

**MR. SERGIO VILLADAR, JR. & MRS. CARLOTA A. VILLADAR,
Petitioners, vs. ELDON ZABALA and SAMUEL ZABALA, SR., Respondents.***G.R. No. 166458. February 14, 2008*

Ponente: QUISUMBING, J.

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Petitioners Mr. and Mrs. Sergio Villadar, Jr. appeal the Decision[1] dated November 28, 2003 of the Court of Appeals in CA-G.R. SP No. 71439 and the Resolution[2] dated December 1, 2004, denying the motion for reconsideration. The Court of Appeals had reversed the Decision[3] dated April 15, 2002 of the Regional Trial Court (RTC), Branch 58, Cebu City in Civil Case No. CEB-27050, and ordered petitioners to surrender possession of portions of Lot Nos. 5095-A and 5095-B to respondents Eldon Zabala and Samuel Zabala, Sr.

The antecedent facts are as follows:

Respondent Samuel Zabala, Sr. was the owner of Lot No. 5095 covered by Transfer Certificate of Title (TCT) No. 78269,[4] located at San Nicolas, Cebu City, and comprising 438 square meters. On January 13, 1995, Samuel, Sr., together with his wife Maria Luz Zabala, sold one-half of Lot No. 5095 to his mother-in-law Estelita Villadar for P75,000 on installment basis. Except for a note of partial payment of P6,500,[5] no contract was executed nor was there an agreement on when Estelita shall pay all installments.

On February 28, 1997, Samuel, Sr. sold the other half of Lot No. 5095 to respondent Eldon Zabala. Lot No. 5095 was subdivided and upon cancellation of TCT No. 78269, Lot No. 5095-A under TCT No. 145182[6] was registered in Eldon's name. Lot No. 5095-B under TCT No. 145183[7] was registered in Samuel, Sr.'s name.

On April 20, 1997, Estelita made an additional payment of P22,500,[8] leaving a balance of only P36,500 after deducting all previous payments. Later, however, the spouses Samuel, Sr. and Maria Luz decided to cancel the sale after a confrontation with Estelita at the Office of the Barangay Captain of Barangay Basak, San Nicolas, Cebu City.

Samuel, Sr. together with his son Samuel Zabala, Jr. also filed a complaint for ejectment with the Office of the Lupong Tagapamayapa of Barangay Basak against Estelita's son, petitioner Sergio Villadar, Jr., who occupied one of the houses that stood on the property. On June 14, 1998, said office issued to Samuel, Sr. a certificate to file action after petitioner Sergio Villadar, Jr. failed to appear for conciliation.

On October 27, 1998, Eldon and Samuel, Sr. filed a Complaint[9] for unlawful detainer against petitioners Sergio Villadar, Jr. and his wife Carlota Alimurung before the Municipal Trial Court in Cities (MTCC), Branch 8, Cebu City. In their complaint, they alleged that they own Lot Nos. 5095-A and 5095-B, and that in the latter part of 1986, they allowed petitioners to stay in a vacant store on the lot out of pity, subject to the condition that petitioners would leave once respondents need the premises for the use of their own families. In January 1998, they demanded that petitioners vacate the store because they needed the store for the use of their children but petitioners refused to leave.

In their Answer,[10] petitioners claimed that one-half of Lot No. 5095 was sold on installment to Sergio Villadar, Jr.'s mother, Estelita Villadar, on January 13, 1995 for P75,000; that on January 13, 1995, Estelita made a downpayment of P6,500 and had an unpaid balance of only P36,500 as of April 20, 1997; that by virtue of the sale, Estelita became the owner of the premises where their house stood; that they derive their title from Estelita who promised and agreed to give them one-half of one-half of Lot No. 5095 after she has fully paid the price and obtained a separate title in her name; that they constructed a residential house, which now straddles Lot Nos. 5095-A and 5095-B because of respondents' wrongful subdivision of Lot No. 5095; that Estelita tried to tender the balance of the purchase price, but Samuel, Sr. unjustifiably refused to receive the payment; that because of such refusal, Estelita and Sergio Villadar, Jr. sought the intervention of the Lupon Authority of Barangay Basak, San Nicolas, Cebu City but no settlement was reached; that assuming that they and Estelita are adjudged to have an inferior right over one-half of the lot, they are builders in good faith and they should be allowed to retain the lot until they are paid or reimbursed the amount of P80,000, which is the value of the house they built on the premises.

On August 27, 2001, the MTCC dismissed the complaint.[11] The MTCC ruled that petitioners could not be deprived of their possession of the disputed portion because one-half of Lot No. 5095 had already been sold in 1995 to Estelita Villadar, who was the source of petitioners' right to possess it. The dispositive portion of the decision states:

WHEREFORE, upon the premises, judgment is hereby rendered against [p]laintiffs and this case is DISMISSED; [de]fendants are hereby granted to recover the costs of this litigation in the sum of P10,000.00 from [p]laintiffs who are hereby directed to pay the same.

SO ORDERED.[12]

Respondents Eldon and Samuel, Sr. appealed to the RTC which affirmed the MTCC's ruling.

Upon appeal, the Court of Appeals in a Decision dated November 28, 2003 reversed the rulings of the MTCC and RTC. The Court of Appeals ruled that although there was an oral agreement between Samuel Zabala, Sr. and Estelita Villadar for the sale of one-half of Lot No. 5095, Samuel Zabala, Sr. had reserved title to the property in his name until full payment of the purchase price had been made by Estelita. The pertinent portions of the Court of Appeals' decision state:

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It is undisputed that ... there was a verbal agreement between petitioner Samuel Zabala, Sr. and the respondents for the sale of Lot No. 50[95]-B for P75,000.00 on January 13, 1995. The sale of Lot No. 5095-B, although not in writing, had been perfected as the parties had agreed upon the object of the contract, which was Lot 5095-B, and the price, which was P75,000.00 (Article 1475, Civil Code of the Philippines). Similarly, We sustain the validity of the oral sale as no written form is really required for the validity of a contract of sale (Article 1483, Civil Code of the Philippines). But, as correctly observed by the trial court, the term or manner of payment of the purchase price had not been agreed upon by the parties in which case petitioner Samuel Zabala, Jr. should seek the intervention of the court to fix the period when Estelita vda. De Villadar should pay in full the consideration of the sale. Where the period has been fixed by the court and Estelita refused to pay the remaining balance of P36,500.00, that would be the opportune time for petitioner Samuel Zabala, Sr. to cause the rescission of the oral contract. As it is, however, petitioner Samuel Zabala, Sr. could not rescind or cancel the contract on the ground that Estelita failed to pay the remaining balance of the purchase price because he had no cause for cancellation or rescission yet in view of fact that no period had been agreed upon by him and Estelita when the P36,500.00 should be paid. Thus, unless the contract of sale is rescinded, it remains to be valid.

On a different light, however, We note and We are inclined to believe, based on the evidence submitted to Us and in determining the intentions of petitioner Samuel Zabala, Sr. and the respondents spouses, that the sale, being one on installment basis, petitioner Samuel Zabala, [Sr.] had reserved title to the property in his name until full payment of the purchase price had been made by Estelita. This explains why title of Lot No. 5095-B, specifically TCT No. 145183, was registered in his name when Lot No. 5095 was divided into two lots and Estelita had not sought the registration of the lot in her name. Although respondents occupied the store or house on the common boundary of [Lot Nos.] 50[95]-A and 50[95]-B, their occupation or possession did not constitute delivery of the land subject of the oral contract of sale so as to have effectively transferred ownership thereof to Estelita. Therefore, even assuming that respondents were the ones who constructed the house or store on Lot No. 50[95]-B, they had no right to construct any structure thereon because their mother, Estelita, did not own the land until she had fully paid the consideration of the sale.

As no right was acquired by the respondents better than the right pertaining to Estelita, the occupancy and possession by the respondents of the subject land was merely tolerated by the owner, herein plaintiff-petitioner Samuel Zabala, Sr. Similarly, respondents did not have the right to possess or occupy that portion of the land belonging to petitioner Eldon Zabala. Their occupation with respect to that portion was, likewise, merely tolerated by the owner and, thus, it was the duty of the respondents to surrender possession thereof upon demand by petitioner Eldon. From July 23, 1998 then, when a formal demand (Rollo, p. 63) was made upon the respondents to vacate the premises, the possession of the respondents had become unlawful and they were subject to ejectment.

Respondents could not claim that they were builders in good faith of the house. From their allegations in their Answer with Counterclaim (par. 2.3), respondent Sergio Villadar, Jr. knew and admitted that Lot No. 5095-B was not yet fully paid and a separate title thereto had not yet been issued in the name of Estelita (Rollo, p. 55) from whom he and his wife allegedly derived their title. Being builders in bad faith, they cannot, as a matter of right, recover the value of the house or the improvements thereon, if any, from the petitioners, much less retain possession of the premises (Article 449, Civil Code of the Philippines). Respondents have no right, whatsoever, except the right to be reimbursed for necessary expenses which they had incurred for the preservation of both portions of [Lot] Nos. 50[95]-A and 50[95]-B (Article 452, Civil Code of the Philippines) occupied by them.

WHEREFORE, in view of the foregoing, the petition is GIVEN DUE COURSE. The Decision dated April 15, 2002 of the Regional Trial Court, Branch 58, Cebu City affirming the Decision dated August 27, 2001 of the Municipal Trial Court in Cities, Branch 8, Cebu City, is hereby REVERSED and SET ASIDE, and another one entered ordering defendants-respondents to surrender the physical and material possession of that portion of Lot No. 50[95]-A and Lot No. 50[95]-B upon which their house was constructed to petitioners Samuel Zabala, Sr. and Eldon Zabala.

SO ORDERED.[13]

On December 1, 2004, the Court of Appeals likewise denied petitioners' motion for reconsideration. Hence, this petition.

Petitioners raise the following issues in their Memorandum:

I.

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED IN GIVING DUE COURSE TO RESPONDENTS' PETITION FOR REVIEW AND RENDERING A DECISION THERE[O]N, INSTEAD OF DISMISSING THE SAME FOR VIOLATION OF SEC. 2(d) OF RULE 42 OF THE 1997 RULES OF CIVIL PROCEDURE.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION, AND MISAPPREHENSION OF FACTS, IN RULING THAT THERE WAS NO DELIVERY OF POSSESSION TO ESTELITA VILLADAR OF THE ½ PORTION OF LOT [NO.] 5095 SOLD TO HER IN PETITIONERS' EXH. "1" BY RESPONDENT SAMUEL ZABALA[,] SR. AND WIFE, WHICH IS THE RECEIPT DATED JANUARY 13, 1995 OF THE PARTIAL PAYMENT OF ESTELITA VILLADAR OF ITS CONSIDERATION ADMITTED BY RESPONDENT SAMUEL ZABALA SR. [SIC]

III.

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED IN HOLDING THAT ESTELITA VILLADAR DID NOT OWN THE LAND WHERE HER AND PETITIONERS' HOUSES STAND BECAUSE SHE HAD NOT FULLY PAID THE CONSIDERATION OF THE SALE.

IV.

WHETHER OR NOT THE HON. COURT OF APPEALS' HOLDING. . . THAT PETITIONERS' OCCUPANCY OF THE ½ PREMISES OF LOT [NO.] 5095 WAS BY MERE TOLERANCE OF THE RESPONDENTS [WAS RIGHT].

V.

WHETHER OR NOT PETITIONERS ARE EJECTIBLE [SIC] FROM THE PREMISES OF LOT [NO.] 5095.

VI.

ASSUMING THAT THEY ARE, WHETHER OR NOT THE HON. COURT OF APPEALS' HOLDING [WAS] RIGHT THAT PETITIONERS WERE NOT BUILDERS IN GOOD FAITH OF THEIR RESIDENTIAL HOUSE IN THE PREMISES AT A COST OF P80,000.00 (P.3. CA'S DECISION – ANNEX "A", PETITION); HENCE NOT REIMBURSABLE FOR SAID EXPENSES THEREOF, AND HAVE NO RIGHT OF RETENTION.

VII.

WHETHER THE COURT A QUO WAS RIGHT OR NOT IN NOT DISMISSING OUTRIGHTLY THE [RESPONDENTS'] COMPLAINT, FOR NON-COMPLIANCE WITH THE KATARUNGANG PAMBARANGAY LAW AND THIS HON. COURT'S ADM. CIR. NO. 14-93, AND RULE 16, SEC. 1 (j) OF THE 1997 RULES OF CIVIL PROCEDURE.

VIII.

WHETHER OR NOT THE RESPONDENTS' COMPLAINT AT THE COURT A QUO IS DISMISSABLE UNDER THE RULING OF THE SUPREME COURT IN THE CASE OF SARM[I]ENTO V. COURT OF APPEALS, G.R. NO. 116192, NOV. 16, 1995, ON THE GROUND THAT IT IS NOT COGNIZABLE BY THE SAID COURT.[14]

Essentially, the main issue for our resolution is whether the appellate court erred in reversing the RTC's ruling that the respondents can not validly eject petitioners.

Petitioners argue that Estelita owns one-half of Lot No. 5095 and that their possession of the disputed portion was based on their agreement with Estelita, not upon respondents' tolerance. Petitioners also add that they cannot be summarily ejected from the disputed portion without first resolving the ownership of the land sold to Estelita in an accion publiciana.[15]

Respondents counter that since Estelita failed to pay the full price within two years, Samuel, Sr., who reserved his title until full payment, retained ownership. Respondents insist that petitioners must vacate upon demand since their possession is merely tolerated and they have no better right than Estelita.[16]

Prefatorily, we restate a now settled doctrine.[17] Where the issue of possession in an unlawful detainer suit is closely intertwined with the issue of ownership, as in this case, the MTCC can provisionally resolve the issue of ownership for the sole purpose of determining the issue of possession.[18] The judgment, however, is not conclusive in any action involving title or ownership and will not bar an action between the same parties respecting title to the land or building.[19]

After carefully examining the records of this case, we are constrained to reverse the appellate court's decision. First, we find erroneous and without factual basis the appellate court's conclusion that Samuel, Sr. reserved his title to the land he sold to Estelita. Rather, the RTC aptly ruled that no evidence proved that Samuel, Sr. reserved his title. In respondents' complaint,[20] position paper[21] and joint affidavit[22] with the MTCC, and even in their petition for review[23] before the Court of Appeals, respondents never alleged that Samuel, Sr. reserved his title. While the price was payable on installment, there was no agreement between Estelita and Samuel, Sr. that the latter reserved his title, conditioning the transfer of ownership upon full payment of the price.[24]

Patently therefore, the oral contract was a contract of sale, not a contract to sell. It is in a contract to sell that ownership is, by agreement, reserved in the seller and is not to pass to the buyer until full payment of the purchase price.[25] Notably, the Court of Appeals stated that unless rescinded, the perfected contract of sale remains valid.[26] Incidentally, this statement reveals the inconsistency of the Court of Appeals in finding that Samuel, Sr. reserved his title and also saying that the transaction was a contract of sale. Worse, despite the parties' common submission that the sale was between Estelita and Samuel, Sr., the Court of Appeals misappreciated that it was between petitioners and Samuel, Sr.[27]

We also note respondents' inconsistent positions as this case was tried and appealed. Their complaint was silent on the sale to Estelita. As they appealed to the RTC, respondents advanced a new but erroneous theory that the sale to Estelita was actually an "oral agreement to sell,"[28] such that by agreement ownership was reserved by seller Samuel, Sr.[29] Respondents soon abandoned that theory in their petition before the Court of Appeals and argued that the "sale agreement" in 1995 with Estelita was immaterial in this case.[30] Now before us, respondents resurrect their contention in the RTC and echo the appellate court's error that Samuel, Sr. reserved his title.

Second, the records belie respondents' allegation that Estelita's installments were payable in two years. We note that on April 20, 1997, or more than two years after Estelita's initial payment of P6,500 on January 13, 1995,[31] Maria Luz accepted Estelita's additional payment of P22,500.[32]

Anent Samuel, Sr.'s decision to cancel the sale and refusal to receive Estelita's payment of the balance of the price,[33] we find that Samuel, Sr. neither notified Estelita by notarial act that he was rescinding the sale nor did he sue in court to rescind the sale.[34] In addition, the records do not show Samuel, Sr.'s compliance with the requirements of the Realty Installment Buyer Protection Act – that actual cancellation takes place after 30 days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by notarial act and upon full payment of the cash surrender value to the buyer, which in this case is 50% of Estelita's total payments for more than two years.[35]

Thus, under the circumstances, Estelita's claim of ownership is valid, absent a valid rescission or cancellation of the contract of sale. Hence, she was properly within her rights when she allowed petitioners to occupy part of the land she bought upon her promise to sell it to them. Relatedly, respondents now concede that the land sold to

Estelita is Lot No. 5095-B,[36] but the disputed portion straddles Lot Nos. 5095-B and 5095-A.

While Samuel, Sr. is the registered owner of Lot No. 5095-B, he has no cause to eject petitioners for alleged unlawful detainer since a finding of unlawfulness of petitioners' possession of the disputed portion depends upon the rescission of the contract of sale between Samuel, Sr. and Estelita.[37] We hasten to add that rescission is not even absolute for the court may fix a period within which Estelita, if she is found in default, may be permitted to comply with her obligation.[38]

As regards Lot No. 5095-A, we find respondent Eldon's detainer suit premature for failure to exhaust all administrative remedies.[39] As aptly pointed out by petitioners,[40] Eldon did not comply[41] with Section 412 of the Local Government Code (LGC), which sets forth a pre-condition to the filing of complaints in court, to wit:

SECTION 412. Conciliation. – (a) Pre-condition to filing of complaint in court. – No complaint, petition, action, or proceeding involving any matter within the authority of the lupon shall be filed or instituted directly in court or any other government office for adjudication, unless there has been a confrontation between the parties before the lupon chairman or the pangkat, and that no conciliation or settlement has been reached as certified by the lupon secretary or pangkat secretary as attested to by the lupon or pangkat chairman or unless the settlement has been repudiated by the parties thereto.

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Conformably with said Section 412, the MTCC should have dismissed Eldon's complaint. For our part, this Court is without authority to refuse to give effect to, and wipe off the statute books, Section 412 of the LGC insofar as this case and other cases governed by the Rules on Summary Procedure are concerned.[42]

Moreover, we are unconvinced of Eldon's claim that "out of pity" he also allowed petitioners to stay on the disputed portion in 1986 because he only bought what is now Lot No. 5095-A in 1997.

WHEREFORE, we GRANT the petition and SET ASIDE the assailed Decision dated November 28, 2003 and Resolution dated December 1, 2004 of the Court of Appeals in CA-G.R. SP No. 71439. The appellate court erred in reversing the RTC's Order to respect petitioners' possession of the disputed property. Respondents' unlawful detainer complaint is hereby DISMISSED, without prejudice to any appropriate suit between the parties respecting title to the disputed portion.

Costs against respondents.

SO ORDERED.

Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

Tinga, J., in the result.

* Also referred to as Samuel Zabala per TCT Nos. 78269 and 145183.

[1] Rollo, pp. 32-37. Penned by Associate Justice Sergio L. Pestaño, with Associate Justices Marina L. Buzon and Jose C. Mendoza concurring.

[2] Id. at 38-39-A. Penned by Associate Justice Marina L. Buzon, with Associate Justices Jose C. Mendoza and Fernanda Lampas-Peralta concurring.

[3] Id. at 43-49. Penned by Judge Gabriel T. Ingles.

[4] CA rollo, p. 31.

[5] Id. at 61.

[6] Id. at 32.

[7] Id. at 33.

[8] Id. at 62.

[9] Records, pp. 1-4.

[10] Id. at 28-36.

[11] Id. at 105-107. Penned by Judge Edgemelo C. Rosales.

[12] Id. at 107.

[13] Rollo, pp. 35-37.

[14] Id. at 137.

[15] Id. at 145-146.

[16] Id. at 111, 114-115.

[17] *Heirs of Basilisa Hernandez v. Vergara, Jr.*, G.R. No. 166975, September 15, 2006, 502 SCRA 163, 169.

[18] Id. at 168-169; RULES OF COURT, Rule 70, Sec. 16.

SEC. 16. Resolving defense of ownership. – When the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.

[19] RULES OF COURT, Rule 70, Sec. 18.

SEC. 18. Judgment conclusive only on possession; not conclusive in actions involving title or ownership. – The judgment rendered in an action for forcible entry or detainer shall be conclusive with respect to the possession only and shall in no wise bind the title or affect the ownership of the land or building. Such judgment shall not bar an action between the same parties respecting title to the land or building.

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[20] Records, pp. 1-4.

[21] Id. at 60-64.

[22] Id. at 65.

[23] CA rollo, pp. 8-19.

[24] See *Agag v. Alpha Financing Corporation*, G.R. No. 154826, July 31, 2003, 407 SCRA 602, 608; *Heirs of Jesus M. Mascuñana v. Court of Appeals*, G.R. No. 158646, June 23, 2005, 461 SCRA 186, 203-204; *Dignos v. Court of Appeals*, No. L-59266, February 29, 1988, 158 SCRA 375, 382.

[25] *Agag v. Alpha Financing Corporation*, id.

[26] Rollo, pp. 35-36.

[27] Id. at 35.

[28] Records, p. 134.

[29] Id. at 135.

[30] CA rollo, p. 16.

[31] Records, p. 37.

[32] Id. at 38.

[33] Id. at 104; rollo, pp. 128-129.

[34] *Dignos v. Court of Appeals*, supra note 24, at 383.

[35] Republic Act No. 6552 – AN ACT TO PROVIDE PROTECTION TO BUYERS OF REAL ESTATE ON INSTALLMENT PAYMENTS, approved on September 14, 1972.

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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(b) If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: Provided, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer. (Underscoring supplied.)

x x x x

[36] Rollo, p. 114.

[37] *Villena v. Chavez*, G.R. No. 148126, November 10, 2003, 415 SCRA 33, 41.

[38] *Dignos v. Court of Appeals*, supra note 24, at 383-384.

[39] *Berba v. Pablo*, G.R. No. 160032, November 11, 2005, 474 SCRA 686, 696, 698.

[40] Records, pp. 82, 154; rollo, p. 148.

[41] Records, p. 7. Only Samuel, Sr. and Samuel, Jr. had complied with Section 412.

[42] *Berba v. Pablo*, supra note 39, at 699.

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