

## ARISTON ANDAYA, ET AL., PLAINTIFFS AND APPELLEES, VS. DR. MELENCIO MANANSALA, DEFENDANT AND APPELLANT.

*G.R. No. 14714. April 30, 1960*

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

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

Originally brought to the Court of Appeals, this appeal was forwarded to us by said court because it raises only legal questions.

There is no dispute as to the antecedents of the case, which the lower court found to be as follows:

"On June 13, 1934, one Isidro Fenis sold the land in question to Eustaquia Llanes, with right of repurchase within a period of five years. After the expiry of said period, and without repurchasing the said property, Isidro Fenis sold it again to Maria Vilorio on January 13, 1944. Seven months later, or on August 21, 1944, Maria Vilorio sold by way of sale with right to repurchase within a period of one year, the said property together with another parcel of land to the herein defendant Melencio Manansala. On August 1, 1946, upon the expiry of the said period, Manansala registered with the Register of Deeds an affidavit consolidating his title on the property. A year later, or on September 28, 1947, Maria Vilorio sold by way of absolute sale the same property to Ciriaco Casiño, Fidela Valdez, and the plaintiff spouses Ariston Andaya and Micaela Cabrito, for P4,800.00, which deed contained the following stipulation:

The following month, or on October 18, 1947, Eustaquia Llanes, instituted Civil case No. 399 to quiet title and to recover possession of said parcel from Ciriaco Casiño. Eight months later, or on June 9, 1949, a defendant Melencio Manansala sold by way of absolute sale, the property in question to the spouses Ciriaco Casino and Fidela Valdez, and the plaintiffs for P1,500.00, which deed contained the following stipulation:

"That from and after this date, the vendee herein named are the lawful owners of the land herein sold which I warrant to be free from all kinds of liens and encumbrances whatever and in case of eviction, I promise, agree and covenant to answer to and for the vendee in the form and manner provided by law."

This document of conveyance was recorded in the Register of Deeds under Act No. 3344, on June 9, 1948.

In the meantime, on September 28, 1948, Eustaquia Llanes, included as co-defendant in Civil Case No. 399, Melencio Manansala (Annex C), and on September 2, 1950, as additional defendants, Fidela Valdez and the spouses Ariston Andaya and Micaela Cabrito (Annex D). The said defendant filed a joint answer to the second amended complaint, claiming title on said property on the basis of the conveyance made in favor of Manansala, and from the latter to the other defendants. Judgment was rendered in that case in favor of Eustaquia Llanes, and on October 17, 1955, the said judgment having become final, a writ of execution was issued against Ciriaco Casino, Fidela Valdez, Ariston Andaya and Micaela Cabrito. In the enforcement of said writ, the properties of Fidela Valdez were attached and sold at public auction to cover the damages, representing the value of the produce of the land, amounting to P676.00, costs of the suit in the amount of P33.20, or a total of P709.20 (Annex H-1)."

On March 23, 1956, plaintiffs spouses Ariston Andaya and Micaela Cabrito commenced this case in the Court of First Instance of Ilocos Sur against defendant Melencio Manansala to recover damages suffered by them by reason of the latter's breach of his warranty of title or against eviction embodied in his sale of the land in question to plaintiffs. Defendant Manansala denied liability for the damages claimed, and alleged that it was plaintiffs and their co-purchasers who pleaded with him to sell said land to them at a low price after they had been sued by Eustaquia Llanes in Civil Case No. 399, considering that Manansala had registered the land in his name with the office of the Register of Deeds. After the case was submitted for a summary judgment and the parties had agreed on a statement of facts, the lower court entered the following decision:

"Considering that the same land was already sold to the plaintiffs and their co-vendee, Ciriaco Casiño and Fidela Valdez, it is obvious that their only purpose in acquiring the same land from the defendant at the low price of P1,500 was to enable them to register the prior deed of sale executed by Maria Viloría. This is true, because the title of the defendant had already consolidated pursuant to Article 1509 of the Spanish Civil Code as shown by an affidavit of the defendant registered with the Register of Deeds of this province. This was clearly the understanding of the parties, and the plaintiffs apparently knew that the stipulation on warranty in the deed was made pro forma, and could not have been intended, considering the above circumstances and from the fact that said property was then subject of a pending litigation as an actual warranty on the title and possession of the purchasers. This being so, it would be inequitable now to hold that the defendant is liable under the provisions of Article 1555 of the new Civil Code or under Act 1478 of the Spanish Civil Code which is the law that should be applied, the said transaction being before August 30, 1950.

"In determining therefore the obligations of the defendant, those applicable to a vendor in cases of rescission of a contract should be applied.

WHEREFORE, the Court renders judgment sentencing the defendant to return to the plaintiffs the sum of P750.00 which represent one-half of the purchase price with interest at 6% from June 9, 1948 until fully paid, and to pay the costs of this suit."

From the above decision, defendant Melencio Manansala appealed, claiming that after finding that he was not liable to plaintiffs-appellees for breach of warranty against eviction, the lower court erred in holding him liable as in rescission of sale and ordering him to return to plaintiffs-appellees the price of the land in question with interests.

There is merit in the appeal.

The vendor's liability for warranty against eviction in a contract of sale is waivable and may be renounced by the vendee (last par., Art. 1475, Old Code; last par., Art. 1548, New). The contract of sale between herein appellant and the appellees included a stipulation as to the warranty; but the lower court found that the parties understood that such stipulation was merely pro forma and that the appellant vendor was not to be bound thereby, in view of the fact that the same land had been previously bought by appellees from Maria Viloría and that their only purpose in buying the same, again from appellant was to enable them to register their prior deed of sale; and the further fact that when the sale between appellant and appellee was made, the property was already the subject of a pending litigation between appellees and one Eustaquia Llanes, who claimed its title and possession by virtue of an earlier sale from the original owner, and it was by final judgment in this litigation that appellees were evicted from said land. Not having appealed from the decision of the court below, appellees are bound by these findings, the implication of which is that they not only renounced or waived the warranty against eviction, but that they knew of the danger of eviction and assumed its consequences.

Now, according to Article 1477 of the old Code, (the law applicable when the contract in this case was made),

"When the vendee has waived the right to warranty in case of eviction, and eviction shall occur, the vendor

shall only pay the price which the thing sold had at the time of the eviction, unless the vendee has made the waiver with knowledge of the danger of eviction and assumed its consequences." (Same as Art. 1554 of the new Code)

As already stated, appellees knew of the danger of eviction at the time they purchased the land in question from appellant, and assumed its consequences. Therefore, the appellant is not even obliged to restore to them the price of the land at the time of eviction, but is completely exempt from liability whatsoever.

Neither may appellant be condemned to return the price, received from appellees on the theory of rescission of their contract of sale, as held by the court below. In the first place, the remedy of rescission contemplates that the one demanding it is able to return whatever he has received under the contract; and when this can not be done, rescission can not be carried out (Art. 1295, Old Code; Art. 1385, New). It is for this reason that the law on sales does not make rescission a remedy in case the vendee is totally evicted from the thing sold, as in this case, for he can no longer restore the thing to the vendor. It is only when the vendee loses "a part of the thing sold of such importance, in relation to the whole, that he would not have purchased it without said part" that he may ask for rescission, but he has "the obligation to return the thing without other encumbrances than those which it had when he acquired it" (Art. 1479, old Code; 1356, New). In the second place, appellees, as already stated, assumed the risk of eviction, which stops them from asking for rescission even were it possible for them to restore what they had received under the contract.

On their part, appellees claim that in view of their eviction from the land in question, they are entitled to recover from appellant more items of damages under Article 1555 of the New Code than the mere return of the price with interests as ordered by the trial court. The claim is untenable, not only because appellant, as we have held, is exempt from any liability for appellees' eviction, but also because not having appealed from the decision of the court below, appellees can not ask for a modification thereof or an award of damages not included therein (David vs. De la Cruz, 103 Phil., 380; 54 Off. Gaz. [35] 8073; Pineda & Ampil Mfg. Co. vs. Bartolome, 95 Phil., 930; Gorospe vs. Peñaflorida, 101 Phil., 886).

Wherefore, the decision appealed from is reversed and the complaint dismissed, with costs against appellees Ariston Andaya, et al.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Gutierrez David, JJ., concur.

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