

CORNELIO CRUZ, PLAINTIFF AND APPELLANT, VS. PABLO REYES, DEFENDANT AND APPELLANT.*G. R. No. 35859. November 16, 1932*

Ponente: OSTRAND, J.

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This action was brought by the plaintiff to rescind a contract of sale of a parcel of land and to recover from the defendant the alleged price in the sum of P10,000, which appears to have been paid by the plaintiff to the defendant as consideration for the sale. After trial the court below reduced the sum of P10,000 to only P4,000, and both the plaintiff and the defendant appealed to this court.

The facts of the case are well stated by the trial court in its decision as follows:

"It is a proven fact that the defendant owed a certain, sum of money to the plaintiff, to pay which the former promised to sell to the latter, if he (defendant) obtained the Torrens title, a portion of twenty hectares of a parcel of land of greater area which he said he had in the municipality of San Jose, Province of Bulacan, the plaintiff to pay the difference, if any, in excess of the indebtedness. Time passed and the title was not obtained; in the meantime the indebtedness reached the sum of P4,000, and in that state of affairs, the defendant asked the plaintiff that at the rate of ₱500 per hectare the plaintiff might pay to said defendant the balance of the price of the twenty hectares, he, the defendant, on his part promising to procure the title to the land. Having accepted the proposition, the plaintiff caused his attorney, Jose E. Tolentino, to investigate the nature of the title which the defendant claimed to have over the land, and it was found to be a possessory information title inscribed in the registry in the name of Leon Zamora from whom the defendant purchased the said land, which is situated in Caybanban or Banban, of Santo Cristo, municipality of San Jose del Monte, Bulacan. The same attorney, Mr. Tolentino, acting in accordance with the instructions received from the defendant, prepared the deed, Exhibit A, whereby the said defendant sold to the plaintiff a portion of said land with an area of twenty hectares for the price of P10,000. On December 26, 1929, the parties signed the deed, ratifying it on the same date before notary Jose E. Tolentino. Sometime later, the plaintiff went to see the defendant in order to inquire of him whether he had already secured the title, as they had agreed that once the title was obtained the defendant would segregate the twenty hectares sold to the plaintiff. Inasmuch as the title had not been secured in spite, of the time that had transpired since the date of the sale, the plaintiff, not desiring to wait any longer, in May, 1930, decided to survey and mark the limits of the portion purchased by him, advising the defendant that the surveyor, Telesforo Bayani, would segregate the twenty hectares mentioned in the contract ; but on the day appointed the defendant disappeared, and only the plaintiff with his wife, Ciriaca Serrano, and the surveyor, Bayani, went to said land. The surveyor could not survey the land because the people who were there objected, and Bayani did not think it prudent to effect the survey. The following month, that is to say, on June 23, 1950, the plaintiff with his wife and another surveyor named Ricardo Aquino returned to the land, but this surveyor could survey no more than thirteen hectares, which are marked in the sketch Exhibit C with the letters XXXX, because the homesteaders Macario Mendoza, Juan Villanueva and C. M. Santos threatened to attack them with bolos if they proceeded with the survey of the land sold, which is situated east of the creek Kay Salacot. With that property the claimant Macario Mendoza had a rice plantation. Aquino prepared the plan of the portion which he could survey, Exhibit G, but upon being submitted to the Bureau of Lands it was

disapproved, the same Bureau having disapproved the plan of the defendant on June 30, 1928. In view of this, the attorneys of the plaintiff wrote a letter, of which Exhibit F is a copy, to the defendant on June 30, 1930, the original of which the defendant admitted having received; in said letter, the defendant was advised that the plaintiff had attempted to take possession of the land sold by him (defendant) and had encountered* the opposition of adverse claimants. The letter ended with this paragraph: 'If we do not hear from you on or before July 5, 1930, we shall take it that you have no title, or do not care to defend your title, to the land in question, and shall, therefore, be compelled to take the necessary action in the court against you to vindicate our client's right.'

The defendant did not answer that letter, and the court so believes, notwithstanding that he testified that he did answer it, not to the attorneys but to the plaintiff himself, saying that he was disposed to defend his title.

"It appears from Exhibit B, which is a certified copy of the report submitted on October 11, 1929, by the assistant inspector of public lands, Nemesio T. Montes, with reference to the inspection made of the larger piece of land, which the defendant had applied for as homestead, as well as from the sketch Exhibit C cited in said report, that the land out of which was to be segregated the twenty hectares sold to the plaintiff was occupied by other persons who had applied for homesteads, some of whom had already obtained title and others had their applications pending approval. On the date of said report, October 11, 1929, a portion on the western part, that is to say, that marked on the sketch Exhibit G with the letters X and XXXX seemed not to have been occupied by third persons, but it is a proven fact that when in May and June, 1930, the plaintiff went to segregate the twenty hectares bought by him, he found a great part, if not all of said portion, was occupied and cultivated by the claimants who had applied for, homesteads.

"From what has been said it clearly appears that when on December 26, 1929, the defendant executed in favor of the plaintiff the deed of sale of the twenty hectares of land, he knew that his plan had been disapproved on June 30, 1928, that it is therefore to be presumed that he also knew that the surveyor (inspector) Montes in his report Exhibit B arrived at the conclusion that the land applied for by said defendant was public land and that the occupants had a preferred right to acquire title under their respective application, and also knew that when in May and June, 1930, the plaintiff attempted to survey and take possession of the twenty hectares purchased by him, that portion was occupied and planted in its greater part by Macario Mendoza and others. The complaint for rescission of the sale and return of the price is therefore fully justified.

"But the defendant attempted to prove by his own testimony that the transfer which he executed of the twenty hectares in favor of the plaintiff was not a sale but a donation which he made in consideration, he says, of the good friendship which existed between them and because his daughters lived for a long time as boarders in the house of the plaintiff whom he called compadre' as a token of esteem and because the plaintiff also promised to help him as to the expenses of obtaining the title to said twenty hectares of land, which expenses amounted to about P1500. When the defendant testified during the trial on the morning of the 25th instant (March 25, 1931,) he said that notwithstanding that the act executed by him was a donation, he agreed to state in the deed, Exhibit A, that it was a contract of sale and that the price was P10,000, because the plaintiff so requested him in order to make it appear that the land was of great value so that he could easily obtain money upon it; but, he affirmed, aside from a few sums for land taxes, he had received no money from the plaintiff. In the afternoon session, however, he testified that he signed the deed, Exhibit A, without knowing its contents because he does not understand English; that he believed that it was an instrument of donation and that he was of that belief until he received the letter, Exhibit F, from the attorneys of the plaintiff.

"Because of the self-contradiction incurred by the defendant and in view of the proofs adduced by the plaintiff, the court has not the least doubt that the transfer of the twenty hectares of land was made by the defendant by way of sale and not donation." The bad faith in selling the land in question to the plaintiff was fully established by the

defendant's failure to deliver the possession of the land to the plaintiff after the said defendant had received the purchase price, notwithstanding repeated verbal demands followed by a written formal demand made by the plaintiff through his attorneys.

But the defendant did not even have the courage to accompany the plaintiff and his wife to the land in question; on the contrary, he went away on the day when plaintiff requested him to accompany the plaintiff and his wife together with the surveyor to said land for the purpose of marking the limits and taking possession thereof. This is another example of the defendant's bad faith.

It further appears that the defendant did not inform the plaintiff of the disapproval of the plan by the Director of Lands, but on the contrary, made plaintiff believe that the said defendant was applying for the registration of said land under the Land Registration Act. Being a surveyor, the defendant would hardly apply for the registration of said parcel of land without a plan, it having been disapproved by the Director of Lands because the land covered thereby, appeared to be public land.

It may also be noted that the defendant admitted on cross-examination that he obtained money from one Angel Santiago under the same promise of selling to him a portion of the very land which he tried to sell to the plaintiff herein.

The defendant is sufficiently intelligent; he is a surveyor and is not without experience, and he admits that he had borrowed money from the plaintiff. The uncontradicted testimony of Ciriaca Serrano, the wife of the plaintiff, is that at the time the deed, Exhibit A, was about to be executed, the defendant's indebtedness to the plaintiff had already reached the sum of P4,000. Ciriaca further testified that upon the signing of the said deed, she herself counted out the sum of P6,000 and paid it over to the defendant.

The notary public, Jose E. Tolentino, who prepared the deed, testified that while he was registering the document in his notarial book, he saw the delivery of the money, although he did not know the amount. As against that and the recital in the document itself, in which the defendant acknowledged the receipt of the sum of P10,000, there is no evidence to the contrary, except the self-contradictory and uncorroborated declaration of the defendant. His statements are evidently without truth and his only witness, Gregorio Bernardo, is equally unreliable. In fact, Gregorio is worse; he maintains that he has been in possession of the land in question from 1922 to 1930, but unfortunately, one Raymundo Mendoza had his homestead on that land; it was approved on April 28, 1917, and Mendoza was in possession until February, 1929, when he died. His son, Macario Mendoza, is still working on said land.

It is evident that the defendant was never in possession of any part of the land, and the so-called information posesoria is of no value. The defendant has failed "to comply with that which is incumbent upon him" (articles 1124 and 1504, Civil Code), and as a consequence, he must return to the plaintiff the full amount of the P10,000 with legal interest from the date of this complaint.

It being understood that the amount to be recovered by the plaintiff is increased to P10,000, with interest, the appealed judgment will be affirmed. With costs against the defendant. So ordered.

Street, Malcolm, Villa-Real, Hull, and Vickers, JJ., concur.

ABAD SANTOS, J.: I vote to affirm.

IMPERIAL, J.: I vote to affirm the judgment of the court below.

BUTTE, J.: I vote to affirm the judgment without modification.

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