

SILVESTRE DIGNOS AND ISABEL LUMUNGSOD, PETITIONERS, VS. HON. COURT OF APPEALS AND ATILANO G. JABIL, RESPONDENTS.

G.R. No. 59266. February 29, 1988

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for review on certiorari seeking the reversal of the: (1) Decision[*] of the 9th Division, Court of Appeals dated July 31, 1981, affirming with modification the Decision[**] dated August 25, 1972 of the Court of First Instance of Cebu in Civil Case No. 23-L entitled Atilano G. Jabil vs. Silvestre T. Dignos and Isabela Lumungsod de Dignos and Panfilo Jabalde, as Attorney-in-Fact of Luciano Cabigas and Jovita L. de Cabigas; and (2) its Resolution dated December 16, 1981, denying defendant-appellant's (Petitioner's) motion for reconsideration, for lack of merit.

The undisputed facts as found by the Court of Appeals are as follows:

"The Dignos spouses were owners of a parcel of land, known as Lot No. 3453, of the cadastral survey of Opon, Lapu-Lapu City. On June 7, 1965, appellants (petitioners) Dignos spouses sold the said parcel of land to plaintiff-appellant (respondent Atilano J. Jabil) for the sum of P28,000.00, payable in two installments, with an assumption of indebtedness with the First Insular Bank of Cebu in the sum of P12,000.00, which was paid and acknowledged by the vendors in the deed of sale (Exh. C) executed in favor of plaintiff-appellant, and the next installment in the sum of P4,000.00 to be paid on or before September 15, 1965.

"On November 25, 1965, the Dignos spouses sold the same land in favor of defendants spouses Luciano Cabigas and Jovita L. De Cabigas, who were then U.S. citizens, for the price of P35,000.00. A deed of absolute sale (Exh. J, also marked Exh. 3) was executed by the Dignos spouses in favor of the Cabigas spouses, and which was registered in the Office of the Register of Deeds pursuant to the pro-visions of Act No. 3344.

"As the Dignos spouses refused to accept from plaintiff-appellant the balance of the purchase price of the land, and as plaintiff-appellant discovered the second sale made by defendants-appellants to the Cabigas spouses, plaintiff-appellant brought the present suit." (Rollo, pp. 27-28)

After due trial, the Court of First Instance of Cebu rendered its Decision on August 25, 1972, the decretal portion of which reads:

"WHEREFORE, the Court hereby declares the deed of sale executed on November 25, 1965 by defendant Isabela L. de Dignos in favor of defendant Luciano Cabigas, a citizen of the United States of America, null and void ab initio, and the deed of sale executed by defendants Silvestre T. Dignos and Isabela Lumungsod de Dignos not rescinded. Consequently, the plaintiff Atilano G. Jabil is hereby ordered to pay the sum of Sixteen Thousand Pesos (P16,000.00) to the defendants-spouses upon the execution of the Deed of Absolute Sale of Lot No. 3453, Opon Cadastre and when the decision of this case becomes final and executory.

"The plaintiff Atilano G. Jabil is ordered to reimburse the defendants Luciano Cabigas and Jovita L. de Cabigas, through their attorney-in-fact, Panfilo Jabalde, reasonable amount correspond-ing to the expenses or costs of the hollow block fence, so far constructed.

"It is further ordered that defendants?spouses Silvestre T. Dignos and Isabela Lumungsod de Dignos should return to defendants-spouses Luciano Cabigas and Jovita L. de Cabigas the sum of P35,000.00, as equity demands that nobody shall enrich himself at the expense of another.

"The writ of preliminary injunction issued on September 23, 1966, automatically becomes per-manent in virtue of this decision.

"With costs against the defendants."

From the foregoing, the plaintiff (respondent herein) and defendants-spouses (petitioners herein) appealed to the Court of Appeals, which appeal was docketed therein as CA-G.R. No. 54393-R, "Atilano G. Jabil v. Silvestre T. Dignos, et al."

On July 31, 1981, the Court of Appeals affirmed the decision of the lower court except as to the portion ordering Jabil to pay for the expenses incurred by the Cabigas spouses for the building of a fence upon the land in question. The dispositive portion of said decision of the Court of Appeals reads:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, except as to the modification of the judgment as pertains to plaintiff-appellant above indicated, the judgment appealed from is hereby AFFIRMED in all other respects.

"With costs against defendants-appellants.

"SO ORDERED.

"Judgment MODIFIED."

A motion for reconsideration of said decision was filed by the defendants-appellants (petitioners) Dignos spouses, but on December 16, 1981, a resolution was issued by the Court of Appeals denying the motion for lack of merit.

Hence, this petition.

In the resolution of February 10, 1982, the Second Division of this Court denied the petition for lack of merit. A motion for reconsideration of said resolution was filed on March 16, 1982. In the resolution dated April 26, 1982, respondents were required to comment thereon, which comment was filed on May 11, 1982 and a reply thereto was filed on July 26, 1982 in compliance with the resolution of June 16, 1982. On August 9, 1982, acting on the motion for reconsideration and on all subsequent pleadings filed, this Court resolved to reconsider its resolution of February 10, 1982 and to give due course to the instant petition. On September 6, 1982, respondents filed a rejoinder to reply of petitioners which was noted on the resolution of September 20, 1982.

Petitioners raised the following assignment of errors:

I

THE COURT OF APPEALS COMMITTED A GRAVE ERROR OF LAW IN GROSSLY, INCORRECTLY INTERPRETING THE TERMS OF THE CONTRACT, EXHIBIT C, HOLDING IT AS AN ABSOLUTE SALE, EFFECTIVE TO TRANSFER OWNERSHIP OVER THE PROPERTY IN QUESTION TO THE RESPONDENT AND NOT MERELY A CONTRACT TO SELL OR PROMISE TO SELL; THE COURT ALSO ERRED IN MISAPPLYING ARTICLE 1371 AS WARRANTING READING OF THE AGREEMENT, EXHIBIT C, AS ONE OF ABSOLUTE SALE, DESPITE THE CLARITY OF THE TERMS THEREOF SHOWING IT IS A CONTRACT OF PROMISE TO SELL.

II

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN INCORRECTLY APPLYING AND

OR IN MISAPPLYING ARTICLE 1592 OF THE NEW CIVIL CODE AS WARRANTING THE ERRONEOUS CONCLUSION THAT THE NOTICE OF RESCISSION, EXHIBIT G, IS INEFFECTIVE SINCE IT HAS NOT BEEN JUDICIALLY DEMANDED NOR IS IT A NOTARIAL ACT.

III

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN REJECTING THE APPLICABILITY OF ARTICLES 2208, 2217 and 2219 OF THE NEW CIVIL CODE AND ESTABLISHED JURISPRUDENCE AS TO WARRANT THE AWARD OF DAMAGES AND ATTORNEY'S FEES TO PETITIONERS.

IV

PLAINTIFF'S COMPLAINT FOR SPECIFIC PERFORMANCE SHOULD HAVE BEEN DISMISSED, HE HAVING COME TO COURT WITH UNCLEAN HANDS.

V

BY AND LARGE, THE COURT OF APPEALS COMMITTED AN ERROR IN AFFIRMING WITH MODIFICATION THE DECISION OF THE TRIAL COURT DUE TO GRAVE MISINTERPRETATION, MISAPPLICATION AND MISAPPREHENSION OF THE TERMS OF THE QUESTIONED CONTRACT AND THE LAW APPLICABLE THERETO.

The foregoing assignment of errors may be synthesized into two main issues, to wit:

- Whether or not subject contract is a deed of absolute sale or a contract to sell.
- Whether or not there was a valid rescission thereof.

There is no merit in this petition.

It is significant to note that this petition was denied by the Second Division of this Court in its Resolution dated February 10, 1982 for lack of merit, but on motion for reconsideration and on the basis of all subsequent pleadings filed, the petition was given due course.

I.

The contract in question (Exhibit C) is a Deed of Sale, with the following conditions:

"1.

That Atilano G. Jabil is to pay the amount of Twelve Thousand Pesos (P12,000. 00) Philippine Currency as advance payment;

"2.

That Atilano G. Jabil is to assume the balance of Twelve Thousand Pesos (P12,000. 00) Loan from the First Insular Bank of Cebu;

"3.

That Atilano G. Jabil is to pay the said spouses the balance of Four Thousand Pesos (P4,000.00) on or before September 15, 1965;

"4.

That the said spouses agrees to defend the said Atilano G. Jabil from other claims on the said property;

"5.

That the spouses agrees to sign a final deed of absolute sale in favor of Atilano G. Jabil over the above-mentioned property upon the payment of the balance of Four Thousand Pesos." (Original Record, pp. 10-11).

In their motion for reconsideration, petitioners reiterated their contention that the Deed of Sale (Exhibit "C") is a mere contract to sell and not an absolute sale; that the same is subject to two (2) positive suspensive conditions, namely: the payment of the balance of P4,000.00 on or before September 15, 1965 and the immediate assumption of the mortgage of P12,000.00 with the First Insular Bank of Cebu. It is further contended that in said contract, title or ownership over the property was expressly reserved in the vendor, the Dignos spouses, until the suspensive condition of full and punctual payment of the balance of the purchase price shall have been met. So that there is no actual sale until full payment is made (Rollo, pp. 51-52).

In bolstering their contention that Exhibit "C" is merely a contract to sell, petitioners aver that there is absolutely nothing in Exhibit "C" that indicates that the vendors thereby sell, convey or transfer their ownership to the alleged vendee. Petitioners insist that Exhibit "C" (or 6) is a private instrument and the absence of a formal deed of conveyance is a very strong indication that the parties did not intend "transfer of ownership and title but only a transfer after full payment" (Rollo, p. 52). Moreover, petitioners anchored their contention on the very terms and conditions of the contract, more particularly paragraph four which reads, "that said spouses has agreed to sell the herein mentioned property to Atilano G. Jabil x x x" and condition number five which reads, "that the spouses agrees to sign a final deed of absolute sale over the mentioned property upon the payment of the balance of four thousand pesos."

Such contention is untenable.

By and large, the issues in this case have already been settled by this Court in analogous cases.

Thus, it has been held that a deed of sale is absolute in nature although denominated as a "Deed of Conditional Sale" where nowhere in the contract in question is a proviso or stipulation to the effect that title to the property sold is reserved in the vendor until full payment of the purchase price, nor is there a stipulation giving the vendor the right to unilaterally rescind the contract the moment the vendee fails to pay within a fixed period (*Taguba v. Vda. de Leon*, 132 SCRA 722; *Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.*, 86 SCRA 305).

A careful examination of the contract shows that there is no such stipulation reserving the title of the property on the vendors nor does it give them the right to unilaterally rescind the contract upon non-payment of the balance thereof within a fixed period.

On the contrary, all the elements of a valid contract of sale under Article 1458 of the Civil Code, are present, such as: (1) consent or meeting of the minds; (2) determinate subject matter; and (3) price certain in money or its equivalent. In addition, Article 1477 of the same Code provides that "The ownership of the thing sold shall be transferred to the vendee upon actual or constructive delivery thereof." As applied in the case of *Froilan v. Pan Oriental Shipping Co., et al.* (12 SCRA 276), this Court held that in the absence of stipulation to the contrary, the ownership of the thing sold passes to the vendee upon actual or constructive delivery thereof.

While it may be conceded that there was no constructive delivery of the land sold in the case at bar, as subject Deed of Sale is a private instrument, it is beyond question that there was actual delivery thereof. As found by the

trial court, the Dignos spouses delivered the possession of the land in question to Jabil as early as March 27, 1965 so that the latter constructed thereon Sally's Beach Resort also known as Jabil's Beach Resort in March, 1965; Mactan White Beach Resort on January 15, 1966 and Bevirlyn's Beach Resort on September 1, 1965. Such facts were admitted by petitioner spouses (Decision, Civil Case No. 23-L; Record on Appeal, p. 108).

Moreover, the Court of Appeals in its resolution dated December 16, 1981 found that the acts of petitioners, contemporaneous with the contract, clearly show that an absolute deed of sale was intended by the parties and not a contract to sell.

Be that as it may, it is evident that when petitioners sold said land to the Cabigas spouses, they were no longer owners of the same and the sale is null and void.

II.

Petitioners claim that when they sold the land to the Cabigas spouses, the contract of sale was already rescinded.

Applying the rationale of the case of *Taguba v. Vda. de Leon* (supra) which is on all fours with the case at bar, the contract of sale being absolute in nature is governed by Article 1592 of the Civil Code. It is undisputed that petitioners never notified private respondents Jabil by notarial act that they were rescinding the contract, and neither did they file a suit in court to rescind the sale. The most that they were able to show is a letter of Cipriano Amistad who, claiming to be an emissary of Jabil, informed the Dignos spouses not to go to the house of Jabil because the latter had no money and further advised petitioners to sell the land in litigation to another party (Record on Appeal, p. 23). As correctly found by the Court of Appeals, there is no showing that Amistad was properly authorized by Jabil to make such extra-judicial rescission for the latter who, on the contrary, vigorously denied having sent Amistad to tell petitioners that he was already waiving his rights to the land in question. Under Article 1358 of the Civil Code, it is required that acts and contracts which have for their object the extinguishment of real rights over immovable property must appear in a public document.

Petitioners laid considerable emphasis on the fact that private respondent Jabil had no money on the stipulated date of payment on September 15, 1965 and was able to raise the necessary amount only by mid-October, 1965.

It has been ruled, however, that "where time is not of the essence of the agreement, a slight delay on the part of one party in the performance of his obligation is not a sufficient ground for the rescission of the agreement" (*Taguba v. Vda. de Leon*, supra). Considering that private respondent has only a balance of P4,000.00 and was delayed in payment only for one month, equity and justice mandate as in the aforecited case that Jabil be given an additional period within which to complete payment of the purchase price.

WHEREFORE, the petition filed is hereby Dismissed for lack of merit and the assailed decision of the Court of Appeals is Affirmed in toto.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Feliciano, and Cortes, JJ., concur.

[*] Penned by Justice Elias B. Asuncion and concurred by Justices Porfirio V. Sison and Vicente V. Mendoza.

[**] Penned by Judge Ramon E. Nazareno.

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