

JESUS KHO, PLAINTIFF-APPELLEE, VS. THE HON. COURT OF APPEALS, MARIANO SUSON, JR., RICARDO L. INOCIAN, ACCUSED-APPELLANT.

G.R. No. 88445. June 17, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

The factual background is not disputed. Ricardo Inocian was the owner of several lots in Maria Teresa Village in Guadalupe, Cebu City. Roberto Osmeña was his real estate broker. In 1971, Inocian and Osmeña sold what was identified as Lot 1 to Mariano Suson[1] and, later that same year, the adjacent lot, identified as Lot 2, to Jesus Kho.[2] Lot 3 had previously been sold to Marilyn Ong.[3] Suson built a house on Lot 2, believing it to be Lot 1. Kho built his own house on Lot 3, believing it to be Lot 2. When the mistakes were discovered in 1975, the parties conferred and sought a solution. They failed. Eventually, Ong sued Kho for ejectment, resulting in Kho buying Ong's lot as a compromise.[4] Kho thereafter filed a complaint for recovery and damages against Inocian, Osmeña and Suson. Suson filed a cross-claim against his co-defendants.

After trial, Judge Juan Y. Reyes of the Regional Trial Court of Cebu rendered a decision dated August 4, 1983, disposing as follows:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendants, ordering:

1) Defendants Roberto 'Bob' Osmeña and Ricardo Inocian, jointly and severally;

(a) To pay plaintiff P11,360.00 as damages suffered by plaintiff by reason of gross negligence and misrepresentation in indicating the lot to plaintiff;

(b) To reimburse plaintiff of the sum of P2,000.00 representing actual expenses in settling the ejectment case filed against plaintiff in the City Court of Cebu by Marilyn Ong, and the sum of P5,000.00 as moral damages;

(c) To pay plaintiff P5,000.00 representing attorney's fees and P500.00 as litigation expenses.

2) Defendant Mariano Suson, Jr.,

(a) To remove his house from Lot 2 of Maria Theresa Village II owned by and titled in the name of plaintiff, vacate the premises thereof and deliver the same to plaintiff within two months after this decision shall have become final and executory;

(b) To pay plaintiff rentals at the reasonable amount of P75.00 per month from May 1971 until possession of Lot 2 shall have been delivered to plaintiff;

WITH respect to the cross-claim of Mariano Suson against cross-defendants Osmeña and Inocian, this Court renders judgment in favor of cross-claimant against cross-defendants, ordering the latter to pay to Suson, Jr. -?

(a) The sum of P5,000.00 representing moral damages;

(b) A sum equivalent to the total amount of rentals the cross-claimant shall pay to the plaintiff in the form of reimbursement; and

(c) Attorney's fees in the sum of P2,000.00.

Costs fixed against defendants Osmeña and Inocian.

SO ORDERED.

On appeal by the three defendants, this decision was modified by the Court of Appeals[5] on January 13, 1989, thus:

WHEREFORE, the judgment of the lower court in Civil Case No. R-15657 is hereby modified as follows:

Defendants Roberto "Bob" Osmeña and Ricardo Inocian, are jointly and severally ordered:

a) To pay plaintiff Jesus Kho P11,360.00 as damages suffered by him when he was compelled to buy lots from Marilyn Ong, by reason of their gross negligence and misrepresentation in indicating the lot of plaintiff;

b) To reimburse plaintiff the sum of P10,800.00, the consideration he paid in the sale of Lot 2 in the subject subdivision;

c) To reimburse plaintiff the sum of P2,000.00 representing actual expenses in settling the ejectment case filed against him in the City Court of Cebu by Marilyn Ong; and the sum of P5,000.00 as moral damages;

d) To pay plaintiff P5,000.00 representing attorney's fees and P500.00 as litigation expenses in this suit;

e) To pay cross-claimant Mariano Suson, Jr. P5,000.00 representing moral damages; and P2,000.00 as attorney's fees.

It is also hereby ordered that TCT No. 51965 in the name of Suson be cancelled and TCT No. 50806 in the name of Kho be likewise cancelled and transferred to the name of Suson. Costs against defendants Inocian and Osmeña.

SO ORDERED.

Kho is now before us, claiming that the respondent court erred "in making the following presumptions and conclusions."

(a) When Kho negotiated with Osmeña and Inocian to buy a lot in MTV II in 1971, it was his intention to buy Lot 3 and no other.

(b) Kho could not have contemplated buying the real lot (now occupied by Suson) since he knew then that it was already sold to the cross-claimant.

(c) That no sale of the lot occupied by Susan in favor of Kho was contemplated or perfected in 1971 is demonstrated by the fact that Kho knew right then that the property was already owned by Suson.

The petition will fail.

The issues raised are mainly factual. In a petition for certiorari under Rule 45 of the Rules of Court, only questions of law may be raised.[6] A review is not a matter of right but of sound judicial discretion and will be granted only when there are special and important reasons therefore.[7] We see none in the case at bar.

The findings of fact of the respondent court, which in the main affirmed those of the trial court, appear to be based on substantial evidence. They will therefore not be disturbed in this review. Inocian has not appealed and in his memorandum practically concedes such findings.[8] So has Suson, who also prays for the denial of the

petition.[9] Osmeña has been dropped as a respondent on the petitioner's own motion.[10]

Kho maintains that he could not have bought Lot 3 because it had already been sold to Ong. This is absolutely true, which is the reason why Inocian and Osmeña, who misrepresented it to him as Lot 2, were sentenced to pay him damages. Kho also holds that the only lot that could be sold to him at that time was Lot 2, which is what he bought. This contention is erroneous because Lot 2 had already been sold at that time to Suson as Lot 1.

The petitioner argues that even if Suson had acted in good faith when he built his house on Lot 2, he should still be liable in damages to him because it was because of Suson's mistake that he himself was led to build his house on Lot 3. He himself refuted this argument when he testified on direct examination as follows:

Q. In other words, you were the one who pointed to the carpenter where to build the house?

A. Yes, sir.

Q. And you pointed out as bearing the property where the house of Suson was constructed because the house was already there?

A. Even if Suson did not have his house there I have to construct my house on the lot because that was the same lot which was indicated to me.[11]

Kho also speculates that if he had not been able to purchase Lot 3 from Ong, he would have been in the same situation as Suson, with a house on another person's lot. In these circumstances, Ong could not have been legally required to transfer her lot to Kho because she was the original purchaser. Yet, in the questioned decision, although the situation between Kho and Suson is no different, Kho is required to transfer Lot 2 to Suson, in whose name its registration is ordered.

The problem between Kho and Suson is different. Suson was the only purchaser of Lot 2 although it was identified as Lot 1. The lower court found that what Kho purchased was Lot 3 although it was identified as Lot 2. Lot 3 was therefore involved in a double sale, first to Ong and then to Kho. Ong legally has precedence, having the title and registration over the lot.[12]

The petitioner claims that the transfer certificates of title issued to the parties over their respective lots are the best evidence of what they had purchased. As he was the registered buyer of what was described in TCT No. 50806 as Lot 2, then Lot 2 should be recognized as belonging to him, not Suson.

He invokes the rule, but it is not without exceptions.

The respondent court found that Susan could not have bought Lot 1 because it was near a creek and already partly eroded. It was not suitable for residential purposes. Proof of his real intention was the fact that he constructed his house on Lot 2, which was what he believed he had purchased. TCT No. 51965 referred, indeed, to Lot 1 and not Lot 2. But in case of mistakes of this nature, the registration may be rectified and the certificates of title corrected.

Parenthetically, Kho cannot claim that his intention to buy Lot 2 is also evidenced by the fact that he built his house on that lot. In fact, he built on Lot 3, not Lot 2.

In the case of *Bijis v. Legaspi*,^[13] this Court declared:

It appears that the Court of Appeals made no findings or mention of the facts obtaining in the record, supported by documentary evidence, and found out by the trial court, which clearly indicate that there has been an erroneous exchange in the numbers of the two lots in the different deeds that had been executed. These facts are, namely: although the lot mortgaged by Pedro Medina to the San Lazaro Estate Fund for the amount of P6,400.00 was designated as Lot No. 1357, the report of appraisal in connection with the mortgage describes

the lot as consisting of 627 square meters in area and located in the poblacion, Rosario, Cavite, with improvements consisting of a 2-story house of strong materials and a camarin, which features distinguish Lot No. 1155 from Lot 1357 located in the barrio of Bagbag municipality of Rosario, Cavite; the petitioner, with the knowledge of the respondents and without objection on their part, took possession of the said Lot No. 1155 and in the concept of owner collected rentals from the Bureau of Lands office and the Rosario Institute, then occupants of the building; Lot No. 1155 with its improvements had at the time of the mortgage to the San Lazaro Estate an appraised value of P10,830.00, while Lot No. 1357 was assessed at P280.00 only, with an improvement consisting of a nipa house valued at P200.00; and when the parties discovered that there has been a mistake in the designation of the numbers of the lots, they attempted to rectify that error by executing instruments of sale in favor of each other over the two lots under dispute. Exhibit 18, Annex "N" of Petitioners Brief is a "Deed of Absolute Sale" signed by Luis Atienza Bijis conveying to Francisco Legaspi and the other respondents Lot 1357, while Exhibit 3, Annex "O" of the same Brief is entitled "Extrajudicial Partition with Sale" signed by the Legaspis deeding to the herein petitioner Lot 1155. Although the documents mentioned, which were supposed to have been drawn on the same day, are in the form of sale, the obvious intention of the parties was to exchange the two lots with each other. This can be gleaned from the fact that the price mentioned in each of the documents is the same--P2,000.00--notwithstanding the disparity between the properties in their respective values owing to the difference in their location and improvements.

To our minds, the foregoing facts over which the appellate court failed to make any findings amply support the contention that the petitioner is the owner of Lot 1155 and the respondents are the owners of Lot 1357 as found out and correctly adjudged by the trial court.

The mere mention of Lot No. 1357 in the contract to sell, the final deed of sale and the certificate of title in favor of the herein petitioner is not conclusive that the property sold to him is the lot located at barrio Bagbag. For as has been elucidated, the parties meant Lot 1155 at the poblacion. Article 1370 of the Civil Code provides that if the words in a contract appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

Applying the above doctrine to the case at bar, we declare with the respondent court that despite the erroneous registration of their respective lots, what Suson bought was Lot 2 and what Kho bought was Lot 3, although Kho had to yield to the superior right thereto of Ong, who had earlier bought and registered the lot.

In view of this conclusion, it is no longer necessary to discuss the petitioner's contention that Suson was a builder in bad faith.

WHEREFORE, the petition is DENIED and the challenged decision of the Court of Appeals is AFFIRMED, with costs against the petitioner. It is so ordered.

Griño-Aquino, Bellosillo, and Quiason, JJ., concur.

[1] Records, p. 119.

[2] Ibid., p. 117.

[3] Id., p. 141.

[4] Id., p. 138, 142.

[5] Penned by Justice Alfredo L. Benipayo with Campos, Jr. and Francisco R., JJ., concurring.

[6] Section 2, Elayda v. Court of Appeals, 199 SCRA 349; Lauron v. Court of Appeals, 184 SCRA 215; Mayuga v. Mayuga, 170 SCRA 347.

[7] Section 4, *Sunbeam Convenience Foods, Inc. v. Court of Appeals*, 181 SCRA 443.

[8] *Rollo*, p. 79.

[9] *Id.*, pp. 38, 95.

[10] *Id.*, p. 75.

[11] *TSN*, August 5, 1977, p. 19.

[12] *Gatmaitan v. Court of Appeals*, 200 SCRA 37; *Abad v. Court of Appeals*, 179 SCRA 818.

[13] 107 Phil. 512.

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