

RUFO ARCENAS, PLAINTIFF AND APPELLANT, VS. INOCENCIO DEL ROSARIO ET AL., DEFENDANTS. INOCENCIO DEL ROSARIO, CROSS-PLAINTIFF AND APPELLANT, ESPERANZA CORDOVA AND MATIAS SEVERING,...*G.R. No. 45295. April 10, 1939*

Ponente: CONCEPCION, J.

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This appeal has been taken: (1) from an order of June 17, 1936, sustaining a demurrer and dismissing the complaint with the statement that the latter is not susceptible of amendment, and (2) from another order of the same date dismissing the cross-complaint of the defendant Inocencio del Rosario against his codefendants Esperanza Cordova and Matias Severino because of the dismissal of the principal complaint.

THE COMPLAINT AND THE DEMURRER THERETO

The complaint was filed by Rufo Arcenas against Inocencio del Rosario, Esperanza Cordova, Matias Severino and the registrar of deeds Salvador Villaruz. According to its allegations, the defendant Inocencio del Rosario sold to the plaintiff, with the right of repurchase, on January 1, 1923, lot No. 3971 of the Capiz cadastre, covered by original certificate of title No. 5130. By virtue of said sale, the plaintiff took possession of the land on the date of the deed of sale. Inocencio del Rosario had not exercise his right of repurchase within the stipulated five-year period which expired on January 1, 1928, or at any time thereafter. The plaintiff, thereupon, asked the registrar of deeds to issue to him the transfer certificate of title to said lot, for which purpose he presented the aforesaid deed of sale and an affidavit to the effect that the defendant Inocencio del Rosario had not availed himself of his right of repurchase. The registrar of deeds refused to issue the transfer certificate of title.

Paragraph 6 of the complaint reads:

"That subsequently, that is, on May 31, 1934, the defendant Inocencio del Rosario with full knowledge that he is no longer the owner or possessor of the land in question, lot No. 3971 of the Capiz cadastre, in bad faith and with the intention of defrauding the plaintiff Rufo Arcenas, notwithstanding the express warnings of the plaintiff and the assurances given by said defendant Inocencio del Rosario to the plaintiff not to sell, convey, transfer or otherwise alienate and encumber the said parcel of land, lot No. 3971, nevertheless said defendant Inocencio del Rosario, made an absolute sale, conveyance and transfer thereof to the other defendant Esperanza Cordova assisted by her husband Matias Severino, and said spouses, with full knowledge that said land had already been sold long before, with the right of repurchase, by the said defendant Inocencio del Rosario to the plaintiff Rufo Arcenas and that ownership thereof had consolidated in the latter, and acting in bad faith and with the intention of defrauding the plaintiff Rufo Arcenas, against the warnings of the said plaintiff and in breach of the promises of both defendants Inocencio del Rosario, on the one hand, and Esperanza Cordova and Matias Severino, on the other, to repurchase the land for P700, paying this amount to the plaintiff Rufo Arcenas, should he consent to said repurchase, before entering into any transaction over the said land, the said spouses purchased the land in question and received the deed of sale, conveyance and

transfer executed in their favor by the defendant Inocencio del Rosario, and they deliberately and maliciously hastened the legislation thereof in the office of the registrar of deeds of the Province of Capiz, Salvador Villaruz, the herein defendant, who, notwithstanding the plaintiff's protest and the notice of lis pendens made by him, registered the same and issued a transfer certificate of title No. 2186 corresponding to lot No. 3971 which is the subject matter of this complaint, in favor and in the name of the defendant Esperanza Cordova married to Matias Severino."

The complaint concludes with the plaintiff's prayer that he be declared the owner of the aforesaid lot No. 3971 of the Capiz cadastre, and that the deed of sale executed by the defendant Inocencio del Rosario in favor of the spouses Esperanza Cordova and Matias Severino be declared null and void, with other pronouncements in favor of the plaintiff.

The defendants Esperanza Cordova and Matias Severino interposed a demurrer to the complaint on the ground that the facts alleged therein do not constitute a cause of action because, so they argue, the deed of sale with the right of repurchase executed by Inocencio del Rosario in favor of said defendant Esperanza Cordova was duly registered, a certificate of title having been issued in her name, whereas, the deed of sale in favor of the plaintiff Rufo Arcenas has never been registered in the registry of deeds.

The court sustained the demurrer and dismissed the complaint.

THE CROSS-COMPLAINT AND THE DEMURRER THERETO

The defendant Inocencio del Rosario filed his answer and a separate cross-complaint against the spouses Esperanza Cordova and Miatias Severino, alleging substantially that he notified said defendants that the land referred to in the complaint, which the said spouses attempted to buy, was already sold to the plaintiff for P700, with the right of repurchase within live years, and that said right was not exercised by me cross-plaintiff and the possession of the land was already delivered to the plaintiff. It is also alleged that the cross-defendants undertook to repurchase the questioned land from the plaintiff for P700, to be deducted from the price of P2,000 agreed upon with the cross-plaintiff, provided that the latter should execute without delay the deed of sale of the land, as was in fact done on May 31, 1934. The cross-defendants—continues the cross-complaint—in malicious breach of their obligations, did not repurchase the litigated land from the plaintiff, and they did not pay to the latter the sum of P700, nor to the cross-plaintiff the sale puce of the land, and in .bad faith and with the intention of defrauding the cross-plaintiff and the plaintiff, they caused the registration of the deed of sale executed in their favor in the office of the register of deeds of Capiz, and obtained the cancellation of the original certificate of title of the cross-plaintiff Inocencio del Rosario. In his prayer the cross-plaintiff asked for the rescission of the sale of the land made by and between the cross-plaintiff and the cross-defendants, and the cancellation of the transfer certificate of title issued in favor of said cross-defendants.

The latter interposed a demurrer to the cross-complaint on the ground that the facts alleged therein do not constitute a cause of action for the rescission of the said contract of purchase and sale, one of their arguments being that, inasmuch as there is no stipulation in the contract as to when the defendants should pay the stipulated price of P2,000, said price should be paid upon the delivery of the thing sold, and as under paragraph (b) of the complaint, the land sold has not yet been delivered to the purchasers, the cross-defendants, the latter are not guilty of any delay, wherefore, the cross-plaintiff has no right to rescind the aforesaid contract of purchase and sale.

Instead of ruling upon the aforesaid demurrer, the court dismissed the cross-complaint due to the dismissal of the principal complaint.

The two appealed orders of dismissal are clearly erroneous. With respect to the demurrer interposed to the complaint, it is true that when real property is the subject matter of a double sale, the purchaser who first registers

it in the registry becomes the owner thereof under the provision of article 1473 of the Civil Code; but this legal provision should not be understood in an absolute sense, nor does it constitute a ground to sustain the demurrer, because the rights conferred by said article upon one of the two purchasers of the same real property who has registered his title in the registry of deeds, do not come into being if the registration is not made in good faith. (*Leung Yee vs. F. L. Strong Machinery Co. and Williamson*, 37 Phil., 644.) And it is not only required that the purchaser of the real property who has it registered should have done so in good faith, but also for a valuable consideration. (*Tuason vs. Raymundo*, 23 Phil., 635, 637.)

In the instant case, the defendants Esperanza Cordova and Matias Severino, under the allegations of the complaint which should be deemed admitted, when they interposed a demurrer, were not purchasers in good faith, inasmuch as they knew that the lot in question had been sold by the defendant Inocencio del Rosario to the plaintiff with the right of repurchase and the said spouses undertook to repurchase the land by paying the plaintiff the price of P700 and the defendant Inocencio del Rosario the balance of P1,300 to complete the stipulated price of P2,000; however, according to the allegations of the said complaint, said spouses did not pay to the plaintiff the amount of P700, or that of P1,300 to the defendant Inocencio del Rosario, and in bad faith registered their deed in the registry of deeds.

One of the errors committed by the court is the dismissal of the complaint without giving the plaintiff an opportunity to amend it, in violation of section 101 of the Code of Civil Procedure providing that when the court sustains a demurrer, the party whose pleading is thus adjudged defective may amend it within a time to be fixed by the court.

The statement made in the order of dismissal to the effect that the complaint is not susceptible of amendment is clearly irregular.

The order dismissing the cross-complaint of Inocencio del Rosario against his codefendants Esperanza Cordova and Matias Severino, is likewise erroneous because instead of ruling upon the demurrer interposed to said cross-complaint, the court dismissed the same on the sole ground that the principal complaint had been dismissed. Even assuming that the complaint in the present case cannot be maintained, the cross-complaint of Inocencio del Rosario may stand, the best evidence of this being the fact that in the same order of dismissal, the court reserved to the cross-plaintiff Inocencio del Rosario the right to bring the action which he may deem proper against the cross-defendants Esperanza Cordova and Matias Severino, for the recovery of the balance of the indebtedness (that is, the stipulated price of the sale of the land), or for the rescission of the contract of sale—a reservation which could not have been made if the dismissal of the principal complaint were a bar to the continuation, substantiation and decision of the cross-complaint.

The appealed orders are reversed, the demurrers interposed to the complaint and cross-complaint are overruled, and it is ordered that the case be returned to the court of origin for further proceedings, with the costs of this instance to the appellees. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Moran, JJ., concur.

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