

SECOND DIVISION

[G.R. No. 166790, November 19, 2014]

**JUAN P. CABRERA, PETITIONER, VS. HENRY YSAAC,
RESPONDENT.**

D E C I S I O N

LEONEN, J.:

Unless all the co-owners have agreed to partition their property, none of them may sell a ***definite portion*** of the land. The co-owner may only sell his or her ***proportionate interest*** in the co-ownership. A contract of sale which purports to sell a specific or definite portion of unpartitioned land is null and void ab initio.

In this petition for review on certiorari,^[1] Juan P. Cabrera assails the Court of Appeals' decision dated June 19, 2003^[2] and resolution dated January 3, 2005.^[3] These decisions ruled that a specific performance to execute a deed of sale over a parcel of land is not available as a relief for Juan Cabrera.

It appears that the heirs of Luis and Matilde Ysaac co-owned a 5,517-square-meter parcel of land located in Sabang, Naga City, covered by Original Certificate of Title (OCT) No. 506.^[4] One of the co-owners is respondent, Henry Ysaac.

Henry Ysaac leased out portions of the property to several lessees. Juan Cabrera, one of the lessees, leased a 95-square-meter portion of the land beginning in 1986.^[5]

On May 6, 1990, Henry Ysaac needed money and offered to sell the 95-square-meter piece of land to Juan Cabrera.^[6] He told Henry Ysaac that the land was too small for his needs because there was no parking space for his vehicle.^[7]

In order to address Juan Cabrera's concerns, Henry Ysaac expanded his offer to include the two adjoining lands that Henry Ysaac was then leasing to the Borbe family and the Espiritu family. Those three parcels of land have a combined area of 439-square-meters. However, Henry Ysaac warned Juan Cabrera that the sale for those two parcels could only proceed if the two families agree to it.

Juan Cabrera accepted the new offer. Henry Ysaac and Juan Cabrera settled on the price of P250.00 per square meter, but Juan Cabrera stated that he could only pay in full after his retirement on June 15, 1992.^[8] Henry Ysaac agreed but demanded for an initial payment of P1,500.00, which Juan Cabrera paid.^[9]

According to Juan Cabrera, Henry Ysaac informed him that the Borbe family and the Espiritu family were no longer interested in purchasing the properties they were leasing. Since Mamerta Espiritu of the Espiritu family initially considered purchasing

the property and had made an initial deposit for it, Juan Cabrera agreed to reimburse this earlier payment. On June 9, 1990, Juan Cabrera paid the amount of P6,100.00.^[10] Henry Ysaac issued a receipt for this amount. P3,100.00 of the amount paid was reimbursed to Mamerta Espiritu and, in turn, she gave Juan Cabrera the receipts issued to her by Henry Ysaac.^[11]

On June 15, 1992, Juan Cabrera tried to pay the balance of the purchase price to Henry Ysaac. However, at that time, Henry Ysaac was in the United States. The only person in Henry Ysaac's residence was his wife. The wife refused to accept Juan Cabrera's payment.^[12]

Sometime in September 1993, Juan Cabrera alleged that Henry Ysaac approached him, requesting to reduce the area of the land subject of their transaction. Part of the 439-square-meter land was going to be made into a barangay walkway, and another part was being occupied by a family that was difficult to eject.^[13] Juan Cabrera agreed to the proposal. The land was surveyed again. According to Juan Cabrera, Henry Ysaac agreed to shoulder the costs of the resurvey, which Juan Cabrera advanced in the amount of P3,000.00.

The resurvey shows that the area now covered by the transaction was 321 square meters.^[14] Juan Cabrera intended to show the sketch plan and pay the amount due for the payment of the lot. However, on that day, Henry Ysaac was in Manila. Once more, Henry Ysaac's wife refused to receive the payment because of lack of authority from her husband.^[15]

On September 21, 1994, Henry Ysaac's counsel, Atty. Luis Ruben General, wrote a letter addressed to Atty. Leoncio Clemente, Juan Cabrera's counsel.^[16] Atty. General informed Atty. Clemente that his client is formally rescinding the contract of sale because Juan Cabrera failed to pay the balance of the purchase price of the land between May 1990 and May 1992. The letter also stated that Juan Cabrera's initial payment of P1,500.00 and the subsequent payment of P6,100.00 were going to be applied as payment for overdue rent of the parcel of land Juan Cabrera was leasing from Henry Ysaac.^[17] The letter also denied the allegation of Juan Cabrera that Henry Ysaac agreed to shoulder the costs of the resurveying of the property.^[18]

Juan Cabrera, together with his uncle, Delfin Cabrera, went to Henry Ysaac's house on September 16, 1995 to settle the matter.^[19] Henry Ysaac told Juan Cabrera that he could no longer sell the property because the new administrator of the property was his brother, Franklin Ysaac.^[20]

Due to Juan Cabrera's inability to enforce the contract of sale between him and Henry Ysaac, he decided to file a civil case for specific performance on September 20, 1995.^[21] Juan Cabrera prayed for the execution of a formal deed of sale and for the transfer of the title of the property in his name.^[22] He tendered the sum of P69,650.00 to the clerk of court as payment of the remaining balance of the original sale price.^[23] On September 22, 1995, a notice of *lis pendens* was annotated on OCT No. 560.^[24]

In his answer with counterclaim,^[25] Henry Ysaac prayed for the dismissal of Juan

Cabrera's complaint.^[26] He also prayed for compensation in the form of moral damages, attorney's fees, and incidental litigation expenses.^[27]

Before the Regional Trial Court decided the case, the heirs of Luis and Matilde Ysaac, under the administration of Franklin Ysaac, sold their property to the local government of Naga City on February 12, 1997.^[28] The property was turned into a project for the urban poor of the city.^[29]

During the trial, Corazon Borbe Combe of the Borbe family testified that contrary to what Juan Cabrera claimed, her family never agreed to sell the land they were formerly leasing from Henry Ysaac in favor of Juan Cabrera.^[30] The Borbe family bought the property from Naga City's urban poor program after the sale between the Ysaacs and the local government of Naga City.^[31]

On September 22, 1999, the Regional Trial Court of Naga City ruled that the contract of sale between Juan Cabrera and Henry Ysaac was duly rescinded when the former failed to pay the balance of the purchase price in the period agreed upon.^[32] The Regional Trial Court found that there was an agreement between Juan Cabrera and Henry Ysaac as to the sale of land and the corresponding unit price.^[33] However, aside from the receipts turned over by Mamerta Espiritu of the Espiritu family to Juan Cabrera, there was no "evidence that the other adjoining lot occupants agreed to sell their respective landholdings" to Juan Cabrera.^[34] The Regional Trial Court also doubted that Juan Cabrera was willing and able to pay Henry Ysaac on June 15, 1992. According to the trial court:

[A]fter the said refusal of Henry Ysaac's wife, plaintiff [Juan Cabrera] did not bother to write to the defendant [Henry Ysaac] or to any of the co-owners his intention to pay for the land or he could have consigned the amount in court at the same time notifying [Henry Ysaac] of the consignment in accordance with Article 1256 of the Civil Code. Furthermore, in September, 1993 [Juan Cabrera] was able to meet [Henry Ysaac] when the latter allegedly talked to him about the reduction of the area he was going to buy. There is no showing that [Juan Cabrera] again tendered his payment to Henry Ysaac. Instead, he allegedly made his offer after he had the land resurveyed but defendant was then in Manila. There is no evidence as to what date this offer was made. . .

. . . [T]he court does not see any serious demand made for performance of the contract on the part of [Juan Cabrera] in 1992 when he allegedly promised to pay the balance of the purchase price. Neither could he demand for the sale of the adjoining lots because the occupants thereof did not manifest their consent thereto. At the most, he could have demanded the sale of the lot which he was occupying. If his payment was refused in 1995, he cannot demand for damages because the rescission of the contract was relayed to him in writing in Exhibit "4".^[35]

The Regional Trial Court dismissed Juan Cabrera's complaint and Henry Ysaac's counterclaim.^[36] Juan Cabrera appealed the Regional Trial Court's decision.^[37]

The Court of Appeals agreed with the Regional Trial Court that there was a perfected contract of sale between Juan Cabrera and Henry Ysaac.^[38] According to the Court of Appeals, even if the subject of the sale is part of Henry Ysaac's undivided property, a co-owner may sell a definite portion of the property.^[39]

The Court of Appeals also ruled that the contract of sale between Juan Cabrera and Henry Ysaac was not validly rescinded.^[40] For the rescission to be valid under Article 1592 of the Civil Code, it should have been done through a judicial or notarial act and not merely through a letter.^[41]

However, due to the sale of the entire property of the Ysaac family in favor of the local government of Naga City, the Court of Appeals ruled that the verbal contract between Juan Cabrera and Henry Ysaac cannot be subject to the remedy of specific performance.^[42] The local government of Naga City was an innocent purchaser for value, and following the rules on double sales, it had a preferential right since the sale, it entered into was in a public instrument, while the one with Juan Cabrera was only made orally.^[43] The only recourse the Court of Appeals could do is to order Henry Ysaac to return the initial payment of the purchase price of P10,600.00 (P1,500.00 and P6,100.00 as evidenced by the receipts issued by Henry Ysaac to Juan Cabrera, and P3,000.00 for the surveying expenses) as payment of actual damages. The Court of Appeals likewise awarded attorney's fees and litigation costs. To wit:

WHEREFORE, premises considered, the assailed decision of the lower court is hereby SET ASIDE and a new one is entered as follows:

1. Declaring that there is no valid rescission of the contract of sale of the subject lot between plaintiff-appellant [Juan P. Cabrera] and defendant-appellee [Henry Ysaac]; however, specific performance is not an available relief to plaintiff because of the supervening sale of the property to the City of Naga, an innocent purchaser and for value;
2. Ordering [Henry Ysaac] to pay [Juan P. Cabrera] actual damages in the amount of P10,600.00, with legal interest of 12% per annum from September 20, 1995 until paid;
3. Ordering [Henry Ysaac] to pay [Juan P. Cabrera], the amount of thirty thousand pesos (P30,000.00) by way of attorney's fees and litigation expenses.

Henry Ysaac filed his motion for reconsideration dated July 14, 2003 of the decision of the Court of Appeals.^[44] On the other hand, Juan Cabrera immediately filed a petition for review on certiorari with this court.^[45] In the resolution dated October 15, 2003, this court denied the petition "for being premature since respondent's motion for reconsideration of the questioned decision of the Court of Appeals is still pending resolution."^[46]

In the resolution dated January 3, 2005, the Court of Appeals denied Henry Ysaac's motion for reconsideration. On February 24, 2005, Juan Cabrera filed another petition with this court, questioning the propriety of the Court of Appeals' decision and resolution.

This court initially noted that the petition was filed out of time. The stamp on the petition states that it was received by this court on March 24, 2005,^[47] while the reglementary period to file the petition expired on February 28, 2005. Thus, the petition was dismissed in this court's resolution dated April 27, 2005.^[48] Petitioner filed a motion for reconsideration.^[49] However, the same was denied with finality in this court's resolution dated August 17, 2005.^[50]

In a letter addressed to the Chief Justice, petitioner argued that it would be unfair to him if a clerical error would deprive his petition from being judged on the merits. Petitioner emphasized that the registry receipts show that he filed the petition on February 24, 2005, not March 24, 2005, as noted by this court in his pleading.^[51] This court treated the letter as a second motion for reconsideration. In the resolution dated March 31, 2006, this court found merit in petitioner's letter.^[52] The petition was reinstated, and respondent was ordered to file his comment.^[53] Respondent filed his comment on September 18, 2006.^[54] This court required petitioner to file a reply,^[55] which petitioner complied with on January 15, 2007.^[56]

The issues raised by petitioner and respondent are summarized as follows:

1. Whether this court could take cognizance of issues not raised by petitioner but by respondent in his comment to the petition for review;
2. Whether there was a valid contract of sale between petitioner and respondent;
3. Whether the contract of sale still subsisted;
 - a. Whether the contract was terminated through rescission;
 - b. Whether the contract was no longer enforceable due to the supervening sale of the property to the local government of Naga City;
4. Whether petitioner is entitled to the execution of a deed of sale in his favor;
and
5. Whether petitioner is entitled to actual damages, attorney's fees, and costs of litigation.

The petition should be denied.

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**This court can resolve issues
raised by both parties**