

CIRILO ABELLA, PLAINTIFF AND APPELLEE, VS. MARIANO GONZAGA, DEFENDANT AND APPELLANT.

G. R. No. 34574. September 19, 1931

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The plaintiff demands specific performance of the contract entered into with the defendant on April 15, 1921, which reads as follows:

(Exhibit A)

"SPECIAL CONTRACT OF LEASE

"Mariano Gonzaga, land-owner, and Cirilo Abella, tenant, do hereby enter into a contract of lease under the following conditions:

"First. Mariano Gonzaga, as land-owner, does hereby lease the following-described parcel of land situate within the jurisdiction of San Felipe Neri to Cirilo Abella to use with all the active and passive easements thereof, to wit: etc. The surveyed parcel contains an area of one hectare, seventy-eight ares, and fifty-eight centares.

"Second. This lease shall run for five years: from March 5, 1921 to March 5, 1926.

"Third. The rent shall be one thousand one hundred fourteen pesos and 34/100 (P1,114.34) per annum payable in advance at the house of the undersigned on the 5th of March every year.

"Fourth. In consideration of the sum of one thousand three hundred ninety-two pesos and 92/100 (P1,392.92) which the tenant has now paid, and of his promise to pay the rent of the remaining nineteen quarters at the periods fixed in the preceding clause, the owner undertakes at the termination of this contract to transfer free of charge to the tenant the full ownership of the leased property, provided the tenant has made the aforesaid payments.

"Fifth. The costs of surveying, fixing the boundaries, registering the title and other expenses, shall be charged to the tenant's account

"Sixth. Failure to comply with any stipulation herein shall deprive the tenant of any right he may have under this contract, and he shall lose all the amounts paid: but the owner shall not collect from him the pending rent, but may only eject him from the land.

"Seventh. The tenant may assign this contract, or sublet the leased property, with the written consent of the owner.

"Eighth. When the leased property is to be transferred to the tenant, as provided in the fourth clause, the land shall be surveyed and any excess or shortage in area shall be charged for at the rate of P..... per square meter.

"Ninth....., undertakes to cultivate the land as a regular farmer, preserving the metes and bounds, and all the easements, active, passive, and otherwise, so working the land in such a manner as not to impair in any way its condition, state, or value; he also binds himself to preserve all useful trees thereon existing now or hereafter, for during the lease they shall belong to the owner of the land, and the tenant shall have no right to them whatever. The lessor reserves the right to open up a quarry, and the lessee is therefore prohibited from opening up a quarry on said land; but he may make use of stones to supply the needs of the land leased and within the boundaries thereof; in such cases, however, he must first secure permission in writing, and neither said lessee nor his workmen may traffic in them or give them to any other person under any pretext whatsoever.

"Tenth. The lessee expressly waives his right to a reduction of the stipulated price in view of the lack of fertility of the soil, or the total or partial loss of the products owing to a fortuitous event, ordinary or extraordinary, foreseen or unforeseen.

"Eleventh. Every betterment, of whatever class or nature, made by the lessee upon the leased land, shall accrue to the owner, and no indemnity need be paid by the owners on that account, when the former leaves the land, for any reason whatsoever.

"Twelfth. The lessee shall within the briefest time possible advise the lessors of any usurpation or adverse act performed or about to be performed by third persons upon the leased property, and shall be liable in damages for their neglect in this behalf to the owners of the land.

"The lessees of parcels abutting upon the boundaries of the property shall be bound to notify the owner of any defect they may note in the boundary marks, ditches, streams, etc.

"Thirteenth. Notwithstanding the foregoing clause, in case of mere disturbance of possession, the lessee shall bring the proper action to protect his own rights.

"Fourteenth. All expenses that the lessor may have to incur in order to enforce his right and compel the lessee to fulfill these stipulations, even if he should have to go to court for that purpose, shall be for the account of said lessee, who shall under no circumstances be allowed to avoid reimbursement.

"Signed and executed in duplicate at the undersigned's home in San Felipe Neri on the 15th of April, 1921. (Sgd.) M. GONZAGA, land-owner—witnesses: J. MENDIOLA, etc. (Sgd.) CIRILO ABELLA, lessee."

The defendant contends in his answer that the plaintiff's right to compel him to make the transfer of the land in question is not absolute, but conditional; that the conditions have not been complied with, but violated by the plaintiff, who made the last payment over a year after the obligation had become due, that is, on March 27, 1927, instead of March 5, 1926.

This case was heard in the Court of First Instance of Rizal; both parties adduced evidence and the court entered a decision requiring the defendant: (a) To execute the deed of transfer of the land described in the complaint to the plaintiff, after redeeming it through the payment of the amount of the mortgage to the Mandaluyong Estate, i. e., about P21,000; (b) to pay the plaintiff the sum of P21,000 or the proportional part thereof necessary to redeem the land described in this complaint from the mortgage to the Mandaluyong Estate, if the defendant should fail to pay said Mandaluyong Estate the amount of the aforementioned mortgage; and (c) to pay the costs of the action.

The defendant appealed from this judgment, alleging that the trial court erred:

- In not finding that the plaintiff has no cause of action against the defendant.
- In holding that the special contract of lease, Exhibit A, is a contract of sale on installments.
- In applying to this case the rulings cited in its decision.

- In requiring the defendant to redeem the mortgage on the land in question, or else to indemnify the plaintiff for the amount he may pay in redeeming it himself.
- In rendering judgment against the defendant.
- In denying the defendant's motion for a new trial."

The parties submitted the following agreed statement of facts to the court for consideration:

- That about the month of February, 1921, the defendant, Mariano Gonzaga, agreed to purchase 70 parcels of land from the Mandaluyong Estate, including lot No. 9. with an area of 17,558 square meters, which is the subject matter of the complaint, and is a subdivision of lot No. 18; its technical description may be found in certificate of title No. 7379, issued by the registrar of deeds of the Province of Rizal.
- That in pursuance of the agreement with the owners of the estate, Mr. Gonzaga made several payments on account of said seventy parcels of land.
- That on December 16, 1922, Mr. Gonzaga agreed with the owners of the Mandaluyong Estate to apply thirteen thousand five hundred sixty-three pesos and twenty centavos (P13,563.20), of the amount he had paid to the payment in full of the price of twenty-two parcels of land, and these terms were set out in the deed executed on that date, December 16, 1922.
- That it was also agreed to apply the six hundred fifty-two pesos and fifty centavos (P652.50) the balance of the amount paid by Gonzaga, to the payment of a portion of the price of the 48 remaining parcels of land, another deed of sale having been executed in favor of said Mr. Gonzaga by Messrs. Whitaker and Ortigas, before the Notary D. Geronimo J. Garcia, on the same day, December 16, 1922, whereby Mr. Gonzaga bound himself to pay the balance of the price, or fifty-five thousand three hundred fifty-two pesos (P55,352) as follows: P18,909.26 in May, 1923; P11,930.08 in May, 1924; P11,930 in May, 1925; and P11,930.08 in May, 1926, all of which is set forth in the certificates of title issued by the registrar of deeds of the Province of Rizal to the defendant Mariano Gonzaga, which also mentioned the mortgage on said 48 parcels to secure the payment of the debt with interest.
- That the defendant Mariano Gonzaga is at present indebted to Messrs. Whitaker and Ortigas for principal and interest computed until December 31, 1929, in the sum of twenty-one thousand and two pesos and sixty-nine centavos (P21,002.69), as the outstanding balance to be paid upon the mortgage mentioned in the preceding paragraph.
- That Messrs. Whitaker and Ortigas, as mortgagees have cancelled the mortgage upon several of the 48 parcels of land mortgaged to them by the defendant Mariano Gonzaga, in view of the fact that a part of the amount of the mortgage has been paid up.
- That among the parcels of land still subject to the mortgage given by the defendant Mariano Gonzaga to Messrs. Whitaker and Ortigas, is lot No. 9, a subdivision of lot No. 18, containing 17,558 square meters, which is the land here in question, the technical description of which may be found in certificate of title No. 7379 issued by the registrar of deeds of the Province of Rizal."

The decision of this case depends upon the interpretation of the contract, Exhibit A, quoted above. The plaintiff contends that it is a contract of sale on installments, while the defendant holds that it is really a contract of lease. If the contract is a lease, it is plain that the plaintiff has no right to the relief he seeks; but if the contract is a sale on installments and the plaintiff has paid all the installments, it is obvious he has a right to demand that the defendant execute the proper deed to transfer the ownership to him.

Upon this point the trial court held in its judgment after an examination of the evidence that the contract in question is clearly a sale on installments, and we believe it was quite right in so holding. The document, Exhibit

A, is entitled "Special Contract of Lease," and the special quality consists in the stipulation found in clause IV, to wit: that in consideration of the sum of P1,392.92 which the plaintiff had just paid to the defendant, and of his promise to pay the rental of the remaining 19 quarters within the time stipulated, the owner bound himself at the termination of said contract to transfer to the tenant free of charge the full ownership of the property leased, provided the said tenant has paid all those installments. If the contract were really a lease, we are at a loss to explain how such a clause was inserted therein. If we take into account the other condition that the expenses of surveying, fixing the boundaries, registering the title and other expenses should be for the account of the tenant, the fact that in the five receipts, Exhibits C, D, E, F, and G, the defendant himself stated that the amounts paid were on account of the first, second, third, fourth, and fifth installments, and the further fact that in his answer the defendant filed no claim for alleged rental of the land subsequent to the year 1927, when the plaintiff paid the last installment, we arrive at the inevitable conclusion that although in the contract Exhibit A the usual words "lease," "lessee," and "lessor" were employed, that is no obstacle to holding, as we do hereby hold, that said contract was a sale on installments, for such was the evident intention of the parties in entering into said contract. (Art. 1281, par. 2, of the Civil Code, as interpreted by this court in the cases of Reyes vs. Limjap, 15 Phil., 420; and De la Vega vs. Ballilos, 34 Phil., 683.)

As we understand the evidence, the land in question was a part of the estate denominated the Mandaluyong Estate. The defendant-appellant had an understanding with the owners to purchase a large tract of it including the land now in question. Pending proceedings for the registration of the land which the defendant desired to purchase, he entered into an agreement with the plaintiff evidenced by the contract Exhibit A, called "Special Contract of Lease." The parties had agreed upon the sale of the land for about P7,000. The plaintiff then paid P1,392.92 (Exhibit B), and the remainder was to be paid in five yearly installments of P1,114.34 each. These installments were paid, according to Exhibits C, D, E, F, and G. Some of these yearly payments were delayed somewhat, but the defendant admitted the payment, according to said receipts, for, as the plaintiff stated, he agreed to pay ten per cent interest upon the arrearage, and this statement was admitted by the court below.

It is argued that at the time when the contract Exhibit A was entered into (April 15, 1921), the defendant was not the owner of the land in question, inasmuch as he acquired the ownership on December 16, 1922, as shown by a deed executed on that date to him by virtue of which certificate of title No. 7379 was issued to him, and that he could not bind himself to transfer the ownership of the land after the period of five years of the alleged contract of lease. In this contract of lease the defendant, Mariano Gonzaga, it will be observed, considered himself the owner of the land, and in this capacity he entered into the contract; therefore, he cannot now be heard to say that he was not the owner of said land, after inducing the plaintiff to believe that he was. But assuming that when the contract Exhibit A was entered into the title to the land had not yet been issued to the defendant, and that he subsequently acquired the ownership thereof, the doctrine laid down in *Llacer vs. Munoz de Bustillo* and *Achaval* (12 Phil., 328) must be followed, to the effect that when a person who is not the owner of a piece of land conveys it to another, and thereafter acquires title to it, such subsequent ownership gives effect to the conveyance.

Since the plaintiff has fulfilled his obligations under that contract of sale called "Special Contract of Lease," we are of the opinion that he may compel the defendant to execute the proper deed of transfer of the full ownership of the property in question.

But as it appears from paragraph V of the agreed statement of facts that the property in question is at present subject to a mortgage given by said defendant to the owners of the Mandaluyong Estate, Whitaker and Ortigas, said defendant must first free the land of this encumbrance, and then execute the proper deed of conveyance of the property to the plaintiff.

Wherefore, the judgment appealed from is hereby affirmed, with costs against the appellant. So ordered.

Johnson, Street, Malcolm, Ostrand, Rormmldez, Villa-Real, and Imperial, JJ., concur.

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