

FIRST DIVISION

[G.R. No. 165168, July 09, 2010]

**SPS. NONILON (MANOY) AND IRENE MONTECALVO,
PETITIONERS, VS. HEIRS (SUBSTITUTES) OF EUGENIA T.
PRIMERO, REPRESENTED BY THEIR ATTORNEY-IN-FACT,
ALFREDO T. PRIMERO, JR., RESPONDENTS.**

D E C I S I O N

DEL CASTILLO, J.:

Jurisprudence is replete with rulings that in civil cases, the party who alleges a fact has the burden of proving it. Burden of proof is the duty of a party to present evidence on the facts in issue necessary to prove the truth of his claim or defense by the amount of evidence required by law.^[1] In this case, the petitioners awfully failed to discharge their burden to prove by preponderance of evidence that the Agreement they entered into with respondents' predecessor-in-interest is a contract of sale and not a mere contract to sell, or that said Agreement was novated after the latter subsequently entered into an oral contract of sale with them over a determinate portion of the subject property more than a decade ago.

Petitioners filed this appeal from the Decision of the Court of Appeals (CA) affirming the Regional Trial Court's (RTC's) dismissal of their action for specific performance where they sought to compel the respondents to convey the property subject of their purported oral contract of sale.

Factual Antecedents

The property involved in this case is a portion of a parcel of land known as Lot No. 263 located at Sabayle Street, Iligan City. Lot No. 263 has an area of 860 square meters covered by Original Certificate of Title (OCT) No. 0-271^[2] registered in the name of Eugenia Primero (Eugenia), married to Alfredo Primero, Sr. (Alfredo).

In the early 1980s, Eugenia leased the lot to petitioner Irene Montecalvo (Irene) for a monthly rental of P500.00. On January 13, 1985, Eugenia entered into an un-notarized Agreement^[3] with Irene, where the former offered to sell the property to the latter for P1,000.00 per square meter. They agreed that Irene would deposit the amount of P40,000.00 which shall form part of the down payment equivalent to 50% of the purchase price. They also stipulated that during the term of negotiation of 30 to 45 days from receipt of said deposit, Irene would pay the balance of P410,000.00 on the down payment. In case Irene defaulted in the payment of the down payment, the deposit would be returned within 10 days from the lapse of said negotiation period and the Agreement deemed terminated. However, if the negotiations pushed through, the balance of the full value of P860,000.00 or the net amount of P410,000.00 would be paid in 10 equal monthly installments from receipt of the down payment, with interest at the prevailing rate.

Irene failed to pay the full down payment within the stipulated 30-45-day negotiation period. Nonetheless, she continued to stay on the disputed property, and still made several payments with an aggregate amount of P293,000.00. On the other hand, Eugenia did not return the P40,000.00 deposit to Irene, and refused to accept further payments only in 1992.

Thereafter, Irene caused a survey of Lot No. 263 and the segregation of a portion equivalent to 293 square meters in her favor. However, Eugenia opposed her claim and asked her to vacate the property. Then on May 13, 1996, Eugenia and the heirs of her deceased husband Alfredo filed a complaint for unlawful detainer against Irene and her husband, herein petitioner Nonilon Montecalvo (Nonilon) before the Municipal Trial Court (MTC) of Iligan City. During the preliminary conference, the parties stipulated that the issue to be resolved was whether their Agreement had been rescinded and novated. Hence, the MTC dismissed the case for lack of jurisdiction since the issue is not susceptible of pecuniary estimation. The MTC's Decision dismissing the ejectment case became final as Eugenia and her children did not appeal therefrom.^[4]

On June 18, 1996, Irene and Nonilon retaliated by instituting CM Case No. 11-3588 with the RTC of Lanao del Norte for specific performance, to compel Eugenia to convey the 293-square meter portion of Lot No. 263.^[5]

Proceedings before the Regional Trial Court

Trial on the merits ensued and the contending parties adduced their respective testimonial and documentary evidence before the trial court.

Irene testified that after their Agreement for the purpose of negotiating the sale of Lot No. 263 failed to materialize, she and Eugenia entered into an oral contract of sale and agreed that the amount of P40,000.00 she earlier paid shall be considered as down payment. Irene claimed that she made several payments amounting to P293,000.00 which prompted Eugenia's daughters Corazon Calacat (Corazon) and Sylvia Primero (Sylvia) to ask Engr. Antonio Ravacio (Engr. Ravacio) to conduct a segregation survey on the subject property. Thereafter, Irene requested Eugenia to execute the deed of sale, but the latter refused to do so because her son, Arty. Alfredo Primero, Jr. (Atty. Primero), would not agree.

On March 22, 1999, herein respondents filed with the court *a quo* a "Notice of Death of the Defendant"^[6] manifesting that Eugenia passed away on February 28, 1999 and that the decedent's surviving legal heirs agreed to appoint their co-heir Atty. Primero, to act as their representative in said case, In an Order^[7] dated April 8, 1999, the trial court substituted the deceased defendant with Atty. Primero.

Respondents, on the other hand, presented the testimony of Atty. Primero to establish that Eugenia could not have sold the disputed portion of Lot No. 263 to the petitioners. According to Atty. Primero, at the time of the signing of the Agreement on January 13, 1985, Eugenia's husband, Alfredo, was already dead. Eugenia merely managed or administered the subject property and had no authority to dispose of the same since it was a conjugal property. In addition, respondents asserted that the deposit of P40,000.00 was retained as rental for the subject

property.

Respondents likewise presented Sylvia, who testified that "the receipts issued to petitioners were for the lot rentals."^[8] Another sister of Atty. Primero, Corazon, testified that petitioners were their tenants in subject land, which she co-owns with her mother Eugenia.^[9] She denied having sold the purported 293-square meter portion of Lot No. 263 to the petitioners.^[10]

As rebuttal witness, petitioners presented Engr. Ravacio, a surveyor who undertook the segregation of the 293-square meter portion out of fee subject property.^[11]

On October 22, 2001, the RTC rendered a Decision:^[12] (1) dismissing the complaint and the counterclaim for lack of legal and factual bases; (2) ordering petitioners to pay respondents P2,500.00 representing rentals due, applying therefrom the amount deposited and paid; and (3) ordering petitioner to pay 12% legal interest from finality of decision until full payment of the amount due.^[13]

Aggrieved, petitioners appealed the Decision of the trial court to the CA.

Proceedings before the Court of Appeals

Both parties filed their respective briefs before the appellate court.^[14] Thereafter, on November 28, 2003, the CA rendered a Decision^[15] affirming the RTC Decision.^[16]

Petitioners timely filed a Motion for Reconsideration.^[17] However, in a Resolution^[18] dated June 27, 2004, the CA resolved to deny the same for lack of merit.^[19]

Issues

Petitioners thus filed this Petition for Review on *Certiorari* anchored on the following grounds.

1. WHETHER AN ORAL CONTRACT OF SALE OF A PORTION OF [A] LOT IS BINDING [UPON] THE SELLER.
2. WHETHER A SELLER IN AN ORAL CONTRACT OF SALE OF A PORTION OF [A] LOT CAN BE COMPELLED TO EXECUTE THE REQUIRED DEED OF SALE AFTER THE AGREED CONSIDERATION WAS PAID AND POSSESSION THEREOF DELIVERED TO AND ENJOYED BY THE BUYER.
3. WHETHER THE BUYER HAS A RIGHT TO ENFORCE AN ORAL CONTRACT OF SALE AFTER THE PORTION SOLD IS SEGREGATED BY AGREEMENT OF THE PARTIES.
4. WHETHER THE SELLER IS BOUND BY THE HANDWRITTEN RECEIPTS PREPARED AND SIGNED BY HER EXPRESSLY INDICATING

PAYMENTS OF LOTS.

5. WHETHER THE TRIAL COURT COULD RENDER A JUDGMENT ON ISSUES NOT DEFINED IN THE PRE-TRIAL ORDER.

Our Ruling

The petition lacks merit.

The Agreement dated January 13, 1985 is a contract to sell. Hence, with petitioners' non-compliance with its terms and conditions, the obligation of the respondents to deliver and execute the corresponding deed of sale never arose.

The CA found that the Agreement dated January 13, 1985 is not a contract of sale but a mere contract to sell, the efficacy of which is dependent upon the *resolutive* condition that Irene pay at least 50% of the purchase price as down payment within 30-45 days from the day Eugenia received the P40,000.00 deposit.^[20] Said court further found that such condition was admittedly not met.^[21]

Petitioners admit that the Agreement dated January 13, 1985 is at most, "a preliminary agreement for an eventual contract."^[22] However, they argue that contrary to the findings of the appellate court, it was not only the buyer, Irene, who failed to meet the condition of paying the balance of the 50% down payment.^[23] They assert that the Agreement explicitly required Eugenia to return the deposit of P40,000.00 within 10 days, in case Irene failed to pay the balance of the 50% down payment within the stipulated period.^[24] Thus, petitioners posit that for the cancellation clause to operate, two conditions must concur, namely, (1) buyer fails to pay the balance of the 50% down payment within the agreed period and (2) seller should return the deposit of P40,000.00 within 10 days if the first condition was not complied with. Petitioners conclude that since both seller and buyer failed to discharge their reciprocal obligations, being in *pari delictu*, the seller could not repudiate their agreement to sell.

The petitioners' contention is without merit.

There is no dispute as to the due execution and existence of the Agreement. The issue thus presented is whether the said Agreement is a contract of sale or a contract to sell. For a better understanding and resolution of the issue at hand, it is apropos to reproduce herein the Agreement in *haec verba*:

A G R E E M E N T

This Agreement, made and executed by and between:

EUGENIA T. PRIMERO, a Filipino of legal age and residing in Camague, nigan City (hereinafter called the OWNER)

-and-

IRENE P. MONTECALVO, Filipino of legal age and presently residing at Sabayle St., Iligan City (hereinafter [called] the INTERESTED PARTY);

-and-

WITNESSETH:

That the OWNER is the true and absolute owner of a parcel of land located at Sabayle St. immediately fronting the St. Peter's College which is presently leased to the INTERESTED PARTY;

1. That the property referred to contains an area of EIGHT HUNDRED SIXTY SQUARE METERS at the value of One Thousand Pesos (P1,000.00) per square meters;
2. That this agreement is entered, into for the purpose of negotiating the, sale of the above referred property between the same parties herein under the following terms and conditions, to wit:

a) That the term of this negotiation is for a period of Thirty to Forty Five (30-45) days from receipt of a deposit;

b) That Forty Thousand Pesos (P40,000.00) shall be deposited to demonstrate the interest of the Interested Party to acquire the property referred to above, which deposit shall not earn any interest;

c) That should the contract or agreement push through the deposit shall form part of the down payment of Fifty percent (50%) of the total or full value. Otherwise the deposit shall be returned within TEN (10) days from the lapse of the period of negotiation;

3. That should this push through, the balance of Four Hundred Ten Thousand on the down payment shall be made upon execution of the Agreement to Sell and the balance of the full value of Eight Hundred Sixty Thousand or Four Hundred Ten Thousand Pesos shall be paid in equal monthly installment within Ten (10) months from receipt of the down payment with [sic] according to prevailing interest.

IN WITNESS WHEREOF, the parties have signed these presents in the