

## LEODEGARIO AZARRAGA, PLAINTIFF AND APPELLEE, VS. MARIA GAY, DEFENDANT AND APPELLANT.

*G.R. No. 29449. December 29, 1928*

Ponente: VILLAMOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-29449/>

---

### VILLAMOR, J.:

By a public document Exhibit A, dated January 17, 1921, the plaintiff sold two parcels of land to the defendant for the lump sum of P47,000, payable in installments.

The conditions of the payment were: P5,000 at the time of signing the contract Exhibit A; P20,000 upon delivery by the vendor to the purchaser of the Torrens title to the first parcel described in the deed of sale, P10,000 upon delivery by the vendor to the purchaser of Torrens title to the second parcel; and lastly the sum of P12,000 one year after the delivery of the Torrens title to the second parcel.

The vendee paid P5,000 to the vendor when the contract was signed. The vendor delivered the Torrens title to the first parcel to the vendee who, pursuant to the agreement, paid him P20,000. In the month of March 1921, Torrens title to the second parcel was issued and forthwith delivered by the vendor to the vendee who, however, failed to pay the P10,000 da agreed, neither did she pay the remaining P12,000 one year after having received the Torrens title to the second parcel.

The plaintiff here claims the sum of P22,000, with legal interest from the month of April 1921 on the sum of P10,000, and from April 1922 on the sum of P12,000, until full payment of the amounts claimed.

The defendant admits that she purchased the two parcels of land referred to by the plaintiff, by virtue of the deed of sale Exhibit A, but alleges in defense: (a) That the plaintiff knowing that the second parcel of land he sold had an area of 60 hectares, by misrepresentation lead the defendant to believe that said second parcel contained 98 hectares, and thus made it appear in the deed of sale and induced the vendee to bind herself to pay the price of P47,000 for the two parcels of land, which he represented contained an area of no less than 200 hectares, to which price the defendant would not have bound herself had she known that the real area of the second parcel was 60 hectares, and, consequently, she is entitled to a reduction in the price of the two parcels in proportion to the area lacking, that is, that the price be reduced to P38,000; (b) that the defendant, in addition to the amounts acknowledged by the plaintiff, had paid other sums amounting to P4,000; and (c) that the defendant never refused to pay the justly reduced price, but the plaintiff refused to receive the just amount of the debt.

And by way of cross-complaint, the defendant prays that she be indemnified in the sum of P15,000 for damages sustained by her by reason of the malicious filing of the instant complaint.

The plaintiff, replying to the amended answer, alleges that the contract of sale in question was made only for the lump sum of P47,000, and not at the rate of so much per hectare, and that the defendant's claim for alleged damages has prescribed.

The lower court, having minutely analyzed the evidence adduced by the parties held that neither the plaintiff nor

the defendant gave any importance to the area of the land in consenting to the contract in question, and that there having been no fraud when the parties agreed to the lump sum for the two parcels of land described in the deed Exhibit A, following article 1471 of the Civil Code, ordered the defendant to pay the plaintiff the sum of P19,300 with legal interest at 8 per cent per annum from April 30, 1921 on the sum of P7,300, and from April 30, 1922, on the sum of P12,000. And finally dismissed the defendant's cross-complaint, without special pronouncement as to costs.

A motion for a new trial having been denied, this case was brought up to this court through the proper bill of exceptions.

The appellant alleges that the trial court erred in not considering that the plaintiff induced the defendant by deceit, to pay him the stipulated price for the two parcels he sold, stating falsely in the deed of sale that the second of said parcels had an area of 98 hectares when he knew that in reality it only had about 60 hectares more or less, or at least, if such deceit was not practised that there was a mistake on the part of Maria Gay in believing that said second parcel contained 98 hectares.

As a question of fact the trial court found from the evidence adduced by the parties, that the plaintiff had not practised any deception in agreeing with the defendant upon the sale of the two parcels of land described in Exhibit A. We concur with the trial court in this conclusion. It appears of record that before the execution of the contract Exhibit A, the defendant went over the plaintiff's land and made her own calculations as to the area of said two parcels. But this is not all. The plaintiff delivered to the defendant the documents covering the land he was trying to sell. As to the first parcel there is no question whatever and the defendant's contention is limited solely to the actual area of the second parcel. The defendant had document Exhibit 4 in her possession which is the deed by which the plaintiff acquired the land from the original owner, Crispulo Beramo, in which document it appears that the area of the second parcel is about 70 hectares. It was the defendant who intrusted the drawing of the deed of sale Exhibit A to her attorney and notary, Hontiveros, and it is to be presumed that both she and the lawyer who drew the document Exhibit A, had read the contents of the document Exhibit 4. The plaintiff declares that he signed the document between 5 and 7 in the afternoon of that day and he did not pay any attention to the area of the second parcel, probably in the belief that in the drawing of the document the data concerning the area of the land had been taken from the said Exhibit 4. The defendant testified that she received from the plaintiff a note or piece of paper containing the data to be inserted in the contract Exhibit A. The plaintiff denies this and said note or piece of paper was not presented at the trial. We are of opinion that this testimony of the defendant's is unimportant, because, in reality, if the plaintiff had delivered Exhibit 4 to the defendant, there was no need to deliver to her another note to indicate the area of the second parcel which already appeared in the said Exhibit 4.

If, notwithstanding the fact that it appeared in Exhibit 4 that the area of the second parcel was, approximately, 70 hectares, the defendant, however, stated in said document Exhibit A that said second parcel contained 98 hectares as was admitted by him in his interviews with the plaintiff in the months of April and June, 1924, then she has no right to claim from the plaintiff the shortage in area of the second parcel. Furthermore, there is no evidence of record that the plaintiff made false representation to the defendant as to the area of said second parcel, and even if he did make such false representations as are now imputed to him by the defendant, the latter accepted such representations at her own risk and she is the only one responsible for the consequences of her inexcusable credulousness. In the case of *Songco vs. Sellner* (37 Phil., 254), the court said:

"The law allows considerable latitude to seller's statements, or dealer's talk; and experience teaches that it is exceedingly risky to accept it at its face value.

"Assertions concerning the property which is the subject of a contract of sale, or in regard to its qualities and characteristics, are the usual and ordinary means used by sellers to obtain a high price and are always

understood as affording to buyers no ground for omitting to make inquiries. A man who relies upon such an affirmation made by a person whose interest might so readily prompt him to exaggerate the value of his property does so at his peril, and must take the consequences of his own imprudence."

The defendant had ample opportunity to appraise herself of the condition of the land which she purchased, and the plaintiff did nothing to prevent her from making such investigation as she deemed fit, and, as was said in *Songco vs. Sellner*, supra, when the purchaser proceeds to make investigations by himself, and the vendor does nothing to prevent such investigation from being as complete as the former might wish, the purchaser cannot later allege that the vendor made false representations to him. (*National Cash Register Co. vs. Townsend*, 137 N. C., 652; 70 L. R. A., 349; *Williamson vs. Holt*, 147 N. C., 515.) The same doctrine has been sustained by the courts; of the United States in the following cases, among others: "Misrepresentations by a vendor of real property with reference to its area are not actionable, where a correct description of the property was given in the deed and recorded chain of title, which the purchaser's agent undertook to investigate and report upon, and the vendor made no effort to prevent a full investigation," (*Shappirio vs. Goldberg*, 48 Law. ed., 419.) "One who contracts for the purchase of real estate in reliance on the representations and statements of the vendor as to its character and value, but after he has visited and examined it for himself, and has had the means and opportunity of verifying such statements, cannot avoid the contract on the ground that they were false or exaggerated," (*Brown vs. Smith*, 109 Fed., 26.)

That the defendant knew that the area of the second parcel was only about 70 hectares is shown by the fact that she received the document Exhibit 4 before the execution of the contract Exhibit A, as also Exhibit E-3 on September 30, 1920; which is the notification of the day for the trial of the application for registration of said parcel, wherein it appears that it had an area of 60 hectares more or less, and by the fact that she received from the plaintiff in the month of June 1924 the copy of the plans of the two parcels, wherein appear their respective areas; and yet, in spite of all this, she did not complain of the difference in the area of said second parcel until the year 1926. Moreover, the record contains several of the defendant's letters to the plaintiff in the years 1921 to 1925, in which said defendant acknowledges her debt, and confining herself to petitioning for extensions of time within which to make payment for the reasons given therein. But in none of these letters is there any allusion to such lack of area, nor did she complain to the plaintiff of the supposed deceit of which she believes she is a victim. All of which, in our opinion, shows that no such deceit was practised, as the trial court rightly found.

As to the alleged error to the effect that the trial court failed to order the reduction from the price due on the second parcel as stated in the contract of sale Exhibit A, the proportional price of the area lacking, we are of the opinion that said error has no legal ground.

It appears that by the contract Exhibit A, the parties agreed to the sale of two parcels of land, the first one containing 102 hectares, 67 ares and 32 centares, and the second one containing about 98 hectares, for the lump sum of P47,000 payable partly in cash and partly in installments. Said two parcels are defined by means of the boundaries given in the instrument. Therefore, the case falls within the provision of article 1471 of the Civil Code, which reads as follows:

"ART. 1471. In case of the sale of real estate for a lump sum and not at the rate of a specified price for each unit of measure, there shall be no increase or decrease of the price even if the area be found to be more or less than that stated in the contract.

"The same rule shall apply when two or more estates are sold for a single price; but, if in addition to a statement of the boundaries, which is indispensable in every conveyance of real estate, the area of the estate should be designated in the contract, the vendor shall be obliged to deliver all that is included within such boundaries, even should it exceed the area specified in the contract; and should he not be able to do so, he shall suffer a reduction of the price in proportion to what is lacking of the area, unless the contract be annulled by

reason of the vendee's refusal to accept anything other than that which was stipulated."

The plaintiff contends that, in accordance with the first paragraph of this article, the defendant has no right to ask for the reduction of the price, whatever may be the area of the two parcels of land sold to her. On the other hand, the defendant contends that, according to paragraph 2 of the same article of the Civil Code, she has a right to ask for a reduction of the price due on the second parcel, in proportion to the area lacking.

In his comments on the article cited, Manresa says, among other things:

"\* \* \* If the sale was made for a price per unit of measure or number, the consideration of the contract with respect to the vendee, is the number of such units, or, if you wish, the thing purchased as determined by the stipulated number of units. But if, on the other hand, the sale was made for a lump sum, the consideration of the contract is the object sold, independently of its number or measure, the thing as determined by the stipulated boundaries, which has been called in law a determinate object.

"This difference in consideration between the two cases implies a distinct regulation of the obligation to deliver the object, because, for an acquittance delivery must be made in accordance with the agreement of the parties, and the performance of the agreement must show the confirmation, in fact, of the consideration which induces each of the parties to enter into the contract.

"From all this, it follows that the provisions of article 1471 concerning the delivery of determinate objects had to be materially different from those governing the delivery of things sold for a price per unit of measure or number. Let us examine it, and for the sake of greater clearness, let us expound it as we understand it.

"With respect to the delivery of determinate objects two cases may arise, either the determinate object is delivered as stipulated, that is, delivering everything included within the boundaries, inasmuch as it is the entirety thereof that distinguishes the determinate object; or that such entirety is impaired in the delivery by failing to deliver to the purchaser something included within the boundaries. These are the two cases for which the Code has provided although, in our opinion, it has not been sufficiently explicit in expressing the distinction; hence, at first sight, the article seems somewhat difficult to understand.

"The first paragraph and the first clause of the second paragraph of article 1471 deal with the first of said cases; that is where everything included within the boundaries as set forth in the contract has been delivered. The Code goes on to consider the case where a definite area or number has been expressed in the contract, and enunciates the rule to be followed when, after delivery, the area included within said boundaries is found not to coincide with the aforesaid content or number. Said rule may be thus stated: Whether or not the object of sale be one realty for a lump sum, or two or more for a single price also a lump sum, and, consequently, not for so much per unit of measure or number, there shall be no increase or decrease in the price even if the area be found to be more or less than that stated in the contract.

"Thus understood the reason for the regulation is clear and no doubts can arise from its application. It is concerned with determinate objects. The consideration of the contract, and the thing to be delivered is a determinate object, and not the number of units it contains. The price is determined with relation to it; hence, its greater or lesser area cannot influence the increase or decrease of the price agreed upon. We have just learned the reason for the regulation, bearing in mind that the Code has rightly considered an object as determinate for the purposes now treated, when it is a single realty as when it is two or more, so long as they are sold for a single price constituting a lump sum and not for a specified amount per unit of measure or number.

"We have stated that the second possible case in the delivery of determinate objects is that in which, on account of circumstances of diverse possible origins, everything included within the boundaries is not delivered.

"We have indicated about that where everything included within the boundaries is delivered there can be no increase or decrease in price, no matter whether the area be more or less than that given in the contract. From this a very important consequence follows, to wit: That if the vendor is bound to deliver a determinate object, he is bound to deliver all of it, that is, everything within its boundaries, even though these contain a greater area than that stated in the contract, and that from the moment he fails to do so, either because he cannot, or because, ignoring the meaning of the contract, he alleges that it contains a greater area than that stipulated, the contract is partially unfulfilled and it is but just that certain actions be available to the vendee for the protection of his right.

"The rule in the latter case is found in the second paragraph of article 1471, with the exception of the first clause which refers to the former hypothesis. This rule may be stated as follows: Whether or not the object of the sale be one realty for a lump sum, or two or more for a single price also a lump sum, and, consequently not at the rate of a specified price for each unit of measure or number, the vendor shall be bound to deliver everything that is included within the boundaries stated, although it may exceed the area or number expressed in the contract; in case he cannot deliver it, the purchaser shall have the right either to reduce the price proportionately to what is lacking of the area or number, or to rescind the contract at his option.

"Comprehending the meaning of a sale of a determinate object, it is easily understood how, in cases wherein by virtue of the rule enunciated, the vendor has to deliver a greater area than that expressed in the contract, there is, strictly speaking, no excess of area, inasmuch as one may always properly ask, excess with respect to what?. With respect to the area appearing in the deed, it will be answered. But as this area was not taken into account in entering into the contract inasmuch as the parties made neither the amount of the price, nor the efficacy of the contract to depend on the number of its units; since that area was written in to fulfill a formal requisite demanded by the present rules upon the drawing of public instruments, but not as a condition essential to the contract, which, if it were not true, would not be consummated, it results in the long run, that this detail of the written recital, with respect to which the excess is to be estimated, is so negligible, so inconsistent, so haphazard, and in the vast majority of cases so wide of the mark, that it is impossible to calculate the excess; and considering the nature of a contract of sale of a definite object, it cannot be strictly held that there is any excess at all.

"If everything within the stipulated boundaries is not delivered, then the determinate object which was the consideration of the contract for the vendee, is not delivered; hence his power to nullify it. However, it might be (and this he alone can say), that although he has not received the object, according to the stipulated terms, it suits him; hence his power to carry the contract into effect with the just decrease in price referred to in the article under comment.

"The manner in which the matter covered by this article was distributed in its two paragraphs contributes to making it difficult to understand. The rule might have been clearly stated had the first clause of the second paragraph been included in the first paragraph, the latter to end with the words: 'The same rule shall apply when two or more estates are sold for a single price.' And if by constituting an independent paragraph, with the rest of the second paragraph, it were made to appear more expressly that the rule of the second paragraph thus drawn referred to all the cases of paragraph one, as we have expounded, namely, to the case of a sale of one single estate and that of two or more for one single price, the rule would have been clearer.

"In our opinion, this would have better answered what we deem to be the indubitable intention of the legislator.

"Some eminent commentators construe the last part of article 1471 in a different way. To them the phrase and should he not be able to do so" as applied to the vendor, does not mean as apparently it does 'should he not be able to deliver all that is included within the boundaries stated,' but this other thing, namely, that if by reason of the fact that a less area is included within the boundaries than that expressed in the contract, it is not possible for the vendor to comply therewith according to its literal sense, he must suffer either the effects of the nullity of the contract or a reduction of the price proportionately to what may be lacking of the area or number. It is

added as a ground for this solution that if the vendor fulfills the obligation, as stated in the article, by delivering what is not included within the boundaries, there can never be any case of proportionate reduction of the price on account of shortage of area, because he does not give less who delivers all that he bound himself to.

"According to this opinion, which we believe erroneous, if within the boundaries of the property sold, there is included more area than that expressed in the title deeds, nothing can be claimed by the vendor who loses the value of that excess, but if there is less area, then he loses also because either the price is reduced or the contract is annulled. This theory would be anomalous in case of sale of properties in bulk, but, especially, would work a gross injustice which the legislator never intended.

"There is no such thing. So long as the vendor can deliver, and for that reason, delivers all the land included within the boundaries assigned to the property, there can be no claim whatsoever either on his part, although the area may be found to be much greater than what was expressed, nor on the part of the purchaser although that area may be in reality much smaller. But as he sold everything within the boundaries and this is all the purchaser has paid, or must pay for whether much or little, if afterwards it is found that he cannot deliver all, because, for instance, a part, a building, a valley, various pieces of land, a glen, etc., are not his, there is no sale of a determinate object, there is no longer a sale of the object agreed upon, and the solution given by the article is then just and logical: Either the contract is annulled or the price is reduced proportionately."

We have quoted from Manresa's Commentaries at length for a better understanding of the doctrine on the matter, inasmuch as the contending counsel have inserted in their respective briefs only such portions of said commentaries as relate to their respective contentions.

It may be seen from a careful reading of the commentaries on said article 1471, that the great author distinguishes between the two cases dealt with in article 1471, and formulates the proper rules for each. In the delivery of a determinate object, says the author, two cases may arise: either the determinate object is delivered as stipulated, that is, delivering everything included within the boundaries, inasmuch as it is the entirety thereof that distinguishes the determinate object; or that such entirety is impaired in the delivery by failing to deliver to the purchaser something included within the boundaries. For the first case, Manresa gives the following rule: "Whether or not the object of the sale be one realty for a lump sum, or two or more for a single price also a lump sum, and, consequently, not for so much per unit of measure or number, there shall be no increase or decrease in the price even if the area be found to be more or less than that stated in the contract." And for the second case, this other: "Whether or not the object of the sale be one realty for a lump sum, or two or more for a single price also a lump sum, and, consequently, not at the rate of a specified price for each unit of measure or number, the vendor shall be bound to deliver everything that is included within the boundaries stated, although it may exceed the area or number expressed in the contract; in case he cannot deliver it, the purchaser shall have the right either to reduce the price proportionately to what is lacking of the area or number, or to rescind the contract, at his option."

Considering the facts of the present controversy, it seems clear to us that the rule formulated for the second paragraph of article 1471 is inapplicable in the instant case inasmuch as all the land included within the boundaries of the two parcels sold has been delivered in its entirety to the vendee. There is no division of the land enclosed within the boundaries of the properties sold; the determinate object which is the subject matter of the contract has been delivered by the vendor in its entirety as he obligated himself to do. Therefore, there is no right to complain either on the part of the vendor, even if there be a greater area than that stated in the deed, or on the part of the vendee, though the area of the second parcel be really much smaller. (*Irureta Goyena vs. Tambunting*, 1 Phil., 490.)

With regard to the damages prayed for by the defendant, the lower court finally dismissed the cross-complaint without special pronouncement as to costs. And according to the decision of the Supreme Court of Spain of 1897, a judgment absolving a party from a claim of damages against him, who has not contravened his obligations, does

not violate articles 1101 and 1108 of the Civil Code.

With respect to the question of interest, the lower court likewise held that, as the defendant had not paid the sum of P7,300 on April 30, 1921, when the plaintiff had delivered the certificate of title, she was in default from that date and also from the date of one year thereafter, with respect to the sum of P12,000, constituting the last period of the obligation. We are of the opinion that the lower court has committed no error which should be corrected by this court.

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

Avanceña, C. J., Johnson, Street, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.