

**EDILBERTO C. ABARQUEZ AND HELEN C. ABARQUEZ, PETITIONERS,
VS. HON. COURT OF APPEALS, MR. & MRS. LEONARDO
SAGRADO, MR. & MRS. ALBERTO JUMAO-AS, MR. & MRS.
NORBERTO ISRAEL, RESPON...**

G.R. No. 95843. September 02, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is a petition for certiorari with preliminary injunction/restraining order from the decision[1] dated July 27, 1990 of the Court of Appeals reversing the decision of the trial court[2] and finding petitioners spouses Edilberto and Helen Abarquez to be in bad faith and ordering the cancellation of their certificate of title TCT No. T-19445 as well as the resolution dated October 10, 1990 denying petitioners' Motion for Reconsideration in the appealed decision.

It appears on record that respondent Lita Ebarle was the owner of a parcel of land situated in the Poblacion of Cagayan de Oro containing 476 square meters, more or less, designated as Lot No. 430-L-2-L-5 and more particularly, described as follows:

"A parcel of land, (Lot 430-L-2-L-5, being a portion of Lot 430-L-2-L, LRC Psd?93572), situated in the Poblacion, City of Cagayan de Oro Island of Mindanao. Bounded on the NE., along line 4-1 by Road, on the SE., along line 1-2 by Lot 430-L-3-L-6, on the SW., along line 2-3 by Lot 430-L-2-M, (LRC) PSD-93572, on the NW., along 3-4 by Lot 430--L-2-L-4. Beginning at point marked "I" on plan being N. 85 deg. 26 'E., 699.16 ms. from BLLM No. 2, Cagayan Cadastre 237;

thence S. 39 deg. 30' W., 35.81 ms. to point 2

thence S. 79 deg. 11' W., 14.00 ms. to point 3

thence N. 39 deg. 53' E., 42.77 ms. to point 4

thence S. 49 deg. 19' E., 12.00 ms. to point

of beginning. Containing an area of FOUR HUNDRED SEVENTY SIX (476) square meters more or less. All points referred to are indicated on the plan and marked on the ground by P.S. cyl. conc. mons. 15 X 60 cm. diameter."[3]

On January 15, 1972, respondent Ebarle sold the aforementioned land to respondent spouses Norberto and Felisa Israel for P15,232.00 on an installment basis with a down payment of P2,000.00 and a monthly payment of P100.00 until fully paid but the Deed of Sale was only executed on June 15, 1973 and said document was notarized only on July 9, 1975.[4]

Upon payment of the aforesaid P2,000.00 downpayment, respondent spouses Israel took possession of said property and constructed a house which they allowed respondent spouses Leonardo and Lilia Sagrado to occupy.

Sometime in 1974, respondent spouses Israel also allowed respondent spouses Alberto and Teresita Jumao-as to construct another house on said property.

On March 11, 1975, respondent Ebarle sold to the petitioner spouses Edilberto and Helen Abarquez a parcel of land containing 862 square meters more or less designated as Lot No. 430-L-2-L-C (LRC) Psd-216208 for a consideration of P17,240.00 as evidenced by the Deed of Sale executed between them.[5] Said document was registered on July 3, 1975 by the petitioners with the Office of the Registry of Deeds of Cagayan de Oro City and TCT No. T-19445 was subsequently issued in petitioners' name. However, this parcel of land also included the 476 square meter lot sold previously to the respondents spouses Israel.

On December 18, 1975, petitioners' counsel sent a letter addressed to respondent spouses Sagrado and spouses Israel demanding them to remove the two houses constructed on his clients' property[6] but the latter refused claiming that they are the owners of the parcel of land on which the two houses were constructed having bought said property from respondent Ebarle.[7]

On September 8, 1978, petitioners filed with the then CFI of Misamis Oriental, 15th Judicial District, Branch VII, a complaint for quieting of titles and damages against respondent spouses Sagrado, Jumao-as and Israel, which was docketed as Civil Case No. 5132.

On December 23, 1976, the spouses Israel filed an Answer in Intervention alleging ownership over the subject parcel of land[8] and on April 21, 1977 filed a Third-Party Complaint together with spouses Sagrado and Jumao-as against respondent Ebarle for selling to the petitioners the subject parcel of land which the latter had already sold to respondent spouses Israel.[9]

On December 29, 1977, petitioners and respondent spouses Sagrado, Jumao-as, Israel and Ebarle submitted a partial stipulation of facts signed by them with the assistance of their respective counsel which read as follows:

"1. That they admit the identity of all parties to the complaint.

"2. That they admit that the land in controversy, designated as Lot No. 430-L-2-L-C (LRC) Psd. 216208 of the Cagayan Cadastre used to be comprised of two lots, namely: Lot No. 430-L-2-L-5 and Lot No. 430-L-2-L-6 of the Cagayan Cadastre.

"3. That they admit that the land in controversy, Lot No. 430-L-2-L-C (LRC) Psd. 216208 is now covered by TCT No. T-19445 in the name of plaintiffs.

"4. That plaintiffs acquired Lot No. 430-L-2-L-C (LRC) Psd. 216208 from third-party defendant, Lita Ebarle, on March 11, 1975, under a deed of absolute sale, which was registered with the Office of the Register of Deeds on July 3, 1975.

"5. That third-party defendant, Lita Ebarle, had earlier sold on installments to Mr. and Mrs. Norbert[o] Israel, third-party plaintiffs and intervenors, on June 15, 1973, Lot No. 430-L-2-L-5, consisting of 476 sq. m., more or less, and which lot now forms part of Lot No. 430-L-2-L-C (LRC) Psd. 216200[8], but the deed of sale in favor of third-party plaintiffs/intervenors is not registered.

"6. That the real controversy centers on that portion of Lot No. 430-L-2-L-C (LRC) Psd. 216200[8] that used to be designated as Lot No. 430-L-2-L-5, consisting of 476 sq. m., more or less, which third-party defendant sold to intervenors/third-party plaintiffs, and on which are found the houses and other improvements of defendants/third-party plaintiffs, Sagrado and Jumao-as." [10]

On March 13, 1978, respondent Ebarle filed a Motion for leave to file Fourth-Party Complaint against Engineer Romualdo Lagsa for erroneously including Lot No. 430-L-2-L-5 in the technical description of Lot No. 430-L-2-L-C (LRC) Psd. 216208 which was granted on March 21, 1978. However, respondent Lagsa denied

preparing an erroneous technical description in the assailed plan of Lot No. 430-L-2-L-C (LRC) Psd. 216208 and alleged that respondent Ebarle commissioned him to prepare the technical description of Lot 430-L-2-L-5 and later commissioned him again to prepare the plan and technical description of Lot 430-L-2-L-C (LRC) Psd. 216208 which necessarily included Lot 430-L-2-L-5 without any knowledge that respondent Ebarle had already sold to respondent spouses Israel Lot 430-L-2-L-5 neither did he know that Ebarle intended to sell said parcel of land to two different buyers.[11]

On December 27, 1978, respondent Ebarle was declared non-suited for her and her counsel's failure to attend the pre-trial. Consequently, the trial court ordered the dismissal of her complaint and her counterclaim.[12]

After trial on the merit or on July 14, 1986, the court a quo rendered a decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, JUDGMENT is hereby rendered in favor of the plaintiffs and against the defendants and intervenors:

"1. Declaring the plaintiffs Mr. & Mrs. Abarquez as the true and legal owner[s] of the lot in question;

"2. Considering that the defendants are possessors in good faith the plaintiffs are, therefore, given the option to buy the houses of the defendants, the value of which as determined by this Court taking into consideration its market value as shown in their respective Tax Declaration and the admission of the defendants as well as the depreciation, the same is fixed at the amount of P6,000.00 and P500.00 [should be P5,000.00] for defendants Jomao-as [should be Jumao-as] and Sagrado, respectively;

"3. Defendants are hereby ordered to pay the amount of P30.00 a month as rental or the sum of P3,000.00 from 1976 to 1986 for the lot in question and should the plaintiffs exercise their option the said amount should be offset from the purchase price of the houses in question;

"4. On the third-party complaint, JUDGMENT is hereby rendered in favor of the third-party complainant and against the third-party defendant Lita Ebarle ordering the latter to pay to the third-party plaintiff[s] the amount of P6,823.26 as reimbursement of the amount she has advanced as partial payment of the lot in question;

"5. The amount of P10,000.00 as moral damages; P5,000.00 as exemplary damages; atty's fees in the amount of P3,000.00 and P1,000.00 as litigation expenses with costs against the third-party defendants.

"SO ORDERED." [13]

Not satisfied with said decision, respondent spouses Sagrado, Jumao-as and Israel appealed to the Court of Appeals which rendered a decision on July 27, 1990, the pertinent portion of which reads:

"We find Ms. Ebarle and spouses Abarquez to be in bad faith. An award of moral damages, being the proximate result of their wrongful act, is warranted under the circumstances. By way of example or correction for the public good, an award of exemplary damages is also justified. Ms. Ebarle's wrongful act compelled spouses Israel to incur attorney's fees and litigation expenses to protect their right.

"WHEREFORE, the decision appealed from is reversed, and another one is hereby entered ordering:

"1. The Register of Deeds of Cagayan de Oro City to cancel Transfer Certificate of Title No. T-19445 in the name of plaintiffs-appellees, spouses Edilberto Abarquez, and in lieu thereof issue another certificate of title to said spouses covering only the area outside Lot No. 430-L-2-L-5 containing as technically described above.

"2. Intervenors-third-party-plaintiffs, spouses Norberto Israel, to pay third-party defendant Lita Ebarle in full the unpaid balance of the purchase price of said Lot No. 430-L-2-L-5 at 6% legal interest beginning from the date of finality of this decision.

"3. Third-party defendant Lita Ebarle to pay intervenors-third-party-plaintiffs, spouses Norberto Israel, moral damages of P10,000.00, P5,000.00 exemplary damages, P3,000.00 attorney's fees and P1,000.00 litigation expenses.

"4. Third-party defendant Lita Ebarle to pay intervenors-third-party-plaintiffs, spouses Norberto Israel, the costs of suit below as well as the costs of this appeal.

"SO ORDERED." [14]

From the foregoing, this petition for review was filed.

We agree with the appellate court's finding that petitioners are purchasers in bad faith.

Article 1544 of the New Civil Code provides that:

"If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

"Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

"Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith."

Although it is an established fact that the first sale to respondent spouses Israel was only notarized and registered after petitioners had already registered their Deed of Sale with the Registry of Deeds, respondent spouses Israel have a better right against the petitioners because the element of good faith was lacking as regards the latter since the aforementioned article only grants preferential rights to the second vendee provided said vendee acted in good faith when he bought the property, which is not present in the case at bar. As aptly observed by the appellate court:

"x x x This Court had occasions to rule that if a vendee in a double sale registers the sale after he has acquired knowledge that there was a previous sale, the registration will constitute a registration in bad faith and will not confer upon him any right. It is as if there had been no registration, and the vendee who first took possession of the real property in good faith shall be preferred (*Palar[n]ca vs. Director of Lands*, 43 Phil. 146[9]; *Cagaoan vs. Cagaoan*, 43 Phil. 554; *Fernandez vs. Mercader*, 43 Phil. 581.).

"x x x"

"In the present case, there is no question that the Israels bought the small lot and upon making the down payment immediately took possession thereof. As shown above, before they bought the big lot, the Abarquezes already knew that there were houses erected on the small lot. The Abarquezes engaged the services of Engr. Lagsa to make a relocation survey, and this geodetic engineer showed the Abarquezes the perimeter or the extent of the big lot. In his answer to the fourth-party complaint, Engr. Lagsa admitted that he was asked by Ms. Ebarle to prepare two plans and technical descriptions, one covering the small lot and the other for the big lot. In effect, Engr. Lagsa was engaged by both Ms. Ebarle and the Abarquezes to prepare the plans for the lots. We cannot believe that the Abarquezes did not know that Ms. Ebarle had already sold the small lot to the Israels.

"Thus, in accordance with the ruling in *Salvaro vs. Tanega*, supra, the registration by appellees in bad faith of the deed of sale over the big lot, which included the small lot, did not confer on them any preferential right to said small lot since there was no valid registration to speak of at all." [15]

Furthermore, respondent Engineer Lagsa testified as follows in the trial court:

Q: You said that you pointed to Mr. Abarquez the midst and bounds of the land. Do you mean to tell the Honorable Court that you brought Mr. Abarquez to the actual site of the land?

A: Yes, sir.

Q: When was that?

A: Before the sale.[16]

Based on the foregoing, it is therefore correct to conclude that petitioners acted in bad faith since "it is a well settled rule that a purchaser x x x cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor x x x. His mere refusal to believe that such defect exists, or his willful closing of his eye to the possibility of the existence of a defect in the vendor's x x x title, will not make him an innocent purchaser x x x for value, if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defects as would have led to its discovery had he acted with the measure of precaution which may be required of a prudent man in a like situation." [17]

WHEREFORE, the petition for certiorari is hereby DISMISSED for lack of merit and the issuance of a preliminary injunction or restraining order is DENIED.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

Melo, J., no part.

[1] Penned by Justice Jesus M. Elbinias with the concurrence of Justice Pedro A. Ramirez and Justice Regina G. Ordoñez-Benitez.

[2] Penned by Presiding Judge Celso P. Largo.

[3] Original Record, p. 31.

[4] Ibid.

[5] Id., at pp. 133-134.

[6] Id., at p. 285.

[7] Id., at p. 287.

[8] Id., at pp. 26-31.

[9] Id., at 42-46.

[10] Id., at pp. 78-80.

[11] Id., at pp. 107-112.

[12] Id., at pp. 117-118.

[13] Id., at p. 328.

[14] Rollo, p. 27.

[15] Id., at pp. 25-26.

[16] T.S.N., September 17, 1979, p. 21.

[17] Crisostomo vs. Court of Appeals, 197 SCRA 833 [1991].

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