

HEIRS OF CAYETANO PANGAN AND CONSUELO PANGAN, PETITIONERS, VS. SPOUSES ROGELIO PERRERAS AND PRISCILLA PERRERAS, RESPONDENTS.

G.R. No. 157374. August 27, 2009

Ponente: BRION, J.

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BRION, J.:

The heirs[1] of spouses Cayetano and Consuelo Pangan (petitioners-heirs) seek the reversal of the Court of Appeals' (CA) decision[2] of June 26, 2002, as well its resolution of February 20, 2003, in CA-G.R. CV Case No. 56590 through the present petition for review on certiorari.[3] The CA decision affirmed the Regional Trial Court's (RTC) ruling[4] which granted the complaint for specific performance filed by spouses Rogelio and Priscilla Perreras (respondents) against the petitioners-heirs, and dismissed the complaint for consignation instituted by Consuelo Pangan (Consuelo) against the respondents.

THE FACTUAL ANTECEDENTS

The spouses Pangan were the owners of the lot and two-door apartment (subject properties) located at 1142 Casañas St., Sampaloc, Manila.[5] On June 2, 1989, Consuelo agreed to sell to the respondents the subject properties for the price of P540,000.00. On the same day, Consuelo received P20,000.00 from the respondents as earnest money, evidenced by a receipt (June 2, 1989 receipt)[6] that also included the terms of the parties' agreement.

Three days later, or on June 5, 1989, the parties agreed to increase the purchase price from P540,000.00 to P580,000.00.

In compliance with the agreement, the respondents issued two Far East Bank and Trust Company checks payable to Consuelo in the amounts of P200,000.00 and P250,000.00 on June 15, 1989. Consuelo, however, refused to accept the checks. She justified her refusal by saying that her children (the petitioners-heirs) - co-owners of the subject properties - did not want to sell the subject properties. For the same reason, Consuelo offered to return the P20,000.00 earnest money she received from the respondents, but the latter rejected it. Thus, Consuelo filed a complaint for consignation against the respondents on September 5, 1989, docketed as Civil Case No. 89-50258, before the RTC of Manila, Branch 28.

The respondents, who insisted on enforcing the agreement, in turn instituted an action for specific performance against Consuelo before the same court on September 26, 1989. This case was docketed as Civil Case No. 89-50259. They sought to compel Consuelo and the petitioners-heirs (who were subsequently impleaded as co-defendants) to execute a Deed of Absolute Sale over the subject properties.

In her Answer, Consuelo claimed that she was justified in backing out from the agreement on the ground that the sale was subject to the consent of the petitioners-heirs who became co-owners of the property upon the death of her husband, Cayetano. Since the petitioners-heirs disapproved of the sale, Consuelo claimed that the contract

became ineffective for lack of the requisite consent. She nevertheless expressed her willingness to return the P20,000.00 earnest money she received from the respondents.

The RTC ruled in the respondents' favor; it upheld the existence of a perfected contract of sale, at least insofar as the sale involved Consuelo's conjugal and hereditary shares in the subject properties. The trial court found that Consuelo's receipt of the P20,000.00 earnest money was an "eloquent manifestation of the perfection of the contract." Moreover, nothing in the June 2, 1989 receipt showed that the agreement was conditioned on the consent of the petitioners-heirs. Even so, the RTC declared that the sale is valid and can be enforced against Consuelo; as a co-owner, she had full-ownership of the part pertaining to her share which she can alienate, assign, or mortgage. The petitioners-heirs, however, could not be compelled to transfer and deliver their shares in the subject properties, as they were not parties to the agreement between Consuelo and the respondents. Thus, the trial court ordered Consuelo to convey one-half (representing Consuelo's conjugal share) plus one-sixth (representing Consuelo's hereditary share) of the subject properties, and to pay P10,000.00 as attorney's fees to the respondents. Corollarily, it dismissed Consuelo's consignment complaint.

Consuelo and the petitioners-heirs appealed the RTC decision to the CA claiming that the trial court erred in not finding that the agreement was subject to a suspensive condition - the consent of the petitioners-heirs to the agreement. The CA, however, resolved to dismiss the appeal and, therefore, affirmed the RTC decision. As the RTC did, the CA found that the payment and receipt of earnest money was the operative act that gave rise to a perfected contract, and that there was nothing in the parties' agreement that would indicate that it was subject to a suspensive condition. It declared:

Nowhere in the agreement of the parties, as contained in the June 2, 1989 receipt issued by [Consuelo] xxx, indicates that [Consuelo] reserved titled on [sic] the property, nor does it contain any provision subjecting the sale to a positive suspensive condition.

Unconvinced by the correctness of both the RTC and the CA rulings, the petitioners-heirs filed the present appeal by certiorari alleging reversible errors committed by the appellate court.

THE PETITION

The petitioners-heirs primarily contest the finding that there was a perfected contract executed by the parties. They allege that other than the finding that Consuelo received P20,000.00 from the respondents as earnest money, no other evidence supported the conclusion that there was a perfected contract between the parties; they insist that Consuelo specifically informed the respondents that the sale still required the petitioners-heirs' consent as co-owners. The refusal of the petitioners-heirs to sell the subject properties purportedly amounted to the absence of the requisite element of consent.

Even assuming that the agreement amounted to a perfected contract, the petitioners-heirs posed the question of the agreement's proper characterization - whether it is a contract of sale or a contract to sell. The petitioners-heirs posit that the agreement involves a contract to sell, and the respondents' belated payment of part of the purchase price, i.e., one day after the June 14, 1989 due date, amounted to the non-fulfillment of a positive suspensive condition that prevented the contract from acquiring obligatory force. In support of this contention, the petitioners-heirs cite the Court's ruling in the case of *Adelfa Rivera, et al. v. Fidela del Rosario, et al.*: [7]

In a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold; while in a contract to sell, ownership is, by agreement, reserved in the vendor and is not to pass to the vendee until full payment of the purchase price. In a contract to sell, the payment of the purchase price is a positive suspensive condition, the failure of which is not a breach, casual or serious, but a situation that prevents the obligation of the vendor to convey title from acquiring an obligatory force.

[Rivera], however, failed to complete payment of the second installment. The non-fulfillment of the condition rendered the contract to sell ineffective and without force and effect. [Emphasis in the original.]

From these contentions, we simplify the basic issues for resolution to three questions:

- Was there a perfected contract between the parties?
- What is the nature of the contract between them? and
- What is the effect of the respondents' belated payment on their contract?

THE COURT'S RULING

There was a perfected contract between the parties since all the essential requisites of a contract were present

Article 1318 of the Civil Code declares that no contract exists unless the following requisites concur: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation established. Since the object of the parties' agreement involves properties co-owned by Consuelo and her children, the petitioners-heirs insist that their approval of the sale initiated by their mother, Consuelo, was essential to its perfection. Accordingly, their refusal amounted to the absence of the required element of consent.

That a thing is sold without the consent of all the co-owners does not invalidate the sale or render it void. Article 493 of the Civil Code[8] recognizes the absolute right of a co-owner to freely dispose of his pro indiviso share as well as the fruits and other benefits arising from that share, independently of the other co-owners. Thus, when Consuelo agreed to sell to the respondents the subject properties, what she in fact sold was her undivided interest that, as quantified by the RTC, consisted of one-half interest, representing her conjugal share, and one-sixth interest, representing her hereditary share.

The petitioners-heirs nevertheless argue that Consuelo's consent was predicated on their consent to the sale, and that their disapproval resulted in the withdrawal of Consuelo's consent. Yet, we find nothing in the parties' agreement or even conduct - save Consuelo's self-serving testimony - that would indicate or from which we can infer that Consuelo's consent depended on her children's approval of the sale. The explicit terms of the June 8, 1989 receipt[9] provide no occasion for any reading that the agreement is subject to the petitioners-heirs' favorable consent to the sale.

The presence of Consuelo's consent and, corollarily, the existence of a perfected contract between the parties are further evidenced by the payment and receipt of P20,000.00, an earnest money by the contracting parties' common usage. The law on sales, specifically Article 1482 of the Civil Code, provides that whenever earnest money is given in a contract of sale, it shall be considered as part of the price and proof of the perfection of the contract. Although the presumption is not conclusive, as the parties may treat the earnest money differently, there is nothing alleged in the present case that would give rise to a contrary presumption. In cases where the Court reached a conclusion contrary to the presumption declared in Article 1482, we found that the money initially paid was given to guarantee that the buyer would not back out from the sale, considering that the parties to the sale have yet to arrive at a definite agreement as to its terms - that is, a situation where the contract has not yet been perfected.[10] These situations do not obtain in the present case, as neither of the parties claimed that the P20,000.00 was given merely as guarantee by the respondents, as vendees, that they would not back out from the sale. As we have pointed out, the terms of the parties' agreement are clear and explicit; indeed, all the essential

elements of a perfected contract are present in this case. While the respondents required that the occupants vacate the subject properties prior to the payment of the second installment, the stipulation does not affect the perfection of the contract, but only its execution.

In sum, the case contains no element, factual or legal, that negates the existence of a perfected contract between the parties.

The characterization of the contract can be considered irrelevant in this case in light of Article 1592 and the Maceda Law, and the petitioners-heirs' payment

The petitioners-heirs posit that the proper characterization of the contract entered into by the parties is significant in order to determine the effect of the respondents' breach of the contract (which purportedly consisted of a one-day delay in the payment of part of the purchase price) and the remedies to which they, as the non-defaulting party, are entitled.

The question of characterization of the contract involved here would necessarily call for a thorough analysis of the parties' agreement as embodied in the June 2, 1989 receipt, their contemporaneous acts, and the circumstances surrounding the contract's perfection and execution. Unfortunately, the lower courts' factual findings provide insufficient detail for the purpose. A stipulation reserving ownership in the vendor until full payment of the price is, under case law, typical in a contract to sell.[11] In this case, the vendor made no reservation on the ownership of the subject properties. From this perspective, the parties' agreement may be considered a contract of sale. On the other hand, jurisprudence has similarly established that the need to execute a deed of absolute sale upon completion of payment of the price generally indicates that it is a contract to sell, as it implies the reservation of title in the vendor until the vendee has completed the payment of the price. When the respondents instituted the action for specific performance before the RTC, they prayed that Consuelo be ordered to execute a Deed of Absolute Sale; this act may be taken to conclude that the parties only entered into a contract to sell.

Admittedly, the given facts, as found by the lower courts, and in the absence of additional details, can be interpreted to support two conflicting conclusions. The failure of the lower courts to pry into these matters may understandably be explained by the issues raised before them, which did not require the additional details. Thus, they found the question of the contract's characterization immaterial in their discussion of the facts and the law of the case. Besides, the petitioners-heirs raised the question of the contract's characterization and the effect of the breach for the first time through the present Rule 45 petition.

Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by the reviewing court, as they cannot be raised for the first time at the appellate review stage. Basic considerations of fairness and due process require this rule.[12]

At any rate, we do not find the question of characterization significant to fully pass upon the question of default due to the respondents' breach; ultimately, the breach was cured and the contract revived by the respondents' payment a day after the due date.

In cases of breach due to nonpayment, the vendor may avail of the remedy of rescission in a contract of sale. Nevertheless, the defaulting vendee may defeat the vendor's right to rescind the contract of sale if he pays the amount due before he receives a demand for rescission, either judicially or by a notarial act, from the vendor. This right is provided under Article 1592 of the Civil Code:

Article 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term. [Emphasis supplied.]

Nonpayment of the purchase price in contracts to sell, however, does not constitute a breach; rather, nonpayment is a condition that prevents the obligation from acquiring obligatory force and results in its cancellation. We stated in *Ong v. CA*[13] that:

In a contract to sell, the payment of the purchase price is a positive suspensive condition, the failure of which is not a breach, casual or serious, but a situation that prevents the obligation of the vendor to convey title from acquiring obligatory force. The non-fulfillment of the condition of full payment rendered the contract to sell ineffective and without force and effect. [Emphasis supplied.]

As in the rescission of a contract of sale for nonpayment of the price, the defaulting vendee in a contract to sell may defeat the vendor's right to cancel by invoking the rights granted to him under Republic Act No. 6552 or the Realty Installment Buyer Protection Act (also known as the Maceda Law); this law provides for a 60-day grace period within which the defaulting vendee (who has paid less than two years of installments) may still pay the installments due. Only after the lapse of the grace period with continued nonpayment of the amounts due can the actual cancellation of the contract take place. The pertinent provisions of the Maceda Law provide:

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Section 2. It is hereby declared a public policy to protect buyers of real estate on installment payments against onerous and oppressive conditions.

Sec. 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:

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Section 4. In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than 60 days from the date the installment became due. If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from the receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by notarial act. [Emphasis supplied.]

Significantly, the Court has consistently held that the Maceda Law covers not only sales on installments of real estate, but also financing of such acquisition; its Section 3 is comprehensive enough to include both contracts of sale and contracts to sell, provided that the terms on payment of the price require at least two installments. The contract entered into by the parties herein can very well fall under the Maceda Law.

Based on the above discussion, we conclude that the respondents' payment on June 15, 1989 of the installment due on June 14, 1989 effectively defeated the petitioners-heirs' right to have the contract rescinded or cancelled. Whether the parties' agreement is characterized as one of sale or to sell is not relevant in light of the respondents' payment within the grace period provided under Article 1592 of the Civil Code and Section 4 of the Maceda Law. The petitioners-heirs' obligation to accept the payment of the price and to convey Consuelo's conjugal and hereditary shares in the subject properties subsists.

WHEREFORE, we DENY the petitioners-heirs' petition for review on certiorari, and AFFIRM the decision of the Court of Appeals dated June 24, 2002 and its resolution dated February 20, 2003 in CA-G.R. CV Case No. 56590. Costs against the petitioners-heirs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Del Castillo, and Abad, JJ., concur.

[*] Deceased.

[1] Victor, Ludinila, Hermelina, Virgilio, and Editha, all surnamed Pangan; rollo, p. 33.

[2] Penned by Associate Justice Elvi John S. Asuncion (separated from the service), with Associate Justice Portia Aliño-Hormachuelos and Associate Justice Edgardo F. Sundiam (deceased), concurring, id., pp. 21-25.

[3] Under Rule 45 of the Rules of Court; id., pp. 10-18.

[4] In Civil Case Nos. 89-50258 and 89-50259, penned by Judge Ed Vincent S. Albano on January 27, 1997, id., pp. 33-49.

[5] The land is covered by TCT No. 16098 and registered in the name of spouses Cayetano and Consuelo Pangan.

[6] Rollo, p. 6. The receipt stated:

Received from Mrs. Priscilla Perreras of #35 Nicanor Roxas St., Sta. Mesa Heights, Q.C. the amount of Twenty Thousand Pesos (P20,000.00) as EARNEST MONEY for the house and lot located at 1140-1142 Casañas St., Sampaloc, Manila.

The total purchased [sic] price is Five Hundred Forty Thousand Pesos (P540,000.00).

Two Hundred Fifty Thousand Pesos (P250,000.00) to be given on or before June 14/89.

The total balance of Two Hundred Seventy Thousand Pesos (P270,000.00) to be given once the tenants vacated [sic] the premises. [Emphasis in the original.]

[7] G.R. No. 144934, January 15, 2004, 419 SCRA 626.

[8] The full text of Article 493 of the Civil Code reads:

Each co-owner shall have full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

[9] Supra note 6.

[10] See *Manila Metal Container Corporation v. Tolentino*, G.R. No. 166862, December 20, 2006, 511 SCRA 444; *San Miguel Properties Phil., Inc. v. Huang*, G.R. No. 137290, July 31, 2000, 336 SCRA 737, citing *Spouses Doromal v. CA*, 66 SCRA 575 (1975).

[11] See *Cordero v. F.S. Management and Development Corporation, Inc.*, G.R. No. 167213, October 31, 2006, 506 SCRA 451; *Ramos v. Santiago*, G.R. No. 145330, October 14, 2005, 473 SCRA 79; *Rayos v. CA*, G.R. No. 135528, July 14, 2004, 434 SCRA 365.

[12] Pag-Asa Steel Works, Inc. v. CA, G.R. No. 166647, March 31, 2006, 486 SCRA 475.

[13] G.R. No. 97347, July 6, 1999, 310 SCRA 1.

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