

**SPOUSES ALFREDO E. GIMENEZ AND PACITA GIMENEZ,
PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND JOSE
T. MERCADO, JR., RESPONDENTS.**

G.R. No. 92171. March 13, 1991

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This is a petition for review of the decision dated November 16, 1989 of the Court of Appeals in CA-G.R. CV No. 18664 ordering:

"1. the appellee to pay the appellants the sum of P156,800.00 with interest thereon at 1% a month from October 16, 1983, the date of the first demand until full payment;

"2. the appellee to pay the appellants the sum of P10,000.00 as attorney's fees;

"3. the appellants to execute to the appellee a deed of sale of the property and improvements described in Transfer Certificate of Title No. 68259 of the Registry of Deeds of Quezon City immediately after payment of the sums mentioned in No. 1 above, with the assumption by the appellee of the balance due the GSIS on appellants' Accounts Nos. 25869 and 25869-A." (pp. 102-103, Rollo.)

On July 5, 1975, the petitioners as sellers, and the private respondent, Jose T. Mercado, as buyer, entered into a conditional contract of sale of a house and lot with an area of 1,200 square meters at No. 34 Hillside Drive, Blue Ridge, Quezon City, for the price of FIVE HUNDRED THOUSAND (P500,000.00) PESOS, subject to the following conditions:

"1. A downpayment of the ONE HUNDRED THOUSAND (P100,000.00) PESOS in cash will be paid by Mr. Jose Mercado to Mr. Alfredo Gimenez upon signing of this agreement.

"2. The premises shall be ready for occupancy on July 6, 1975, furnished.

"3. The balance less the GSIS loan on said property shall be paid by the buyer in two or more equal installments but not later than one year.

"4. A deed of absolute sale shall be executed in favor of Mr. Jose Mercado, Jr. upon payment of the 40% of the total selling price. The cost of the preparation of the deed of sale and the cost of the necessary documentary stamps shall be borne by the seller while the cost of the registration fees to be borne by the buyer.

"5. However, if the balance is not fully paid within one year period, the total payments received by the seller shall be considered as advance payments to the rental of the house in the amount of FIVE THOUSAND (P5,000.00) PESOS per month." (p. 4, Rollo.)

Petitioners contend that from July 5, 1975 up to July 5, 1976, the private respondent, instead of completing payment of the entire balance of P400,000 on the purchase price of the house and lot, was able to pay Twenty Thousand Pesos (P20,000.00) only. On November 7, 1976, private respondent paid petitioners an additional Ten

Thousand (P10,000.00) Pesos.

On September 7, 1977, more than two (2) years after the execution of the conditional contract of sale, the parties executed another agreement wherein the buyer, Mercado, Jr., promised to pay the balance of Three Hundred Seventy Thousand (P370,000.00) Pesos on or before October 6, 1977 plus 1% interest on the balance from July 6, 1976 to September 6, 1977, and also the unpaid interest on the GSIS mortgage for July 6, 1975 to September 4, 1977. In case of default, he promised to voluntarily vacate the premises and leave the furnishings belonging to the sellers. Upon execution of the supplemental agreement, private respondent also paid P5,000 to petitioners deductible from his account.

The new period expired on October 6, 1977 with the private respondent paying only P25,000 on his balance of P370,000. The sum of P5,000 was considered as rental of the house subject of the sale, for one month or until November 6, 1977 and another P5,000 would be applied as rental until December 6, 1977 (p. 138, Rollo). The amount of P15,000 would be forfeited in favor of petitioners (p. 9, Rollo).

Foreseeing his inability to pay, private respondent wrote the petitioners on December 5, 1977 requesting for an extension up to December 19, 1977 which the latter granted. On December 7, 1977, private respondent sent to petitioners P15,000 and another amount of P35,000 on December 19, 1977 and requested for an extension of two (2) months or up to February 19, 1978. In their acknowledgment, petitioners advised private respondent that he should pay P50,000 on or before January 3, 1978, otherwise he should vacate the premises.

On January 3, 1978, private respondent was able to pay only the sum of P25,000, but promised to pay the other P25,000 on or before January 17, 1978. On January 30, 1978, he paid P15,000. He made other partial payments so that as of May 28, 1990 or five (5) years after the parties executed the contract to sell, Mercado had paid only P343,000 on the price of the Gimenez property. The unpaid balance on the contract was P156,800.

On September 12, 1984, petitioners, through counsel, demanded that Mercado pay his rents in arrears and vacate the premises. When he did not comply, they filed an ejectment complaint against him. On August 1, 1986, the Metropolitan Trial Court rendered a decision in petitioners' favor, but on appeal by the private respondent, the Regional Trial Court (Q-48670) dismissed the complaint on November 10, 1986 on the ground of prematurity, because "the conflict arising from the conditional Contract of Sale . . . and subsequent agreements relative thereto entered into between the parties" should first be resolved "to determine whether or not a cause of action for ejectment exists" (p. 20, Rollo).

On March 20, 1987, the petitioners filed this action (Civil Case No. Q-50391) for annulment/cancellation of contract, recovery of possession, and damages based on Article 1191 of the New Civil Code on account of private respondent's failure to pay the balance of the purchase price of petitioners' house and lot. By then the private respondent had been occupying the property for some twelve (12) years.

The private respondent, on the other hand, contended that he had fully paid the purchase price and that his only remaining obligation was to redeem the property from the GSIS. He demanded that the petitioners be ordered to execute a deed of absolute sale in his favor.

On June 20, 1988, the trial court dismissed the complaint for lack of merit and ordered the plaintiffs (now petitioners) to execute within thirty (30) days from the finality of the judgment, a Deed of Sale with Assumption of Mortgage over the property in question in favor of Mercado.

Upon appeal to the Court of Appeals, the appellate court on November 16, 1989 affirmed with modification the trial court's decision. The Court of Appeals ruled that petitioners could no longer rescind the contract to sell because they had granted several extensions of time to the respondent buyer, and accepted late partial payments

from him. It cited the following ruling in *Angeles vs. Calasanz* (135 SCRA 323):

"x x x when the defendants-appellants, instead of availing of their alleged right to rescind, have accepted and received delayed payments of installments, though the plaintiffs-appellees have been in arrears beyond the grace period mentioned in paragraph 6 of the contract, the defendants-appellants have waived and are now estopped from exercising their alleged right of rescission."

In this petition for review, the petitioners argue that the Court of Appeals erred in applying *Angeles vs. Calasanz* (135 SCRA 323) and in failing to consider the basic rule on rescission of contracts and the guiding principles laid down by this Court in *Siy vs. Court of Appeals* (138 SCRA 536).

The petition for review is meritorious. Indeed, *Angeles vs. Calasanz* bears no factual similarity to this case, hence, was erroneously applied by the Court of Appeals. In *Angeles vs. Calasanz*, *supra*, a small subdivision lot was sold for the price of P3,920.00 payable in monthly installments. The buyer made a 10% downpayment of P392 upon the execution of the contract to sell on December 19, 1957 with 7% interest per annum on the balance until fully paid. The plaintiffs paid the monthly installments until July, 1966 when their aggregate payments already amounted to P4,533.38. In other words, the buyer appeared to have already "overpaid" the seller. If anything more was due the seller, it could not be substantial. For that reason, this Court held that: "the breach of contract adverted to by the defendants is so slight and casual" that "to sanction the rescission made by the defendants-appellants will work injustice to the plaintiffs-appellees (See *J.M. Tuazon & Co., Inc. vs. Javier*, 31 SCRA 829). It would unjustly enrich the defendants-appellants." It allowed the plaintiffs to pay whatever installments remained unpaid.

In the present case, the subject of the 1975 contract to sell was a house and lot, of 1,200 square meters, in the Blue Ridge Subdivision in Quezon City which the buyer occupied upon the execution of the contract. The price was P500,000. After making a down payment of P100,000, the buyer was supposed to pay the balance of P400,000 "not later than one year." The contract provided that "if the balance is not fully paid within [the] one year period, the total payments received by the seller shall be considered as advance payments to (sic) the rental of the house in the amount of P5,000.00 a month." The one-year period and the extensions sought by the buyer and granted by the seller, expired without full payment of the price. As of May 24, 1980, the unpaid balance of the price was still P156,800. In September, 1984, the sellers (Gimenez) demanded that the buyer (Mercado) pay his rental arrears as provided in the contract and vacate the premises. Since he did not heed their demand, they filed an ejectment suit against him. As of the date of the sellers' demand to vacate, Mercado had been occupying their house and lot for 9 years and 2 months (110 months). At P5,000 per month, his rentals should have amounted to P550,000. Having paid P343,200 only, his rental arrears amounted to P206,800 as of September, 1984.

Under the circumstances, and considering how much real estate prices have jumped since 1975, it would be a travesty of justice to deny the sellers' right to cancel the sale under Art. 1191 of the Civil Code.

There is no gainsaying Mercado's breach of the contract to sell. He failed to pay the stipulated purchase price of P500,000, within the one-year period originally fixed in the agreement which expired on July 5, 1976, nor within the extended period fixed in their supplemental agreement which expired on October 6, 1977, nor within the other extensions he sought thereafter. His breaches of the contract justly entitled the sellers to ask for the cancellation of the contract to sell with damages (Art. 1191, Civil Code; *Siy vs. Court of Appeals*, 138 SCRA 536; *Nagarmull vs. Binalbagan-Isabela Sugar Co., Inc.*, 33 SCRA 52). Requiring the sellers to execute a deed of absolute sale in favor of Mercado would penalize the former for their magnanimity in granting the latter extensions of time to complete payment of the price of the sale (which he never did), and reward his defaults and contractual breaches, while continuing to enjoy the petitioners' property.

WHEREFORE, the petition for review is granted. The decision of the Court of Appeals in CA-G.R. CV No. 18664 is hereby annulled and set aside. The contract to sell of July 7, 1975 and the supplemental agreement of September 7, 1977 are cancelled and annulled and the private respondent, Jose T. Mercado, Jr., is ordered to vacate petitioners' property and restore its possession to the petitioners. He is further ordered to pay reasonable compensation for his use and occupancy of the petitioners' property, which the Court determines to be in the sum of P5,000 per month from September 1984 (date of demand) until he vacates the same, plus reasonable attorney's fees of P20,000 and the costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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