

EDUARDO C. TANEDO, PETITIONER, VS. HON. JUANITO A. BERNAD, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, 7TH JUDICIAL REGION, BRANCH XXI, CEBU CITY; SPOUSES ROMEO SIM AND PACITA ...*G.R. No. 66520. August 30, 1988*

Ponente: PADILLA, J.

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This is a petition for review on certiorari of the Order issued by the respondent judge, Hon. Juanito A. Bernad, on 5 December 1983, which dismissed the complaint for legal redemption filed by the petitioner in Civil Case No. CEB-994 of the Regional Trial Court of Cebu, and the Order of the same respondent judge, dated 20 January 1984, which denied petitioner's motion for reconsideration.

The facts, in brief, are as follows:

The private respondent Antonio Cardenas was the owner of two (2) contiguous parcels of land situated in Cebu City which he had inherited from Lourdes Cardenas, and more particularly known as Lot 7501-A, with an area of 140 square meters and Lot 7501-B, with an area of 612 square meters. On Lot 7501-A is constructed an apartment building, while the improvements on Lot 7501-B consist of one four-door apartment of concrete and strong materials; one two-storey house of strong materials; a bodega of strong materials; and a septic tank for the common use of the occupants of Lots 7501-A and 7501-B. A small portion of the apartment building on Lot 7501-A also stands on Lot 7501-B.

On 5 February 1982, said Antonio Cardenas sold Lot 7501-A to herein petitioner Eduardo C. Tanedo.[1]

Antonio Cardenas, on that same day, also mortgaged Lot 7501-B to said Eduardo C. Tanedo as a security for the payment of a loan in the amount of P10,000.00.[2]

Antonio Cardenas further agreed that he would sell Lot 7501-B only to Eduardo Tanedo in case he should decide to sell it, as the septic tank in Lot 7501-B services Lot 7501-A and the apartment building on Lot 7501-A has a part standing on Lot 7501-B. This was confirmed in a letter, dated 26 February 1982, wherein Antonio Cardenas asked Tanedo not to deduct the mortgage loan of P10,000.00 from the purchase price of Lot 7501-A "because as we have previously agreed, I will sell to you Lot 7501-B." [3]

Antonio Cardenas, however, sold Lot 7501-B to the herein respondent spouses Romeo and Pacita Sim.[4] Upon learning of the sale, Eduardo Tanedo offered to redeem the property from Romeo Sim. But the latter refused. Instead, Romeo Sim blocked the sewage pipe connecting the building of Eduardo Tanedo built on Lot 7501-A, to the septic tank in Lot 7501-B. He also asked Tanedo to remove that portion of his building encroaching on Lot 7501-B. As a result, Eduardo Tanedo, invoking the provisions of Art. 1622 of the Civil Code, filed an action for legal redemption and damages, with a prayer for the issuance of a writ of preliminary injunction, before the Regional Trial Court of Cebu, docketed therein as Civil Case No. CEB-994, against the spouses Romeo and

Pacita Sim, Antonio Cardenas and his wife Mae Linda Cardenas, the Register of Deeds of Cebu City, and Banco Cebuano, Cebu City Development Bank.[5]

Answering, the spouses Romeo and Pacita Sim claimed that they are the absolute owners of Lot 7501-B and that Eduardo Tanedo has no right to redeem the land under Art. 1622 of the Civil Code As the land sought to be redeemed is much bigger than the land owned by Tanedo.[6]

Antonio Cardenas, upon the other hand, admitted that he had agreed to sell Lot 7501-B to Eduardo Tanedo and claimed by way of cross-claim against the spouses Romeo and Pacita Sim, that the Deed of Sale he had executed in favor of said spouses was only intended as an equitable mortgage, to secure the payment of amounts received by him from said spouses as petty loans.[7]

In answer to the cross-claim, the spouses Romeo and Pacita Sim insisted that the sale executed by Antonio Cardenas of Lot 7501-B in their favor was an absolute one.[8]

Thereafter, or on 14 October 1983, the spouses Romeo and Pacita Sim filed motions to dismiss the complaint and the cross-claim, for lack of cause of action.[9]

Acting upon these motions and other incidental motions, the respondent judge issued the questioned order of 5 December 1983 dismissing the complaint and cross-claim.[10] Tanedo filed a motion for reconsideration of the order, but his motion was denied on 20 January 1984.[11]

Hence, the present recourse by petitioner Tanedo.

The Court finds merit in the petition. The dismissal of the complaint on the ground of lack of cause of action, is precipitate. The settled rule where dismissal of an action is sought on the ground that the complaint does not state a cause of action is, that the insufficiency of the cause of action must appear on the face of the complaint. And the test of the sufficiency of the ultimate facts alleged in the complaint to constitute a cause of action, is whether or not, admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer of the complaint. For this purpose, the movant is deemed to admit hypothetically the truth of the facts thus averred.[12]

In the instant case, it cannot be denied that petitioner Tanedo cannot redeem the entire Lot 7501-B from the spouses Romeo and Pacita Sim pursuant to the provisions of Art. 1622 of the Civil Code, since the lot sought to be redeemed, has an area of 612 square meters which is much bigger, area-wise, than the lot owned by petitioner Tanedo. However, the petitioner seeks to purchase only that small portion of Lot 7501-B occupied by his apartment building, because the spouses Romeo and Pacita Sim had told him to remove that portion of his building which encroaches upon Lot 7501-B. Whether or not this is possible should have been determined at the pre-trial stage or trial on the merits.

Besides, the action of petitioner Tanedo is also one for recovery of damages by reason of breach of promise by the respondent Antonio Cardenas to sell Lot 7501-B. Paragraphs 3 and 4 of the amended complaint read, as follows:

"3. That by written agreement, plaintiff and defendant spouses Antonio Cardenas and Mae Linda Cardenas agreed that in the event they decide to sell the adjacent Lot No. 7501-B of the subdivision plan (LRC) Psd. 23638, a portion of Lot No. 7501 of the cadastral survey of Cebu, LRC (GLRC) Cad. Record No. 9465, situated in the City of Cebu, containing an area of SIX HUNDRED TWELVE (612) Square meters more or less which lot is adjacent to Lot No. 7501-A of the plaintiff and where part of the plaintiff's apartment is standing on, the same should be sold to the plaintiff, but far from compliance of the writ-ten agreement, defendant spouses Antonio Cardenas and Mae Linda Cardenas surreptiously [sic] sold the aforestated Lot No. -7501-B- to the defendant spouses, Romeo Sim and Pacita Sim on July 23, 1982 as per Deed of Sale notarized

by Notary Public, Jorge S. Omega and entered in his Notarial Register as Doc. No. 462; Page No. -94-; Book No. 11, Series of 1982;

"4. That due to the sale by the defendant spouses Antonio Cardenas and Mae Linda Cardenas of the property in question to spouses Romeo Sim and Pacita Sim, plaintiff suffered moral damages in the form of mental anguish, sleepless nights, mental torture, for which he is entitled to a compensation in the amount to be established during the trial of the case and has incurred litigation expenses subject for reimbursement and attorneys fee in the sum of P10,000.00 which should be chargeable to both defendant spouses;"[13]

and the plaintiff (herein petitioner) prayed, among others: "(c) That defendant spouses Romeo Sim and Pacita Sim, and spouses Antonio Cardenas and Mae Linda Cardenas be ordered to pay plaintiff moral damages, litigation expenses and attorneys fees in the amount of P50,000.00."[14]

That there was a written agreement, as alleged in the complaint, between the plaintiff Eduardo Tanedo and the defendant Antonio Cardenas is admitted by the latter. In his answer, he alleged the following:

"ALLEGATIONS as to written agreement is ADMITTED, but, specifically denies that herein defendants SUREPTIOUSLY [sic] SOLD the lot in question to the other defendant Spouses Sim, the truth is, that the herein defendants [sic] was required to execute the Deed of Sale described in this paragraph 3 as security for the personal loans and other forms of indebtedness incurred from the Spouses Sims but never as a conveyance to transfer ownership;"[15]

Considering this admission of defendant Cardenas, and that his promise to sell Lot 7501-B to Eduardo Tanedo appears to be for a valuable consideration, a trial is necessary to determine, at the very least, the amount of damages suffered by the plaintiff Eduardo Tanedo by reason of such breach of promise to sell, if indeed there is such a breach.

Moreover, the finding of the trial court that petitioner Tanedo's right to continue to use the septic tank, erected on Lot 7501-B, ceased upon the subdivision of the land and its subsequent sale to different owners who do not have the same interest,[16] also appears to be contrary to law. Article 631 of the Civil Code enumerates the grounds for the extinguishment of an easement. Said article provides:

"Art. 631. Easements are extinguished:

(1)

By merger in the same person of the ownership of the dominant and servient estates;

(2)

By nonuser for ten years; with respect to discontinuous easements, this period shall be computed from the day on which they ceased to be used; and, with respect to continuous easements, from the day on which an act contrary to the same took place;

(3)

When either or both of the estates fall into such condition that the easement cannot be used; but it shall revive if the subsequent condition of the estates or either of them should again permit its use, unless when the use becomes possible, sufficient time for prescription has elapsed, in accordance with the provisions of the preceding number;

(4)

By the expiration of the term or the fulfillment of the condition, if the easement is temporary or conditional;

(5)

By the renunciation of the owner of the dominant estate;

(6)

By the redemption agreed upon between the owners of the dominant and servient estates."

As can be seen from the above provisions, the alien-ation of the dominant and servient estates to different persons is not one of the grounds for the extinguishment of an easement. On the contrary, use of the easement is continued by operation of law. Article 624 of the Civil Code provides:

"Art. 624. The existence of an apparent sign of easement between two estates, established or maintained by the owner of both, shall be considered, should either of them be alien-ated, as a title in order that the easement may continue actively and passively, unless, at the time the ownership of the two estates is divided, the contrary should be provided in the title of conveyance of either of them, or the sign aforesaid should be removed before the execution of the deed. This provision shall also apply in case of the division of a thing owned in common by two or more persons."

In the instant case, no statement abolishing or extinguishing the easement of drainage was mentioned in the deed of sale of Lot 7501-A to Eduardo Tanedo. Nor did Antonio Cardenas stop the use of the drain pipe and septic tank by the occupants of Lot 7501-A before he sold said lot to Eduardo Tanedo. Hence, the use of the septic tank is continued by operation of law. Accordingly, the spouses Romeo and Pacita Sim, the new owners of the servient estate (Lot 7501-B), cannot impair, in any manner whatsoever, the use of the servitude.[17]

WHEREFORE, the Orders complained of are hereby REVERSED and SET ASIDE. The respondent judge or another one designated in his place is directed to proceed with the trial of this case on the merits. With costs against private respondents.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

[1] Amended Complaint, par. 2, Original Record, p. 7

[2] Original Record, p. 32

[3] Rollo, pp. 28-29

[4] Id., p. 30

[5] Original Record, p. 1

[6] Original Record, p. 19

[7] Id., p. 24

[8] Id., p. 49

[9] Id., p. 87, 91

[10] Rollo, p. 32

[11] Id., p. 43

[12] Azur vs. Prov. Board, G.R. No. L-22333, Feb. 27, 1969, 27 SCRA 50

[13] Original Record, p. 8

[14] Id., p. 10

[15] Id., p. 24

[16] Id., p. 124

[17] Art. 629, Civil Code

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