

THE CARIDAD ESTATES, INC., PLAINTIFF AND APPELLEE, VS. PABLO SANTERO, DEFENDANT AND APPELLANT.*G.R. No. 47231. December 19, 1940*

Ponente: LAUREL, J.

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On November 28, 1934, the Caridad Estates, Inc., through its manager, Hammon H. Buck, leased to Pablo Santero cadastral lots Nos. 1080 B-1, 1080 B-2 and 1116 in the municipality of Cavite, Cavite, for one year for P2,200. Said lands were used for fishpond and salt bed purposes. About three months prior to the expiration of the contract of lease, or on August 24, 1935, the lessor sold the same lots to the lessee for P30,000, payable as follows: P1,500 on the execution of the agreement; P4,000 on or before December, 1935; P4,500 on or before March, 1936; and the remaining balance of P20,000 in ten years, each annual installment to be paid on or before the month of August of each year beginning 1937. In said contract (Exhibit A), the parties stipulated that should the vendee fail to make the payments agreed upon within sixty days of the date they fall due, the total balance shall become due and payable and recoverable by an action at law, or the vendor may recover possession of the property and consider any and all sums paid by the vendee forfeited.

On account of the purchase price of P30,000, the vendee, defendant-appellant here, made the following payments: P1,500 on August 12, 1935 (Exhibit 7), W35 on December 28, 1935 (Exhibit 8), P225 on December 31, 1935 (Exhibit 9), P2,460 on January 3, 1936 (Exhibits 10 and 11), P1,500 on May 1, 1936 (Exhibit 12), and P1,470 on May 3, 1936 (Exhibits 13 and 14). "As things thus stood, the amount outstanding in vendee's account as of March, 1936, was P2,445.20. The defendant-appellant claims that he offered to pay this amount on September 21, 1936, with check No. C-65060, but that plaintiff refused to accept payment on the ground that the contract of sale had been definitely cancelled since September 15, 1936, when the same lands were conveyed by sale to Triston Sison. On the other hand, it is alleged by plaintiff-appellee that on August 31, 1936, its general manager by formal communication (Exhibit B), advised the defendant of the revocation of the contract of sale and asked the latter to vacate the premises immediately thereafter.

As the defendant-appellant would not surrender possession of the lands in question, the Caridad Estates, Inc., on October 2, 1936, filed a complaint for illegal detainer and recovery of rentals against Pablo Santero in the justice of the peace court of Cavite. The defendant, on January 27, 1937, submitted his answer, the principal argument of which being that the justice of the peace court was without jurisdiction to entertain the action as it involved, besides the question of ownership, a contract of P30,000. On May 28, 1937, the court rendered its decision ordering the defendant to surrender the property in question, and to pay the plaintiff, for its use and occupation, a monthly rental of P200, beginning September 16, 1936, until actual delivery, with legal interest from the commencement of the suit.

Defendant-appellant brought the case on appeal to the Court of First Instance which affirmed the ruling of the justice of the peace court, in its decision of December 29, 1937. The dispositive part of the decision reads:

"En virtud de todo lo expuesto, el Juzgado condena al demandado Pablo Santero a restituir la posesión de las propiedades descritas en la demanda a la demandante Garidad Estates of Cavite, Inc., manteniendo así su derecho de posesión sobre las referidas propiedades adquirido desde el 13 de septiembre de 1937, en virtud de la orden de ejecución dictada por este Juzgado por falta de pago de las mensualidades especificadas en la sentencia apelada del Juzgado de Paz. Se condena también a dicho demandado a pagar a dicha demandante la cantidad de doscientos pesos (P200) mensuales por el uso y ocupación de las propiedades detentadas ilegalmente, a contar desde el día 16 de septiembre de 1936 y hasta el día 13 de septiembre de 1937, en que se hizo la entrega de su posesión a la demandante, con sus intereses legales y las costas del juicio."

His exception and motion for a new trial having been denied, defendant-appellant, on February 2, 1938, moved to declare the provincial sheriff in contempt of court for the reasons stated in his petition, and, on February 11, 1938, presented another motion praying for the dissolution of the order of execution issued by the justice of the peace court of Cavite on June 2, 1937. On March 22, 1938, the Court of First Instance disallowed the two motions of the defendant. From this judgment, the defendant appealed assigning the following alleged errors as committed by the trial court a quo in its decision, to wit:

"1. The lower court erred in holding that the contract of purchase and sale of the real property in question may be rescinded by the vendor-plaintiff on the mere failure of the vendee-defendant to complete the payment of the installment due during the month of March, 1936.

"2. The lower court erred in sustaining that the vendor-plaintiff could forfeit to his own benefit the whole sum of 77,590 paid by the defendant on account of the purchase price and apply it all to the rental of the land involved for the period from December, 1935 to August 31, 1936, or nine months.

"3. The lower court erred in holding that the plaintiff can institute this ejectment proceedings in the justice of the peace court before demand has been made by suit in the Court of First Instance for the rescission of the contract of purchase and sale of this real estate, or for the payment of what is due from the defendant.

"4. The lower court erred in holding that it has appellate jurisdiction over the case of ejectment, and that the justice of the peace court had original jurisdiction over this case.

"5. The lower court erred in holding that no extension of time has been granted to defendant to pay the balance of P2,445.20 of the installment of P4,500 due in the month of March, 1936, and that payment of this P2,445.20 may be refused by plaintiff after the term specified in the contract expired.

"6. The lower court erred in not giving to the defendant a new trial to enable him to prove damages sustained by him on account of the execution in January 28, 1938, of the order of attachment of June 2, 1937.

"7. The lower court erred in holding that it had no jurisdiction to discharge the order of attachment of June 2, 1937, issued by the justice of the peace court.

"8. The lower court erred in not discharging the order of attachment, in not absolving the defendant of this complaint and in not requiring the plaintiff to accept the payment of P2,445.20 tendered by defendant and in not assessing damages against the plaintiff, and in not crediting the defendant of the sum of P550 over payment of rental."

Notwithstanding that, as afore-transcribed, appellant pointed out eight errors as having been committed by the court below, there are, to our mind, only three important questions of law that stand to be resolved: (1) whether or not the provisions of the contract of sale (Exhibit A), more specifically paragraphs 3 and 4 thereof, violate those legal principles which condemn pacto commissorio; (2) whether or not the justice of the peace court of Cavite had jurisdiction to entertain the ejectment suit filed by the plaintiff; and (3) whether or not the Court of First Instance had legal authority to decree the discharge of the order of attachment issued by the justice of the peace court on June 2, 1937.

The first question to be decided is raised in the first and second assignments of errors. The attack of nullity is centered around paragraphs 3 and 4 of the contract of sale which, as appellant contends, ordain a procedure or mode of action basically and fundamentally pactum commissorium.

The pertinent portion of paragraph 4 provides as follows:

"* * * But if the said party of the second part should fail to make the payments above specified within sixty days of the date or dates stipulated in this agreement or neglect to repair any damage caused to the above described property within sixty days of formal notification of such damages by the party of the first part, then the total remaining purchase price shall become due and payable and recoverable by action at law, or the party of the first part, may, at its option, recover possession of the above described property in which case any and all sums paid by the party of the second part under the provisions of this contract shall be considered as rental for the use and occupancy of the property."

Paragraph 3 recites:

"The party of the second part acknowledges that he has received the above described property and all the improvements thereon in good condition and engages during the period of this contract to repair at his own expense any damage that may be caused to the said property or improvements through storm, fire or deterioration and in the event of failure to fulfill the terms of payment as above stated to faithfully comply with the penal clause here appended and in the event that the party of the first part should demand the return of the property on account of noncompliance with the terms of payment, to deliver possession of the said property and improvements thereon in good condition and repair."

As may be seen, paragraph 4 gives the vendor, if the vendee fails to make the specified payments, the option of (1) considering the total remaining purchase price due and payable and recoverable by an action at law or (2) recovering the possession of the property in which case any and all sums paid by the vendee shall be regarded as rental for the use and occupancy of the property. On the other hand, paragraph 3 obligates the vendee to deliver the possession of the property and the improvements thereon in good condition and repair in the event that the vendor should demand the return of the same on account of noncompliance with the terms and conditions of payment. It is quite plain, therefore, that the course followed by the vendor in cancelling the contract and demanding the repossession of the property was well supported by, and employed in consonance with, the covenants embodied in their agreement. As the stipulations in question do not violate the prohibitive provisions of the law or defeat morals and public order, they constitute the law between the parties, binding and effectual upon them. (Arts. 1255 and 1278, Cjvil Code; Jimeno vs. Gacilago, 12 Phil., 16.)

Appellant, however, gives full reliance on article 1504 of the Civil Code, and vigorously argues that whatever be the provision of the contract, resolution may not be declared in the absence of a demand upon the vendee "either judicially or by a notarial act." A cursory fading of the provision would be the best refutation of the appellant's argument, as it leaves no doubt as to its inapplicability in the present instance. The contract (Exhibit A) is a sale in installment, in which the parties have laid down the procedure to be followed in the event the vendee failed to fulfill his obligation. There is, consequently, no occasion for the application of the requirements of article 1504.

Taking up the argument that the stipulations outlined in paragraphs 3 and 4 of the contract have resulted in a pactum commissoHum, we are of ttie opinion that the objection is without legal basis. Historically and in point of strict law, pactum commissoHum, referred to in Law 41, title 5, and Law 12, title 12 of the Fifth Partida, and included in articles 1859 and 1884 of the Civil Code, presupposes the existence of mortgage or pledge or that of antichresis. (Alcantara vs. Alinea et al., 8 Phil., 111.) Upon this account, it becomes hardly conceivable, although the argument has been employed here rather extravagantly, that the idea of pactum commtssorium should occur in the present contract of sale, considering that, it is admitted, the person to whom the property is forfeited is the real

and equitable owner of the same because title would not pass until the payment of the last installment. At most, the provisions in point, as the parties themselves have indicated in the contract, is a penal clause which carries the express waiver of the vendee to any and all sums he had paid when the vendor, upon his inability to comply with his duty, seeks to recover possession of the property, a conclusive recognition of the right of the vendor to said sums, and avoids unnecessary litigation designed to enforce fulfillment of the terms and conditions agreed upon. Said provisions are not unjust or inequitable and does not, as appellant contends, make the vendor unduly rich at his cost and expense. The charge that the amount forfeited greatly exceeded that which should be paid had the contract been one of lease loses its weight when we consider that during the years 1935 and 1936, when the agreement was in full force and effect, the price of salt rose high to bring big profits and returns.

The factual background of this case is not lacking in point of authority. In *The Manila Racing Club, Inc. vs. The Manila Jockey Club, et al.*, G. R. No. 46533, promulgated October 28, 1939, the condition of the contract was that "si el comprador no paga en su debido tiempo la cantidad correspondiente a cualquiera de los plazos, la vendedora podria declarar resuelto el contrato y confiscadas en su favor las cantidades pagadas." In deciding the main question raised on appeal, similar in all respects to the one which now confronts us, the court said: "Esta clausula de confiscacion de lo pagado parcialmente es valida. Tiene el caracter de clausula penal, que puede ser establecida legaimente por las partes (arts. 1152 y 1255 del Codigo Civil). En su doble objeto de asegurar el cumplimiento, no es contraria a la ley, ni a la moral, ni al orden publico, habiendo sido pactada voluntaria y conscientemente por las partes."

For aforesaid reasons, we find no merit in the first, second, and third assignment of errors.

The next question raised in the fourth assignment of error is whether or not the justice of the peace court of Cavite had jurisdiction to entertain the ejectment suit filed by the plaintiff. The controversy is reduced to interpretation of section 80 of the Code of Civil Procedure.

Section 80 provides:

"Anyone deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, and any landlord, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or determination of the right to hold possession, by virtue of any contract, express or implied, and the legal representative or assigns of any such landlord, vendor, vendee, or other person, shall at any time within one year after such unlawful deprivation or withholding of possession be entitled, as against the person or persons unlawfully withholding or depriving of possession, or against any person or persons claiming under them, to restitution of the land, building, and premises possession of which is unlawfully withheld, together with damages and costs: * * *" (Cf. sec. 1, Rule 72.)

In conformity with the above-copied provision, it is clear that any vendor against whom the possession of any land is unlawfully withheld after the expiration of the right to hold the same by virtue of an express contract, shall be entitled to restitution together with damages and costs, and when the action arising therefrom is commenced within one year from the time the acts of deprivation took place, the justice of the peace court of the place where the land is situated has exclusive jurisdiction to try the case. (*Monteblanco vs. Hinigaran Plantation, Inc.*, and *Coruna*, G. R. No. 43550, promulgated November 27, 1936.) This, in our opinion, is the precise position of the parties, and a review of the environmental circumstances leads to the conclusion that the essential requirements of section 80 are here present.

In violation of the provisions of the contract (Exhibit A), the vendor-appellant failed to complete his payment of the installment due in March, 1936. Subsequently, on August 31, 1936, he received the notification letter of Manager H. H. Buck of the Caridad Estates, Inc. cancelling the contract and asking him to vacate the premises.

After his receipt of the letter, therefore, his right to remain in possession of the property by virtue of the contract of sale expired, and his retention of the same became, to all intents and purposes, illegal and violative of the proprietary rights of the appellee. As the action for ejectment was filed on October 2, 1936, it is clear that more than fifteen days had elapsed from the receipt of the notification letter and that the same was brought within the one-year period contemplated under section 80. It follows that the Court of First Instance acted properly in overruling the objection to the original jurisdiction of the justice of the peace court, and in taking cognizance of the case in its appellate jurisdiction.

With reference to the last question relative to the denial of the motion of the defendant for the dissolution of the order of attachment issued by the justice of the peace court, it is sufficient to state that the same was proper and legal under the circumstances, because the failure or neglect of the appellant to raise the question of the correctness of the decision of the justice of the peace court of June 18, 1937, disallowing the petition for annulment of the said order of attachment on appeal limited or confined the jurisdiction of the court below to deciding the merits of the ejectment proceedings.

The other assignment of errors deals strictly with bare questions of fact and the findings of the court below should not be disturbed.

The judgment appealed from should be, as it is hereby affirmed, with costs against the appellant.

In view of the result, the deposit of P2,400 which appears to have been made by the defendant-appellant at his own instance with the clerk of this court is ordered returned to him. So ordered.

Avanceña, C.J., Imperial, Diaz, and Horrilleno, JJ., concur.

Judgment affirmed.

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