

## JOSE B. ESCUETA, PLAINTIFF AND APPELLEE, VS. AQUILINO PANDO, DEFENDANT AND APPELLANT.

CA-G.R. No. 174. March 12, 1946

Ponente: OZAETA, J.

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### OZAETA, J.:

The facts of this case are not disputed. On February 14, 1933, Eleuteria Magsarile, the wife of the plaintiff Jose B. Escueta, purchased from the defendant three lots of the Pasay Obrero Subdivision at a price payable in monthly installments spread over a period of ten years, with the stipulation that if the buyer should fail to pay any of the monthly installments within thirty days after maturity the contract of sale could be rescinded and annulled and the vendor would be at liberty to dispose of and sell said lots to another person as if the contract had never been entered into, and that in case of such rescission all the sums of money paid in virtue of the contract should be considered as rents for the use of the property.

On May 28, 1934, the present plaintiff instituted civil case No. 5863 of the Court of First Instance of Rizal to annul the aforesaid contract of sale entered into by and between his wife and the defendant and to recover all sums paid by her on account of said contract. That case was decided by the court on June 19, 1935, in accordance with the stipulation of the parties which read as follows:

"Las partes convienen y estipulan:

"Primero: Que el demandado reconoce que la esposa del demandante ha hecho pagos a cuenta de los contratos referidos en la demanda en la suma total de P787.89;

"Segundo: Que of rece al demandante y a su esposa Eleuteria Magsarile acreditar dicha cantidad de P787.89 a uno de los lotes en cuestion u otro mas barato de la subdivision que escogieran dichos esposos;

"Tercero: Que el demandante acepta la oferta del demandado y previa consulta con su senora, va a escoger de entre los tantos lotes de la subdivision un. Lote para que las partes puedan ejecutar u otorgar el contrato correspondiente igua) al formulario unido a la demanda como Exhibit 'A.'

"Cuarto: Que la proxima mensualidad para el pago de dicho Lote que escogiera el demandante comenzara el dia 15 de julio de 1935, segun y conforme a la suma que resultare del compute correspondiente igual al compute que ordinariamente hace la subdivision.

"Por tanto, las partes renuncian a seguir este asunto, y bajo las bases arriba estipuladas, piden que se dicte sentencia de acuerdo con las mismas, sin especial pronunciamiento en cuanto a las costas."

On August 6, 1936, a writ of execution of the judgment entered in said case was issued at the instance of the defendant. Said writ was not accomplished because the plaintiff could not be located by the sheriff. On October 9, 1936, an alias writ of execution was issued, of which the plaintiff was notified; whereupon he chose lot No. 12, block No. 2, of the Pasay Obrero Subdivision. Informed by the sheriff of that choice, the defendant advised the plaintiff through the sheriff that the price of the lot chosen by him was P1,590, that the monthly installment

thereon was P13.25 and that after crediting the plaintiff with the sum of P787.89, the balance of the purchase price was P802.11, of which the total sum of P198.75 corresponding to the monthly installments from July 15, 1935, to October 15, 1936, was already due at that time. The sheriff requested the plaintiff to deposit in his office the last-mentioned sum, but the plaintiff refused to do so on the ground that he was not under obligation to begin paying the installments until after the contract of sale was signed, and that he would prefer to pay the balance of the purchase price in one lump sum provided he was given a discount in consideration of the cash payment. On November 21, 1936, the sheriff returned to the court the alias writ of execution together with the letters he had received from the attorneys of the parties in the sense above indicated. The formal contract of sale of the lot chosen by the plaintiff, which the parties were bound to sign by their agreement and by the judgment, was never signed.

On July 6, 1937, the defendant sold the said lot No. 12 to Abundia Romero and Dionisio Bravo.

In 1940 the plaintiff on his part procured an alias writ of execution to compel the defendant to sell to him the said lot No. 12 or any other unsold lot of the subdivision, but the sheriff was informed by the defendant that all the lots had already been sold.

Based upon the foregoing facts the plaintiff, on April 7, 1941, commenced the present action against the defendant to recover the sum of P787.89, with legal interest thereon from April 15, 1940, in view of the impossibility on the part of the defendant to sell to him lot No. 12 or any other lot of the subdivision. The theory of the plaintiff is 'that the defendant had no right to dispose of all his lots without the knowledge of the plaintiff and without the authority of the court.

The defendant pleaded that he sold all the lots of his subdivision in good faith and only after the plaintiff had refused to comply with the agreement and the judgment entered in civil case No. 5863; and that under paragraph 7 of the contract of sale entered into on February 14, 1933, by and between the defendant and plaintiff's wife, the defendant had the right to rescind the contract and keep the payments made thereon as rents of the property.

The trial court sustained the plaintiff's contention and rendered judgment in his favor, ordering the defendant to pay to the plaintiff the sum of P787, with interest thereon from July 6, 1937, and the costs. From that judgment the defendant appealed to the Court of Appeals. On August 25, 1943, the First Division of that court certified the case to the Supreme Court on the ground that the same involved questions of law only.

The question to decide is whether upon the facts above stated the plaintiff is entitled to recover from the defendant the sum of P787.89 which his wife had paid on account of the purchase price of certain lots and which the defendant subsequently agreed to credit to the plaintiff as part of the purchase price of another lot to be chosen and bought by the plaintiff from the defendant.

The contract between plaintiff's wife and the defendant, which the latter invokes in his defense, was novated and extinguished by the agreement of the parties which was submitted to and approved by the court on June 19, 1935, in civil case No. 5863. (See articles 1203 and 1204, Civil Code.) It is therefore the latter agreement that governs the rights of the parties in this case. Under that agreement the defendant was bound to credit the plaintiff with the sum of P787.89, and the plaintiff in turn was bound to choose one of the lots of defendant's subdivision, to sign the corresponding contract of purchase and sale on instalments upon the same terms as those contained in the contract form Exhibit A and to begin paying the monthly instalments on July 15, 1935. After choosing lot No. 12 the plaintiff had no right to refuse to sign the formal contract and to pay the instalments beginning July 15, 1935, nor to demand other terms than those already agreed upon. Upon his refusal to do so in spite of the writ of execution issued by the court to enforce the agreement, the defendant could and should have moved the court to punish him for contempt unless he complied with the judgment. But the defendant did not do that. He did not

insist upon his right under his agreement with the plaintiff and the judgment of the court.

The defendant could not, by himself alone and without judicial intervention, resolve or annul the agreement. Under article 1124 of the Civil Code the right to resolve reciprocal obligations, in case one of the obligors shall fail to comply with that which is incumbent upon him, is deemed to be implied. But that right must be invoked judicially; for the same article also provides: "The court shall decree the resolution demanded, unless there should be grounds which justify the allowance-"of a term for the performance of the obligation."

By the agreement in question the defendant bound himself to credit the plaintiff with the sum of P787.89 on the purchase price of the lot to be selected by the latter, and the plaintiff on his part bound himself to sign the corresponding contract. There is no stipulation to the effect that should the plaintiff fail or refuse to fulfill his part of the agreement he would forfeit said sum to the defendant.

While it is true that the plaintiff agreed to sign a contract containing among others the following stipulations embodied in<sup>ne</sup> contract form Exhibit A, to wit:

"5. El Propietario cntregara la poscsion de dicha parcela de terreno al comprador al firmarsc este documento y pagarse el primer plazo.

\* \* \* \* \*

"7. Si el comprador deja de hacer cualquiera de los pagos mensuales convenidos dentro de los 30 dias de su vencimiento este con-trato podra ser considerado como rescindido y anulado, y el propietario quedara en libertad de disponer dc dicha parcela de terrciio a otra persona, en la misma forma como si este contrato nunca se hubicra eclebrado. En ese caso de rescision, todas las sumas de tlinco pagadas en virtud de este contrato scran consideradas como rentas por el uso de la propicdad y el comprador por la presente rcnuncia a todo derecho a reclamar la devolucion de las mismas, y se obliga a vacar el terreno."

And while it is clear that under article 1279 of the Civil Code the defendant had the right to compel the plaintiff to sign such contract, it is evident that until and unless that contract was signed the defendant could not invoke the stipulation of forfeiture due to the failure of the buyer to pay any instalment. It is true that article 1258 of the Civil Code provides as follows:

"ART. 1258. Contracts are perfected by mere consent, and from that time the parties ave bound,, not only to the performance of that which has been expressly stipulated, but also with respect to all the consequences which, according- to the character of the contract, are in accordance with good faith, custom, and law."

But in the instant case the execution of a formal contract of sale containing a description of the property sold and the agreed price thereof, was an indispensable prerequisite to the operation of the forfeiture clause agreed upon by the parties. That clause was based on the assumption that the buyer had been given the possession and enjoyment of the lot he agreed to buy and that the payments already made thereon were to be considered as rents in case he defaulted in any subsequent payment; but since by the terms of the agreement the delivery of the possession of the lot was to be made only upon the signing of the contract and the payment of the first instalment, it is evident that such assumption did not hold true in this case. The defendant cannot claim the sum in question as rent of a lot which he has never delivered to the plaintiff.

The only legal basis upon which the defendant could claim the right to retain the sum in question would be that he suffered damages in that amount by reason of the failure or refusal of the plaintiff to fulfill his part of the agreement. But since he did not claim and prove such damages in this case, we find no ground upon which to sustain his contention that he is not bound to refund the said sum.

We find, however, that defendant and appellant's fourth assignment of error with respect to the date from which

legal interest on the sum adjudged is to run, is well taken. Interest should have been awarded from the date of the filing of the complaint and not from the date the defendant sold lot No. 12 to somebody else. Indeed, the plaintiff himself did not so claim in his complaint.

Wherefore, with the modification that legal interest on the sum awarded by the trial court shall be computed from *De la Fuente and Teodoro vs. Jugo and Borromeo* April 7, 1941, the date of the filing of the complaint, the judgment is affirmed. We make no pronouncement as to costs in this instance, considering that the plaintiff himself was not free from blame.

De Joya, Perfecto, Hilado, and Bengzon, J.J., concur.

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