

NICANOR JACINTO, PLAINTIFF AND APPELLEE, VS. FRANK W. CARPENTER, REPRESENTED BY HIS ATTORNEY-IN-FACT, E. E. ELSEY, DEFENDANT AND APPELLANT.

G.R. No. 21422. December 12, 1923

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The appellant prays for the reversal of the judgment of the Court of First Instance of Manila, sentencing him to pay the plaintiff Nicanor Jacinto the sum of P7,764.77 with legal interest thereon from February 28th of this year, without express finding as to costs, alleging that the trial court erred: (a) In rendering judgment against the defendant for the sum stated in the judgment; (b) in not rendering judgment in accordance with paragraph 7 of the contract in question, and in not holding that the liability of the defendant-appellant was satisfied by his waiving the payments he had made, and surrendering the land to plaintiff with all the improvements placed by him thereon; and (c) in denying the motion for new trial.

The contract from which this litigation arose is as follows:

"This deed of real sale executed in the City of Manila, P. I., this 29th day of December, 1922, A. D., by and between Dr. Nicanor Jacinto, of age, married with Dña. Rosario Pantangco, physician, and resident of the City of Manila, P. I., as party of the first part, and Mr. Frank W. Carpenter, of age, property owner, single, and resident of Manila, as party of the second part,

"WITNESSETH:

"First. That the Government of the Philippine Islands has granted the party of the first part the right to purchase, in accordance with Act No. 1120, as amended, and the regulation promulgated thereunder, thirty-three lots of the land known as Hacienda Tala situated in the municipality of Caloocan, Province of Rizal, the price whereof being payable by installments. The numbers of his contracts of sale with the aforesaid Government of the Philippine Islands are as follows: (Here are stated the numbers of the lots and the contracts).

"Second. That the lots above described are free from all liens and encumbrances and are up-to-date in the payments of the installments in favor of the Government of the Philippine Islands and other taxes levied thereon.

"Third. That in consideration of the total sum of fifty thousand pesos (P50,000), Philippine currency, which the party of the second part agrees to pay to the party of the first part on the dates hereinafter to be specified, said party of the first part, that is, Dr. Nicanor Jacinto, does hereby sell, convey and transfer absolutely and forever all his rights and actions over the lots above described to the party of the second part, that is, Mr. Frank W. Carpenter, his heirs and successors in interest.

"Fourth. That the manner of making the payments upon the installments mentioned in the preceding paragraph on account of the aforesaid total sum of fifty thousand pesos (P50,000), Philippine currency, shall be as

follows:

"At the execution hereof the party of the second part hands to the party of the first part the sum of P500, Philippine currency, as payment in advance, receipt of which is hereby acknowledged by said party of the first part, and on February 28, 1923, the party of the second part agrees to pay to the party of the first part the sum of P10,000, Philippine currency, and the balance, namely, the sum of P39,500, Philippine currency, shall be paid on the 15th day of December, 1923; Provided, however, That from the aforesaid balance of P39,500, Philippine currency, there shall be deducted an amount equivalent to the sum of all the installments that said party of the first part shall pay on this date to the Government of the Philippine Islands in order that he may be declared absolute owner of the lots above-mentioned and which are the subject-matter of this deed.

"Fifth. That to secure the payment of the balance of the price of said absolute sale, the party of the second part agrees not to sell nor mortgage or otherwise encumber the aforesaid lots without the express consent in writing of the party of the first part, and for this purpose it is stipulated by both parties that this deed shall be registered and recorded in the office of the Bureau of Lands.

"Sixth. That it is hereby stipulated by both parties that at the execution of this document the party of the second part shall have the right to take immediate and physical possession of the aforesaid lots, as well as to have the proper documents of transfer executed, such as are required by the Bureau of Lands, in order that said party of the second part should appear in the records of said office as the concessionaire of said lots.

"Seventh. That both parties agree faithfully to comply with all the conditions herein stipulated and any breach thereof by either of the parties shall give the other the right either to enforce performance of the contract or to demand its resolution, at his election, with indemnity for damages, in accordance with article 1124 of the Civil Code; Provided, however, That the party of the second part shall lose all the amounts paid to the party of the first part and all the improvements introduced shall inure to the exclusive benefit of the party of the first part without any right on the part of the party of the second part to be indemnified therefor in case of breach of any of the conditions herein stipulated.

"In testimony whereof, both parties have hereunto set their hands on the place and date above-mentioned,

(Sgd.)

"FRANK W. CARPENTER

"N. JACINTO

"Signed in the presence of:

(Sgd.)

"J. R. BORJA

"(Illegible.)"

The appellant contends that the contract hereinbefore set out is an option, or an alternative contract. The appellant admits not having complied with his obligation to pay the instalment that became due on February 28, 1923, but maintains that, in accordance with the seventh clause of the contract, he has the right to elect between complying with the contract, by paying the installments stipulated, and transferring back, and surrendering, to plaintiff, all the rights acquired by him under Exhibit A of the plaintiff.

The contention of the appellant is untenable. The contract is one of purchase and sale and not merely of an option

to purchase. As expressly provided in the contract, it is the party injured by the breach of any of the conditions stipulated who has the right either to enforce the contract or demand its rescission at his election. Which of the contracting parties failed to comply with his obligation? The defendant. Then it is plaintiff's right either to enforce the contract or to demand its rescission at his election. The plaintiff elected to demand performance of the contract. The trial court, agreeably with the stipulation of the parties, so held. We see in this no error whatever to be corrected by this court. Had the plaintiff elected to exercise his right to demand the rescission of the contract, then the effect of the rescission should be what was beforehand stipulated by the parties; that is to say, that the damages shall be limited to the loss of all the amounts paid by the purchaser and the improvements placed by him on the land.

The judgment appealed from being in accordance with the law, must be, as is hereby, affirmed with costs against the appellant. So ordered.

Johnson, Street, Avanceña, Ostrand, Johns, and Romualdez, JJ., concur.

Malcolm, J., did not take part.

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