

**ENCARNACION RAMOS AND LEON AYCO, PLAINTIFFS AND
APPELLEES, VS. JUSTO DUEÑO AND VICENTE OTCEDA, DEFENDANTS.
VICENTE OTCEDA, DEFENDANT-APPELLANT.**

G.R. No. 27483. September 29, 1927

Ponente: JOHNSON, J.

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JOHNSON, J.:

The important question presented by this appeal is: What rights does the second purchaser of a piece or parcel of land acquire when at the time he purchased the same he had actual knowledge that his vendor had obligated himself to sell the said parcel to another person?

The important facts disclosed by the record may be stated as follows:

That on the 27th day of May, 1919, by means of a public document (Exhibit A) the defendant Justo Dueño entered into a contract for the sale of a piece or parcel of land known as lot No. 1212 of the cadastral survey of Bago of the Province of Occidental Negros, containing an area of 8 hectares, 37 ares and 56 centares, which is particularly described by metes and bounds in paragraph 2 of the complaint; that under and by virtue of the terms of said contract the said parcel of land was to be delivered to the purchaser in the month of November, 1925; that immediate delivery of the parcel of land was not made at the time of the contract of purchase and sale for the reason that at that time the said parcel of land was in the possession of one Primitivo Toro and that his right of possession continued until the month of November, 1925. On the 25th day of September, 1925, the said Vicente Otceda, with full knowledge of the fact that Justo Dueño had theretofore obligated himself on the 27th day of May, 1919, to sell the said parcel of land to the plaintiffs, entered into a contract with the said Justo Dueño for the purchase of the same parcel of land.

Basing their rights upon the foregoing facts, in their action in the Court of First Instance of the Province of Occidental Negros, the plaintiffs prayed that a judgment be rendered declaring null and void and of no effect the sale of the said parcel of land by Justo Dueño to the defendant Vicente Otceda; that the registration of said document be cancelled as well as the certificate of transfer of title issued by the vendor to Vicente Otceda; that Justo Dueño be required to accept the price agreed upon between him and the plaintiffs herein for the purchase of the said parcel of land, which amount of P300 was deposited with the clerk of court; that the defendants be required to execute the necessary documents in favor of the plaintiffs for the transfer of said land to them and that the defendant Vicente Otceda be required to deliver the immediate possession of said parcel of land to the plaintiffs.

After hearing the evidence adduced during the trial of the cause the Honorable M. L. de la Rosa, judge, in an exceedingly well prepared opinion, reached the conclusion, from the facts established during the trial of the cause, that Vicente Otceda at the time he purchased said parcel of land from Justo Dueño had full knowledge of the former sale by his vendor to the plaintiffs herein, and rendered a judgment declaring null and void said sale and ordered the cancellation of the registration of the document of sale. The court further adjudged and decreed that

the defendant Vicente Oteda execute and deliver to Encarnacion Ramos and Leon Ayco the necessary documents of transfer of said parcel of land, to immediately deliver the possession of said parcel of land to the plaintiffs and to receive from the clerk of the Court of First Instance the sum of P300 deposited with him by the plaintiffs, without any finding as to costs. From that judgment the defendant Vicente Oteda appealed.

In his first assignment of error the appellant contends that the lower court committed an error in deciding that the said Justo Dueño had sold said parcel of land to the plaintiffs. Upon that question the plaintiffs presented oral and documentary evidence. The testimony of the plaintiffs is positive, direct and unequivocal. By reference to the documentary proof presented by the plaintiffs, Exhibits A, B and B-1, it will be seen that the said Justo Dueño did on the 27th day of May, 1919, enter into a contract, by virtue of which he promised to sell to the plaintiffs herein the parcel of land in question. Said documents show clearly that the sale was absolute and that the delivery of the possession of said parcel of land, for the reason stated in said documents, was to be postponed until the month of November, 1925. The defendant Justo Dueño actually received a partial payment of the price fixed for said parcel of land. Upon that assignment of error we find no reason for changing or modifying, the judgment of the lower court.

In his second assignment of error the appellant contends that the lower court committed an error in not taking into consideration the provisions of articles 1101, 1124 and the last paragraph of article 1451 of the Civil Code. Article 1101 provides that "any person who is guilty of fraud, negligence, or delay in the fulfillment of his obligations, or who in any manner whatsoever shall fail to comply with the terms thereof, shall be liable for any damage caused thereby," It is difficult to see just how any of the provisions of said article apply to the facts in the present case. No fraud or negligence or delay in the fulfillment of the contract in question has been shown. The plaintiffs acted promptly in their effort to comply with the terms of their contract. The only reason why their part of the contract was not fully complied with in the month of November, 1925, was due to the absence of Justo Dueño. And, moreover, this court has decided in the case of Quiros vs. Palanca Tan-Guinlay (5 Phil., 675) that said article (1101) does not apply to obligations which consist in the payment of money.

With reference to the contention of the appellant, that the lower court refused to apply the provisions or article 1124 of the Civil Code, it may again be said that, that article has no application to the facts in the present case. The plaintiffs insisted upon a compliance with the terms of their contract of purchase. Their vendor presents no objection. The record presents no justifiable excuse for a failure on the part of the vendor to comply with his promise to execute the necessary documents for the sale of said parcel of land. (Borromeo vs. Franco, 5 Phil., 49.) The plaintiffs had a perfect right under their contract of purchase, under said article 1124, to insist upon a specific performance of the same. (Mateos vs. Lopez, 6 Phil., 296.) A mere nonperformance on the part of the vendor does not operate as a rescission of the contract. (Guevara vs. De Pascual, 12 Phil., 311). The plaintiffs herein were authorized to insist upon a rescission or a performance of their contract. They chose to insist upon a performance of the contract. (Yap Unki vs. Chua Jamco, 14 Phil., 602.) The plaintiffs demanded a performance of the contract of May 27, 1919, and deposited the price which they had agreed to pay, with the clerk of the court and placed that money at the disposition of the defendant Justo Dueño. We find no reason in the facts of record to justify a modification of the judgment appealed from upon the second assignment of error.

The record shows that Justo Dueño could not be found at the time of the trial. The record further shows that Vicente Oteda purchased said parcel of land with full knowledge that his vendor had theretofore obligated himself to transfer the same to the plaintiffs herein. With full knowledge of that fact he purchased the land in question and therefore only obtained the right which his vendor then had, subject to the obligations which his vendor had assumed. Having purchased with full knowledge of the contract of his vendor and his obligations, he now stands in the shoes of his vendor and must comply with his obligations. The only thing which he purchased

under the circumstances was a law suit.

In view of all of the facts of the record, and basing our decision upon the ground that Vicente Otcada had full knowledge of the obligations of his vendor at the time he purchased said parcel of land, we find no reason nor justification for changing or modifying the judgment of the lower court, except that part thereof which requires Justo Dueño to accept the P300 now in the hands of the clerk of the Court of First Instance. We are of the opinion that, that part of the judgment should be modified, and the clerk of the Court of First Instance is hereby ordered to deliver said P300 to the appellant herein Vicente Otcada. And without any finding as to costs, it is so ordered.

Avanceña, C. J., Street, Malcolm, Villamor, and Villa-Real, JJ., concur.

DISSENTING OPINION

JOHNS, J.:

This judgment of the lower court should be affirmed in toto and to that extent I dissent.

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