MARIA Z. KHO,PETITIONER,VS. FEDERICO BIRON, SR., RESPONDENT.

G.R. NO. 137171. July 14, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

By this petition for review on certiorari, petitioner Maria Z. Kho seeks the reversal of the October 16, 1998 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 44614, as reiterated in its Resolution[2] of January 6, 1999, affirming an earlier decision of the Regional Trial Court (RTC) of Bacolod City in an action for Specific Performance, Refund of Overpayment of Rentals and Damages thereat commenced by the petitioner against the herein respondent, Federico Biron, Sr.

The facts:

On May 17, 1984, petitioner entered into a contract of lease with respondent over a 30-hectare portion of the latter's land, identified as Lot No. 738-B-9, situated at E.B. Magalona, Negros Occidental. The lease contract pertinently provides:

xxx xxx xxx

> That the lessor offer (sic) to lease and the lessee agrees to lease a portion of the above-described parcel of land consisting of approximately THIRTY (30) hectares, as designated on the plan hereto attached and marked as Annex "A" and made an integral part of this contract;
>
> That for and in consideration of the foregoing premises and of the terms conditions and covenants hereinbelow setforth, the lessor, by these presents, leases and demises unto and in favor of the lessee, the thirty (30) hectares portion of the above-described parcel of land, primarily consisting of fishponds, subject to the following -
>
> TERMS AND CONDITIONS;
>
> - This lease shall cover the period of seven (7) years starting January 1, 1985 up to December 31, 1991;
>
> - The lessee shall pay to the lessor an annual rental of One Hundred Twenty Thousand Pesos (P120,000.00), Philippine Currency, to be paid as follows:
>
> a) The rentals due for the first two (2) years of the lease period from January 1, 1985 to December 31, amounting to Two Hundred Forty Thousand Pesos (P240,000.00), Philippine Currency, shall be paid as follows:
>
> - The sum of Sixty Thousand Pesos (P60,000.00) upon the signing of this contract of lease;
>
> - The sum of Sixty Thousand Pesos only (P60,000.00) on or before September 15, 1984;
>
> - The sum of One Hundred Twenty Thousand Pesos (P120,000.00) on or before March 15, 1985;
>
> b. The rental due for the third year of the lease period from January 1, 1987 to December 31, 1987, amounting

> to One Hundred Twenty Thousand Pesos (P120,000.00), Philippine Currency, shall be payable on or before January 31, 1987;
>
> c. Thereafter, the yearly rental of One Hundred Twenty Thousand Pesos (P120,000.00), Philippine Currency, shall be payable on or before the 31st day of January of every year thereafter beginning January 31, 1988; xxx.

On June 26, 1989, or after more than four years through the contract of lease, petitioner filed with the RTC of Bacolod City a complaint against respondent for Specific Performance, Refund of Overpayment of Rentals and Damages, therein alleging that sometime in May 1987, she (petitioner) discovered through a geodetic survey that respondent short-delivered the area of 30 hectares as provided in the lease agreement. She claimed that respondent turned over only approximately 23.26 hectares, not 30 hectares. She demanded the delivery to her of the remaining 6.74 hectares and the refund of the alleged overpaid amount of P106,240.00 for the undelivered 6.74 hectares, but respondent failed to heed her demands.

In his answer, respondent averred, among other matters, that petitioner had no cause of action against him; petitioner was guilty of laches; and there were other terms and conditions agreed upon by the parties after the execution of the lease contract on May 17, 1984. According to respondent, when petitioner signed the lease agreement, the latter agreed to lease a portion of Lot No. 738-B-9, consisting of approximately 30 hectares for a consideration of P120,000.00 annually, not for P4,000.00 per hectare, as claimed by petitioner. Respondent added that since the area of Lot No. 738-B-9, which was actually devoted to fishpond, was only 17 hectares, he gave petitioner sufficient time to improve and convert into fishpond the vacant portion of Lot No. 738-B-9, consisting of 11 hectares, into a fishpond, adding that although the contract of lease was entered on May 17, 1984, it took effect only on January 1, 1986 upon agreement of the parties. Explaining the change in the effective date of the agreement, respondent averred that sometime in November 1984, petitioner discovered his (respondent's) ownership of the adjoining lot, Lot No. 298-B, of which 9,566 hectares were already devoted to fishpond. According to respondent, petitioner suggested that instead of developing the undeveloped portion of Lot No. 738-B-9 into a fishpond, she (petitioner) would just exchange the undeveloped area thereof with the adjoining area already developed, to which respondent, out of his good relationship with the petitioner, agreed. Respondent maintained that petitioner also developed .3119 hectares of his other adjoining lot, Lot No. 297-B, into a fishpond and that since 1985 to 1989, petitioner had been occupying Lot No. 738-B-9, consisting of 18.75 hectares of developed fishpond, and Lot No. 298-B, consisting of .3119 hectares, or approximately in the total area of 30 hectares. Respondent also claimed that sometime in March 1988, petitioner went to his house requesting that the lease contract be extended by five (5) years, but he did not agree. Thereafter, petitioner made repeated visits reiterating said request but all to no avail. His refusal to give in to petitioner's plea must have been the reason why it was only sometime in May 1988 when petitioner complained for the first time that the area delivered to her was less than 30 hectares and paid only P100,000.00, instead of P120,000.00, as provided in the lease contract.

In a decision, dated September 30, 1993, the trial court dismissed petitioner's complaint and rendered judgment for the respondent, to wit:

> WHEREFORE IN VIEW OF THE FOREGOING CONSIDERATION, the Court hereby renders judgment in favor of the defendant [now respondent] Federico Biron, Sr. and against the plaintiff [now petitioner] Maria Kho as follows:
>
> - Ordering the dismissal of the complaint and rescission of the contract of lease;
>
> - Ordering plaintiff to pay defendant the sum of P60,000.00 representing the unpaid rentals due defendant for the years 1989, 1990 and 1991, plus 12% interest per annum until the amount is fully paid;
>
> - Ordering plaintiff to pay defendant the sum of P30,000.00 by way of moral damages; P10,000,00 by way of

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> exemplary damages; and the amount of P30,000.000 by way of attorney's fees, plus appearance fee of P1,000.00 to be account (sic) thereafter and finally to pay the cost of this proceeding.
>
> SO ORDERED. (Words in brackets added).

In time, petitioner went to the CA whereat her appellate recourse was docketed as CA-G.R. CV No. 44614.

In the herein assailed decision dated October 16, 1998, the CA affirmed that of the trial court, which affirmance was reiterated in its resolution of January 8, 1999, denying petitioner's motion for reconsideration.

Hence, petitioner's present recourse.

In the main, petitioner contends that the CA committed reversible error when it upheld the factual findings of the trial court despite the manifest violation and non-compliance by the respondent of the terms and conditions of the parties' lease agreement.

The Court reiterates the oft-stated doctrine that factual findings of the CA, affirming those of the trial court, are binding on this Court unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error.[3] We find none in this case.

Admittedly, the two (2) courts below uniformly declared that the area occupied by petitioner is, indeed, short of the thirty (30) hectares agreed upon in the lease contract. However, as both courts noted, petitioner exerted no effort to refute, in any manner, respondent's allegation that there exist other terms agreed upon by the parties after the execution of the subject contract of lease, not the least of which are those relating to petitioner's occupancy of the developed portions of respondent's Lot No. 297-B and Lot No. 298-B. Such other terms are deemed admitted inasmuch as petitioner failed and, in fact, did not even attempt to rebut the same. Qui non negat, fatetur.[4]

As mandated by the Rules of Court, each party must prove his own affirmative allegation by presenting such quantum of evidence required by law to obtain a favorable judgment.

Sadly, petitioner failed to discharge her burden. As it were, her basic claim that respondent short-delivered the area of 30 hectares remains to be a mere claim, devoid of any evidentiary mooring. She failed to dispute the fact that she and respondent agreed on subsequent terms and conditions which took effect before she commenced paying the lease rental for the year 1985. To the mind of the Court, circumstances abound which cast doubt on petitioner's allegations. Immediately after the parties entered into the contract of lease, petitioner took over the portion of Lot No. 738-B-9 and made improvements on approximately 17 hectares thereof. Petitioner entered two (2) other adjoining lots of the respondent not mentioned in the contract of lease, namely, Lot No. 298-B and Lot No. 297-B, which measured 11 hectares, more or less, and worked on those adjacent lots.

To be sure, petitioner has not come to court with clean hands. She should be the last person to file a suit for specific performance to compel respondent to deliver what was stipulated in their lease agreement inasmuch as she was the one who sought the modification thereof. In fact, she had not disputed that she herself approached respondent several times asking the latter to allow her to occupy Lots No. 297-B and No. 298-B, which are already developed, instead of the undeveloped portion of Lot No. 738-B-9 because it would be more expensive for her to convert said undeveloped portion into a fishpond. We are inclined to think that the area which respondent intended for petitioner to lease was a much bigger area than what petitioner ended up occupying.

Moreover, petitioner was the first to violate the terms and conditions of the contract when she paid the initial down payment on installment even as the contract itself called for the payment thereof in cash. Further, the contract clearly provides for an annual rent of P120,000.00. Indeed, from 1985 to 1988, petitioner paid said amount in full. However, from 1989 until 1991, in violation of the lease contract, petitioner paid only

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P100,000.00 annually for the lease of respondent's property.

All told, this Court is more inclined to give credit to respondent's account on how it came to be that petitioner was in possession of an area less than that agreed upon in the contract of lease originally entered into by the parties.

WHEREFORE, the petition is DENIED and the assailed decision and resolution of the CA are AFFIRMED.

Costs against petitioner.
SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

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[1] Penned by Associate Justice Ramon Mabutas, Jr. (ret.), with Associate Justices Hilarion L. Aquino (ret.) and Martin S. Villarama, concurring; Rollo, pp. 24-25.

[2] Rollo, p. 40.

[3] Maximino Fuentes v. Court of Appeals, Thirteenth Division, and Virgilio Uy, Brigido Saguindang, Leoncio Caligang, et al., G.R. No. 109849, February 26, 1997, 268 SCRA 703.

[4] He who fails to deny, admits.

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