

ESTELITA VILLAMAR, PETITIONER, VS. BALBINO MANGAOIL, RESPONDENT.

G.R. No. 188661. April 11, 2012

Ponente: REYES, J.

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REYES, J.:

The Case

Before us is a petition for review on certiorari[1] under Rule 45 of the Rules of Court filed by Estelita Villamar (Villamar) to assail the Decision[2] rendered by the Court of Appeals (CA) on February 20, 2009 in CA-G.R. CV No. 86286, the dispositive portion of which reads:

WHEREFORE, the instant appeal is DISMISSED. The assailed decision is AFFIRMED in toto.

SO ORDERED.[3]

The resolution[4] issued by the CA on July 8, 2009 denied the petitioner's motion for reconsideration to the foregoing.

The ruling[5] of Branch 23, Regional Trial Court (RTC) of Roxas, Isabela, which was affirmed by the CA in the herein assailed decision and resolution, ordered the (1) rescission of the contract of sale of real property entered into by Villamar and Balbino Mangaoil (Mangaoil); and (2) return of the down payment made relative to the said contract.

Antecedents Facts

The CA aptly summarized as follows the facts of the case prior to the filing by Mangaoil of the complaint[6] for rescission of contract before the RTC:

Villamar is the registered owner of a 3.6080 hectares parcel of land [hereinafter referred as the subject property] in San Francisco, Manuel, Isabela covered by Transfer Certificate of Title (TCT) No. T-92958-A. On March 30, 1998, she entered into an Agreement with Mangaoil for the purchase and sale of said parcel of land, under the following terms and conditions:

“1. The price of the land is ONE HUNDRED AND EIGHTY THOUSAND (180,000.00) PESOS per hectare but only the 3.5000 hec. shall be paid and the rest shall be given free, so that the total purchase or selling price shall be [P]630,000.00 only;

2. ONE HUNDRED EIGHTY FIVE THOUSAND (185,000.00) PESOS of the total price was already received on March 27, 1998 for payment of the loan secured by the certificate of title covering the land in favor of the Rural Bank of Cauayan, San Manuel Branch, San Manuel, Isabela [Rural Bank of Cauayan], in order that the certificate of title thereof be withdrawn and released from the said bank, and the rest shall be for the payment of the mortgag[e]s in favor of Romeo Lacaden and Florante Parangan;

3. After the release of the certificate of title covering the land subject-matter of this agreement, the necessary

deed of absolute sale in favor of the PARTY OF THE SECOND PART shall be executed and the transfer be immediately effected so that the latter can apply for a loan from any lending institution using the corresponding certificate of title as collateral therefor, and the proceeds of the loan, whatever be the amount, be given to the PARTY OF THE FIRST PART;

4. Whatever balance left from the agreed purchase price of the land subject matter hereof after deducting the proceed of the loan and the [P]185,000.00 already received as above-mentioned, the PARTY OF THE SECOND PART shall pay unto the PARTY OF THE FIRST PART not later than June 30, 1998 and thereafter the parties shall be released of any obligations for and against each other; xxx”

On April 1, 1998, the parties executed a Deed of Absolute Sale whereby Villamar (then Estelita Bernabe) transferred the subject parcel of land to Mangaoil for and in consideration of [P]150,000.00.

In a letter dated September 18, 1998, Mangaoil informed Villamar that he was backing out from the sale agreed upon giving as one of the reasons therefor:

“3. That the area is not yet fully cleared by incumbrances as there are tenants who are not willing to vacate the land without giving them back the amount that they mortgaged the land.”

Mangaoil demanded refund of his [P]185,000.00 down payment. Reiterating said demand in another letter dated April 29, 1999, the same, however, was unheeded.[7] x x x (Citations omitted)

On January 28, 2002, the respondent filed before the RTC a complaint[8] for rescission of contract against the petitioner. In the said complaint, the respondent sought the return of P185,000.00 which he paid to the petitioner, payment of interests thereon to be computed from March 27, 1998 until the suit's termination, and the award of damages, costs and P20,000.00 attorney's fees. The respondent's factual allegations were as follows:

5. That as could be gleaned the “Agreement” (Annex “A”), the plaintiff [Mangaoil] handed to the defendant [Villamar] the sum of [P]185,000.00 to be applied as follows; [P]80,000 was for the redemption of the land which was mortgaged to the Rural Bank of Cauayan, San Manuel Branch, San Manuel, Isabela, to enable the plaintiff to get hold of the title and register the sale x x x and [P]105,000.00 was for the redemption of the said land from private mortgages to enable plaintiff to posses[s] and cultivate the same;

6. That although the defendant had already long redeemed the said land from the said bank and withdrawn TCT No. T-92958-A, she has failed and refused, despite repeated demands, to hand over the said title to the plaintiff and still refuses and fails to do so;

7. That, also, the plaintiff could not physically, actually and materially posses[s] and cultivate the said land because the private mortgage[e]s and/or present possessors refuse to vacate the same;

x x x x

11. That on September 18, 1998, the plaintiff sent a letter to the defendant demanding a return of the amount so advanced by him, but the latter ignored the same, x x x;

12. That, again, on April 29, 1999, the plaintiff sent to the defendant another demand letter but the latter likewise ignored the same, x x x;

13. That, finally, the plaintiff notified the defendant by a notarial act of his desire and intention to rescind the said contract of sale, xxx;

x x x x.[9] (Citations omitted)

In the respondent's answer to the complaint, she averred that she had complied with her obligations to the respondent. Specifically, she claimed having caused the release of TCT No. T-92958-A by the Rural Bank of

Cauayan and its delivery to a certain “Atty. Pedro C. Antonio” (Atty. Antonio). The petitioner alleged that Atty. Antonio was commissioned to facilitate the transfer of the said title in the respondent's name. The petitioner likewise insisted that it was the respondent who unceremoniously withdrew from their agreement for reasons only the latter knew.

The Ruling of the RTC

On September 9, 2005, the RTC ordered the rescission of the agreement and the deed of absolute sale executed between the respondent and the petitioner. The petitioner was, thus directed to return to the respondent the sum of P185,000.00 which the latter tendered as initial payment for the purchase of the subject property. The RTC ratiocinated that:

There is no dispute that the defendant sold the LAND to the plaintiff for [P]630,000.00 with down payment of [P]185,000.00. There is no evidence presented if there were any other partial payments made after the perfection of the contract of sale.

Article 1458 of the Civil Code provides:

“Art. 1458. By the contract of sale[,] one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefore a price certain in money or its equivalent.”

As such, in a contract of sale, the obligation of the vendee to pay the price is correlative of the obligation of the vendor to deliver the thing sold. It created or established at the same time, out of the same course, and which result in mutual relations of creditor and debtor between the parties.

The claim of the plaintiff that the LAND has not been delivered to him was not refuted by the defendant. Considering that defendant failed to deliver to him the certificate of title and of the possession over the LAND to the plaintiff, the contract must be rescinded pursuant to Article 1191 of the Civil Code which, in part, provides:

“Art. 1191. The power of rescind obligations is implied in reciprocal ones in case one of the obligors should not comply with what is incumbent upon him.”[10]

The petitioner filed before the CA an appeal to challenge the foregoing. She ascribed error on the part of the RTC when the latter ruled that the agreement and deed of sale executed by and between the parties can be rescinded as she failed to deliver to the respondent both the subject property and the certificate of title covering the same.

The Ruling of the CA

On February 20, 2009, the CA rendered the now assailed decision dismissing the petitioner’s appeal based on the following grounds:

Burden of proof is the duty of a party to prove the truth of his claim or defense, or any fact in issue necessary to establish his claim or defense by the amount of evidence required by law. In civil cases, the burden of proof is on the defendant if he alleges, in his answer, an affirmative defense, which is not a denial of an essential ingredient in the plaintiff's cause of action, but is one which, if established, will be a good defense – i.e., an “avoidance” of the claim, which prima facie, the plaintiff already has because of the defendant's own admissions in the pleadings.

Defendant-appellant Villamar’s defense in this case was an affirmative defense. She did not deny plaintiff-appellee’s allegation that she had an agreement with plaintiff-appellee for the sale of the subject parcel of land. Neither did she deny that she was obliged under the contract to deliver the certificate of title to plaintiff-appellee immediately after said title/property was redeemed from the bank. What she rather claims is that she already complied with her obligation to deliver the title to plaintiff-appellee when she delivered the same to Atty. Antonio as it was plaintiff-appellee himself who engaged the services of said lawyer to precisely work for the immediate transfer of said title in his name. Since, however, this affirmative defense as alleged in

defendant-appellant's answer was not admitted by plaintiff-appellee, it then follows that it behooved the defendant-appellant to prove her averments by preponderance of evidence.

Yet, a careful perusal of the record shows that the defendant-appellant failed to sufficiently prove said affirmative defense. She failed to prove that in the first place, "Atty. Antonio" existed to receive the title for and in behalf of plaintiff-appellee. Worse, the defendant-appellant failed to prove that Atty. Antonio received said title "as allegedly agreed upon."

We likewise sustain the RTC's finding that defendant-appellant Villamar failed to deliver possession of the subject property to plaintiff-appellee Mangaoil. As correctly observed by the RTC - "[t]he claim of the plaintiff that the land has not been delivered to him was not refuted by the defendant." Not only that. On cross-examination, the defendant-appellant gave us insight on why no such delivery could be made, viz.:

"x x x x

Q: So, you were not able to deliver this property to Mr. Mangaoil just after you redeem the property because of the presence of these two (2) persons, is it not?

x x x

A: Yes, sir.

Q: Forcing you to file the case against them and which according to you, you have won, is it not?

A: Yes, sir.

Q: And now at present[,] you are in actual possession of the land?

A: Yes, sir. x x x"

With the foregoing judicial admission, the RTC could not have erred in finding that defendant-[appellant] failed to deliver the possession of the property sold, to plaintiff-appellee.

Neither can we agree with defendant-appellant in her argument that the execution of the Deed of Absolute Sale by the parties is already equivalent to a valid and constructive delivery of the property to plaintiff-appellee. Not only is it doctrinally settled that in a contract of sale, the vendor is bound to transfer the ownership of, and to deliver the thing that is the object of the sale, the way Article 1547 of the Civil Code is worded, viz.:

"Art. 1547. In a contract of sale, unless a contrary intention appears, there is:

(1) An implied warranty on the part of the seller that he has a right to sell the thing at the time when the ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing;

(2) An implied warranty that the thing shall be free from any hidden defaults or defects, or any change or encumbrance not declared or known to the buyer.

x x x."

shows that actual, and not mere constructive delivery is warranted by the seller to the buyer. "(P)eaceful possession of the thing" sold can hardly be enjoyed in a mere constructive delivery.

The obligation of defendant-appellant Villamar to transfer ownership and deliver possession of the subject parcel of land was her correlative obligation to plaintiff-appellee in exchange for the latter's purchase price thereof. Thus, if she fails to comply with what is incumbent upon her, a correlative right to rescind such contract from plaintiff-appellee arises, pursuant to Article 1191 of the Civil Code.[11] x x x (Citations omitted)

The Issues

Aggrieved, the petitioner filed before us the instant petition and submits the following issues for resolution:

I.

WHETHER THE FAILURE OF PETITIONER-SELLER TO DELIVER THE CERTIFICATE OF TITLE OVER THE PROPERTY TO RESPONDENT-BUYER IS A BREACH OF OBLIGATION IN A CONTRACT OF SALE OF REAL PROPERTY THAT WOULD WARRANT RESCISSION OF THE CONTRACT;

II.

WHETHER PETITIONER IS LIABLE FOR BREACH OF OBLIGATION IN A CONTRACT OF SALE FOR FAILURE OF RESPONDENT[-]BUYER TO IMMEDIATELY TAKE ACTUAL POSSESSION OF THE PROPERTY NOTWITHSTANDING THE ABSENCE OF ANY STIPULATION IN THE CONTRACT PROVIDING FOR THE SAME;

III.

WHETHER THE EXECUTION OF A DEED OF SALE OF REAL PROPERTY IN THE PRESENT CASE IS ALREADY EQUIVALENT TO A VALID AND CONSTRUCTIVE DELIVERY OF THE PROPERTY TO THE BUYER;

IV.

WHETHER OR NOT THE CONTRACT OF SALE SUBJECT MATTER OF THIS CASE SHOULD BE RESCINDED ON SLIGHT OR CASUAL BREACH;

V.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE RTC ORDERING THE RESCISSION OF THE CONTRACT OF SALE[.][12]

The Petitioner's Arguments

The petitioner avers that the CA, in ordering the rescission of the agreement and deed of sale, which she entered into with the respondent, on the basis of her alleged failure to deliver the certificate of title, effectively imposed upon her an extra duty which was neither stipulated in the contract nor required by law. She argues that under Articles 1495[13] and 1496[14] of the New Civil Code (NCC), the obligation to deliver the thing sold is complied with by a seller who executes in favor of a buyer an instrument of sale in a public document. Citing *Chua v. Court of Appeals*,[15] she claims that there is a distinction between transferring a certificate of title in the buyer's name, on one hand, and transferring ownership over the property sold, on the other. The latter can be accomplished by the seller's execution of an instrument of sale in a public document. The recording of the sale with the Registry of Deeds and the transfer of the certificate of title in the buyer's name are necessary only to bind third parties to the transfer of ownership.[16]

The petitioner contends that in her case, she had already complied with her obligations under the agreement and the law when she had caused the release of TCT No. T-92958-A from the Rural Bank of Cauayan, paid individual mortgagees Romeo Lacaden (Lacaden) and Florante Parangan (Paranga), and executed an absolute deed of sale in the respondent's favor. She adds that before T-92958-A can be cancelled and a new one be issued in the respondent's favor, the latter decided to withdraw from their agreement. She also points out that in the letters seeking for an outright rescission of their agreement sent to her by the respondent, not once did he demand for the delivery of TCT.

The petitioner insists that the respondent's change of heart was due to (1) the latter's realization of the difficulty in determining the subject property's perimeter boundary; (2) his doubt that the property he purchased would yield harvests in the amount he expected; and (3) the presence of mortgagees who were not willing to give up

possession without first being paid the amounts due to them. The petitioner contends that the actual reasons for the respondent's intent to rescind their agreement did not at all constitute a substantial breach of her obligations.

The petitioner stresses that under Article 1498 of the NCC, when a sale is made through a public instrument, its execution is equivalent to the delivery of the thing which is the contract's object, unless in the deed, the contrary appears or can be inferred. Further, in *Power Commercial and Industrial Corporation v. CA*,^[17] it was ruled that the failure of a seller to eject lessees from the property he sold and to deliver actual and physical possession, cannot be considered a substantial breach, when such failure was not stipulated as a resolutory or suspensive condition in the contract and when the effects and consequences of the said failure were not specified as well. The execution of a deed of sale operates as a formal or symbolic delivery of the property sold and it already authorizes the buyer to use the instrument as proof of ownership.^[18]

The petitioner argues that in the case at bar, the agreement and the absolute deed of sale contains no stipulation that she was obliged to actually and physically deliver the subject property to the respondent. The respondent fully knew Lacaden's and Parangan's possession of the subject property. When they agreed on the sale of the property, the respondent consciously assumed the risk of not being able to take immediate physical possession on account of Lacaden's and Parangan's presence therein.

The petitioner likewise laments that the CA allegedly misappreciated the evidence offered before it when it declared that she failed to prove the existence of Atty. Antonio. For the record, she emphasizes that the said lawyer prepared and notarized the agreement and deed of absolute sale which were executed between the parties. He was also the petitioner's counsel in the proceedings before the RTC. Atty. Antonio was also the one asked by the respondent to cease the transfer of the title over the subject property in the latter's name and to return the money he paid in advance.

The Respondent's Contentions

In the respondent's comment,^[19] he seeks the dismissal of the instant petition. He invokes Articles 1191 and 1458 to argue that when a seller fails to transfer the ownership and possession of a property sold, the buyer is entitled to rescind the contract of sale. Further, he contends that the execution of a deed of absolute sale does not necessarily amount to a valid and constructive delivery. In *Masallo v. Cesar*,^[20] it was ruled that a person who does not have actual possession of real property cannot transfer constructive possession by the execution and delivery of a public document by which the title to the land is transferred. In *Addison v. Felix and Tioco*,^[21] the Court was emphatic that symbolic delivery by the execution of a public instrument is equivalent to actual delivery only when the thing sold is subject to the control of the vendor.

Our Ruling

The instant petition is bereft of merit.

There is only a single issue for resolution in the instant petition, to wit, whether or not the failure of the petitioner to deliver to the respondent both the physical possession of the subject property and the certificate of title covering the same amount to a substantial breach of the former's obligations to the latter constituting a valid cause to rescind the agreement and deed of sale entered into by the parties.

We rule in the affirmative.

The RTC and the CA both found that the petitioner failed to comply with her obligations to deliver to the respondent both the possession of the subject property and the certificate of title covering the same.

Although Articles 1458, 1495 and 1498 of the NCC and case law do not generally require the seller to deliver to the buyer the physical possession of the property subject of a contract of sale and the certificate of title covering

the same, the agreement entered into by the petitioner and the respondent provides otherwise. However, the terms of the agreement cannot be considered as violative of law, morals, good customs, public order, or public policy, hence, valid.

Article 1458 of the NCC obliges the seller to transfer the ownership of and to deliver a determinate thing to the buyer, who shall in turn pay therefor a price certain in money or its equivalent. In addition thereto, Article 1495 of the NCC binds the seller to warrant the thing which is the object of the sale. On the other hand, Article 1498 of the same code provides that when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed, the contrary does not appear or cannot clearly be inferred.

In the case of *Chua v. Court of Appeals*,^[22] which was cited by the petitioner, it was ruled that “when the deed of absolute sale is signed by the parties and notarized, then delivery of the real property is deemed made by the seller to the buyer.”^[23] The transfer of the certificate of title in the name of the buyer is not necessary to confer ownership upon him.

In the case now under our consideration, item nos. 2 and 3 of the agreement entered into by the petitioner and the respondent explicitly provide:

2. ONE HUNDRED EIGHTY FIVE THOUSAND (P185,000.00) PESOS of the total price was already received on March 27, 1998 for payment of the loan secured by the certificate of title covering the land in favor of the Rural Bank of Cauayan, San Manuel Branch, San Manuel, Isabela, in order that the certificate of title thereof be withdrawn and released from the said bank, and the rest shall be for the payment of the mortgages in favor of Romeo Lacaden and Florante Parangan;

3. After the release of the certificate of title covering the land subject-matter of this agreement, the necessary deed of absolute sale in favor of the PARTY OF THE SECOND PART shall be executed and the transfer be immediately effected so that the latter can apply for a loan from any lending institution using the corresponding certificate of title as collateral therefor, and the proceeds of the loan, whatever be the amount, be given to the PARTY OF THE FIRST PART;^[24] (underlining supplied)

As can be gleaned from the agreement of the contending parties, the respondent initially paid the petitioner P185,000.00 for the latter to pay the loan obtained from the Rural Bank of Cauayan and to cause the release from the said bank of the certificate of title covering the subject property. The rest of the amount shall be used to pay the mortgages over the subject property which was executed in favor of Lacaden and Parangan. After the release of the TCT, a deed of sale shall be executed and transfer shall be immediately effected so that the title covering the subject property can be used as a collateral for a loan the respondent will apply for, the proceeds of which shall be given to the petitioner.

Under Article 1306 of the NCC, the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy.

While Articles 1458 and 1495 of the NCC and the doctrine enunciated in the case of *Chua* do not impose upon the petitioner the obligation to physically deliver to the respondent the certificate of title covering the subject property or cause the transfer in the latter's name of the said title, a stipulation requiring otherwise is not prohibited by law and cannot be regarded as violative of morals, good customs, public order or public policy. Item no. 3 of the agreement executed by the parties expressly states that “transfer [shall] be immediately effected so that the latter can apply for a loan from any lending institution using the corresponding certificate of title as collateral

therefore.” Item no. 3 is literal enough to mean that there should be physical delivery of the TCT for how else can the respondent use it as a collateral to obtain a loan if the title remains in the petitioner’s possession. We agree with the RTC and the CA that the petitioner failed to prove that she delivered the TCT covering the subject property to the respondent. What the petitioner attempted to establish was that she gave the TCT to Atty. Antonio whom she alleged was commissioned to effect the transfer of the title in the respondent's name. Although Atty. Antonio's existence is certain as he was the petitioner’s counsel in the proceedings before the RTC, there was no proof that the former indeed received the TCT or that he was commissioned to process the transfer of the title in the respondent's name.

It is likewise the petitioner’s contention that pursuant to Article 1498 of the NCC, she had already complied with her obligation to deliver the subject property upon her execution of an absolute deed of sale in the respondent’s favor. The petitioner avers that she did not undertake to eject the mortgagors Parangan and Lacaden, whose presence in the premises of the subject property was known to the respondent.

We are not persuaded.

In the case of Power Commercial and Industrial Corporation[25] cited by the petitioner, the Court ruled that the failure of the seller to eject the squatters from the property sold cannot be made a ground for rescission if the said ejectment was not stipulated as a condition in the contract of sale, and when in the negotiation stage, the buyer's counsel himself undertook to eject the illegal settlers.

The circumstances surrounding the case now under our consideration are different. In item no. 2 of the agreement, it is stated that part of the P185,000.00 initially paid to the petitioner shall be used to pay the mortgagors, Parangan and Lacaden. While the provision does not expressly impose upon the petitioner the obligation to eject the said mortgagors, the undertaking is necessarily implied. Cessation of occupancy of the subject property is logically expected from the mortgagors upon payment by the petitioner of the amounts due to them.

We note that in the demand letter[26] dated September 18, 1998, which was sent by the respondent to the petitioner, the former lamented that “the area is not yet fully cleared of incumbrances as there are tenants who are not willing to vacate the land without giving them back the amount that they mortgaged the land.” Further, in the proceedings before the RTC conducted after the complaint for rescission was filed, the petitioner herself testified that she won the ejectment suit against the mortgagors “only last year”.[27] The complaint was filed on September 8, 2002 or more than four years from the execution of the parties' agreement. This means that after the lapse of a considerable period of time from the agreement's execution, the mortgagors remained in possession of the subject property.

Notwithstanding the absence of stipulations in the agreement and absolute deed of sale entered into by Villamar and Mangaoil expressly indicating the consequences of the former's failure to deliver the physical possession of the subject property and the certificate of title covering the same, the latter is entitled to demand for the rescission of their contract pursuant to Article 1191 of the NCC.

We note that the agreement entered into by the petitioner and the respondent only contains three items specifying the parties' undertakings. In item no. 5, the parties consented “to abide with all the terms and conditions set forth in this agreement and never violate the same.”[28]

Article 1191 of the NCC is clear that “the power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.” The respondent cannot be deprived of his right to demand for rescission in view of the petitioner’s failure to abide with item nos. 2 and 3 of the agreement.

This remains true notwithstanding the absence of express stipulations in the agreement indicating the consequences of breaches which the parties may commit. To hold otherwise would render Article 1191 of the NCC as useless.

Article 1498 of the NCC generally considers the execution of a public instrument as constructive delivery by the seller to the buyer of the property subject of a contract of sale. The case at bar, however, falls among the exceptions to the foregoing rule since a mere presumptive and not conclusive delivery is created as the respondent failed to take material possession of the subject property.

Further, even if we were to assume for argument's sake that the agreement entered into by the contending parties does not require the delivery of the physical possession of the subject property from the mortgagors to the respondent, still, the petitioner's claim that her execution of an absolute deed of sale was already sufficient as it already amounted to a constructive delivery of the thing sold which Article 1498 of the NCC allows, cannot stand.

In *Philippine Suburban Development Corporation v. The Auditor General*,^[29] we held:

When the sale of real property is made in a public instrument, the execution thereof is equivalent to the delivery of the thing object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.

In other words, there is symbolic delivery of the property subject of the sale by the execution of the public instrument, unless from the express terms of the instrument, or by clear inference therefrom, this was not the intention of the parties. Such would be the case, for instance, x x x where the vendor has no control over the thing sold at the moment of the sale, and, therefore, its material delivery could not have been made.^[30] (Underlining supplied and citations omitted)

Stated differently, as a general rule, the execution of a public instrument amounts to a constructive delivery of the thing subject of a contract of sale. However, exceptions exist, among which is when mere presumptive and not conclusive delivery is created in cases where the buyer fails to take material possession of the subject of sale. A person who does not have actual possession of the thing sold cannot transfer constructive possession by the execution and delivery of a public instrument.

In the case at bar, the RTC and the CA found that the petitioner failed to deliver to the respondent the possession of the subject property due to the continued presence and occupation of Parangan and Lacaden. We find no ample reason to reverse the said findings. Considered in the light of either the agreement entered into by the parties or the pertinent provisions of law, the petitioner failed in her undertaking to deliver the subject property to the respondent.

IN VIEW OF THE FOREGOING, the instant petition is DENIED. The February 20, 2009 Decision and July 8, 2009 Resolution of the Court of Appeals, directing the rescission of the agreement and absolute deed of sale entered into by Estelita Villamar and Balbino Mangaoil and the return of the down payment made for the purchase of the subject property, are AFFIRMED. However, pursuant to our ruling in *Eastern Shipping Lines, Inc. v. CA*,^[31] an interest of 12% per annum is imposed on the sum of P185,000.00 to be returned to Mangaoil to be computed from the date of finality of this Decision until full satisfaction thereof.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Sereno, JJ. concur.

[1] Rollo, pp. 26-77.

[2] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Edgardo P. Cruz and Ricardo R. Rosario, concurring; *id.* at 11-22.

[3] *Id.* at 22.

[4] *Id.* at 24.

[5] *Id.* at 102-107.

[6] *Id.* at 98-100.

[7] *Id.* at 12-14.

[8] *Supra* note 6.

[9] *Id.* at 98-99.

[10] Rollo, pp. 106-107.

[11] *Id.* at 17-21.

[12] *Id.* at 40.

[13] Art. 1495. The vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale.

[14] Art. 1496. The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee.

[15] 449 Phil. 25 (2003).

[16] *Id.* at 50.

[17] 340 Phil. 705 (1997).

[18] *Id.* at 715.

[19] Rollo, pp. 121-123.

[20] 39 Phil. 134 (1918).

[21] 38 Phil. 404 (1918).

[22] *Supra* note 15.

[23] *Id.* at 47.

[24] Rollo, p. 108.

[25] *Supra* note 17.

[26] Rollo, p. 111.

[27] *Id.* at 19.

[28] Supra note 24.

[29] 159 Phil. 998 (1975).

[30] Id. at 1007-1008. also see Addison v. Felix and Tioco, supra note 19; Masallo v. Cesar, supra note 18; Leonardo v. Maravilla, 441 Phil. 409 (2002); Asset Privatization Trust v. T.J. Enterprises, G.R. No. 167195, May 8, 2009, 587 SCRA 481.

[31] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

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