

DR. AND MRS. MERLIN CONSING, PETITIONERS, VS. THE COURT OF APPEALS AND CARIDAD SANTOS, RESPONDENTS.*G.R. No. 78272. August 29, 1989*

Ponente: CORTES, J.

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Petitioner Merlin Consing is the registered owner of a 9,643 sq. m. parcel of land covered by Transfer Certificate of Title (TCT) No. 312970 located in barrio Bayanbayan, Marikina, Rizal. Sometime in 1971, Consing caused the subdivision of said parcel of land into thirty-eight (38) lots and submitted a subdivision plan to the Land Registration Commission (LRC) which was approved on January 25, 1971 as a simple subdivision plan. Subsequently, Consing filed a petition for segregation of title and the issuance of separate certificates of title for the 38 lots. In the same petition, Consing likewise informed the Register of Deeds that he voluntarily grants the right of way in lots 2, 7, 8, 13, 14, 19, 20, 25, 26, 31, 32, 35, 36, and 37 [Exh. "3".] The petition for segregation was granted and thereafter, doing business under the name Mearle Homes, the spouses Consing engaged in the sale of these 38 lots.

On October 4, 1971 private respondent Caridad Santos and the Consings entered into an agreement denominated as a "Contract of Sale" whereby the latter agreed to sell, transfer and convey to the former a house and lot more particularly described as follows:

A newly constructed 4 bedrooms, two bathrooms, complete with light and water connections bungalow, fenced on two parcels of land (Lot No. 26 of subdivision plan (LRC) Psd 134075 and Lot No. 25 of subdivision plan (LRC) Psd 134075, all being a portion of Lot B (LRC) Psd 133634, LRC Rec No. 7672 containing an area of TWO HUNDRED NINETY FOUR (294) SQUARE METERS & TWO HUNDRED NINETY FIVE (295) SQUARE METERS, respectively more or less including the voluntary right of way, covered by TCT No. 313386 and TCT 313385, respectively; located at Barrio Bayanbayan, Municipality of Marikina, Rizal [Exh. "11".]

It is stipulated in said "Contract of Sale" that in consideration of the agreement to sell the buyer will pay the seller P110,000.00 with interest at 12% per annum, payable as follows: P25,000.00 upon the signing of the contract and a monthly installment of P1,020.14 payable on or before the fifth day of each month beginning December 1971 without necessity of demand until the amount of the purchase price and interest shall have been fully paid after which ownership would be transferred to the buyer.

Santos paid her monthly installments to the Consings. Starting May 1972, however, she defaulted in her payments. Consing sent her several letters of demand to which she did not reply. On June 28, 1974, counsel for the Consings sent a final demand letter to Santos asking her to settle her obligations which by then have accrued to P12,818.61, otherwise, they shall be constrained to resort to court litigation [Record, p. 12.]

Santos, represented by a lawyer, manifested her willingness to settle her obligations on the condition that the Consings comply with all the laws and regulations on subdivisions and after payment to her of damages as a

consequence of the use of a portion of her lot, more or less 168 sq.m., as a subdivision road [Record, p. 13.]

Subsequently, on July 26, 1974, the Consings filed an ejectment case against Santos. After trial, on November 4, 1974, judgment was rendered by Judge Gregorio de la Paz of the Municipal Court of Marikina in favor of the Consings.

It appears, however, that on August 22, 1974, with the ejectment case still pending, Santos filed with the then Court of First Instance (CFI) a complaint for specific performance with damages against the Consings. On March 17, 1975, the CFI issued a restraining order enjoining the Municipal Court of Marikina from resolving the motion for execution filed by the Consings in the ejectment case and from taking further action in said case until further orders from the CFI [Record, p. 69.]

Also borne out by the record is the criminal complaint filed by Santos against Merlin Consing charging him with the crime of Violation of Municipal Ordinance No. 7, Series of 1964 of Marikina for contracting to sell to her the two lots in question without first securing the approval of the Municipal Council of Marikina for his subdivision plan [Exh. "1".] On May 21, 1975 this complaint was dismissed by the fiscal on the grounds of lack of a prima facie case and prescription [Exh. "1-b".]

At about the same time, Consing submitted his subdivision plan to the Municipal Council of Marikina for approval. The council, in turn, referred the same to the Department of Local Government and Community Development (DLGCD) in compliance with its Memorandum Circular No. 73-41 of September 7, 1973. The DLGCD, in its second indorsement dated March 13, 1975, noted that the "subdivision plan meets in general the requirements in the subdivision regulations of this Office with respect to lot areas and lot frontages except the street widths which are not indicated as road lots and which are below the 10 m. minimum requirement. It is therefore recommended that the existing roads should be indicated on the plan as road lots and the corresponding areas along the sides of the said roads as corrected, be reserved for future road widening and annotated in the title as such and should be excluded from the sale of the corresponding affected lots. . . ." [Exh. "D".]

On August 28, 1981, the CFI rendered judgment finding that although the Consings may have "corrected the irregularities and/or [have] complied with the legal requirements for the operation of their subdivision, they cannot escape their liability to [Santos] for having sold to her portions of the roads or streets denominated as right-of-way. On this ground alone, this Court believes that [Santos] was fully justified in refusing to pay further her monthly amortizations. In the interest of justice, fair play and equity, this Court believes that there shall be a proportionate reduction of the purchase price of the two lots corresponding to the area of 168 square meters, more or less, used as a [right] of way." [Record, p. 485.] The dispositive portion of the CFI decision reads as follows:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff (Santos), ordering the defendants (Consings) to allow the plaintiff to continue paying her monthly amortizations of the two lots in question of the reduced purchase price of P78,375.68, after deducting whatever amounts were already paid by her.

Defendants are further ordered to pay the plaintiff the amount of P10,000.00 as and for attorney's fees.

The restraining order issued against Municipal Judge Gregorio C. de la Paz is made permanent.

Plaintiff's other prayers for relief, as well as defendants' counterclaim, are dismissed, for lack of merit.

With costs against the defendants.

SO ORDERED [Record, p. 486.]

The Consings interposed an appeal to the Court of Appeals which affirmed the decision of the CFI with modification as to the computation of the amount to be deducted from the purchase price. The decretal portion of

the CA decision[1] is as follows:

WHEREFORE, the appealed decision is hereby affirmed with the modification that the reduced purchase price of the property in question should be, as it is hereby fixed, at P94,312.16 instead of P78,375.68. Costs against appellants.

SO ORDERED [CA Decision, pp. 12-13.]

From the decision of the Court of Appeals, petitioner-spouses filed this petition for review citing the following reasons why the decision of respondent court should be reviewed and their petition allowed:

1. The decision rendered by the respondent Court of Appeals in this case does not comply with the requirements of Article VIII, section 13, of the New Constitution;
2. It is arbitrary and there is no law to support Judge Pineda and the respondent Court of Appeals in holding that when the Consings constituted a voluntary right of way on Lots 25 and 26, the portions subject to the right of way ceased to be owned by the Consings and became streets or road lots which the Consings have no right to sell;
3. It is arbitrary and contrary to the documented facts for the respondent Court of Appeals to say that the portions of lots 25 and 26 subject to a voluntary right of way are actually used as streets or roads even though it is clearly stated in the lot titles, in the location plans, and in the contract of sale, that said portions are not streets or roads, but are portions subject to voluntary right of way, and in spite of the fact that the subdivision was approved by the Land Registration Commissioner as a simple subdivision plan which clearly shows that there are no streets or road lots in the subdivision.

It is arbitrary for Judge Pineda and the respondent Court of Appeals to suppose that the portions of Lots 25 and 26 subject to right of way are streets or road lots and then compute the value of the said portions in a careless and erroneous manner, deducting afterwards the value so computed from the P110,000 purchase price; and

5. There is no legal or factual basis in ordering the Consings to pay P10,000 attorney's fee to Caridad [Rollo, pp. 24-25.]

Thereafter, private respondent, as required by the Court, filed her Answer/Comment to which petitioners filed their Reply. On May 2, 1988 the Court, after considering the allegations contained, the issues raised and the arguments adduced in the pleadings submitted by the parties, gave due course to the petition [Rollo, p. 84.]

Petitioners first raise the issue of the Court of Appeals' non-compliance with the certification requirement under Art. VIII Sec. 13 of the 1987 Constitution.

Art. VIII Sec. 13 of the 1987 Constitution provides that:

Sec. 13. The conclusions of the Supreme Court in any case submitted to it for decision en banc or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. A certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. Any Member who took no part, or dissented, or abstained from a decision or resolution must state the reason therefor. The same requirements shall be observed by all lower collegiate courts. [Underscoring supplied.]

The first sentence of this provision outlining the decision-making process of the Supreme Court is adopted from both the 1935[2] and 1973[3] Constitutions. The latter Constitution further broadened the application of the requirement on the decision-making process by mandating that this "shall be observed by all inferior collegiate courts".

The certification^[4] requirement, however, is a new provision introduced by the framers of the 1987 Constitution. Its purpose is to ensure the implementation of the constitutional requirement that decisions of the Supreme Court and lower collegiate courts, such as the Court of Appeals, Sandiganbayan and Court of Tax Appeals, are reached after consultation with the members of the court sitting en banc or in a division before the case is assigned to a member thereof for decision-writing. The decision is thus rendered by the court as a body and not merely by a member thereof [I Record of the Constitutional Commission 498-500.] This is in keeping with the very nature of a collegial body which arrives at its decisions only after deliberation, the exchange of views and ideas, and the concurrence of the required majority vote.

The absence, however, of the certification would not necessarily mean that the case submitted for decision had not been reached in consultation before being assigned to one member for the writing of the opinion of the Court since the regular performance of official duty is presumed [Sec. 5 (m) of Rule 131, Rules of Court.] The lack of certification at the end of the decision would only serve as evidence of failure to observe the certification requirement and may be basis for holding the official responsible for the omission to account therefore [See I Record of the Constitutional Commission 460.] Such absence of certification would not have the effect of invalidating the decision.

The second and third assigned errors of petitioners assail the decision of the Court of Appeals finding that a portion of Lots 25 and 26, although called a voluntary right of way, is a subdivision road which they have no right to sell. The Consings argue that it is a voluntary easement which they have a right to constitute by virtue of Art. 619 of the New Civil Code and "[b]y constituting and establishing a voluntary right of way in said two lots, the portions subject to the voluntary right of way did not become streets or roads as held by Judge Pineda and the respondent Court of Appeals; they continue to be the property of the Consings but subject to an encumbrance, i.e. subject to an easement of right of way." [Petition, p. 22; Rollo, p. 27.] Further, the Consings contend that "the portions of Lots 25 and 26 subject to voluntary right of way can never be used as streets or road lots because [their] subdivision plan was approved by the Land Registration Commissioner as a simple subdivision plan which means that there are no streets or road lots in the subdivision, otherwise it would not have been approved as [such]." [Petition, p. 24; Rollo, p. 29.] In fine, the Consings are alleging that there is no basis for the reduction in the purchase price of the two lots.

Private respondent Santos on the other hand, avers that the alleged right of way is actually a subdivision road. This road is included in the two lots sold to her and she is deprived of the use and enjoyment thereof, hence, a reduction in the purchase price of said lots is in order.

Petitioners' contentions are devoid of merit. The evidence on record negates the Consings' assertion that the portions subject to the voluntary easement of right of way are not roads. It is undisputed that the Consings' subdivision plan was approved by the LRC as a simple subdivision which indicated no streets or roads. However, this does not preclude the need for them within the subdivision. An examination of the Consings' subdivision plan reveals that the land is subdivided into 38 lots with the so-called voluntary right of way cutting across lots 2 and 3, 7 and 6, 8 and 9, 13 and 12, 14 and 15, 19 and 18, 20 and 21, 25 and 24, 26 and 27, 31 and 30, 32 and 33. The relative position of this "right of way" vis-a-vis the lots shows that it is in fact a road without which the subdivision lot buyers would have no means of access to and from the subdivision.

Moreover, as heretofore stated, when the Municipal Council referred the Consings subdivision plan to the DLGCD, the latter recommended that the existing roads within the subdivision should be indicated on the plan as road lots. In turn, the Municipal Council of Marikina passed Resolution No. 70 approving the subdivision plan of Mearle Homes, Inc. subject, however, to several conditions one of which is the subdivision owner's compliance with the recommendation of the DLGCD. On May 19, 1975, Merlin Consing wrote a letter addressed to the

Municipal Mayor and Municipal Council of Marikina wherein he admitted that "the road lots as shown in the plan originally approved by the Land Registration Commission are the Right-of-way which are annotated in the corresponding transfer Certificate of Titles, copies of which were supplied or forwarded to your office. These are the road lots mentioned. . ." [Exh. "24".]

In this same letter, Merlin Consing stated that "the road lots annotated in their corresponding titles ARE NOT INCLUDED in the sale of the property." However, the transfer certificates of title covering lot 25 and lot 26 clearly state the boundaries thereof and when compared to the Consings' subdivision plan would reveal that the seller sold that portion covered by the right of way to the buyer. Further, the "Contract of Sale" between the parties is specific that the property sold to Santos includes the voluntary right of way [See Exh. "11" pertinent portion quoted in p. 2 of this decision.]

In *Lim v. De los Santos* [G.R. No. L-18137, August 31, 1963, 8 SCRA 798] the Court had occasion to state one duty of a subdivision lot seller. In said case the subdivision lot buyers instituted an action for specific performance with damages to compel the sellers to construct the necessary roads in the subdivision that would serve as outlets. The sellers' motion to dismiss on the ground of lack of cause of action was sustained by the trial court because the contract to sell between the parties mentioned no obligation on the part of the defendants to construct roads. The case reached this Tribunal and in resolving the issue of whether or not the complaint stated a cause of action, the Court, speaking through Mr. Justice JBL Reyes, declared that "[t]he allegations in the complaint that defendant-vendor made representations that 'she would have constructed (i.e., would cause to be built) adequate outlets' for the lots sold do not strike us to be so improbable as to justify their being disbelieved de plano. After all, a seller's duty is to deliver the thing sold in a condition suitable for its enjoyment by the buyer for the purposes contemplated (Sent. Trib. Supremo of Spain, 17 Nov. 1930), and proper access to a residence is essential to its enjoyment. . . ." [at 802; Underscoring supplied.]

In the case at bar, in including as part of Santos' purchase price the value of the subdivision road, petitioners have shifted to her the burden of providing for an access to and from the subdivision. The Consings have thus failed in their duty as subdivision lot sellers and for such failure and consequent unfairness and injustice to Santos, the latter should be entitled to a proportionate reduction in her purchase price of the two lots.

Petitioner-spouses also allege that the CA erred in its computation of the amount to be deducted from the purchase price of the lots. They contend that respondent court had no basis when it made its computation and it merely assumed the price to be deducted.

The CFI's computation deducted from the total purchase price of P110,000.00 the price per square meter of the lots multiplied by the total area covered by the right of way which is 168 sq. m. In arriving at the price per square meter of the two lots, the trial court divided the total purchase price by the total area of the two lots, which is 589 sq.m.

On appeal to the Court of Appeals, the Consings took exception to this method of computation alleging that the trial court failed to take into account the value of the bungalow constructed on the lots and which is part of the contract. The Court of Appeals found merit in this allegation and re-computed the price per square meter of the two lots in the following manner:

. . . There is, however, no evidence showing the price of the land sold, separately from that of the house erected thereon. Be that as it may, it may be reasonably assumed under the circumstances of the case, that one-half (1/2) of the price of the property corresponds to the house and the other half to the lot. Upon this assumption, the price per square meter of the land (with a total area of 589 square meters) may be placed at P93.38, and the price of 168 square meters of right of way at P15,687.84 (instead of P31,375.68 stated in the appealed

decision) which is logically and reasonably deductible from the total purchase price due from the appellee. In consequence, the total reduced purchase price of the subject property may be fixed at P94,312.16 (or P110,000.00 minus P15,687.84). [CA Decision, p. 11.]

Indeed, the record is bereft of any evidence as regards the price of the two lots sold to Santos separately from the price of the bungalow constructed thereon. The exhibits presented by the parties and their testimonies do not reveal separate valuations of the bungalow and the two lots. Evident therefore is the fact that the purchase price of P110,000.00 is for both the bungalow and the two lots sold as one property. Further, to require the parties to adduce their respective evidence as to the separate valuations of the properties in question would only serve to unduly delay the disposition of the case. Under these circumstances, the Court of Appeals' computation that one-half of the purchase price of P110,000.00 corresponds to the value of the bungalow and the other half to the two lots is both just and fair. Accordingly, the Court will not disturb the same.

Finally, petitioners allege that "there is no basis for awarding attorney's fees to [private respondent] in this case because the Consings have not 'acted in gross and evident bad faith in refusing to satisfy [Santos'] plainly valid, just and demandable claim' (Art. 2208, para. 5 of the Civil Code of the Philippines" [Petition, p. 26; Rollo, p. 31.] The evidence on record, however, proves otherwise. While the Consings have secured the necessary licenses to operate a subdivision from the Municipal Council of Marikina and the National Housing Authority they, however, exerted the effort to obtain them only after private respondent filed a complaint for specific performance against them. Moreover, as heretofore mentioned, petitioner-spouses constituted an alleged "right of way" over the two lots sold to private respondent which as the evidence on record reveals was intended to be a subdivision road occupying 168 sq.m. of the total 589 sq.m. of the lots sold. This conduct on the part of the petitioners clearly shows gross and evident bad faith, not to mention lack of fairness, for which reason affirmance of the award of P10,000.00 attorney's fees in favor of private respondent is in order.

WHEREFORE, in view of the foregoing, the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[1] Penned by Justice Cecilio L. Pe with Justices Desiderio P. Jurado and Antonio M. Martinez concurring.

[2] Article VIII Sec. 11. The conclusions of the Supreme Court in any case submitted to it for decision shall be reached in consultation before the case is assigned to a Justice for the writing of the opinion of the Court. Any Justice dissenting from a decision shall state the reasons for his dissent.

[3] Article X Sec. 8. The conclusions of the Supreme Court in any case submitted to it for decision en banc or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. Any Member dissenting from a decision shall state the reasons for his dissent. The same requirements shall be observed by all inferior collegiate courts.

[4] In a letter-query dated June 22, 1987 addressed to the then Chief Justice of the Supreme Court Claudio Teehankee the then Presiding Justice of the Court of Appeals Carolina Griño-Aquino manifested that "[i]n a meeting last week of the chairmen of the present 16 divisions of the Court of Appeals . . . the majority were for adopting, with slight modification, the forms now used by the Supreme Court for the "attestation" of the division chairmen, and for the "certification" of the Chief Justice on the decisions of that Court." The Minutes of the CA en banc session on June 26, 1987 reveals that it was only during this time that the members of the CA agreed that each division can adopt its own certification as long as the Constitutional requirement is satisfied. In the same

meeting the Presiding Justice made known her intention to comply with the requirement immediately after her letter-query is acted upon by the SC. In an en banc resolution dated June 23, 1987 (promulgated on June 29, 1987) the SC approved the CA's proposed certification. It is evident therefore that not until after June 1987 did the Court of Appeals begin to make the certification required under the 1987 Constitution. The CA decision in this case was rendered on April 30, 1987.

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