

VICENTE IBAY, PETITIONER, VS. THE HONORABLE INTERMEDIATE APPELLATE COURT, ATANACIO ABANDO AND ROSITA T. ABANDO, RESPONDENTS.

G.R. No. 67279, June 03, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Through this petition for review under Rule 45 of the Rules of Court, petitioner urges this Court to set aside the decision of the then Intermediate Appellate Court (now Court of Appeals) of 27 February 1984 in A.C.-G.R. CV No. 68339[1] which affirmed in toto the decision of the then Court of First Instance (now Regional Trial Court) of Rizal in Civil Case No. Q-25747 entitled Atanacio T. Abando and Rosita Abando vs. Vicente Ibay, an action for recovery of possession of a portion of a lot located in Quezon City.

The antecedent facts are faithfully summarized by the respondent Court as follows:

“The real property in question originally belonged to the People’s Homesite and Housing Corporation, referred to herein as PHHC, and is bounded and described as follows:

‘A parcel of land (Lot 19, block 68 of Diliman Estate, subdivision plan Psd-10575 being a portion of Lot R. P. 3-A-3 B of Plan Psd 2007, L.R.C. (GLRC). Rec. No. 7681 x x x containing an area of THREE HUNDRED THIRTY SEVEN SQUARE METERS AND EIGHTY SQUARE DECIMETERS (337.80) x x x’.

The above-described lot was later awarded to the plaintiff-appellee, Atanacio T. Abando, but on July 22, 1959, the said plaintiff with the consent of his wife Jacobina Tarifa, transferred his rights and interest on (sic) the one-half (1/2) portion or an area of 168.90 square meters of said land in favor of his daughter and co-plaintiff Rosita Abando, who was then legally separated from her husband, in consideration of the sum of P1,109.68 paid by the said transferee to the transferor (Exhibit 2). The transferee took possession of the portion of land sold and had (sic) small house thereon.

On January 28, 1960, Rosita Abando entered into an agreement with Vicente Ibay for the sale of her one-half of the property, covered by TCT No. 167385, Registry of Deeds of Quezon City marked as Exhibit 1 which she claims to be a lease.

The consideration of the sale in the amount of P4,500.00 was paid in full by defendant Vicente Ibay on the occasions as follows:

P 2,100.00 - on January 28, 1960 when the document was executed;

1,500.00 - on December 10, 1959 (Exhibit 13);

410.00 - on December 8, 1959 (Exhibit 14);

490.00 - on December 23, 1959 (Exhibit 15);

P 4,500.00

As a consequence of the sale, transfer or conveyance, the defendant immediately took possession of the portion of land sold, together with the improvements therein consisting of a small house. The remaining one-half (1/2) portion of the whole land was occupied and possessed by both plaintiffs and Rosita Abando actually resided therein. Defendant Vicente Ibay and his family since the sale and continuously (sic) up to the present possessed and occupied and is (sic) still occupying and possessing the same.

He gradually made changes and improvement (sic) on the small house bought to make it what is now a bigger house with 3 bedrooms, toilet, closet and a store as could be seen on the land at present valued at about P50,000.00.

The defendant paid the taxes of (sic) the land from 1973 up to 1979 to the City Treasurer's Office of Quezon City (Exhibits 6, 6-A to 6-E, inclusive). He likewise paid the realty taxes on the house constructed on the land from 1970 to 1979 (Exhibits 7, 7-A to 7-Q, inclusively). The one-half portion of land was declared for taxation purpose in the name of Vicente Ibay under Tax Declaration No. 8-831 (Exhibit 9) for the year 1979 of the Assessor's Office of Quezon City. The other half is declared in the name of Atanacio Abando under Tax Declaration No. 8-2410 for the year 1979 of the Assessor's Office of Quezon City (Exhibit 8).

The defendant Vicente Ibay had caused the whole land, Lot 19, Block-68 to be subdivided into two (2) lots -- Lot No. 19-A with an area of 168.90 in the name of Atanacio T. Abando and Lot No. 19-B with an area of 168.90 in the name of Vicente Ibay with approved plan and technical descriptions (Exhibits 11, 11-A to 11-B).

Nevertheless, Ibay submitted the alleged document of transfer of rights to PHHC, but the latter disapproved the transaction, because:

‘x x x Mr. Ibay is no longer qualified to acquire same as he is already the holder of PHHC Lot 10, block S-29, of the Diliman Estate Subdivision, Quezon City.’ (Exh. “C”).

This letter, dated February 15, 1960, was addressed to Rosita Abando, and copy furnished to Mr. Ibay.

Without further action as against Rosita Abando or the PHHC, Vicente Ibay remained in possession, as testified to by Rosita, as ‘lessee’ (TSN, same date, same pages).

On August 16, 1971, appellees became the registered owners in fee simple of the property in question, under TCT No. 167385 (Exhibit “A”).

On August 25, 1971, a demand letter was sent to Mr. Ibay, demanding that he should vacate the property, remove the improvements, pay for the use and occupation, and restore possession to the appellees as owners. (Exhibits “5” and “16”).

Mr. Ibay also admitted that, very much earlier than that final demand letter, he had received a telegram from Malacañang, upon complaint of Atanacio Abando also demanding that he he (sic) should vacate the property.

Mr. Ibay did not comply with the demands, but on August 30, 1971, he caused to be annotated on TCT No. 167385, a notice of adverse claim stating under oath that he purchased the property but the same could not be registered ‘FOR LACK OF CONSENT’. (Exhibit A-1, PE-1668, TCT No. 167385).

Thereafter, Mr. Ibay's son wrote to Rosita Abando asking her to comply with a certain agreement. Abando's lawyer answered back informing him that there is no such agreement with him, that the action for specific performance of a supposed contract, if any, had already prescribed, and that on the other hand, Mr. Ibay should vacate the property, remove the improvements, pay for his reasonable use and occupation thereof, and deliver possession to the owners. (Exhibits “4” and “55”).”[2]

On 4 August 1978, the Abandos, hereinafter referred to as private respondents, filed a complaint with the then Court of First Instance of Rizal for recovery of possession of the one-half (1/2) portion of the lot from herein petitioner. The case was docketed as Civil Case No. Q-25747. After trial on the merits, the court, on 19 March

1980, handed down a decision in favor of private respondents, the dispositive portion of which reads as follows:

“WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in favor of the plaintiffs and against the defendant:

- a) Ordering the defendant and those deriving right from him, to leave and vacate the premises described in par. 2 of the complaint and to restore possession to the plaintiff;
- b) Ordering the defendant and those in privity with him to pay the price of the land on which the building is constructed, or in lieu thereof, requiring the plaintiffs to reimburse to the defendant whatever defendant has incurred in accordance with Articles 546 and 548 of the Civil Code and in case of failure to comply with this, requiring the defendant to pay the owner reasonable rental on the premises;
- c) Ordering the cancellation of the annotation of the Adverse Claim on TCT No. 167385 under P.E.1668-T-167385 as appearing in the registered title;
- d) Ordering the defendant to pay to the plaintiffs the amount of ten thousand pesos (P10,000.00) for and by way of attorney’s fees.

Costs against the defendant.

SO ORDERED.”[3]

Petitioner appealed from said decision to the Intermediate Appellate Court which docketed the case as A.C.-G.R. CV No. 68339. In urging said court to reverse the appealed decision, petitioner contended that the lower court erred in:

I. x x x HOLDING THAT EXHIBIT 1 (DEED OF SALE DATED JANUARY 28, 1960 EXECUTED BY ROSITA ABANDO IN FAVOR OF VICENTE IBAY) IS A XEROX COPY AND MUST NOT BE ACCEPTED IN COURT.

II. x x x HOLDING THAT EXHIBIT 1 IS NOT ADMISSIBLE IN EVIDENCE, AND EVEN IF ADMISSIBLE THE REAL CONTRACT OF THE PARTIES IS NOT SALE BUT TRANSFER OF RIGHTS WHICH HAS BEEN DISAPPROVED BY THE PHHC.

III. x x x HOLDING THAT ADVERSE CLAIM IS INVALID.”[4]

In its decision of 28 February 1984, the respondent Court found no merit in the appeal. In disposing of the first and second assigned errors, the respondent Court, while agreeing with the petitioner that the Exhibit “1” in the folder of exhibits is not a xerox copy but a carbon original, expressed doubt that it was the one actually introduced in evidence since if indeed the trial court committed an error in this regard, petitioner should have immediately called its attention thereto. Petitioner failed to do so; since he raised the issue only on appeal, it is possible that the xerox copy could have been, with the connivance of some personnel in the office of the clerk of court, surreptitiously substituted with the carbon original. In any case if indeed there existed a clear error or mistake on the part of the trial court, then it cannot be raised on appeal unless the latter’s attention is first called to it. Notwithstanding such assertions, the respondent Court nevertheless declared that Exhibit “1” is admissible in evidence. However, it ruled that the same is not a deed of sale but a mere transfer of rights since Rosita Abando was not yet the owner of the one-half (1/2) portion of the lot in question at the time it was executed. As of that time, she had not yet completed the payment of the purchase price to the PHHC, for which reason approval by the latter of the transfer was necessary. The transfer was disapproved[5] because petitioner was no longer qualified to acquire the same as he was already the holder of PHHC Lot 10, Block S-29 of the Diliman Estate Subdivision. Accordingly, the transfer “became one in violation of law (the rules of the PHHC being promulgated in pursuance of law have the force of law) and therefore void ab initio.” Hence, appellant acquired no right over the lot for,

from a contract void ab initio, no rights are created. Estoppel, as postulated by petitioner, will not apply for it cannot be predicated on an illegal act. It is generally considered that as between the parties to a contract, validity cannot be given to it by estoppel if it is prohibited by law or is against public policy.[6]

Since respondent Court found Exhibit "1" to be in violation of the law, it ruled that the adverse claim was also null and void. Thus, it rejected the third assigned error.

His motion to reconsider the decision having been denied by the respondent Court in its resolution of 3 April 1984,[7] petitioner filed the instant petition wherein he imputes two (2) vague errors committed by the respondent Court, to wit:

- "1. That the Honorable Intermediate Appellate Court committed an error in its finding of facts as contained in the decision,
2. That the ruling made by the Honorable Court on the defendant-appellant's three (3) assignment (sic) of errors is not supported by fact and jurisprudence on the matter."

and submits the following as his grounds for the allowance of the petition:

- "1. THE INTERMEDIATE APPELLATE COURT ERRED ON QUESTION OF LAW IN APPLYING IN THE CASE AT BAR THE RULE THAT NO MISTAKE OR ERROR CLEARLY APPARENT NOT CALLED TO THE ATTENTION OF THE TRIAL COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.
2. THAT THE INTERMEDIATE APPELLATE COURT ERRED ON A QUESTION OF LAW IN HOLDING A DOUBT AS TO WHETHER THE CARBON ORIGINAL (EXHIBIT 1), NOT A XEROX COPY, WAS PROPERLY INTRODUCED IN EVIDENCE AND THE PROBABILITY (sic) OF CONNIVANCE AND INSERTION OF DOCUMENT.
3. THAT THE INTERMEDIATE APPELLATE COURT ERRED IN (sic) A QUESTION OF LAW IN HOLDING THAT THE DEED OF SALE (EXHIBIT 1) IS NULL AND VOID OR AGAINST THE LAW AND PUBLIC POLICY.
4. THE APPELLATE COURT ERRED ON A QUESTION OF LAW IN HOLDING THAT THE ADVERSE CLAIM FILED BY THE PETITIONER IS INVALID."[8]

We find no merit in this petition.

The first two grounds relied upon are misplaced. The respondent Court, despite its suspicion that what was marked as Exhibit "1" is in fact a xerox copy, for which reason the trial court declared it as inadmissible for not being the best evidence, and that the carbon original which petitioner claims to be his Exhibit "1" could have been surreptitiously substituted for the xerox copy, did in fact rule that Exhibit "1" is admissible in evidence. There is no need to quibble on or belabor further this point. As squarely ruled by the respondent Court, Exhibit "1" is not to be considered a deed of sale of the property but merely a transfer of Rosita Abando's rights as an applicant to one-half (1/2) of the lot. This is so because at the date of its execution, Rosita was not yet the owner of the lot. The document itself explicitly states that the PHHC is the registered owner of the property. The approval of the PHHC is necessary for the transfer to be valid and effective. In the case at bar, not only did the transfer lack the requisite approval, the same was categorically disapproved by the latter, per its letter of 15 February 1960,[9] because petitioner, under the policy of the PHHC, is no longer qualified to acquire another PHHC lot. Resolution No. 82 of the PHHC, adopted by its Board of Directors on 23 May 1951, provided that "the sale of more than one lot per person shall not be permitted." [10] This policy is supported by the law. One of the purposes of the PHHC was to acquire, develop, improve, subdivide, lease and sell lands and construct, lease and sell buildings or any

interest therein in the cities and populous towns in the Philippines with the object of providing decent housing for those who may be found unable otherwise to provide themselves therewith.[11] Petitioner himself sought the approval of the transfer and was furnished with a copy of the disapproval. He did not ask for its reconsideration. He took no further steps to perfect his right as transferee. It can then be logically presumed that he was aware of his disqualification from acquiring another lot from the PHHC and that no remedy was available to him. Even after the private respondents obtained a transfer certificate of title on the lot on 16 August 1971, petitioner exerted no effort to register the so-called deed of sale in his favor. Indisputably, petitioner was fully aware of the fatal flaw in his claim.

WHEREFORE, for lack of merit, the petition is DISMISSED, with costs against the petitioner.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Per Associate Justice Eduardo P. Caguioa, concurred in by Associate Justices Ramon G. Gaviola, Jr. and Ma. Rosario Quentulio-Losa.

[2] Rollo, 23-26.

[3] Rollo, 22-23.

[4] Rollo, 8.

[5] Exhibit "C".

[6] Citing 19 Am. Jur. 802; Eugenio vs. Perdido, 97 Phil. 41 [1955].

[7] Rollo, 46.

[8] Id., 9.

[9] Exhibit "C", op. cit.

[10] Resolution No. 558, adopted on 16 April 1962, also expressly provided that: "x x x only one residential lot per family shall be allowed, it being understood that children of legal age and no longer dependent upon the applicant for support, shall not be considered members of that family for purposes of award." This restriction was "intended to distribute to as many needy families as possible the benefits of the government's assistance program through the PHHC."

[11] Executive Order No. 399, issued on 5 January 1951. Executive Order No. 93 Of 4 October 1947 merged the National Housing Commission, created under C.A. No. 648, and the People's Homesite Corporation and converted them into the Philippine Homesite and Housing Corporation.

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