

## **SATURNINO SONGCUAN, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT, MARIANO ALVIAR, BELEN ALVIAR AND LUZ ALVIAR PINLAC, RESPONDENTS.**

*G.R. No. 75096. October 23, 1990*

Ponente: MEDIALDEA, J.

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### **MEDIALDEA, J.:**

Victoriano Alviar was the owner of two parcels of land located at San Fernando, La Union. On the land stands a building owned by his son, Mariano, and his wife, Belen. On September 29, 1966, the Alviars sold these realties to Saturnino Songcuan for P34,026.09. On October 10, 1966 Songcuan executed an instrument entitled "Deed of Repurchase of Two Parcels of Land and a Residential-Commercial Building" (pp. 5-6, Records [Exhibit]) wherein he gave the Alviars, or any one of them or "their respective heirs and assigns, the right and privilege to repurchase [the realties they had previously sold to him] x x x at the price of P34,026.09 x x x for, during and within the period of 10 years counted from the date of execution of [the] instrument" provided that the redemptioner also pays the cost of improvements.

Appearing at the dorsal portion of the instrument below the notarial subscription is an undated additional condition which reads, to wit:

"P.S. (Additional condition)

"In the event the said Victoriano Alviar, Mariano S. Alviar and Belen F. Alviar or either of them, exercise or exercises the right to repurchase the above described properties and they or either of them become the owner and possessor of the premises, they shall or either of them be obliged to give me (Saturnino A. Songcuan) the right of lease and are or is oblige to execute a lease contract with me for a period of twenty five (25) years from the time of exercising the right to repurchase the premises, at a monthly rental of three hundred ninety pesos (P390.00), for the premises actually occupied by me (Saturnino Songcuan) at the time of the execution of this instrument." (p. 6, Records [Exhibit])

The signatures of the Alviars appear at the bottom of the paragraph. At the time of the execution of the instrument, Songcuan, though then already the owner of the realties, was admittedly actually occupying only one-third portion of the ground floor of the 3-storey building, apparently having leased the remaining portion to third persons.

Sometime in March, 1969 the mentioned building was razed by fire and Songcuan erected another at his own expense. Subsequently, Songcuan had the realties registered in his name and was issued OCT No. O-1029 sometime in 1969.

In 1974, the Alviars filed a complaint against Songcuan, docketed as Civil Case No. 2621, for "Redemption with Consignation" to compel the defendant to effect the redemption to them of the subject realties, Victoriano Alviar having died at this time, he was represented by his heirs. Songcuan refused to sell back to the Alviars the properties because the latter was tendering only the price of P34,026.00 whereas Songcuan wanted reimbursement

for the cost of the building he erected and also for the cost of the registration of the realties. The Alviars, on the other hand, claimed that the transactions between them and Songcuan were one of equitable mortgage and, therefore, Songcuan cannot compel them to pay for the cost of the building he had erected without their permission.

In his Answer, Songcuan prays, in the alternative, that in the event the Alviars be allowed to repurchase the realties the latter be also compelled to lease the properties to him pursuant to the "P.S. (Additional Condition)" embodied in the instrument dated October 10, 1966 as above quoted.

On July 29, 1977, the then Court of First Instance of La Union rendered its decision decreeing the following:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered -

"(a) Declaring that the true and real agreement or contract of the parties (Exhs, C, D, E & F for plaintiffs; Exhs. 1, 2, 3 and 4 for the defendant) on the two parcels of land with the commercial building is that of a deed of sale with right to repurchase and hereby enjoins the parties to comply and abide by the terms of their contract;

"(b) Declaring that plaintiffs' right to repurchase the property as admitted by the defendant for a period of 10 years from October 10, 1966 to October 10, 1976, as stipulated in their contracts, have been suspended by the filing of the complaint on November 22, 1974. Said redemption period is suspended during the pendency of this case. Plaintiffs-vendor-a-retro may exercise their right to repurchase the properties within the remaining period of one (1) year, 10 months and 18 days from the finality of this decision (Ong Chua v. CARR, 53 Phil. 975) or within the period of 30 days from finality of this decision as provided for under Art. 1606 of the New Civil Code;

"(c) The plaintiffs in exercising their right to repurchase the properties should pay the defendant the necessary and useful improvement in putting up the building in the amount of P30,000.00, in addition to the repurchase price of P34,026.09, and the additional expenses of P1,000.00 for the registration of the land under Act 496; otherwise, the defendant may retain possession of the parcels of land and building until reimbursement is fully made;

"(d) No damages, including attorney's fees and litigation expensed is awarded to both parties.

"Without pronouncement as to costs." (p. 57, Record [Exhibits])

From this decision Songcuan appealed alleging among others that "[t]he [lower court] erred in refusing to make a finding as to the appellants' right to lease the property for 25 years x x x."

On July 15, 1980 the Court of Appeals, in CA-G.R. No. 62934, affirmed in toto the appealed decision. With respect to Songcuan's alleged right to lease, the appellate court stated that the lower court had already upheld the validity of the deeds executed by the parties and, therefore, "such pronouncement regarding appellant's right to lease the premises for 25 years is unnecessary. The condition is already there in the contract itself which is the law between the parties."

This decision became final and executory on March 9, 1981, the petition for its review having been denied in our resolution, in G.R. No. 55196 dated January 26, 1981.

The writ of execution was issued on April 1, 1981 but was returned unsatisfied because Songcuan refused to accept the manager's check tendered to him claiming that it was not legal tender and for the further reason that the Alviars refused to execute a lease contract in his favor as embodied in their October 10, 1966 contract. An alias writ of execution was issued on June 1, 1981 but also was not satisfied.

On July 7, 1981, Songcuan filed a complaint with the same Court of First Instance of La Union for Rescission of Right to Repurchase which was docketed as Civil Case No. 3213 and which gave rise to this petition. Songcuan was of the opinion that the Alviars forfeited their right to repurchase the realties for having failed to redeem them within 30 days from the finality of the decision in Civil Case No. 2621 contrary to the mandate of Article 1606 of the Civil Code.

On July 9, 1981, the trial court in Civil Case No. 2621 issued an order for its Clerk of Court to issue a Deed of Reconveyance in behalf of Songcuan and in favor of the Alviars.

On July 11, 1981, Songcuan amended his complaint alleging that rescission lies for the further reason that the Alviars failed to execute in his favor a lease contract citing Article 1191 of the Civil Code, and that if the Deed of Reconveyance had already been executed by the Clerk of Court it be declared null since the Alviars had already forfeited their right to redeem the realties. Songcuan's amended complaint further added an alternative prayer that in the event the court decides to compel him to reconvey the properties the Alviars be also compelled to lease the realties to him for 25 years according to the terms of their contract.

On July 17, 1981, the Clerk of Court of the Court of First Instance of La Union issued a Deed of Reconveyance transferring ownership of the properties to the Alviars. Possession of the properties, however, was retained by Songcuan as the trial court granted his prayer for a writ of preliminary injunction in Civil Case No 3213 to enjoin the Alviars from taking possession of the realties.

In their Answer, the Alviars alleged that their tender to Songcuan of a manager's check was a valid tender of payment and that Songcuan is no longer entitled to lease the premises because the subject matter of the contract was burned in 1969 citing Article 1655 of the Civil Code.

On March 19, 1984 the trial court rendered its decision, the dispositive portion of which reads, to wit:

"WHEREFORE, judgment is hereby rendered as follows:

"1. That defendants exercised (sic) their right of redemption within the specific period of one (1) year, ten (10) months and eighteen (18) days from March 9, 1981 as provided for in the decision of Civil Case No. 2621;

"2. That the Deed of Reconveyance executed by the Clerk of Court and Ex-Officio Provincial Sheriff dated July 17, 1981 is valid and cannot be rescinded;

"3. That plaintiff is the lessee of the defendants on the entire properties mentioned in the Deed of Reconveyance for a period of twenty-five (25) years to be counted from July 17, 1981 at the monthly rental of THREE HUNDRED NINETY (P390.00) PESOS;

"4. That the preliminary injunction restraining defendants or any of their representatives or agents or persons acting on their behalf from committing acts of dispossession against plaintiff on the premises of this complaint is now made PERMANENT during the existence of the lease contract, x x x;

"5. That defendants shall maintain the plaintiff in the peaceful and adequate enjoyment of the lease for the entire duration of the lease;

"6. That defendants shall pay plaintiff the amount of P50,000.00 by way of attorney's fees as damages with interest at the legal rate of 12% per year until fully paid; and

"7. That defendants pay costs of this suit.

"SO ORDERED." (pp. 363-386, Records)

Both parties appealed, Songcuan pressing for rescission while the Alviars disclaiming any obligation to lease the

premises to Songcuan. The Alviars, in the alternative countered, that if Songcuan was entitled to lease the premises, the lease should cover only 1/3 of the building.

On June 27, 1986 the Court of Appeals in AC G.R. CV No. 04325 rendered its decision (pp. 58-69, Rollo) modifying that of the trial court's by limiting the area Songcuan is entitled to lease to only 1/3 of the building; declaring the Alviars entitled to a writ of possession with regard the rest of the premises; deleting the award of attorney's fees and ordering the parties to each bear the cost of litigation.

From this decision Songcuan appealed by certiorari to this Court (G.R. No. 75096). The principal issue here is the same as that presented in the lower court and the Court of Appeals, which is, whether or not the Alviars had forfeited their right to repurchase, or whether the right may be rescinded under the grounds advanced by Songcuan. After deliberating on the arguments raised, this Court rules in the negative.

We do not find merit in Songcuan argument that the Alviars had forfeited their right to repurchase the subject premises for having failed to exercise it within thirty days from the finality of the decision in Civil Case No. 2621 citing the third paragraph of Article 1606 of the Civil Code which provides that a vendor-a-retro may still exercise his right to repurchase "within thirty days from the time the final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase." The judgment in Civil Case No. 2621 which had become final on March 9, 1981, had ordained that the running of the period within which the Alviars could repurchase the premises had been suspended during the pendency of the case and they were given the option either to repurchase the premises within 30-days from the finality of the judgment, as provided by the law, or within the remaining period of one year, ten months and 18 days therefrom. It is axiomatic that a final judgment may no longer be amended and to limit now to 30-days the period within which the Alviars may repurchase the premises would be an open violation of the rule. A final judgment is the law between the parties to a case and controls their relation with respect the controversy there presented. We thus fully agree with the pronouncement of the appellate court on this matter that:

"There is no merit in Songcuan's claim that the Alviars' failure to abide by Article 1606 of the New Civil Code foreclosed their right to repurchase. Indeed, Art. 1606 provides that the vendors-a-retro may repurchase within 30 days from the finality of the judgment x x x. However, it is noted that the final decision in Case 2621, which became final on March 9, 1981, gave the Alviars two alternative periods within which to exercise the right to repurchase-either within 30 days as prescribed in Article 1606, or within 1 year, 10 months and 18 days from March 9, 1981, x x x. Accordingly, whichever of the alternative periods the Alviars may avail of, would still constitute a valid exercise of their right." (pp. 64-65, Rollo)

Neither do We agree that the right of the Alviars to repurchase may be rescinded under Article 1191 of the Civil Code. Songcuan asserts that the October 10, 1966 contract he entered into with the Alviars created a reciprocal obligation between them- for him to reconvey the subject premises and for the Alviars to lease the realties to him- and the refusal of the latter to fulfill their obligation gives him the right, under Article 1191, to rescind "the right of [the Alviars] to repurchase" the realties. The law provides in part:

"Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

"x x x."

The cited law is not applicable in this case. Although the parties are each obligor and obligee of the other, their corresponding obligation can hardly be called reciprocal. In reciprocal obligations the obligation of one is a resolutive condition of the obligation of the other, the non-fulfillment of which entitles the other party to rescind the contract. In the case at bar, there are two separate and distinct obligations, each independent of the other. The

obligation of Songcuan to reconvey the property is not dependent on the obligation of the Alviars to lease the premises to the former. The obligation of the Alviars is not an essential part of the contract. This is evident in the wordings of the "P.S. (Additional Condition)" itself which states that "in the event [the Alviars] exercised the right to repurchase x x x and becomes the owner and possessor of the premises, they shall x x x be obliged to give [Songcuan] the right of lease and are x x x obliged to execute a lease contract x x x." In other words, the obligation of the Alviars to lease to Songcuan the subject premises arises only after the latter had reconveyed the realties to them. We quote with approval the following statement of the respondent appellate court:

"For the stipulation imposes on them the obligation to execute the lease only at such time when the Alviars or any one among them exercises the right and becomes the possessor of the properties in question x x x. Otherwise stated, the obligation to execute the lease emerges only if the Alviars had already repurchased and obtained possession of the repurchased properties." (p. 66, Rollo)

Should the Alviars fail to lease the subject premises to Songcuan after reconveyance, then the latter's remedy is not for rescission but for specific performance, which in fact he asked for in the alternative and was granted by the trial court and the Court of Appeals.

Thus, the right of the Alviars to repurchase must be upheld notwithstanding the fact that such right had not been annotated at the back of Songcuan's certificate of title. The purpose of annotation is only to serve notice to third persons and not to lend validity or nullity to an instrument.

The next question to be resolved is how much area Songcuan is entitled to lease. The trial court, awarded Songcuan the whole premises, based on the "P.S. (Additional Condition)" which speaks of "the premises actually occupied by [Songcuan]" and there was no evidence presented by the Alviars on the area Songcuan was actually occupying. Further, the trial court said that the right of Songcuan to lease the whole premises is strengthened by the fact that he became the registered owner of the realties and hence, has complete dominion over the properties.

We rule, however, that the P.S. clause refers to the area Songcuan was actually occupying and not to what he constructively may possess as the owner of the premises at the time of the execution of the October 10, 1966 contract. Further, as pointed out by private respondents, there was no need to present any evidence as to the area Songcuan was actually occupying since at the pre-trial conference in the trial court, Songcuan had admitted that he was occupying only one-third of the single story Alviar building.

Under the parties' agreement, Songcuan's lease was to start from the time the Alviars exercised their right to repurchase, Songcuan should therefore be deemed to have become the Alviars' lessee on July 17, 1981 and should pay rent in the amount agreed upon from said date.

As regards the deletion by the respondent court of the award to Songcuan of attorney's fees, We fully agree and quote its pronouncement that:

"We find no justification for the exorbitant award in Songcuan's favor of attorney's fees of P50,000.00 considered as damages. Attorney's fees in concept of damages may be awarded only if the defendant acted in gross and evident bad faith in refusing plaintiff's just and demandable claim. (Art. 2208, New Civil Code). In the case at bar, there is no showing that the Alviars acted in bad faith in refusing Songcuan's claim to a 25-year lease of the entire premises. The stipulation to that effect merely refers to the premises Songcuan was occupying at the execution of the deed on October 10, 1966, which admittedly, was only 1/3 of the ground floor of the Alviar building, not the entire building. x x x." (p. 68, Rollo)

With respect to G.R. No. 80851, which is a petition to enjoin the implementation of the writ of possession in favor of the Alviars, there is no need to discuss the issues therein, as the same has become moot and academic, this Court having pronounced that Songcuan is entitled to lease only one-third of the ground floor of the subject

building, with the Alviars being entitled to a writ of possession as to the rest.

ACCORDINGLY, the decision under review in G.R. No. 75096 is hereby AFFIRMED, and the petition in G.R. No. 80851 is DISMISSED for having become moot and academic.

**SO ORDERED.**

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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