

TAN TIAH (ALIAS T. SUYA), PETITIONER, VS. YU JOSE (ALIAS JOSE Y. NAVARRO), RESPONDENT.

G.R. No. 45969. May 04, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal by way of certiorari taken by Tan Tiah (alias T. Suya), wherein he prays, on the grounds alleged therein, for the review of the decision rendered in the case by the Court of Appeals reversing: that of the Court of First Instance of Leyte, for the reversal thereof, and for the affirmance of the decision of said Court of First Instance.

As grounds for the allowance of the appeal, petitioner assigns the following alleged errors of law committed by said Court of Appeals in its decision, to wit:

"1. The Court of Appeals erred in finding in its decision, subject of the present petition for certiorari, that the 5th paragraph of the contract of lease Exhibit A establishes rights for the petitioner and for the respondent, which are antagonistic and, therefore, unenforceable by action.

"2. The Court of Appeals likewise erred in finding in its decision that the promise, if any, made by respondent to sell to petitioner the land in question is not enforceable by action for lack of a price.

"3. The Court of Appeals also erred in finding in its decision that the 5th paragraph of the contract of lease entered into by petitioner and respondent does not state two promises to buy and to sell which are mutually demandable.

"4. Lastly, the Court of Appeals erred in holding that the herein petitioner has no cause of action against defendant-respondent."

On May 14, 1923 petitioner and respondent entered into a contract of lease in the fifth clause of which, pertinent to the question at issue, provides:

"5th. That upon termination of the period of this contract, namely, ten years, the lessor shall have the option to buy the building or improvement which the lessee may have built upon the lots, reimbursing the latter ninety per cent (90%) of the original net cost of the construction; but should the lessor be unable or unwilling to buy said building or improvement, the income or rent derived therefrom shall be equally divided between said lessor and lessee, and the latter shall no longer have the obligation to pay the rent agreed upon for the lots in the second paragraph of this contract; provided, however, that the present contract, with the modification just mentioned, with respect to the income from the building and the rent from the lot, shall continue in force until the lessor buys the building or improvement or the lessee buys the land."

The judgment rendered by the Court of First Instance of Leyte and reversed by the Court of Appeals, which absolved the defendant is as follows:

"Wherefore, judgment is rendered sentencing defendant to buy the house of plaintiff or to sell to plaintiff the

land on which the latter's house is. built. Each of the parties must submit the name of a person to be appointed commissioner for the assessment and appraisal of the land on which plaintiff's house is built.

"Defendant is sentenced to pay the costs of the suit."

The main question to be decided in this appeal is whether plaintiff, as lessee, has a right, by virtue of the aforecited fifth clause of the contract of lease, to compel defendant, as lessor, to sell to him the land on which he built his house in accordance with said contract.

It will be seen that the lessor is given the preference of buying the building erected on the leased land at a price equivalent to 90 per cent of the original net cost of the construction upon the termination of the ten years fixed in the contract as the duration of the lease. As ten years have elapsed and the lessor has not exercised his right to buy the building, and has no intention to do so, may the lessee compel the lessor to sell to him the leased land? The lessee is not given the option to buy the land. The grant of said right may not be inferred from the conditional clause of paragraph 5 and from paragraph 4 of the contract since neither in the conditional clause aforecited nor in the fourth paragraph of the contract is the lessor bound to sell the questioned land to the lessee. Furthermore, in the said conditional clause the price which the lessee would have to pay should he decide to buy the land is not fixed. Article 1445 of the Civil Code provides that "By the contract of purchase and sale one of the contracting parties binds himself to deliver a determinate thing and the other to pay a certain price therefor in money or in something representing the same." According to article 1451, "a promise to sell or buy, when there is an agreement as to the thing and the price, entitles the contracting parties reciprocally to demand the fulfillment of the contract." And article 1447 of the same Code provides that in order that the price may be considered certain, it shall be sufficient that it be so in relation to some certain thing, or that its determination be left to the judgment of some particular person, and should the latter be unable or unwilling to fix the price, the contract shall be inoperative. And according to article 1449 of the same Code, the designation of the price can never be left to the determination of one of the contracting parties.

As we have said, a price certain which the lessee should pay the lessor for the land in case he should desire to buy it has not been fixed; neither has anything which may have a definite value or which may serve as a basis for the fixing of the price been designated. Also, no determinate person has been named to fix the price.

The price of the leased land not having been fixed and the lessor not having bound himself to sell it, the essential elements which give life to the contract are lacking. It follows that the lessee cannot compel the lessor to sell the leased land to him.

Having arrived at this conclusion, we do not find sufficient grounds for reversing the decision appealed from, which is hereby affirmed, with costs against the appellant.

Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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