

PONCIANO S. PAZ, PLAINTIFF AND APPELLEE, VS. LUIS SANTIAGO ET AL., DEFENDANTS. THE PAYATAS ESTATE IMPROVEMENT COMPANY, APPELLANT.

G.R. No. 22612. January 28, 1925

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

On October 16, 1923, the plaintiff filed an amended complaint which was admitted by the lower court without objection on the part of the defendants.

The principal allegations of this complaint are:

"Second. That the defendants are owners of an extensive hacienda situated in various municipalities of the Province of Rizal and divided into lots, which are duly shown and described in the general plan of the said hacienda drafted by the defendants, with a statement of their areas.

"Third. That in or about the month of April, 1921, the defendants have agreed to sell to the plaintiff lot No. 4 of said hacienda, situated in the municipality of Montalban, Province of Rizal, containing an area of 25 hectares approximately, for the sum of P9,500.

"Fourth. That pursuant to the agreement mentioned in the preceding paragraph, the plaintiff, on or about April 4th and June 8th, of the year 1921, paid the defendants the sum of P9,500, as the value of lot No. 4, copies of the documents evidencing said payments, marked Exhibits A and B, being attached hereto as a part hereof, and when the plaintiff required the defendants to execute the proper deed of absolute sale and to place him in possession of said lot, the defendants refused to do so, on the ground that the person who was in possession of said lot was refusing to surrender the possession thereof.

"Fifth. That as the defendants did not execute said deed of sale and place the plaintiff in possession of lot No. 4, the defendants offered to sell to the plaintiff lots Nos. 112 and 124 of said hacienda in substitution of the aforesaid lot No. 4, which were situated in the municipality of San Mateo, Province of Rizal, containing an area of fifteen hectares approximately, for the price of P9,535.73, which offer was accepted by the plaintiff.

"Sixth. That in or about the year 1921, the plaintiff required the defendants to execute a deed of absolute sale in his favor, covering lots Nos. 112 and 124 and to give him the possession thereof, but said defendants refused to do so on the ground that the person who was in possession of said lots was refusing to deliver possession thereof.

"Seventh. That the plaintiff, at all time prior to the filing of this complaint, has been willing to accept from the defendants either lot No. 4 or lots Nos. 112 and 124, and to that end has several times required said defendants to execute in his favor the proper deed of sale either of lot No. 4 or lots Nos. 112 and 124; but said defendants have refused and still refuse to execute said deed, covering any of the aforementioned lots, or to deliver the possession of any of them to the plaintiff.

"Eighth. That in view of this attitude of the defendants, the plaintiff elects to have the aforesaid contract

rescinded by the courts of justice.

"Ninth. That the plaintiff has required the defendants several times to pay him the sum of P9,500, but said defendants have refused and still refuse to return said sum or any part thereof to plaintiff, without any legal reason or ground therefor.

"Tenth. That the plaintiff has suffered damages in the sum of P897.50, which represents the legal interest of the amount paid by the plaintiff to the defendants from the month of June, 1921, to the month of December, 1922, plus the interest to become due from this date up to the execution of the judgment to be rendered in this case at the rate of 6 per cent per annum."

The plaintiff, therefore, prays for the rescission of the contract of purchase and sale entered into between him and the defendants, and for judgment against the latter sentencing them to pay the plaintiff jointly and severally the sum of P10,397.50, with legal interest thereon from the filing of the complaint and the costs of the suit.

For answer to this complaint, the defendants made a general denial of each and every allegation thereof, and as special defense alleged:

"First. From the complaint nobody can tell to what land the plaintiff refers.

"Second. If the plaintiff refers to the Payatas Estate, then defendants allege that the Payatas Estate Improvement Company was the only and true owner of the said estate, the other defendants, with the exception of Vicente Santiago, being members of the board of directors of said company.

"Third. At the time the plaintiff alleges having asked for the execution of the deed of sale, the plans of the lots of said estate had not yet been approved by the Bureau of Lands, and this fact was known to the plaintiff.

"Fourth. The plaintiff also knew that the defendants could not give him the possession of any of the lots because they were in possession of other persons, who still had certain claims against the said company, which was then the only owner of all the Payatas Estate.

"Fifth. That if there was any delay in the delivery of the possession of the lots claimed by the plaintiff, it was due exclusively to his fault.

"Sixth. The defendants, with the exception of the defendant Vicente Santiago who is a mere secretary-treasurer of the company herein mentioned, were and are willing to execute in favor of the plaintiff a promise of sale covering the lots claimed by him, but not a deed of absolute sale.

"Seventh. That the plaintiff, as any other purchaser of land of the Payatas Estate, has paid the sum of nine thousand five hundred pesos (P9,500) as a part of the capital of the Payatas Estate Improvement Company, and therefore has no right to its return so long as the said company exists.

"Eighth. That the Payatas Estate Improvement Company cannot yet tell whether all of this sum of nine thousand five hundred pesos (P9,500) has been paid in, although its president, Mr. Luis Santiago, says it has, and admits having received said amount from the plaintiff, but for which sum the company is liable, and he in turn is liable to the company, if after the liquidation, which is now being made, he is found to be indebted in any amount."

And the defendants in turn pray that they be absolved from the complaint with the costs against the plaintiff.

After due trial, the lower court rendered a well reasoned decision sentencing the Payatas Estate Improvement Company to return to the plaintiff Ponciano S. Paz the sum of P9,500 with legal interest thereon from January 8, 1923, the date of the filing of the complaint, with the costs; and the court decreed the rescission of the verbal agreement between the plaintiff and the defendant the Payatas Estate Improvement Company for the sale of lots

Nos. 112 and 124; and finally dismissed the case as to the defendants Luis Santiago, Eulogio Rodriguez, Gregorio Bautista, Daniel Santiago, Miguel Criste and Vicente Santiago, secretary-treasurer of the defendant company, on the ground that in the contract executed with the plaintiff these defendants have acted only as agents or representatives of the company.

The defendant The Payatas Estate Improvement Company appealed from this judgment of the trial court and now contends in its brief that said court erred: (a) In overruling the demurrer filed by the defendants; (b) in excluding Exhibit 3 as evidence of the defendant; (c) in denying the motion for new trial; and (d) in rendering the judgment appealed from.

The first assignment of error is groundless. The only demurrer appearing in the record is that presented by the defendants to the original complaint. Then the appellant company was not included as defendant. After the overruling of said demurrer the plaintiff *motu proprio* amended his complaint, including the appellant company as defendant. No demurrer was presented to said amended complaint. And it is clear that the appellant cannot invoke the demurrer to the first complaint wherein it was not included.

As to the second assignment of error the trial court excluded the document Exhibit 3, appearing on folio 34 of the bill of exceptions, on the ground that no proof was introduced showing the authenticity of the signature of the plaintiff in said exhibit. We see in this no error whatever, justifying the reversal of the judgment appealed from, and much less so because in paragraph 7 of the special defense of the defendants it is admitted that the plaintiff, as any other purchaser of land of the Payatas Estate, has paid the sum of P9,500 as a part of the capital of the Payatas Estate Improvement Company.

The appellant has not advanced any argument in support of the other errors 3 and 4, assigned in its brief, having contented itself with saying that said errors are but corollaries of the preceding ones.

After studying the record, we are of the opinion, and so hold, that the judgment appealed from is in accordance with law and must be, as is hereby, affirmed with costs against the appellant. So ordered.

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

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