HEIRS OF PAULINO ATIENZA, NAMELY, RUFINA L. ATIENZA, ANICIA A. IGNACIO, ROBERTO ATIENZA, MAURA A. DOMINGO, AMBROCIO ATIENZA, MAXIMA ATIENZA, LUISITO ATIENZA, CELESTINA A. GONZAL...

G.R. No. 180665. August 11, 2010

Ponente: ABAD, J.

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ABAD, J.:

This case is about the legal consequences when a buyer in a contract to sell on installment fails to make the next payments that he promised.

The Facts and the Case

Petitioner Heirs of Paulino Atienza, namely, Rufina L. Atienza, Anicia A. Ignacio, Roberto Atienza, Maura A. Domingo, Ambrocio Atienza, Maxima Atienza, Luisito Atienza, Celestina A. Gonzales, Regalado Atienza and Melita A. Dela Cruz (collectively, the Atienzas)[1] own a 21,959 square meters of registered agricultural land at Valle Cruz, Cabanatuan City.[2] They acquired the land under an emancipation patent[3] through the government's land reform program.[4]

On August 12, 2002 the Atienzas and respondent Domingo P. Espidol entered into a contract called Kasunduan sa Pagbibili ng Lupa na may Paunang-Bayad (contract to sell land with a down payment) covering the property.[5] They agreed on a price of P130.00 per square meter or a total of P2,854,670.00, payable in three installments: P100,000.00 upon the signing of the contract; P1,750,000.00 in December 2002, and the remaining P974,670.00 in June 2003. Respondent Espidol paid the Atienzas P100,000.00 upon the execution of the contract and paid P30,000.00 in commission to the brokers.

When the Atienzas demanded payment of the second installment of P1,750,000.00 in December 2002, however, respondent Espidol could not pay it. He offered to pay the Atienzas P500.000.00 in the meantime,[6] which they did not accept. Claiming that Espidol breached his obligation, on February 21, 2003 the Atienzas filed a complaint[7] for the annulment of their agreement with damages before the Regional Trial Court (RTC) of Cabanatuan City in Civil Case 4451.

In his answer,[8] respondent Espidol admitted that he was unable to pay the December 2002 second installment, explaining that he lost access to the money which he shared with his wife because of an injunction order issued by an American court in connection with a domestic violence case that she filed against him.[9] In his desire to abide by his obligation, however, Espidol took time to travel to the Philippines to offer P800,000.00 to the Atienzas.

Respondent Espidol also argued that, since their contract was one of sale on installment, his failure to pay the installment due in December 2002 did not amount to a breach. It was merely an event that justified the Atienzas' not to convey the title to the property to him. The non-payment of an installment is not a legal ground for annulling a perfected contract of sale. Their remedy was to bring an action for specific performance. Moreover,

Espidol contended that the action was premature since the last payment was not due until June 2003.

In a decision[10] dated January 24, 2005, the RTC ruled that, inasmuch as the non-payment of the purchase price was not considered a breach in a contract to sell on installment but only an event that authorized the vendor not to convey title, the proper issue was whether the Atienzas were justified in refusing to accept respondent Espidol's offer of an amount lesser than that agreed upon on the second installment.

The trial court held that, although respondent's legal problems abroad cannot justify his failure to comply with his contractual obligation to pay an installment, it could not be denied that he made an honest effort to pay at least a portion of it. His traveling to the Philippines from America showed his willingness and desire to make good on his obligation. His good faith negated any notion that he intended to renege on what he owed. The Atienzas brought the case to court prematurely considering that the last installment was not then due.

Furthermore, said the RTC, any attempt by the Atienzas to cancel the contract would have to comply with the provisions of Republic Act (R.A.) 6552 or the Realty Installment Buyer Protection Act (R.A. 6552), particularly the giving of the required notice of cancellation, that they omitted in this case. The RTC thus declared the contract between the parties valid and subsisting and ordered the parties to comply with its terms and conditions.

On appeal,[11] the Court of Appeals (CA) affirmed the decision of the trial court.[12] Not satisfied, the Atienzas moved for reconsideration.[13] They argued that R.A. 6552 did not apply to the case because the land was agricultural and respondent Espidol had not paid two years worth of installment that the law required for coverage. And, in an apparent shift of theory, the Atienzas now also impugn the validity of their contract to sell, claiming that, since the property was covered by an emancipation patent, its sale was prohibited and void. But the CA denied the motion for reconsideration, hence, the present petition.[14]

Questions Presented

The questions presented for resolution are:

1. Whether or not the Atienzas could validly sell to respondent Espidol the subject land which they acquired through land reform under Presidential Decree 27[15] (P.D. 27);

2. Whether or not the Atienzas were entitled to the cancellation of the contract to sell they entered into with respondent Espidol on the ground of the latter's failure to pay the second installment when it fell due; and

3. Whether or not the Atienzas' action for cancellation of title was premature absent the notarial notice of cancellation required by R.A. 6552.

The Court's Rulings

One. That the Atienzas brought up the illegality of their sale of subject land only when they filed their motion for reconsideration of the CA decision is not lost on this Court. As a rule, no question will be entertained on appeal unless it was raised before the court below. This is but a rule of fairness.[16]

Nonetheless, in order to settle a matter that would apparently undermine a significant policy adopted under the land reform program, the Court cannot simply shirk from the issue. The Atienzas' title shows on its face that the government granted title to them on January 9, 1990 by virtue of P.D. 27. This law explicitly prohibits any form of transfer of the land granted under it except to the government or by hereditary succession to the successors of the farmer beneficiary.

Upon the enactment of Executive Order 228[17] in 1987, however, the restriction ceased to be absolute. Land reform beneficiaries were allowed to transfer ownership of their lands provided that their amortizations with the

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Land Bank of the Philippines (Land Bank) have been paid in full.[18] In this case, the Atienzas' title categorically states that they have fully complied with the requirements for the final grant of title under P.D. 27. This means that they have completed payment of their amortization with Land Bank. Consequently, they could already legally transfer their title to another.

Two. Regarding the right to cancel the contract for non-payment of an installment, there is need to initially determine if what the parties had was a contract of sale or a contract to sell. In a contract of sale, the title to the property passes to the buyer upon the delivery of the thing sold. In a contract to sell, on the other hand, the ownership is, by agreement, retained by the seller and is not to pass to the vendee until full payment of the purchase price. In the contract of sale, the buyer's non-payment of the price is a negative resolutory condition; in the contract to sell, the buyer's full payment of the price is a positive suspensive condition to the coming into effect of the agreement. In the first case, the seller has lost and cannot recover the ownership of the property unless he takes action to set aside the contract of sale. In the second case, the title simply remains in the seller if the buyer does not comply with the condition precedent of making payment at the time specified in the contract.[19] Here, it is quite evident that the contract involved was one of a contract to sell since the Atienzas, as sellers, were to retain title of ownership to the land until respondent Espidol, the buyer, has paid the agreed price. Indeed, there seems no question that the parties understood this to be the case.[20]

Admittedly, Espidol was unable to pay the second installment of P1,750,000.00 that fell due in December 2002. That payment, said both the RTC and the CA, was a positive suspensive condition failure of which was not regarded a breach in the sense that there can be no rescission of an obligation (to turn over title) that did not yet exist since the suspensive condition had not taken place. And this is correct so far. Unfortunately, the RTC and the CA concluded that should Espidol eventually pay the price of the land, though not on time, the Atienzas were bound to comply with their obligation to sell the same to him.

But this is error. In the first place, since Espidol failed to pay the installment on a day certain fixed in their agreement, the Atienzas can afterwards validly cancel and ignore the contract to sell because their obligation to sell under it did not arise. Since the suspensive condition did not arise, the parties stood as if the conditional obligation had never existed.[21]

Secondly, it was not a pure suspensive condition in the sense that the Atienzas made no undertaking while the installments were not yet due. Mr. Justice Edgardo L. Paras gave a fitting example of suspensive condition: "I'll buy your land for P1,000.00 if you pass the last bar examinations." This he said was suspensive for the bar examinations results will be awaited. Meantime the buyer is placed under no immediate obligation to the person who took the examinations.[22]

Here, however, although the Atienzas had no obligation as yet to turn over title pending the occurrence of the suspensive condition, it was implicit that they were under immediate obligation not to sell the land to another in the meantime. When Espidol failed to pay within the period provided in their agreement, the Atienzas were relieved of any obligation to hold the property in reserve for him.

The ruling of the RTC and the CA that, despite the default in payment, the Atienzas remained bound to this day to sell the property to Espidol once he is able to raise the money and pay is quite unjustified. The total price was P2,854,670.00. The Atienzas decided to sell the land because petitioner Paulino Atienza urgently needed money for the treatment of his daughter who was suffering from leukemia.[23] Espidol paid a measly P100,000.00 in down payment or about 3.5% of the total price, just about the minimum size of a broker's commission. Espidol failed to pay the bulk of the price, P1,750,000.00, when it fell due four months later in December 2002. Thus, it was not such a small default as to justify the RTC and the CA's decision to continue to tie up the Atienzas to the

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contract to sell upon the excuse that Espidol tried his honest best to pay.

Although the Atienzas filed their action with the RTC on February 21, 2003, four months before the last installment of P974,670.00 fell due in June 2003, it cannot be said that the action was premature. Given Espidol's failure to pay the second installment of P1,750,000.00 in December 2002 when it was due, the Atienzas' obligation to turn over ownership of the property to him may be regarded as no longer existing.[24] The Atienzas had the right to seek judicial declaration of such non-existent status of that contract to relieve themselves of any liability should they decide to sell the property to someone else. Parenthetically, Espidol never offered to settle the full amount of the price in June 2003, when the last installment fell due, or during the whole time the case was pending before the RTC.

Three. Notice of cancellation by notarial act need not be given before the contract between the Atienzas and respondent Espidol may be validly declare non-existent. R.A. 6552 which mandated the giving of such notice does not apply to this case. The cancellation envisioned in that law pertains to extrajudicial cancellation or one done outside of court,[25] which is not the mode availed of here. The Atienzas came to court to seek the declaration of its obligation under the contract to sell cancelled. Thus, the absence of that notice does not bar the filing of their action.

Since the contract has ceased to exist, equity would, of course, demand that, in the absence of stipulation, the amount paid by respondent Espidol be returned, the purpose for which it was given not having been attained;[26] and considering that the Atienzas have consistently expressed their desire to refund the P130,000.00 that Espidol paid.[27]

WHEREFORE, the Court GRANTS the petition and REVERSES and SETS ASIDE the August 31, 2007 decision and November 5, 2007 resolution of the Court of Appeals in CA-G.R. CV 84953. The Court declares the Kasunduan sa Pagbibili ng Lupa na may Paunang-Bayad between petitioner Heirs of Paulino Atienza and respondent Domingo P. Espidol dated August 12, 2002 cancelled and the Heirs' obligation under it non-existent. The Court directs petitioner Heirs of Atienza to reimburse the P130,000.00 down payment to respondent Espidol.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Mendoza, JJ., concur.

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[1] Petitioners are the heirs of Paulino Atienza, the original plaintiff in this case, who died on September 7, 2007. Please see: Certificate of Death, rollo, p. 84 and October 13, 2008 Resolution of this Court, id. at 97.

[2] Covered by Transfer Certificate of Title T-3971.

[3] Emancipation Patent 416698.

[4] Records, pp. 73-74.

[5] Id. at 5-7.

[6] Respondent claimed that the amount offered was P800,000.00.

[7] Rollo, pp. 56-59.

[8] Id. at 60-66.

[9] TSN, June 4, 2004, pp. 7-8.

[10] Rollo, pp. 70-79.

[11] Docketed as CA-G.R. CV 84953.

[12] Rollo, pp. 34-44. Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr. concurring.

[13] Id. at 45-51.

[14] Id. at 9-33.

[15] Decreeing the Emancipation of Tenants From the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor.

[16] Bacsasar v. Civil Service Commission, G.R. No. 180853, January 20, 2009, 576 SCRA 787, 793; Jacot v. Dal, G.R. No. 179848, November 27, 2008, 572 SCRA 295, 311.

[17] Declaring Full Land Ownership to Qualified Farmer Beneficiaries Covered by P.D. 27: Determining the Value of Remaining Unvalued Rice and Corn Lands Subject to P.D. 27; and Providing for the Manner of Payment by the Farmer Beneficiary and Mode of Compensation to the Landowner, issued on July 17, 1987.

[18] Section 6, E.O. 228.

[19] Lim v. Court of Appeals, G.R. No. 85733, February 23, 1990, 182 SCRA 564, 570, citing Sing Yee v. Santos, 47 O.G. 6372; Chua v. Court of Appeals, 449 Phil. 25, 41-42 (2003).

[20] Rollo, p. 67.

[21] See: Valenzuela v. Kalayaan Development & Industrial Corporation, G.R. No. 163244, June 22, 2009, 590 SCRA 380, 389-390; Ayala Life Assurance, Inc. v. Ray Burton Development Corporation, G.R. No. 163075, January 23, 2006, 479 SCRA 462, 470.

[22] Paras IV, CIVIL CODE OF THE PHILIPPINES ANNOTATED, 179-180 (1994 Edition).

[23] TSN, December 16, 2003, p. 36.

[24] See: Ong v. Court of Appeals, 369 Phil. 243, 253-254 (1999); Cordero v. F.S. Management & Development Corporation, G.R. No. 167213, October 31, 2006, 506 SCRA 451, 463.

[25] Pagtalunan v. Dela Cruz Vda. de Manzano, G.R. No. 147695, September 13, 2007, 533 SCRA 242, 249, 253.

[26] See: Manuel v. Rodriguez, Sr., 109 Phil. 1, 12 (1960).

[27] Rollo, pp. 17, 29; CA rollo, p. 26.

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