

ANTONIO PUNSALAN, JR., PETITIONER, VS. REMEDIOS VDA. DE LACSAMANA AND THE HONORABLE JUDGE RODOLFO A. ORTIZ, RESPONDENTS.

G.R. No. 55729, March 28, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The sole issue presented by petitioner for resolution is whether or not respondent Court erred in denying the Motion to Set Case for Pre-trial with respect to respondent Remedios Vda. de Lacsamana as the case had been dismissed on the ground of improper venue upon motion of co-respondent Philippine National Bank (PNB).

It appears that petitioner, Antonio Punsalan, Jr., was the former registered owner of a parcel of land consisting of 340 square meters situated in Bamban, Tarlac. In 1963, petitioner mortgaged said land to respondent PNB (Tarlac Branch) in the amount of P10,000.00, but for failure to pay said amount, the property was foreclosed on December 16, 1970. Respondent PNB (Tarlac Branch) was the highest bidder in said foreclosure proceedings. However, the bank secured title thereto only on December 14, 1977.

In the meantime, in 1974, while the property was still in the alleged possession of petitioner and with the alleged acquiescence of respondent PNB (Tarlac Branch), and upon securing a permit from the Municipal Mayor, petitioner constructed a warehouse on said property. Petitioner declared said warehouse for tax purposes for which he was issued Tax Declaration No. 5619. Petitioner then leased the warehouse to one Hermogenes Sibal for a period of 10 years starting January 1975.

On July 26, 1978, a Deed of Sale was executed between respondent PNB (Tarlac Branch) and respondent Lacsamana over the property. This contract was amended on July 31, 1978, particularly to include in the sale, the building and improvement thereon. By virtue of said instruments, respondent Lacsamana secured title over the property in her name (TCT No. 173744) as well as separate tax declarations for the land and building.[1]

On November 22, 1979, petitioner commenced suit for "Annulment of Deed of Sale with Damages" against herein respondents PNB and Lacsamana before respondent Court of First Instance of Rizal, Branch XXXI, Quezon City, essentially impugning the validity of the sale of the building as embodied in the Amended Deed of Sale. In this connection, petitioner alleged:

" . . .

- That defendant, Philippine National Bank, through its Branch Manager . . . by virtue of the request of defendant . . . executed a document dated July 31, 1978, entitled Amendment to Deed of Absolute Sale . . . wherein said defendant bank as Vendor sold to defendant Lacsamana the building owned by the plaintiff under Tax Declaration No. 5619, notwithstanding the fact that said building is not owned by the bank either by virtue of the public auction sale conducted by the Sheriff and sold to the Philippine National Bank or by virtue of the Deed of Sale executed by the bank itself in its favor on September 27, 1977 . . .;

- That said defendant bank fraudulently mentioned . . . that the sale in its favor should likewise have included the building, notwithstanding no legal basis for the same and despite full knowledge that the Certificate of Sale executed by the sheriff in its favor . . . only limited the sale to the land, hence, by selling the building which never became the property of defendant, they have violated the principle against 'pactum commisorium'."

Petitioner prayed that the Deed of Sale of the building in favor of respondent Lacsamana be declared null and void and that damages in the total sum of P230,000.00, more or less, be awarded to him.[2]

In her Answer filed on March 4, 1980, respondent Lacsamana averred the affirmative defense of lack of cause of action in that she was a purchaser for value and invoked the principle in Civil Law that the "accessory follows the principal".[3]

On March 14, 1980, respondent PNB filed a Motion to Dismiss on the ground that venue was improperly laid considering that the building was real property under article 415(1) of the New Civil Code and therefore section 2(a) of Rule 4 should apply.[4]

Opposing said Motion to Dismiss, petitioner contended that the action for annulment of deed of sale with damages is in the nature of a personal action, which seeks to recover not the title nor possession of the property but to compel payment of damages, which is not an action affecting title to real property.

On April 25, 1980, respondent Court granted respondent PNB's Motion to Dismiss as follows:

"Acting upon the 'Motion to Dismiss' of the defendant Philippine National Bank dated March 13, 1980, considered against the plaintiff's opposition thereto dated April 1, 1980, including the reply therewith of said defendant, this Court resolves to DISMISS the plaintiff's complaint for improper venue considering that the plaintiff's complaint which seeks for the declaration as null and void, the amendment to Deed of Absolute Sale executed by the defendant Philippine National Bank in favor of the defendant Remedios T. Vda. de Lacsamana, on July 31, 1978, involves a warehouse allegedly owned and constructed by the plaintiff on the land of the defendant Philippine National Bank situated in the Municipality of Bamban, Province of Tarlac, which warehouse is an immovable property pursuant to Article 415, No. 1 of the New Civil Code; and, as such the action of the plaintiff is a real action affecting title to real property which, under Section 2, Rule 4 of the New Rules of Court, must be tried in the province where the property or any part thereof lies."[5]

In his Motion for Reconsideration of the aforesaid Order, petitioner reiterated the argument that the action to annul does not involve ownership or title to property but is limited to the validity of the deed of sale and emphasized that the case should proceed with or without respondent PNB as respondent Lacsamana had already filed her Answer to the Complaint and no issue on venue had been raised by the latter.

On September 1, 1980, respondent Court denied reconsideration for lack of merit.

Petitioner then filed a Motion to Set Case for Pre-trial, in so far as respondent Lacsamana was concerned, as the issues had already been joined with the filing of respondent Lacsamana's Answer.

In the Order of November 10, 1980, respondent Court denied said Motion to Set Case for Pre-trial as the case was already dismissed in the previous Orders of April 25, 1980 and September 1, 1980.

Hence, this Petition for Certiorari, to which we gave due course.

We affirm respondent Court's Order denying the setting for pre-trial.

The warehouse claimed to be owned by petitioner is an immovable or real property as provided in article 415(1) of the Civil Code.[6] Buildings are always immovable under the Code.[7] A building treated separately from the land on which it stood is immovable property and the mere fact that the parties to a contract seem to have dealt

with it separate and apart from the land on which it stood in no wise changed its character as immovable property.[8]

While it is true that petitioner does not directly seek the recovery of title or possession of the property in question, his action for annulment of sale and his claim for damages are closely intertwined with the issue of ownership of the building which, under the law, is considered immovable property, the recovery of which is petitioner's primary objective. The prevalent doctrine is that an action for the annulment or rescission of a sale of real property does not operate to efface the fundamental and prime objective and nature of the case, which is to recover said real property. It is a real action.[9]

Respondent Court, therefore, did not err in dismissing the case on the ground of improper venue (Section 2, Rule 4)[10], which was timely raised (Section 1, Rule 16).[11]

Petitioner's other contention that the case should proceed in so far as respondent Lacsamana is concerned as she had already filed an Answer, which did not allege improper venue and, therefore, issues had already been joined, is likewise untenable. Respondent PNB is an indispensable party as the validity of the Amended Contract of Sale between the former and respondent Lacsamana is in issue. It would, indeed, be futile to proceed with the case against respondent Lacsamana alone.

WHEREFORE, the petition is hereby denied without prejudice to the refiling of the case by petitioner Antonio Punsalan, Jr. in the proper forum.

Costs against petitioner.

SO ORDERED.

Teehankee (Chairman), Plana, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

[1] Exhibits "R" and "U", Original Records.

[2] pp. 17-21, Rollo.

[3] pp. 22-25, *ibid*.

[4] pp. 26-28, *ibid*.

[5] p. 35, *ibid*.

[6] "ART. 415. The following are immovable property:

(1) Land, buildings, roads and constructions of all kinds adhered to the soil;

...

[7] 3 Manresa 20.

[8] *Leung Yee vs. Strong Machinery Co.*, 37 Phil. 644 (1918).

[9] *Gavieres vs. Sanchez, et al.*, 94 Phil. 760, (1954); *Torres vs. J.M. Tuason & Co.*, 12 SCRA 174 (1964); *De Jesus vs. Coloso*, 1 SCRA 272 (1961).

[10] "Section 2. Venue in Courts of First Instance.— a) Real actions—Actions affecting title, to or for recovery of possession or for partition or condemnation of, or foreclosure of mortgage on, real property, shall be commenced and tried in the province where the property or any part thereof lies" (Rule 4, Rules of Court).

[11] "Section 1. Grounds— Within the time for pleading a motion to dismiss the action may be made on any of the following grounds:

...

c) That venue is improperly laid;" (Rule 16)

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