

THIRD DIVISION

[G.R. No. 187013, April 22, 2015]

**SPOUSES MAGDALINO AND CLEOFE BADILLA, PETITIONERS, VS.
FE BRAGAT, RESPONDENT.**

DECISION

PERALTA, J.:

This is a petition for review on *certiorari*, under Rule 45 of the Rules of Court, assailing the Decision dated October 9, 2008 and Resolution dated February 12, 2009 of the Court of Appeals rendered in CA-G.R. CV No. 70423-MIN.

The case involves the issue of ownership of the subject real property.

The facts follow.

Azur Pastrano and his wife Profitiza Ebaning (*Spouses Pastrano*) were the original owners of Lot No. 19986 (*subject property*), located at Tablon, Cagayan de Oro City. Its Original Certificate of Title (OCT) No. P-2035, consisting of 1,015 sq. m. was issued on November 18, 1980.^[1] The OCT was in the name of Azur Pastrano.^[2]

Before the issuance of the OCT, however, the Spouses Pastrano, on November 18, 1968, sold the lot to Eustaquio P. Ledesma, Jr. (*Ledesma*), as evidenced by a Deed of Definite Sale of Unregistered Coconut and Residential Land.^[3]

The petitioners, the spouses Magdalino and Cleofe Badilla (*Spouses Badilla*) claimed that in 1970, Ledesma sold to them, "on installment" basis, a portion amounting to 200 sq. m. of Lot No. 19986 (*subject property*). The sale was not reduced in writing, however, possession of the portion sold was transferred to the Badillas, which portion the Badillas claim was designated as Lot No. 19986-B.^[4]

On April 18, 1978, the spouses Florito Bragat and Fe Bragat (*Spouses Bragat*) bought 991 sq. m. of the property from Ledesma and his wife, via a Deed of Absolute Sale of a Residential Lot.^[5] Two (2) tax declarations were allegedly issued as a result of the sale: one designated a lot as Lot No. 19986-A with an area of 642 sq. m.,^[6] while another designated the other lot as Lot No. 19986-B with an area of 349 sq. m.^[7]

On May 5, 1984, the Spouses Pastrano executed another Deed of Absolute Sale of Registered Land in favor of herein petitioner Fe Bragat (*Bragat*), covered by OCT No. P-2035 and with an area of 1,015 sq. m.^[8] On the same date, Azur Pastrano executed an Affidavit of Loss reporting the loss of the owner's duplicate copy of OCT No. P-2035.^[9]

It was Bragat, however, who petitioned the court for the issuance of a new owner's duplicate copy of OCT No. P-2035. Thus, on July 24, 1987, the RTC ordered the issuance of a new owner's copy of OCT No. P-2035.^[10]

On October 2, 1987, the Spouses Pastrano executed yet another Deed of Sale of Registered Land in favor of Bragat, which land is again covered by OCT No. P-2035 with an area of 1,015 sq. m.^[11] As a result, OCT No. P-2035 was canceled and TCT No. T-47759 was issued in the name of Bragat.^[12]

On March 7, 1991, Bragat, through her counsel, made a written demand to vacate against the Spouses Badilla. In response, the Spouses Badilla, also through their counsel's letter, refused the demand and raised the earlier sale made by the Spouses Pastrano to Ledesma and the subsequent sale by Ledesma to the Badillas.^[13]

Hence, the parties filed their respective complaints within days of each other.

Bragat filed her Complaint for Recovery of Possession and Damages against the spouses Magdalino and Cleofe Badilla on June 5, 1992, alleging therein that she is the absolute owner of Lot No. 19986, covered by TCT No. T-47759. She claimed to have purchased the property, first, from Eustaquio Ledesma, Jr., but later, when she found out that Ledesma was "unauthorized" to sell, she again allegedly made another purchase of the same property from Azur Pastrano, on May 5, 1984. This led to the cancellation of Pastrano's OCT No. P-2035 and the issuance of Bragat's TCT No. T-47759. Thus, she prays for the Spouses Badilla to be ordered to vacate the around 149-square-meter portion that they occupy in the property.^[14]

Just six days later, on June 11, 1992, the Spouses Badilla filed their own Complaint for Quieting of Title, Declaration of Nullity of TCT No. T-47759 and Damages against Bragat, claiming that the Spouses Badilla are the lawful owners and possessors of Lot No. 19986-B (a portion of Lot No. 19986), having acquired it in 1970 from Ledesma. The latter, on his part, allegedly bought the bigger Lot No. 19986 from Pastrano earlier on November 18, 1968. The Spouses Badilla alleged that they took possession of and built a house on the property upon their purchase thereof from Ledesma and has since remained in possession. However, they claimed that Pastrano was subsequently able to obtain a free patent and a title, OCT No. P-2035, over Lot No. 19986. According to the Badillas, Pastrano made a sale to Bragat on October 2, 1987, but such sale is not valid since Pastrano was no longer the owner of the property on that date. Consequently, the Spouses Badilla prayed that TCT No. T-47759 issued to Bragat pursuant to that sale be declared null and void.^[15]

After Answers were filed for both complaints, the two cases were consolidated and heard by one court, Branch 25 of the RTC of Cagayan de Oro City, as they involved exactly the same parties and subject lot.

After trial, the RTC found for Bragat, noting that the sketch map shows the 152-square-meter portion occupied by the Spouses .Badilla is within the titled property of Bragat.^[16] It also found Bragat's title as valid for what it saw as the result of a purchase in good faith and. for value.^[17] In contrast, the trial court observed a lack of evidence of the Spouses Badilla. The latter allegedly presented handwritten and

typewritten receipts which were purportedly signed by Ledesma, dated March 5, 1989, March 1, 1991 and March 23, 1991 acknowledging Ledesma's receipt of certain amounts, but the court claimed that it found no evidence of (Ledesma's) absolute ownership on these dates. The court noted that Ledesma had sold previously to the Spouses Bragat via a Deed of Absolute Sale of Residential Land dated April 18, 1978. Hence, in the trial court's view, on March 5, 1989, March 1, 1991 and March 23, 1991, Ledesma no longer owned the land and transferred nothing to the Badillas.^[18] The dispositive portion of the RTC decision states:

IN THE LIGHT OF THE FOREGOING, by preponderance of evidence, judgment is hereby rendered in favor of Spouses Fe Bragat and Florito Bragat and against Spouses Magdalino and Cleofe Badilla and dismissing Civil Case No. 92-287 for failure of Spouses Magdalino and Cleofe Badilla to substantiate their complaint and for lack of merit and ordering defendants Cleofe Badilla and Magdalino Badilla in Civil Case No. 92-273:

- a) to vacate immediately the 152-square-meter property they are occupying as shown in Exh. N-2-A, P;
- b) to pay Twenty Thousand Pesos (P20,000.00) by way of moral damages;
- c) to pay a reasonable rental of One Hundred Pesos (P100.00) a month from March 1, 1991 at 6% legal interest until they vacate the premises;
- d) to reimburse Ten Thousand Pesos (P10,000.00) attorney's fees and Five Thousand Pesos (P5,000.00) as expenses for litigation as part of consequential damages; and
- e) pay the costs.

SO ORDERED.^[19]

Upon appeal to the CA, the appellate court affirmed the RTC's decision but modified the same on a finding that Ledesma sold only 991 sq. of the property to Bragat in 1978; hence, it held that the remaining 24 sq. of the 1,015-sq.-m. property was validly sold to the Badillas in 1991 and, therefore, must be reconveyed to the latter.^[20] It also removed the award of damages. The dispositive portion of the CA's decision is as follows:

WHEREFORE, the instant appeal is PARTIALLY GRANTED. The January 14, 2001 Judgment (of the RTC) is MODIFIED in that:

- a) appellants are ordered to VACATE 128 square meters of the disputed lot and appellee is ordered to RECONVEY 24 square meters of the disputed lot to appellants, and
- b) the reimbursement of attorney's fees and expenses of litigation and the payment of costs are DELETED.

This case is REMANDED to the court of origin for the purpose of determining the 24-square-meter lot to be reconveyed to appellants.

SO ORDERED.^[21]

Hence, this petition.

Petitioners Spouses Badijla contend that ownership of the 200-sq.-m. portion was transferred to them when they purchased the same and possession was delivered to them by Ledesma in 1970.^[22] They also contend that when OCT No. P-2035 was actually issued in 1980, it was first delivered by Pastrano to Ledesma and, the latter delivered the same to them (the Badillas).^[23] Thus, Bragat allegedly falsely claimed the "loss" of the title when she petitioned the court for a new duplicate original, because such title was not lost but had been with the Badillas all along.^[24] Another fraud that Bragat allegedly committed was the Deed of Sale dated October 2, 1987, in which Profitiza Pastrano signed (in marital consent) although she had been dead since March 30, 1985.^[25]

In her Comment, Bragat claims that the sale of October 2, 1987 was only a "re-execution" of the sale of May 5, 1984, in order to avoid tax surcharges.^[26] Further, she alleges that the Badillas' documentary evidence were all executed only after she had the property titled to her name.^[27]

The Court resolves to GRANT the petition.

The issue is one of ownership of the subject property.

This Court notes that the arguments raised call for a re-examination of the factual findings of the trial court and the appellate court. It must be stressed that it is a time-honored rule that in a petition for review on *certiorari* under Rule 45, only questions of law may be raised.^[28] Certainly, it is equally observed that factual findings of the Court of Appeals, affirming those of the trial court, are binding on this Court.^[29]

However, these rules admit of certain exceptions, such as when the judgment of the Court of Appeals is premised on a misapprehension of facts, or is belied by the evidence on record, or fails to notice certain relevant facts which, if properly considered, will justify a different conclusion.^[30] After a thorough examination of the findings of the trial court and Court of Appeals, this Court concludes that the case falls under these exceptional situations. Such findings must be reversed.

The error of the courts below is in misapprehending the fact that ownership' passed to the Spouses Badilla upon their purchase of the subject property from Eustaquio Ledesma.

It is not disputed that the spouses Azur and Profitiza Pastrano had previously sold on November 18, 1968, via a Deed of Definite Sale of Unregistered Coconut and Residential Land, the property to Eustaquio Ledesma.^[31] Therefore, as early as such date, it is established that the Pastranos no longer had ownership over the property.

Then, as Ledesma subsequently sold, in 1970, a portion of the property to the petitioner Spouses Badilla, who immediately took delivery and possession, ownership of this portion had also been transferred to the said spouses. Although that sale appears to be merely verbal, and payment therefor was to be made on installment, it is a partially consummated sale, with the Badillas paying the initial

purchase price and Ledesma surrendering possession.^[32] That the parties intended for ownership to be transferred may be inferred from their lack of any agreement stipulating that ownership of the property is reserved by the seller and shall not pass to the buyer until the latter has fully paid the purchase price.^[33] The fact is, Ledesma even delivered to the Badillas the owner's duplicate copy of OCT No. P-2035.^[34] The Civil Code states that ownership of the thing sold is transferred to the vendee upon the actual or constructive delivery of the same.^[35] And the thing is understood as delivered when it is placed in the control and possession of the vendee.^[36] Payment of the purchase price is not essential to the transfer of ownership as long as the property sold has been delivered; and such delivery (*traditio*) operated to divest the vendor of title to the property which may not be regained or recovered until and unless the contract is resolved or rescinded in accordance with law.^[37]

The same is true even if the sale is a verbal one, because it is held that when a verbal contract has been completed, executed or partially consummated, its enforceability will not be barred by the Statute of Frauds, which applies only to an executory agreement.^[38] Thus, where a party has performed his obligation, oral evidence will be admitted to prove the agreement. And, where it was proven that one party had delivered the thing sold to another, then the contract was partially executed and the Statute of Frauds does not apply.^[39]

Therefore, with the Spouses Bad illa owning and occupying the said 152-square-meter portion since 1970, it may be concluded that TCT No. T-47759 (which canceled OCT No. P-2035) covering the said portion has been wrongfully issued.^[40]

In addition, TCT No. T-47759 was issued to Fe Bragat on the strength of a Deed of Sale of Registered Land dated October 2, 1987.^[41] This deed of sale, however, is void for being simulated, since both the vendor (Pastrano) and the vendee (Bragat) knew at the time of its execution of the vendor's lack of ownership over Lot No. 19986, the property being sold. At that time, it was not Pastrano but Ledesma who was absolute owner of the property by virtue of the latter's earlier purchase of Lot No. 19986 from the Spouses Pastrano on November 18, 1968, via a Deed of Definite Sale of Unregistered Coconut and Residential Land.^[42] Bragat herself knew this, as she and her husband themselves first bought the property from Ledesma through a Deed of Absolute Sale of Residential Land dated April 18, 1978.^[43]

In fact, it is from this sale in 1978 that Fe Bragat derives title on the property and not from the Deeds of Sale dated May 5, 1984 and October 2, 1987 executed between her as vendee and Pastrano as vendor. Pastrano could no longer sell any part of the property to Bragat on such later dates since he had already sold the same as early as November 18, 1968 to Ledesma. Well-settled is the rule that no one can give what one does not have - *nemodatus quod non habet* - and, accordingly, one can sell only what one owns or is authorized to sell, and the buyer acquires no better title than the seller.^[44] Thus, the sales made on the dates May 5, 1984 and October 2, 1987 are void for being [simulated and for lack of a subject matter. On these sales, Bragat cannot claim good faith as she herself knew of Pastrano's lack of ownership.