

JESUS TERAN, PLAINTIFF AND APPELLEE, VS. FRANCISCA VILLANUEVA, VIUDA DE RIOSA ET AL., DEFENDANTS AND APPEL-LANTS.

G.R. No. 34697. March 26, 1932

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

On October 6, 1928, the parties in this case executed the deed of sale Exhibit A, whereby the defendants sold to the plaintiff for P4,000 the parcel of land therein described as containing an area of 34 hectares, 52 ares, and 43 centares.

The plaintiff brought this action for rescission of the contract, with damages, upon discovering that the parcel of land contained only about ten hectares.

The trial court found no evidence of bad faith on the part of the defendants, and we agree with this finding. This land, with the same area stated in the contract, was inherited by the defendants from their late father, Mariano Villanueva; and the same area appears in the tax declaration given to the plaintiff by an agent of the defendants, named Rafael Villanueva. The latter, accompanied by the plaintiff, inspected the land. Villanueva pointed out some of the boundaries, as they did not go over all of them. Without further investigating the area of the land, the plaintiff agreed to purchase it for the sum of four thousand pesos, paying the amount and taking possession thereof.

The plaintiff alleges that after the 1928 harvest he discovered that the boundaries pointed out to him by Rafael Villanueva were not the real ones, and, in order to ascertain the exact area of the land, he went to the cadastral office in Malinao and got a sketch of the property (Exh. B), which shows that the land in question contains only ten hectares, and not thirty-four, as appears in the deed of sale.

In view of these facts, the plaintiff now seeks to rescind the contract on the ground that the property contains a smaller area than that stated in the deed of sale. Evidently this is a sale of real estate with area and boundaries given, for a lump sum and not so much per unit of measure, provided for in article 1471 of the Civil Code.

The plaintiff's allegation that Rafael Villanueva did not point out to him the real boundaries, is but a half-truth; for, as has been stated, when the property was inspected, Villanueva did not go over all the boundaries of the land, as testified to by Leopoldo Teran. It is true that the owners of the adjoining lands mentioned in Exhibit B are different from those mentioned in Exhibit A; but there is nothing in the record to show that the property described in the deed Exhibit A was not delivered to the plaintiff. The names of the adjoining landowners may often change, for obvious reasons; but the plaintiff's evidence does not establish that outside the boundaries mentioned in the deed Exhibit A there are portions of the property not yet delivered to him, or that all the land included within those boundaries have not been delivered to the vendee.

According to Manresa and Scsevola, illustrious commentators of the Civil Code, whenever a certain real estate is

sold for a lump sum (case 1, article 1471) the rule in law is that there shall be no increase or decrease in price even if the area or extent is found to be more or less than that stated in the contract; but, if the vendor cannot deliver to the vendee all that is included within the boundaries stated in the contract the latter has the option either to reduce the price in proportion to the deficiency, or to set aside the contract. (See Comm. Civ. Code, Manresa, ed. of 1905, vol. 10, pp. 146-148; Scsevola, vol. 23, pp. 500-503.) In this case the Civil Code presumes that the purchaser had in mind a determinate piece of land, and that he ascertained its area and quality before the contract was perfected. If he did not do so, or if, having done so, he made no objection and consented to the transaction, he can blame no one but himself; and, because, as Professor An-tonio Gomez says, it is presumed that he intended to buy a determinate object, any proof of misrepresentation will not avail him, neither will it vitiate the transaction. (Scsevola, supra.)

Manresa expresses himself in similar terms, saying that, "if the sale was made for a lump sum, the cause of the contract is the thing sold, irrespective of area or quantity, the real estate as defined by the stipulated boundaries, known in law as the *cuerpo cierto*. * * * If all that is included within the stipulated boundaries is not delivered, then the object of the contract, its cause so far as the vendee is concerned, is not delivered: hence, he is entitled to rescind it. He may however think (and of this there can be no judge but himself), that although he did not receive the land within the stipulated boundaries, he would like to have it: hence, his right to enforce the contract with the corresponding decrease in price as provided in article 1471."

Furthermore, in *Azarraga vs. Gay* (52 Phil., 599), it was held:

"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.

"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."

In *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 plaintiff had ample opportunity to investigate the conditions of the land he was purchasing, without the defendant's doing anything to prevent him from making as many inquiries as he deemed expedient, for which reason he cannot now allege that the vendors made false representations. (*National Cash Register Co. vs. Townsend*, 137 N. C., 515.) The same doctrine is upheld by the courts of the United States, in the following case among others: "Mis-representations 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.)

The Spanish cases decided the matter in the same way.

Dona Dolores Amoros Soler brought suit against Francisco Gisbert Richart to recover two parcels of land which, she alleged, were lacking from the property her brother

Francisco sold her. The civil branch of the Valencia Audience decided against the plaintiff, who appealed to the Supreme Court. In dismissing the appeal, the Supreme Court held that, "since the vendee has all the land included within the boundaries mentioned in the titles shown to the bidders at the auction sale, the trial court must be held to have rightly applied article 1471 of the Civil Code in its decision, if the stipulated price was fixed in relation to the area of the land or cuerpo cierto which had to be, or was delivered to the vendee." (Decision of the Supreme Court of April 20th, published June 2, 1913.)

Francisco Fernandez Parra filed a complaint against Pedro Joaquin del Portillo to recover some parcels of land which formed part of those which he had sold to the latter. The civil branch of the Albacete Audience decided against the plaintiff, and on appeal this judgment was affirmed by the Supreme Court, which held that, "as the court found that the parcels of land which the plaintiff sought to recover were within the boundaries of the property sold as a cuerpo cierto, and that the sale was made for a lump sum, and not at a certain price for each unit of measure, it did not violate article 1471 of the Civil Code in absolving the vendee from the complaint." (Decision of the Supreme Court of July 2, 1914, published January 4, 1915.)

Martinez Ruiz (ElCodigo Civil, 2d ed., vol. XV, pp. 298-299) proposes the following question: If real estate is sold for a lump sum and not at so much per unit of measure, may the vendee allege error in giving consent, based upon its inferior quality or deficiency in area?

The Supreme Court decided this question negatively in its decision dated May 9, 1914.

By a deed of August 21, 1901, Mariano de Cieza sold a piece of property 204 fanegas in area for 35,000 pesetas to Bernardino Rodriguez. Several years later Rodriguez brought suit against the Cieza heirs to annul the contract on the ground of misrepresentation in the deed of sale, with reference to the area, which was less than that stated, and not of the first-class quality, so that the price fixed was exorbitant and unjust —according to the data obtained, it should have been less than one-third of that shown in the contract. An answer was filed and the Audience of Valladolid absolved the defendants, whereupon Rodriguez appealed, invoking articles 1265 and 1266 of the Civil Code which, he contended, under the first assignment of error, had been violated, in that the trial court had not held the contract of sale void due to error in the subject matter and principal conditions of the transaction; for the vendee had believed, upon the strength of statements made by the vendor and other persons connected with the sale, and of the deed of sale, that he was getting a piece of land of good quality from which, by employing capital and labor, he would reap a legitimate return, which however, he failed to realize. The Supreme Court dismissed the appeal, "inasmuch as the error which invalidates contractual consent must, in order to effect nullity, necessarily relate to the very substance or the essential qualities of the thing agreed upon, according to a correct understanding of articles 1265 and 1266 of the Civil Code; and this being granted, the first and second grounds are untenable, inasmuch as when the court a quo held, from the evidence adduced, that there was no such error, against the contention of the appellant, who had the burden of proof to show the contrary, it acted correctly because the property appears to have been sold for a lump sum, thereby excluding every argument about quality and area."

In Irureta Goyena vs. Tambunting (1 Phil., 490), the matter dealt with was the sale of a piece of land and the building thereon, situated at No. 20 San Jose Street, Ermita, Manila. This land contained 152.46 square meters. The vendee signed a private document stating that he had purchased of Francisco Irureta Goyena a lot at No. 20 San Jose Street, Ermita, for the sum of three thousand pesos, payable as soon as the deed of sale was signed. The proper notarial document was drawn up, setting the price of the realty at P3,200. The vendee requested a

reduction be-cause the land did not have the area that the plaintiff had, through a broker, told him it contained. The vendor would not reduce the price, and hence the litigation between the parties, decided by the trial court in favor of the plaintiff. Upon appeal, the Supreme Court, applying article 1471 of the Civil Code, affirmed the judgment appealed from on the ground that the sale was made for a lump sum and not at so much per unit of measure.

In *Azarraga vs. Gay* (52 Phil., 599), Leodegario Azarraga sold two parcels of land to Maria Gay for the lump sum of P47,000 to be paid as provided in the contract. The contract recites that the parties agreed upon the sale of two parcels of land, the first containing 102 hectares, 67 ares, and 32 centares, and the second, 98 hectares, more or less, for the lump sum of P47,000 payable, partly in cash and partly in installments. Said two parcels are de-fined by means of the boundaries given in the contract. The defendant refused to pay the full stipulated price, alleging that the second parcel with an area of 98 hectares according to the deed of sale, had only 70 hectares, and therefore asked for a reduction of the price. The plaintiff refused to grant the request, and brought suit against the vendee to recover the whole price agreed upon. The court rendered judgment in favor of the plaintiff. On appeal, the Supreme Court, applying article 1471 of the Civil Code, affirmed the judgment appealed from, on the ground that the rule given in the second paragraph of article 1471 was not applicable to the case, because all the land con-tained within the given boundaries of the two parcels sold had been delivered to the vendee; the land contained within the boundaries of the property sold had not been broken up and the cuerpo cierto which is the object of the contract had all been delivered by the vendor, as he had undertaken to do. Wherefore, the vendor cannot claim anything should the area turn out to be greater than that stated in the deed; neither can the vendee, should the area of the second parcel prove to be much smaller.

In the case of *Asiain vs. Jalandoni* (45 Phil., 296), when the parties agreed upon the sale of the land there in ques-tion, they had in mind chiefly the area and quality of the land, the subject of the contract, as will be seen from the letter of Asiain dated May 6, 1920, in which, among other things, he said:

" 'DEAR BENJAMIN : I am in receipt of your letter and with regard to your statement that that parcel does not contain 21 hectares I do not believe. I bet anything that that part only which is planted with cane contains more than 20 hectares, I bet 2 against 1.

" 'If you agree, I would bet that you pay only one half, I am not a surveyor, but these days I had the pleasure to survey the land and I know more or less its area.

" 'Here we are not to deceive each other. If you like that parcel and if you want to buy it I will give you good propositions. I don't know where and how they learned that I was selling the hacienda and they made me a good offer, but as we do not want to part but with that parcel, hence my propositions are the following, in view of the time that has elapsed and the progress of the cane.

" 'I assure (aseguro) that there are 2,000 piculs and sell on that basis, provided that the cane is milled in due time. In case the sugar does not amount to 2,000 piculs, I will pay in sugar all such amount as will be necessary to com-plete the 2,000 but if after milling the cane, as I say, there is an excess over 2,000 piculs, all the excess shall be mine. So that if you like, I make the sale for the same price that we talked about and the same conditions, not a dime more or less.' "

And also from the written memorandum signed by both contracting parties, containing among other things the fol-lowing :

" 'Purchase of land of Mr.' Luis Asiain and his wife Maria Cadenas, by B. Jalandoni, containing 25 hectares more or less of land bounded by property of the purchaser, with its corresponding crop, estimated at 2,000 piculs, the total value of which is 55 thousand. The price is to be paid by paying 30 thousand at the signing of the document, and 25 thousand within one year with interest at the rate of 10 per cent.' "

In accordance with the foregoing memorandum the deed of sale was executed in the City of Iloilo, the parties stipulating among other things, the following:

" '(1) That Luis Asiain does hereby promise and bind himself to sell to Benjamin Jalandoni a parcel of land of the hacienda "Maria" of the aforesaid Luis Asiain, situated in the municipality of La Carlota, Province of Occidental Negros, P. I.

" '(2) That Benjamin Jalandoni does hereby promise and bind himself to purchase the aforesaid parcel of land in the sum of P55,000 upon certain conditions specified in a memorandum signed by the parties which is in the hands of Attorneys Padilla & Trefias.' "

Jalandoni then took possession of the land, milled the cane at La Carlota Central, from which he realized 800 piculs and 23 cates of centrifugal sugar. And after he had secured from Asiain the certificate of title, he had a surveyor measure the land, which was found to contain only 18 hec-tares, 54 ares, and 22 centares. Jalandoni had paid P30,000 leaving an unpaid balance of P25,000 of the purchase price of P55,000 stipulated in the contract. Asiain sued to re-cover the balance from Jalandoni. The competent court declared the deed of sale void, absolved the defendant from paying P25,000 and ordered the parties to return what they had received under the contract.

Upon appeal to the Supreme Court, the judgment was affirmed on the ground that both parties had acted by a mutual mistake.

Comparing the facts in that case of Asiain with those before us now, we note a fundamental difference: In that case the vendor undertook to deliver to the vendee a parcel of land some 25 hectares in area and of such a quality as to be able to produce 2,000 piculs of centrifugal sugar. The vendee, in turn, agreed to buy said parcel of land with the understanding that it contained that area and was of the quality guaranteed by the vendor. Inasmuch as the land had neither the area nor the quality the vendor had assured the vendee it had, it is clear the latter was entitled to re-scind the contract, upon the strength of the authorities cited in the opinion of the court. We believe that Jalandoni was entitled to rescind that contract, inasmuch as the ven-dor did not deliver a parcel of land of the area and quality stipulated in the contract.

In the present case the parties did not consider the area as an essential element of the contract. There is no evi-dence of the negotiation leading up to the sale of the land, except that the parties executed the deed Exhibit A. There is no evidence of record that the parties fixed the price at so much per hectare. If the plaintiff wanted to buy the land at so much per unit of measure, he should have so stated in the contract. The plaintiff testified that one of the defendants, Francisca Villanueva, signified her willing-ness to set aside the contract in case there was a considerable difference in area. But in her letter Exhibit E-I, this de-fendant stated that she had to wait for the decision of her sister or the latter's husband before acting upon the plain-tiff's claim. We believe that the most that can be inferred from such a statement is that she was disposed to settle the case with a view to avoiding litigation; but this does not mean that the parties agreed to fix the price of the land at so much per unit of measure.

For the foregoing considerations, the judgment appealed from is reversed, and it is held that the contract Exhibit A between the parties is valid and binding upon them. Wherefore, the defendants are absolved from the complaint without special pronouncement of costs. So ordered.

Avancena, C. J., Johnson, Street, Malcolm, Ostrand, Romudldez, and Villa-Real, JJ., concur.

Judgment reversed.

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