

**SPS. LUIS V. CRUZ AND AIDA CRUZ, PETITIONERS, VS. SPS.
ALEJANDRO FERNANDO, SR., AND RITA FERNANDO, RESPONDENTS.***G.R. NO. 145470. December 09, 2005*

Ponente: AUSTRIA-MARTINEZ, J.

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For resolution is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Decision[1] dated October 3, 2000 of the Court of Appeals (CA) in CA-G.R. CV No. 61247, dismissing petitioners' appeal and affirming the decision of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 79, in Civil Case No. 877-M-94.

The antecedent facts are as follows:

Luis V. Cruz and Aida Cruz (petitioners) are occupants of the front portion of a 710-square meter property located in Sto. Cristo, Baliuag, Bulacan. On October 21, 1994, spouses Alejandro Fernando, Sr. and Rita Fernando (respondents) filed before the RTC a complaint for accion publiciana against petitioners, demanding the latter to vacate the premises and to pay the amount of P500.00 a month as reasonable rental for the use thereof. Respondents alleged in their complaint that: (1) they are owners of the property, having bought the same from the spouses Clodualdo and Teresita Glorioso (Gloriosos) per Deed of Sale dated March 9, 1987; (2) prior to their acquisition of the property, the Gloriosos offered to sell to petitioners the rear portion of the property but the transaction did not materialize due to petitioners' failure to exercise their option; (3) the offer to sell is embodied in a Kasunduan dated August 6, 1983 executed before the Barangay Captain; (4) due to petitioners' failure to buy the allotted portion, respondents bought the whole property from the Gloriosos; and (5) despite repeated demands, petitioners refused to vacate the property.[2]

Petitioners filed a Motion to Dismiss but the RTC dismissed it for lack of merit in its Order dated March 6, 1995.[3] Petitioners then filed their Answer setting forth the affirmative defenses that: (1) the Kasunduan is a perfected contract of sale; (2) the agreement has already been "partially consummated" as they already relocated their house from the rear portion of the lot to the front portion that was sold to them; (3) Mrs. Glorioso prevented the complete consummation of the sale when she refused to have the exact boundaries of the lot bought by petitioners surveyed, and the existing survey was made without their knowledge and participation; and (4) respondents are buyers in bad faith having bought that portion of the lot occupied by them (petitioners) with full knowledge of the prior sale to them by the Gloriosos.[4]

After due proceedings, the RTC rendered a Decision on April 3, 1998 in favor of respondents. The decretal portion of the decision provides:

PREMISES CONSIDERED, the herein plaintiffs was able to prove by preponderance of evidence the case of accion publiciana, against the defendants and judgment is hereby rendered as follows:

- Ordering defendants and all persons claiming under them to vacate placefully (sic) the premises in question and to remove their house therefore (sic);

- Ordering defendants to pay plaintiff the sum of P500.00 as reasonable rental per month beginning October 21, 1994 when the case was filed before this Court and every month thereafter until they vacate the subject premises and to pay the costs of suit.

The counter claim is hereby DISMISSED for lack of merit.

SO ORDERED.[5]

Petitioners appealed the RTC decision but it was affirmed by the CA per its Decision dated October 3, 2000.

Hence, the present petition raising the following issues:

- Whether the Honorable Court of Appeals committed an error of law in holding that the Agreement (Kasunduan) between the parties was a "mere offer to sell," and not a perfected "Contract of Purchase and Sale"?
- Whether the Honorable Court of Appeals committed an error of law in not holding that where the parties clearly gave the petitioners a period of time within which to pay the price, but did not fix said period, the remedy of the vendors is to ask the Court to fix the period for the payment of the price, and not an "accion publiciana"?
- Whether the Honorable Court of Appeals committed an error of law in not ordering respondents to at least deliver the "back portion" of the lot in question upon payment of the agreed price thereof by petitioners, assuming that the Regional Trial Court was correct in finding that the subject matter of the sale was said "back portion", and not the "front" portion of the property?
- Whether the Honorable Court of Appeals committed an error of law in affirming the decision of the trial court ordering the petitioners, who are possessors in good faith, to pay rentals for the portion of the lot possessed by them?[6]

The RTC dwelt on the issue of which portion was being sold by the Gloriosos to petitioners, finding that it was the rear portion and not the front portion that was being sold; while the CA construed the Kasunduan as a mere contract to sell and due to petitioners' failure to pay the purchase price, the Gloriosos were not obliged to deliver to them (petitioners) the portion being sold.

Petitioners, however, insist that the agreement was a perfected contract of sale, and their failure to pay the purchase price is immaterial. They also contend that respondents have no cause of action against them, as the obligation set in the Kasunduan did not set a period, consequently, there is no breach of any obligation by petitioners.

The resolution of the issues in this case principally is dependent on the interpretation of the Kasunduan dated August 6, 1983 executed by petitioners and the Gloriosos. The Kasunduan provided the following pertinent stipulations:

- Na pumayag ang mga maysumbong (referring to the Gloriosos) na pagbilhan ang mga ipinagsumbong (referring to petitioners) na bahagi ng lupa at ang ipagbibili ay may sukat na 213 metrong parisukat humigit kumulang sa halagang P40.00 bawat metrong parisukat;
- Na sa titulong papapanaugin ang magiging kabuuang sukat na mauukol sa mga ipinagsusumbong ay 223 metrong parisukat at ang 10 metro nito ay bilang kaloob ng mga maysumbong sa mga Ipinagsusumbong na bahagi ng right of way;
- Na ang right of way ay may luwang na 1.75 meters magmula sa daang Lopez Jaena patungo sa likuran ng lote na pagtatayuan ng bahay ng mga Ipinagsusumbong na kanyang bibilhin;

- Na ang gugol sa pagpapasukat at pagpapanaog ng titulo ay paghahatian ng magkabilang panig na ang panig ay magbibigay ng halagang hindi kukulang sa halagang tig-AAPAT NA DAANG PISO (P400.00);
- Na ang ipinagsusumbong ay tiyakang ililipat ang bahay sa bahaging kanilang nabili o mabibili sa buwan ng Enero 31, 1984;[7] (Emphasis supplied)

Under Article 1458 of the Civil Code, a contract of sale is a contract by which one of the contracting parties obligates himself to transfer the ownership and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent. Article 1475 of the Code further provides that the contract of sale is perfected at the moment there is meeting of the minds upon the thing which is the object of the contract and upon the price. From that moment the parties may reciprocally demand performance subject to the provisions of the law governing the form of contracts.

In a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold, as distinguished from a contract to sell where ownership is, by agreement, reserved in the vendor and is not to pass to the vendee until full payment of the purchase price.[8] Otherwise stated, in a contract of sale, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas, in a contract to sell, title is retained by the vendor until full payment of the price. In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.

The Kasunduan provides for the following terms and conditions: (a) that the Gloriosos agreed to sell to petitioners a portion of the property with an area of 213 meters at the price of P40.00 per square meter; (b) that in the title that will be caused to be issued, the aggregate area is 223 square meters with 10 meters thereof serving as right of way; (c) that the right of way shall have a width of 1.75 meters from Lopez Jaena road going towards the back of the lot where petitioners will build their house on the portion of the lot that they will buy; (d) that the expenses for the survey and for the issuance of the title will be divided between the parties with each party giving an amount of no less than P400.00; and (e) that petitioners will definitely relocate their house to the portion they bought or will buy by January 31, 1984.

The foregoing terms and conditions show that it is a contract to sell and not a contract of sale. For one, the conspicuous absence of a definite manner of payment of the purchase price in the agreement confirms the conclusion that it is a contract to sell. This is because the manner of payment of the purchase price is an essential element before a valid and binding contract of sale can exist.[9] Although the Civil Code does not expressly state that the minds of the parties must also meet on the terms or manner of payment of the price, the same is needed, otherwise there is no sale.[10] As held in *Toyota Shaw, Inc. vs. Court of Appeals*, [11] a definite agreement on the manner of payment of the price is an essential element in the formation of a binding and enforceable contract of sale.

The Kasunduan does not establish any definite agreement between the parties concerning the terms of payment. What it merely provides is the purchase price for the 213-square meter property at P40.00 per square meter.

For another, the telltale provision in the Kasunduan that: "Na pumayag ang mga maysumbong na pagbilhan ang mga ipinagsumbong na bahagi ng lupa at ang ipagbibili ay may sukat na 213 metrong parisukat humigit kumulang sa halagang P40.00 bawat metrong parisukat," simply means that the Gloriosos only agreed to sell a portion of the property and that the portion to be sold measures 213 square meters.

Another significant provision is that which reads: "Na ang ipinagsusumbong ay tiyakang ililipat ang bahay sa bahaging kanilang nabili o mabibili sa buwan ng Enero 31, 1984." The foregoing indicates that a contract of sale is yet to be consummated and ownership of the property remained in the Gloriosos. Otherwise, why would the

alternative term *improbabilis* be used if indeed the property had already been sold to petitioners.

In addition, the absence of any formal deed of conveyance is a strong indication that the parties did not intend immediate transfer of ownership.[12]

Normally, in a contract to sell, the payment of the purchase price is the positive suspensive condition upon which the transfer of ownership depends.[13] The parties, however, are not prohibited from stipulating other lawful conditions that must be fulfilled in order for the contract to be converted from a contract to sell or at the most an executory sale into an executed one.[14]

In the present case, aside from the payment of the purchase price, there existed another suspensive condition, i.e.: that petitioners will relocate their house to the portion they bought or will buy by January 31, 1984.

Petitioners failed to abide by the express condition that they should relocate to the rear portion of the property being bought by January 31, 1984. Indeed, the *Kasunduan* discloses that it is the rear portion that was being sold by the Gloriosos, and not the front portion as petitioners stubbornly claim. This is evident from the provisions establishing a right of way from Lopez Jaena road going towards the back of the lot, and requiring them to relocate their house to the portion being sold by January 31, 1984. Petitioners are presently occupying the front portion of the property. Why the need for a right of way and for petitioners to relocate if the front portion on which their house stands is the portion being sold?

This condition is a suspensive condition noncompliance of which prevented the Gloriosos from proceeding with the sale and ultimately transferring title to petitioners; and the *Kasunduan* from having obligatory force.[15] It is established by evidence that the petitioners did not transfer their house located in the front portion of the subject property to the rear portion which, under the *Kasunduan*, they intended to buy. Thus, no obligation arose on the part of the Gloriosos to consider the subject property as having been sold to petitioners because the latter's non-fulfillment of the suspensive condition rendered the contract to sell ineffective and unperfected.

Petitioners admit that they have not paid a single centavo to the Gloriosos. However, petitioners argue that their nonpayment of the purchase price was due to the fact that there is yet to be a survey made of the property. But evidence shows, and petitioners do not dispute, that as early as August 12, 1983, or six days after the execution of the *Kasunduan*, a survey has already been made and the property was subdivided into Lot Nos. 565-B-1 (front portion) and 565-B-2 (rear portion), with Lot No. 565-B-2 measuring 223 square meters as the portion to be bought by petitioners.

Petitioners question the survey made, asserting that it is a "table survey" made without their knowledge and participation. It should be pointed out that the *Kasunduan* merely provides that the expenses for the survey will be divided between them and that each party should give an amount of no less than P400.00. Nowhere is it stated that the survey is a condition precedent for the payment of the purchase price.

Petitioners further claim that respondents have no cause of action against them because their obligation to pay the purchase price did not yet arise, as the agreement did not provide for a period within which to pay the purchase price. They argue that respondents should have filed an action for specific performance or judicial rescission before they can avail of *accion publiciana*.

Notably, petitioners never raised these arguments during the proceedings before the RTC. Suffice it to say that issues raised for the first time on appeal and not raised timely in the proceedings in the lower court are barred by estoppel.[16] Matters, theories or arguments not brought out in the original proceedings cannot be considered on review or appeal where they are raised for the first time. To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice and due process.[17]

Moreover, it would be inutile for respondents to first petition the court to fix a period for the performance of the contract. In the first place, respondents are not parties to the Kasunduan between petitioners and the Gloriosos, and they have no standing whatsoever to seek such recourse. In the second place, such recourse properly pertains to petitioners. It was they who should have sought the court's intercession. If petitioners believed that they have an actionable contract for the sale of the property, prudence and common sense dictate that they should have sought its enforcement forthwith. Instead, petitioners whiled away their time.

Furthermore, there is no need for a judicial rescission of the Kasunduan for the simple reason that the obligation of the Gloriosos to transfer the property to petitioners has not yet arisen. There can be no rescission of an obligation that is nonexistent, considering that the suspensive conditions therefor have not yet happened.[18]

Hence, petitioners have no superior right of ownership or possession to speak of. Their occupation of the property was merely through the tolerance of the owners. Evidence on record shows that petitioners and their predecessors were able to live and build their house on the property through the permission and kindness of the previous owner, Pedro Hipolito, who was their relative,[19] and subsequently, Teresita Glorioso, who is also their relative. They have no title or, at the very least, a contract of lease over the property. Based as it was on mere tolerance, petitioners' possession could neither ripen into ownership nor operate to bar any action by respondents to recover absolute possession thereof.[20]

There is also no merit to petitioners' contention that respondents are buyers in bad faith. As explained in *Coronel vs. Court of Appeals*:

In a contract to sell, there being no previous sale of the property, a third person buying such property despite the fulfillment of the suspensive condition such as the full payment of the purchase price, for instance, cannot be deemed a buyer in bad faith and the prospective buyer cannot seek the relief of reconveyance of the property. There is no double sale in such case. Title to the property will transfer to the buyer after registration because there is no defect in the owner-seller's title per se, but the latter, of course, may be sued for damages by the intending buyer.[21] (Emphasis supplied)

A person who occupies the land of another at the latter's forbearance or permission without any contract between them is necessarily bound by an implied promise that he will vacate upon demand.[22]

Considering that petitioners' continued possession of the property has already been rendered unlawful, they are bound to pay reasonable rental for the use and occupation thereof, which in this case was appropriately pegged by the RTC at P500.00 per month beginning October 21, 1994 when respondents filed the case against them until they vacate the premises.

Finally, petitioners seek compensation for the value of the improvements introduced on the property. Again, this is the first time that they are raising this point. As such, petitioners are now barred from seeking such relief.[23]

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated October 3, 2000 in CA-G.R. CV No. 61247 is AFFIRMED.

SO ORDERED.

Puno, Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Wenceslao I. Agnir, Jr. (ret.) with Associate Justices Fermin A. Martin, Jr. (ret.) and Oswaldo D. Agcaoili (ret.), concurring.

[2] Records, pp. 1-3.

- [3] Id., pp. 37-38.
- [4] Id., pp. 40-42.
- [5] Id., p. 288.
- [6] See Rollo, p. 8.
- [7] Records, p. 184, Exhibit "Z" (Court).
- [8] Chua vs. Court of Appeals, G.R. No. 119255, April 9, 2003, 401 SCRA 54.
- [9] Limketkai Sons Milling, Inc. vs. Court of Appeals, G.R. No. 118509, March 29, 1996, 255 SCRA 626.
- [10] San Miguel Properties, Inc. vs. Spouses Huang, G.R. No. 137290, July 31, 2000, 336 SCRA 737.
- [11] G.R. No. 116650, May 23, 1995, 244 SCRA 320, 328, citing Velasco vs. Court of Appeals, G.R. No. L-31018, June 29, 1973, 51 SCRA 439.
- [12] Chua vs. Court of Appeals, G.R. No. 119255, April 9, 2003, 401 SCRA 54.
- [13] Gomez vs. Court of Appeals, G.R. No. 120747, September 21, 2000, 340 SCRA 720.
- [14] PNB vs. Court of Appeals, G.R. No. 119580, September 26, 1996, 262 SCRA 464.
- [15] Ibid.
- [16] Philippine Banking Corporation vs. Court of Appeals, G.R. No. 127469, January 15, 2004, 419 SCRA 487.
- [17] De Rama vs. Court of Appeals, G.R. No. 131136, February 28, 2001, 353 SCRA 94.
- [18] Padilla vs. Paredes, G.R. No. 124874, March 17, 2000, 328 SCRA 434.
- [19] TSN, May 5, 1997, p. 3.
- [20] Heirs of Gamos vs. Heirs of Frando, G.R. No. 149117, December 16, 2004, 447 SCRA 136.
- [21] Cited in Ursal vs. Court of Appeals, G.R. No. 142411, October 14, 2005.
- [22] Macasaet vs. Macasaet, G.R. Nos. 154391-92, September 30, 2004, 439 SCRA 625.
- [23] See notes 16 and 17.

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