

EMILIANO E. GARCIA, AS GUARDIAN OF ELISA, MARIA, ANITA, PASTOR, GABINO, JOSE AND PACITA, ALL SURNAMED GARCIA, PLAINTIFF AND APPELLANT, VS. PAZ E. VELASCO (ALIAS PAZ VELASCO), DE...*G.R. No. 47519. June 10, 1941*

Ponente: MORAN, J.

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On July 1, 1929, Florentino Garcia, as duly appointed guardian of the minors, Elisa, Maria, Anita, Pastor, Gabino, Jose and Pacita, all surnamed Garcia, leased to defendant Paz E. Velasco, for a period of ten years at an annual rental of P750, a fish pond belonging to said minors, situated in Paombong, Bulacan. On May 22, 1931, pursuant to authority granted him by the court, he sold the fish pond to said defendant for a lump sum of P14,000. On October 29, 1935, Emiliano E. Garcia, who was appointed guardian in substitution of Florentino Garcia, was ordered by the court to institute an appropriate action for the recovery from the defendant of the purchase price of the fish pond. The action was instituted in the Court of First Instance of Manila where said guardian resides. Defendant, in a special appearance, objected to the court's jurisdiction over her person, and on the overruling of the objection, a demurrer was interposed reasserting the original ground of objection and adding, as another ground, want of the court's jurisdiction over the subject matter of the action. The demurrer having been overruled, defendant filed her answer in which she renewed her objection to the court's jurisdiction over her person and the subject matter, pleads the special defense of payment, and sets up a counterclaim for P249.57. On the issues thus joined, the trial court rendered judgment dismissing the action on the ground of lack of jurisdiction and that the amount claimed has already been paid. Hence, this appeal. Upon the question of jurisdiction raised, we are of the opinion that the trial court erred in sustaining defendant's objection. True that the fish pond is situated in Bulacan and the authority for its sale emanated from the Court of First Instance of the same province; but the action is for recovery of the purchase price and is not one against "executors, administrators and guardians touching the performance of their official duties." It is, therefore, a personal action and its venue should be laid "in any province where the defendant or any necessary defendant may reside or be found, or in any province where the plaintiff or one of the plaintiffs resides, at the election of the plaintiff." As the plaintiff is a resident of the City of Manila, the filing of the complaint therein was an exercise of his right of election in accordance with law. Although, as a judicial policy, only residents should be appointed as guardians (*Guerrero vs. Teran*, 13 Phil., 212), the fact that the plaintiff has been appointed as guardian by the Court of First Instance of Bulacan does not necessarily exclude his residence in Manila as alleged in the complaint and not directly denied in the answer.

On the issue of payment upon which defendant's claim was sustained, we find no ground for disturbing the findings of the trial court; but upon the question of law of whether upon a sale of real property in gross and for a lump sum, the purchaser may be entitled to an equitable reduction in the price in proportion to what is lacking in the area as designated in the contract, the trial court credited the defendant the sum of P3,824 upon the evidence that the fish pond purchased by him was only eight (8) hectares when it was described in the contract to contain

"una extension superficial de once (11) hectareas, treinta y ocho (38) areas, y setenta y siete (77) centiareas, poco mas o menos." The question is controlled by article 1471 of the Civil Code which provides that "in case of the sale of real estate for a lump sum and not at the rate of a specified price for each unit of measure or number there shall be no increase or decrease of the price even if the area or number be found to be more or less than that stated in the contract." The transaction here involved is, according to paragraph 5 of the deed of sale (Exhibit D), one for a lump sum and not at a specified price for each unit of measure and, therefore, no reduction can be authorized although the area was less than what was stated in the contract. There are instances in which equitable relief may be granted to the purchaser, as where the deficiency is very great for, under such circumstance, gross mistake may be inferred. (*Asiain vs. Jalandoni*, 45 Phil., 296.) But, in the instant case, we are satisfied that, although the shortage amounts to practically one-fourth of the total area, the purchaser clearly intended to take the risk of quantity, and that the area has been mentioned in the contract merely for the purpose of description. From the circumstance that the defendant, before her purchase of the fish pond, had been in possession and control thereof for two years as a lessee, she can rightly be presumed to have acquired a good estimate of its value and area, and her subsequent purchase thereof must have been premised on the knowledge of such value and area. Accordingly, she cannot now be heard to claim an equitable reduction in the purchase price on the pretext that the property is much less than she thought it was.

Judgment is reversed, and defendant is hereby ordered to pay plaintiff the sum of P3,824, with costs against her.

Avancena, C. J., Diaz, Laurel, and Horrilleno, JJ., concur.

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