with the Payatas Subdivision, Inc. As per instructions, his secretary wrote plaintiff-appellant (Exhibit "O"). Still, there was no payment.

On August 5, 1944, Eulogio Rodriguez, Sr. sold Lot 51 (among others) to John Landahl (represented in the transaction by Carlos Landahl as attorney-in-fact), for and in consideration of P157,192.80, in Japanese war notes (Exhibit 1-Landahl). The sale was duly registered and Transfer Certificate of Title No. 46521 was issued in Landahl's name (Exhibit 3-Landahl).

On April 6, 1949, or just a little less than 23 years after the alleged sale to him of Lot 51 in 1926, plaintiff-appellant brought the instant case, as aforesaid, to compel the execution of a formal deed of conveyance in his favor covering the purported sale in 1926; to compel receipt of the unpaid balance of the price which plaintiff-appellant consigned in court; and to annul the subsequent sales to Eulogio Rodriguez and to John Landahl, and the corresponding transfer certificates of title issued to them.

The decision of the trial court dismissing the complaint is predicated on two main findings—

Firstly.—That the transaction in 1926 was a mere contract to sell or promise to sell of Lot 51 to plaintiff-appellant, the understanding being that upon failure to pay the installments as demanded, the vendor corporation had the right to consider the contract cancelled and the amounts already paid, forfeited.

Secondly.—That even under plaintiff-appellant's theory that his contract with the defunct Payatas Subdivision Inc. was an absolute sale, involving immediate transfer of ownership, his right of action to compel the execution of a formal deed of conveyance has prescribed, whether the contract is considered written or verbal (Sec. 43, pars. 1 & 2, Code of Civil Procedure, Act 190); moreover, the action is barred by laches.

The findings that the contract entered into in 1926 was a mere contract to sell or promise to sell was predicated on the following premises:

- The alleged contract of absolute sale was not reduced to a formal deed of conveyance, much less registered, which is unlikely if the contract had been, an absolute sale, because plaintiff-appellant would have insisted that it be reduced to a public document, the land being covered by a Torrens title.
- It is highly improbable that the Payatas Subdivision Inc. would agree to an immediate transfer of ownership to plaintiff without any guaranty or security that the balance of the price would be completely paid.
- The statement in Exhibit "J", introduced by plaintiff as his evidence, requesting payment of the balance "at ng kayo naman ay mabigyan na ng katibayan, alinsunod sa pinagkayarian", confirms that the agreement between plaintiff and the company was that title would be transferred to plaintiff only upon full payment of the price.
- Plaintiff would not have waited for more than 20 years to file this action to enforce the contract if this were an absolute sale, considering that the land being covered by a Torrens title, it was easy for the vendor to resell or encumber the same property to some other person on the basis of a clean title.
- The nature of the transaction as a mere contract to sell is established by the testimony of witnesses for defendants-appellees.
- The dissolution of the Payatas Subdivision Inc. sometime in 1939 must have been the reason which prompted the cancellation of plaintiff's contract, as it had to wind up all its affairs and conclude all pending business before dissolution.
- It may be taken judicial notice of that it is a general practice among subdivision companies engaging in installment sales to place the buyer immediately in possession after the down-payment, the company remaining owner of the property until full payment, at which time the deed of conveyance is then executed in favor of the buyer; and if the buyer defaults in paying the installments due, the corporation cancels the contract and forfeits the amount already paid.

In his brief containing 20 assignments of error, plaintiff-appellant insists that the contract in 1926 was not merely a contract to sell but an absolute sale (Errors I-IV). He contends that contrary to the finding of the lower court, the 1926 contract was not verbal but written, citing the series of communications between plaintiff-appellant and the Payatas Subdivision Inc., Exhibits "C" to "G-1". A careful examination of these exhibits, however, reveals that Exhibits "C" to "F" are mere bargaining negotiations that took place before the parties arrived at a full understanding while Exhibits "G" and "G"-1 are mere receipts of payment; they fail to show that the parties had committed all the terms of their agreement to writing. Exhibit "C" merely offers to sell Lot 51 for P2,240, with interest at 10% if it be by installments; Exhibit "D" offered to reduce the total price for Lots 44 and 51 (early negotiation were for 2 lots) to P2,955, and also referred to other matters concerning the sale which should be discussed personally by the parties; Exhibit "E" accepts a previous counter-offer made by plaintiff-appellant to buy Lot 51 for P2,000, provided the payment was in cash, and again referred to other matters regarding the sale which should be threshed out between the parties; Exhibit "F", after making reference to the terms of payment desired by plaintiff-appellant, laid down the condition that if the first payment is at least P1,500, the balance payable in 9 to 10 months would not bear interest; and if the initial payment was less than P1,500, the balance would bear interest at 10%; Exhibit "G" is a note by Payatas Inc. referring to the attached receipt, Exhibit "G-1") covering the down-payment of P1,300 made by plaintiff-appellant for Lot 51.

These letters show that if at all, only the price and the terms of payment were in writing. The most important, the alleged transfer of title, and the other matters alluded to in some of the communications, were, not reduced to any written document. It is generally recognized that to be a written contract, all its terms must be in writing; so that a contract partly in writing and partly oral is, in legal effect, an oral contract (*Fey vs. Loose Wiles Biscuit Co.*, 75

P2d 810; *Peifer vs. NewComer, et al.*, 157 NE 240; 12 Am. Jur. 550). Apart from whether the letters negotiating the transaction could constitute a written contract of sale, the absence of a formal deed of conveyance strongly indicates that the parties did not intend immediate transfer of title, but only a transfer after full payment of the price. As observed by the trial court, if the contract were an absolute sale, it is unlikely that plaintiff-appellant would not have insisted that the same be reduced to a public document, considering that Lot 51 is covered by a Torrens title. On the other hand, it is unlikely for the Payatas Subdivision Inc. to have agreed to an immediate transfer of ownership without guaranty of the balance being ever paid.

One other evidence of the true character of the transaction is the statement contained in Exhibit "J" of the following tenor: "at ng kayo naman ay mabigyan na ng katibayan, alinsunod sa pinagkayarian", strengthening the conclusion that what transpired in 1926 was a mere contract to sell, transfer of title being conditioned on full payment of the price. Plaintiff-appellant tries to refute this by citing *El Banco Nacional Filipino vs. Ah Sing*, 69 Phil. 611, wherein the contract captioned "Promesa De Venta" was held to be an absolute sale. Suffice it to say that the comparison will not hold, because in the cited case, the contract was reduced to a formal deed of conveyance and the court found that the parties had agreed to and actually effectuated a delivery. In the instant case, there was no formal deed of conveyance, and, as the land is covered by a Torrens title, there could be no delivery except by the act of registration of the deed or instrument.

Adding to the pile of circumstances, the fact that plaintiff-appellant did not file this action to enforce the contract until after more than 20 years from the alleged absolute sale in 1926 induces no other conclusion than that the transaction was a mere contract to sell, for if it were an absolute sale, it was unlikely for plaintiff-appellant to wait as long as he did before commencing the present action, considering that as the land was covered by a Torrens title, it could have been very easy for the Payatas Subdivision to dispose or encumber the same to another party. Considering the steady increase in land values since 1928 (*Martin vs. Martin*, [*] 57 Off. Gaz. [9] 1589), plaintiff's laches and his neglect to comply with his own obligations are powerful indicia against the merits of his case rendering his case highly inequitable.

The dissolution of the Payatas Subdivision Inc. sometime in 1939 is sufficiently established by the evidence. The only argument advanced by plaintiff-appellant to show that it was not dissolved in 1939 (Errors I-IV; IX-X) is Exhibit "O", the letter written in 1941 by the secretary of defendant-appellee Eulogio Rodriguez, asking for payment of the balance of the price, wherein the statement appears "Sa utos ng pangasiwan ng Payatas Estate Subdivision **", from which it is supposed to be inferred that said corporation had not yet been dissolved. However, in Exhibit "O" itself, the payment was being asked to be made at the office of defendant-appellee Eulogio Rodriguez at the City Hall, showing that Payatas Subdivision no longer even had an office. Also significant is the computation of interest mentioned in Exhibit "O" which, according to said letter, accrued only up to January, 1939. All these, plus the other circumstances on record, give credence to defendant-appellees' contention that the corporation was really dissolved in 1939.

Although this dissolution cannot be determinative of the character of the sale in 1926 (as to whether conditional or absolute), it must really have been the occasion which prompted the termination of the contract, as the corporation had to wind up its affairs and close all pending business. Plaintiff-appellant, however, argues (Errors I-IV; VI; VIII) that the Payatas Subdivision had no right to cancel the contract, as there was no demand by suit or notarial act, as provided by Article 1504 of the Old Code (Art. 1592, N. C. C). This is without merit, because Article 1504 requiring demand by suit or notarial act in case the vendor of realty wants to rescind, does not apply to a contract to sell or promise to sell, where title remains with the vendor until fulfillment to a positive suspensive condition, such as full payment of the price (*Caridad Estates vs. Santero*, 71 Phil., 114, 121; *Albea vs. Inquimboy*, 86 Phil., 476; 47 Off. Gaz. Supp. 12, p. 181; *Jocson vs. Capitol Subdivision Inc. et al.*, L-6573, February 28, 1955; *Miranda vs. Caridad Estates*, L-2077 and *Aspuria vs. Caridad Estates*, L-2121, October 3, 1950).

The contention of plaintiff-appellant that Payatas Subdivision Inc. had no right to cancel the contract as there was only a "casual breach" is likewise untenable. In contracts to sell, where ownership is retained by the seller and is not to pass until the full payment of the price, such payment, as we said, is a positive suspensive condition, the failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force, in accordance with Article 1117 of the Old Civil Code. To argue that there was only a casual breach is to proceed from the assumption that the contract is one of absolute sale, where non-payment is a resolutive condition, which is not the case.

Whether the trial court could take judicial notice of the alleged practice in subdivision companies to retain ownership over lands they contracted to sell, until full payment of the price, we find not necessary to discuss. The circumstances shown by the trend of evidence, including the oral testimony of the witnesses for defendants-appellees, more than convince this Court that the transaction in 1926 was merely a contract to sell, subject to a suspensive condition that was terminated for the Payatas Subdivision Inc. before its dissolution, by reason of the non-payment of the balance of the price.

It is contended (Error V) that the balance of the price was not due and payable within the 9 to 10-month period mentioned in Exhibit "F". This Court has examined said letter, and finds nothing to justify such a strained conclusion. Reasonably interpreted, the pertinent portion merely stated that if the first payment is at least P1,500, then, the balance will bear interest at 10%. In other words, the initial payment determines whether or not interest will be paid, not the period within which the balance will fall due. The period here bears no relation to the amount to be initially paid. At any rate, plaintiff-appellant was legally bound to pay the obligation due upon judicial or extra-judicial demand (Art. 1100, Old Civil Code; Article 1169, N.C.C.); and it appears that demands were made which plaintiff-appellant failed to heed.

Plaintiff-appellant next contends (Errors IX-XI) that when Exhibit "O" was sent by Clemente Felix, upon instructions of defendant-appellee Eulogio Rodriguez, the latter was not yet the owner of Lot 51 and the Payatas Subdivision Inc. had not yet been dissolved. As earlier discussed, there is enough evidence that the company was dissolved in 1939. As to whether or not Eulogio Rodriguez had already acquired Lot 51 when Exhibit "O" was sent to plaintiff-appellant, it would really seem that said Eulogio Rodriguez, as of that time, was not yet the owner of Lot 51, since Exhibit "O" is dated February 4, 1941 while Exhibit "U" (the deed of sale from Januaria Rodriguez to Eulogio Rodriguez) is dated December 26, 1941. But this is not material, since it would merely show that, for whomever Eulogio Rodriguez was acting, he still wanted to give plaintiff-appellant a chance to own the land as a gesture of liberality. Anyway, appellant failed to take advantage of the proposal, and the same remains without binding effect.

Having lost all rights to the land, plaintiff-appellant has no personality to question the sales subsequently made to Eulogio Rodriguez, and later, to John Landhal. Hence, it becomes academic to discuss the assignments of error pertaining thereto (Errors VII, XII, XIII, XIV, XV, XVI), specially since there is no evidence that Landhal was prevented from relying on the clean certificate of title in the name of Rodriguez.

From a different perspective, there is yet another reason why the purported sale to plaintiff-appellant could not have transferred title to him, and could not have prevented the subsequent sale of the property to another party. The land in question, being covered by a Torrens title, only the act of registration of the deed or instrument could effect transfer of ownership (*Worcester vs. Ocampo*, 34 Phil. 646; *Tuason vs. Raymundo*, 28 Phil. 635; *Buzon vs. Lichauco*, 13 Phil. 354). In the instant case, there is not even a deed or instrument that could possibly be registered.

Having reached the conclusion that title to the disputed property never passed to plaintiff-appellant; that his

failure to complete payment of the price and his laches in enforcing his rights render it inequitable to compel performance of the contract at the present time, we find it unnecessary to discuss the remaining errors assigned in appellant's brief.

Equity would, of course, demand that, in the absence of stipulation, the amounts paid by plaintiff be returned, since the purpose for which he paid them was not attained; and it appears of record that such reimbursement was made as early as 1945 (Exhibits 1 to 1-C).

In view of the foregoing, the judgment of the trial court is affirmed. Costs against plaintiff-appellant.

Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.
Endencia, J., did not take part.

[1] 106 Phil., 750.

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