

ROLANDO T. DIWA, BLESIDA G. DIWA, PETITIONERS, VS. ARNOLD L. DONATO, NAPOLEON L. DONATO, RESPONDENTS.

G.R. No. 97547. July 29, 1994

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for certiorari under Rule 45 of the Revised Rules of Court from two Orders of the RTC of Tuguegarao, Cagayan, Br. 1.[1] The first, dated January 8, 1990, dismissed Civil Case No. 4117-(Tug '90) on the ground of res judicata; and the second, dated January 31, 1991, denied petitioners' motion for reconsideration of the earlier Order.

Petitioners first filed a Complaint for Interpleader And Execution Of Registerable Deed Of Sale With Damages against respondents docketed as Civil Case No. 3892, and raffled to Branch 4 of the RTC of Tuguegarao, Cagayan.[2] The Complaint alleged:

"1. Plaintiffs (petitioners herein) are spouses, of legal age, Filipinos and residents of Tuguegarao, Cagayan;

"2. Defendants (respondents herein) who are brothers are of legal age; Arnold L. Donato is however a Filipino and a resident of and with postal address at 10 Masbate Street, Quezon City while Napoleon L. Donato is an American citizen and resident of Tuguegarao, Cagayan;

"3. DONATO ENTERPRISES COMPANY, LIMITED was a duly constituted and registered partnership composed of only three (3) partners, the brothers and sister, Arnold L. Donato, Napoleon L. Donato and Adoracion Donato, who had equal contributions and shares or interests therein.

"4. DONATO ENTERPRISES COMPANY, LIMITED was the registered owner per Transfer Certificate of Title No. T-16000 of a residential-commercial lot situated in Centro, Tuguegarao, Cagayan more particularly bounded and described as follows:

"xxx xxx xxx

"5. Partner Adoracion L. Donato who died single on October 20, 1985 with neither ascendant nor descendant was survived by the (respondents) who were her brothers;

"6. The death of partner Adoracion L. Donato ipso jure dissolved the DONATO ENTERPRISES COMPANY, LIMITED so that her one-third (1/3) share and interest in the above-described lot devolved upon her heir or heirs;

"7. Sometime in November 1986 (respondents) jointly sold the above-described lot to the (petitioners) for P504,000.00 Philippine currency and accordingly delivered to the latter the said lot;

"8. (Petitioners) forthwith took exclusive possession of said lot and have been possessing it since then continuously up to the present;

"9. Of the total consideration of P504,000.00 (respondent) Arnold L. Donato already received from

(petitioners) P168,000.00 on November 19, 1986 as per xerox copy of a Receipt which he signed and (respondent) Napoleon L. Donato also already received from (petitioners) on June 10, 1988 the same amount of P168,000.00 per xerox copy of a Receipt which he likewise signed, both of which are hereto attached xxx;

"10. Since November 1986 when the sale of said lot was made by (respondents) to the (petitioners) the latter had been tendering the payment of the balance of P168,000.00 to (respondents); the (respondent) Arnold L. Donato wanted to get and receive the whole balance asserting that his late sister Adoracion L. Donato inter alia conveyed her share and interest in said lot to him which was however denied by (respondent) Napoleon L. Donato who claimed that being one of the two intestate heirs of deceased Adoracion L. Donato, he is entitled to one-half of said balance which is P84,000.00;

"11. In the light of the conflicting claims of the (respondents) over the balance of P168,000.00 and in order to finally relieve (petitioners) of further obligation vis a vis said lot, the latter hereby deliver and deposit said amount of money with this Honorable Court which will determine who is/are entitled to receive it and to dispose of it accordingly;

"12. Despite the consummation of the sale of the said lot to the (petitioners) the (respondents) have not yet executed a registerable deed of sale to evidence the same, hence (petitioners) have a legal right to demand the execution of the said documents;

"13. In fact since June 1988, (petitioners) had been demanding of (respondents) to execute the said registerable deed of sale with a proposal to deposit the balance of P168,000.00 in escrow in a commercial bank in favor of whoever would finally be judicially declared entitled to it but although (respondent) Napoleon L. Donato is willing, (respondent) Arnold L. Donato without just cause refused;

"14. Since the sale of the lot to the (petitioners) in November 1986, they intended to build a commercial building thereon with the proceeds of a loan which they planned to secure from a banking institution with the lot as their collateral;

"15. The delay in the execution of the registerable deed of sale necessarily delayed the issuance of a title over said lot in the names of the (petitioners) which resulted in the delay in securing the loan and ultimately in the construction of the said building;

"16. The delay mentioned in the preceding paragraph is directly attributable to the intransigence of (respondent) Arnold L. Donato which caused (petitioners) to suffer damages consisting of the big increase in the prices of construction materials and cost of labor from their index in November 1986 and the present index which is reasonably estimated to be P200,000.00;

"17. (Petitioners) were constrained to engage the services of the undersigned counsel for an agreed fee of P20,000.00;"[3]

Petitioners prayed for judgment: (1) declaring them the owners of the lot in question; (2) ordering respondents to execute in their favor a registerable deed of sale over the lot; (3) declaring who is/are entitled to the P168,000.00 balance; and (4) condemning respondent Arnold L. Donato to pay damages, attorney's fees and costs.

The Complaint was dismissed on December 29, 1988 on the ground that interpleader is not the proper remedy for breach of contract. This court[4] affirmed the dismissal in a Resolution, dated September 20, 1989.

Accordingly, on February 13, 1990, petitioners filed Civil Case No. 4117-(Tug '90) for Specific Performance (Execution of Registerable Deed of Sale and Delivery of Certificate of Title) With Damages. The Complaint contains basically the same allegations and prayers as the Complaint in the interpleader case, except for the following added allegation, viz:

"That even if the transaction between (petitioners) and (respondents) constitutes only a contract to sell the said

land, still (petitioners) who have partially complied with their obligation and are willing to fully comply with it have the right to compel (respondents) to perform their obligation to sell the land to them;"[5]

and the prayer, which reads as follows:

"WHEREFORE, (petitioners) pray this Honorable Court to render judgment:

1. Declaring (petitioners) to be the owners of the lot described above or compelling the (respondents) to sell the lot to the former and ordering (respondent) Arnold L. Donato to execute with his co-(respondent) Napoleon L. Donato the registerable deed of sale over said lot in favor of (petitioners) and to deliver to the latter the owner's duplicate copy of Transfer Certificate of Title No. T-16000;
2. Applying the deposited amount of P168,000.00 in payment of the balance upon the price of said land;
3. Condemning (respondent) Arnold L. Donato to pay the (petitioners) a damage of P100,000.00 and attorney's fees of P20,000.00 and cost of this suit;
4. Granting other proper reliefs."[6]

Private respondents filed separate Answers to the second Complaint. Their Affirmative Defenses constituting grounds for dismissal were heard by the trial court.

On January 8, 1990, the trial court issued the first impugned Order. It dismissed with prejudice the Complaint for specific performance. It held, *inter alia*:

"There is no dispute that the first case entitled *Interpleader and Execution of Registerable Deed of Sale with Damages*, Civil Case No. 3892 was upon review by the Supreme Court denied for lack of merit.

"It was held in the case of *Leonor Magdangal, et al. vs. City of Olongapo, et al.*, x x x 'that a party cannot by varying the form of action or adopting a different method of presenting the case, escape the application of the rule of *res judicata*.' This was reiterated in the case of *Filipinas Investment, et al. vs. Intermediate Appellate Court, et al.*, x x x" (Citations omitted)."[7]

In its Order of January 31, 1991 denying petitioners' motion for reconsideration, the same court held:

"This Court made a comparison between the first civil case No. 3892 between the same parties is entitled *Interpleader and Execution of Registerable Deed of Sale with Damages* while the instant case is for specific performance (execution of registerable deed of sale and delivery of certificate of title with damages). Basically, the two complaints are the same as they involve the same parties, the same cause of action and the subject matter. The only difference is in the caption."

"Granting for the sake of argument that there is no *res judicata* and that the present case is for specific performance, will the latter remedy lie?

'Specific performance is not an absolute right, but one which rests entirely in judicial discretion; exercised according to the settled principles of equity and with reference to the facts of the particular case, and not arbitrarily or capriciously xxx.'

"One of the requisites for the specific performance of the agreement is that there must be contract and the contract must be in writing (Statute of Frauds).

'The contract must be clearly and unequivocally proved and its subject matter, consideration and all other essentials must be specific and unambiguous xxx.'

"Definitely the receipts by Arnold Donato and Napoleon Donato are not contracts for the following reasons:

- (1) They are not in the prescribed form as provided by law;
- (2) They are not specific as indicated by the wording of last paragraph of Annex "A",

'However, should the circumstances occur whereby the transaction will not push through, then this amount will be refundable to Mr. Rolando T. Diwa.'

- (3) It is doubted whether the Supreme Court made a pronouncement that there was a contract to sell considering that the petition for review was denied for lack of merit for failure of counsel to comply with certain requirements with regards to his petition."[8] (Citations omitted.)

In this petition, petitioners contend:

"The errors of the lower court are the following:

1. It erroneously applied res judicata to dismiss with prejudice Civil Case No. 4117 (90-Tug).
2. It mistakenly ruled that there was no contract between the petitioners and respondents.
3. It incorrectly held that specific performance was not the proper remedy.
4. It blundered when it impliedly applied the Statute of Frauds to the agreement between the parties.
5. It goofed when it dismissed Civil Case No. 4117 (90-Tug) with prejudice."[9]

The petition is meritorious.

The elements of res judicata are: (1) the previous judgment has become final; (2) the prior judgment was rendered by a court having jurisdiction over the subject matter and the parties; (3) the first judgment was made on the merits; and (4) there was substantial identity of parties, subject matter and causes of action, as between the prior and subsequent actions.

We hold that the trial court erred in considering our September 20, 1989 Resolution in the interpleader case as an adjudication on the merits. Said Resolution held:

"xxx xxx xxx

"After a careful review of the Petition, its Annexes and the Comment thereto, the Court finds that no reversible error was committed by the RTC in dismissing petitioners' complaint. The RTC correctly applied the doctrine laid down by this Court in the case of Beltran vs. PHHC, G.R. No. L-25138, August 28, 1969, 29 SCRA 145, that if the conflicting claims of the two defendants are only between themselves and are not against the plaintiff-in-interpleader nor do they involve or affect him, the special civil action of interpleader will not lie.

"xxx xxx xxx

"While it is true that petitioners have a cause of action to compel private respondents to execute a registrable deed of sale pursuant to their contract, the proper remedy should be an ordinary civil action for breach of contract or an action for specific performance and not an action for interpleader."[10]

A judgment on the merits is one rendered after argument and investigation, and when there is determination which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point, or by default and without trial.[11] By no stretch of the imagination can our Resolution of September 20, 1989 be considered a judgment on the merits. All it resolved is the issue of the proper action that petitioners should file in light of the allegations of their Complaint. We ruled that they should file an action for specific performance and not an action for interpleader. Only after the filing of the proper action can the substantive rights of the parties be adjudicated. Needless to state, we did not adjudicate the substantive rights of the parties in our

Resolution of September 20, 1989.

The trial court also erred when it further held that specific performance does not lie against respondent, by applying the Statute of Frauds. Under said Statute, agreements for the sale of real property "shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents." [12] Non-compliance with this provision, while not invalidating the contract which is not in writing, makes ineffective the action for specific performance. [13]

It is settled, however, that the Statute of Frauds applies only to executory and not to completed, executed, or partially executed contracts. [14] Thus, as early as 1925, we held that where the land has been delivered under the oral contract of sale, and the vendees have already paid part of the purchase price, the heirs of the vendor cannot invoke the statute of frauds in a proceeding where the vendees seek to have the land registered in their names. [15]

In the case at bench, the agreement to sell the lot in question was already partially executed when the present action was commenced. No specific denial was made by either respondent that petitioners have paid a part of the contract price, and that possession of the land has been delivered to them. Respondent Arnold L. Donato's argument in his Memorandum filed on July 2, 1991 that petitioners' act of refunding the amount of P168,000.00 covered by a receipt dated November 19, 1986, and consigning it with the trial court effectively revoked the contract to sell over the property does not persuade us. In the first place, the alleged refunding is not supported by evidence; and in the second place, even assuming it did occur, there is still the P168,000.00 partial payment made by petitioners to respondent Napoleon L. Donato that makes for the partial execution of the contract to sell.

Finally, we do not see how the trial court could have doubted our finding as to the existence of a contract to sell. We clearly stated in our Resolution in the interpleader case that:

"In the present case, the two private respondents do not dispute the existence of the contract to sell the commercial land in question to petitioners nor do they demand adverse claims against petitioners. In fact, private respondents did not object when the petitioners deposited in court the balance of the purchase price. The conflicting claims of the two private respondents over the sharing of the balance of the purchase price cannot be the subject of an interpleader case since they are exclusively between the private respondents and are not against the petitioners. Neither do they involve or affect the petitioners' interest in the commercial land."

"xxx xxx xxx

"While it is true that petitioners have a cause of action to compel private respondents to execute a registrable deed of sale pursuant to their contract, the proper remedy should be an ordinary civil action for breach of contract or an action for specific performance and not an action for interpleader." [16] (Underscoring supplied.)

IN VIEW WHEREOF, the instant Petition is GRANTED. The Orders, dated January 8, 1990 and January 31, 1991 in Civil Case No. 4117 (90-Tug) are REVERSED AND SET ASIDE. The RTC of Tuguegarao, Cagayan, Branch 1, is hereby ordered to hear the reinstated case on its merits. No costs.

SO ORDERED.

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

[1] Presided by Judge Roger A. Domagas.

[2] Presided by Judge Plaridel L. Villacete.

[3] Rollo, pp. 20-24.

[4] Through a Resolution of the Third Division, dated September 20, 1989.

[5] Complaint in Civil Case No. 4117 (90-Tug), p. 4; Rollo, p. 38.

[6] Ibid., at pp. 5-6; Rollo, pp. 39-40.

[7] Rollo, pp. 53-54.

[8] Ibid., at p. 55.

[9] Id., at pp. 7-8.

[10] Rollo, pp. 32-33.

[11] Black's Law Dictionary, 4th Ed. (1951), p. 979, citing *Bell Grocery Co. vs. Booth*, 250 Ky, 21, 61 S.W. 2d 879; *State ex rel. National Lead Co. vs. Smith*, Mo. App., 134 S.W. 2d 1061, 1068; See *Santos vs. Intermediate Appellate Court*, 145 SCRA 238, 245 (1986).

[12] Art. 1403(2)(e), Civil Code of the Philippines.

[13] A. TOLENTINO, IV *Commentaries and Jurisprudence on the Civil Code of the Philippines* p. 617 (1991), citing *Hernandez vs. Andal*, 78 Phil. 196 (1947).

[14] A. TOLENTINO, IV, *op. cit.*, p. 618 (1991).

[15] See *Almirol and Cariño vs. Monserrat*, 48 Phil. 67 (1925).

[16] Rollo, p. 33.

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