

THIRD DIVISION

[G.R. No. 175399, October 27, 2009]

OPHELIA L. TUATIS, PETITIONER, VS. SPOUSES ELISEO ESCOL AND VISMINDA ESCOL; HONORABLE COURT OF APPEALS, 22ND DIVISION, CAGAYAN DE ORO CITY; REGIONAL TRIAL COURT, BRANCH 11, SINDANGAN, ZAMBOANGA DEL NORTE; AND THE SHERIFF OF RTC, BRANCH 11, SINDANGAN, ZAMBOANGA DEL NORTE, RESPONDENTS.

DECISION

CHICO-NAZARIO, J.:

This Petition for *Certiorari* and *Mandamus*^[1] under Rule 65 of the Rules of Court seeks the annulment of the following Resolutions of the Court of Appeals in CA-G.R. SP No. 00737-MIN: (a) Resolution^[2] dated 10 February 2006 dismissing the Petition for *Certiorari*, Prohibition and *Mandamus* with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction of herein petitioner Ophelia L. Tuatis (Tuatis); (b) Resolution^[3] dated 25 July 2006 denying Tuatis' Motion for Reconsideration of the Resolution dated 10 February 2006; and (c) Resolution^[4] dated 9 October 2006 denying Tuatis' Motion for Leave to File a Second Motion for Reconsideration. The instant Petition further prays for the annulment of the Order^[5] dated 26 September 2005 of the Regional Trial Court (RTC) of Sindangan, Zamboanga del Norte, Branch 11, in Civil Case No. S-618, ordering the Sheriff to immediately serve the Writ of Execution issued on 7 March 2002.

The dispute arose from the following factual and procedural antecedents:

On 18 June 1996, Tuatis filed a Complaint for Specific Performance with Damages^[6] against herein respondent Visminda Escol (Visminda) before the RTC, docketed as Civil Case No. S-618.

Tuatis alleged in her Complaint that sometime in November 1989, Visminda, as seller, and Tuatis, as buyer, entered into a Deed of Sale of a Part of a Registered Land by Installment^[7] (Deed of Sale by Installment). The subject matter of said Deed was a piece of real property situated in Poblacion, Sindangan, Zamboanga del Norte and more particularly described as "[a] part of a registered land being known as Lot No. 251, Pls-66 covered under OCT [Original Certificate of Title] No. P-5421; x x x with an area of THREE HUNDRED (300) square meters, more or less" (subject property).

The significant portions of the Deed of Sale by Installment stated:

That for and in consideration of the sum of TEN THOUSAND PESOS (P10,000.00), Philippine currency, the SELLER [Visminda^[8]] hereby SELLS to the BUYER [Tuatis], the above-described parcel of land under the following terms and conditions:

1. That the BUYER [Tuatis] shall pay to the SELLER [Visminda] the amount of THREE THOUSAND PESOS (P3,000.00), as downpayment;
2. That the BUYER [Tuatis] shall pay to the SELLER [Visminda] the amount of FOUR THOUSAND PESOS (P4,000.00), on or before December 31, 1989;
3. That the remaining balance of THREE THOUSAND PESOS (P3,000.00) shall be paid by the BUYER [Tuatis] to the SELLER [Visminda] on or before January 31, 1990;
4. That failure of the BUYER [Tuatis] to pay the remaining balance within the period of three months from the period stipulated above, then the BUYER [Tuatis] shall return the land subject of this contract to the SELLER [Visminda] and the SELLER [Visminda] [shall] likewise return all the amount paid by the BUYER [Tuatis].^[9]

Tuatis claimed that of the entire purchase price of P10,000.00, she had paid Visminda P3,000.00 as downpayment. The exact date of said payment was not, however, specified. Subsequently, Tuatis paid P3,000.00 as installment on 19 December 1989, and another P1,000.00 installment on 17 February 1990. Tuatis averred that she paid Visminda the remaining P3,000.00 on 27 February 1990 in the presence of Eric Selda (Eric), a clerk in the law office of one Atty. Alanixon Selda. In support of this averment, Tuatis attached to her Complaint a certification^[10] executed by Eric on 27 May 1996.

In the meantime, Tuatis already took possession of the subject property and constructed a residential building thereon.

In 1996, Tuatis requested Visminda to sign a prepared absolute deed of sale covering the subject property, but the latter refused, contending that the purchase price had not yet been fully paid. The parties tried to amicably settle the case before the *Lupon Barangay*, to no avail.^[11]

Tuatis contended that Visminda failed and refused to sign the absolute deed of sale without any valid reason. Thus, Tuatis prayed that the RTC order Visminda to do all acts for the consummation of the contract sale, sign the absolute deed of sale and pay damages, as well as attorney's fees.

In her Answer,^[12] Visminda countered that, except for the P3,000.00 downpayment and P1,000.00 installment paid by Tuatis on 19 December 1989 and 17 February 1990,^[13] respectively, Tuatis made no other payment to Visminda. Despite repeated verbal demands, Tuatis failed to comply with the conditions that she and Visminda

agreed upon in the Deed of Sale by Installment for the payment of the balance of the purchase price for the subject property. Visminda asked that the RTC dismiss Tuatis' Complaint, or in the alternative, order Tuatis to return the subject property to Visminda after Visminda's reimbursement of the P4,000.00 she had received from Tuatis.

After trial, the RTC rendered a Decision^[14] on 29 April 1999 in Civil Case No. S-618 in Visminda's favor. The RTC concluded:

Under the facts and circumstances, the evidence for [Tuatis] has not established by satisfactory proof as to (sic) her compliance with the terms and conditions setforth (sic) in [the Deed of Sale by Installment] x x x.

x x x x

In contracts to sell, where ownership is retained by the seller and is not to pass until the full payment, such payment, as we said, is a positive suspensive condition, the failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force x x x.

x x x x

As the contract x x x is clear and unmistakable and the terms employed therein have not been shown to belie or otherwise fail to express the true intention of the parties, and that the deed has not been assailed on the ground of mutual mistake which would require its reformation, [the] same should be given its full force and effect.

EVIDENCE (sic) at hand points of no full payment of the price, hence No. 4 of the stipulation applies[,], which provides:

"That failure (sic) of the Buyer [Tuatis] to pay the remaining balance within the period of three months from the period stipulated above, then the Buyer [Tuatis] shall return the land subject of this Contract to the Seller [Visminda] and the Seller [Visminda] [shall] likewise return all the (sic) amount paid by the Buyer [Tuatis]."

This stipulation is the law between the [Buyer] and [Seller], and should be complied with in good faith x x x.

[Tuatis] constructed the building x x x in bad faith for, (sic) she had knowledge of the fact that the Seller [Visminda] is still the absolute owner of the subject land. There was bad faith also on the part of [Visminda] in accordance with the express provisions of Article 454 [of the New Civil Code]^[15] since [she] allowed [Tuatis] to construct the building x x x without any opposition on [her] part and so occupy it. The rights of the parties must, therefore, be determined as if they both had

acted in bad faith. Their rights in such cases are governed by Article 448 of the New Civil Code of the Philippines.^[16]

The RTC decreed the dismissal of Tuatis' Complaint for lack of merit, the return by Tuatis of physical possession of the subject property to Visminda, and the return by Visminda of the P4,000.00 she received from Tuatis.

Tuatis filed an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 65037. In a Resolution^[17] dated 29 August 2000, however, the appellate court dismissed the appeal for failure of Tuatis to serve and file her appellant's brief within the second extended period for the same. An Entry of Judgment^[18] was made in CA-G.R. CV No. 65037 on 29 September 2000, as a result of which, the appealed RTC Decision dated 29 April 1999 in Civil Case No. S-618 became final and executory.

Visminda filed a Motion for Issuance of a Writ of Execution^[19] before the RTC on 14 January 2002. The RTC granted Visminda's Motion in a Resolution dated 21 February 2002, and issued the Writ of Execution^[20] on 7 March 2002.

Tuatis thereafter filed before the RTC on 22 April 2002 a Motion to Exercise Right under Article 448 of the Civil Code of the Philippines.^[21] Tuatis moved that the RTC issue an order allowing her to buy the subject property from Visminda. While Tuatis indeed had the obligation to pay the price of the subject property, she opined that such should not be imposed if the value of the said property was considerably more than the value of the building constructed thereon by Tuatis. Tuatis alleged that the building she constructed was valued at P502,073.00,^[22] but the market value of the entire piece of land measuring 4.0144 hectares, of which the subject property measuring 300 square meters formed a part, was only about P27,000.00.^[23] Tuatis maintained that she then had the right to choose between being indemnified for the value of her residential building or buying from Visminda the parcel of land subject of the case. Tuatis stated that she was opting to exercise the second option.

On 20 December 2004, Visminda deposited the amount of P4,000.00 to the office of the Clerk of Court of the RTC, pursuant to the Decision of the trial court dated 29 April 1999.^[24]

In the intervening time, the Writ of Execution issued on 7 March 2002 was yet to be served or implemented by the Sheriff. This prompted Visminda to write a letter to the Office of the Court Administrator (OCA) to complain about the said delay. The OCA endorsed the letter to the RTC.

On 26 September 2005, the RTC issued an Order^[25] directing the Sheriff to immediately serve or enforce the Writ of Execution previously issued in Civil Case No. S-618, and to make a report and/or return on the action taken thereon within a period of fifteen (15) days from receipt of the order.

On 10 October 2005, Tuatis filed before the RTC a Motion for Reconsideration^[26] of the Order dated 26 September 2005, praying that the same be set aside in view of the pendency of her previous Motion to Exercise Right under Article 448 of the Civil Code of the Philippines. However, before the RTC could rule upon Tuatis' Motion for

Reconsideration, the Sheriff enforced the Writ of Execution on 27 October 2005 and submitted his Return to the RTC on 2 November 2005, reporting that the subject writ was fully satisfied.

Tuatis immediately filed with the Court of Appeals a Petition for *Certiorari*, Prohibition and *Mandamus* with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction,^[27] which was docketed as CA-G.R. No. 00737-MIN. Tuatis sought in said Petition the annulment of the RTC Order dated 26 September 2005, as well as the issuance of an order commanding the RTC and the Sheriff to desist from undertaking any further proceedings in Civil Case No. S-618, and an order directing the RTC to determine the rights of the parties under Article 448 of the Civil Code.

In a Resolution^[28] dated 10 February 2006, the Court of Appeals dismissed outright Tuatis' Petition for failure to completely pay the required docket fees, to attach a certified true or authenticated copy of the assailed RTC Order dated 26 September 2005, and to indicate the place of issue of her counsel's IBP and PTR Official Receipts.

Tuatis filed a Motion for Reconsideration^[29] of the Resolution dated 10 February 2006, but said Motion was denied by the appellate court in another Resolution dated 25 July 2006 on the ground that Tuatis had not taken any action to rectify the infirmities of her Petition.

Tuatis subsequently filed a Motion for Leave to File a Second Motion for Reconsideration,^[30] but it was similarly denied by the Court of Appeals in a Resolution dated 9 October 2006, as Section 2, Rule 52^[31] of the Rules of Court proscribes the filing of a second motion for reconsideration.

Hence, Tuatis filed the instant Petition, principally arguing that Article 448 of the Civil Code must be applied to the situation between her and Visminda.

According to Tuatis, grave abuse of discretion, amounting to lack or excess of their jurisdiction, was committed by the RTC in issuing the Order dated 26 September 2005, and by the Sheriff in enforcing the Writ of Execution on 27 October 2005. Tuatis insists that the Motion for Reconsideration of the Order dated 26 September 2005 that she filed on 10 October 2005 legally prevented the execution of the RTC Decision dated 29 April 1999, since the rights of the parties to the case had yet to be determined pursuant to Article 448 of the Civil Code.^[32] Tuatis reiterates that the building she constructed is valued at P502,073.00, per assessment of the Municipal Assessor of Sindangan, Zamboanga del Norte; while the entire piece of land, which includes the subject property, has a market value of only about P27,000.00, based on Tax Declaration No. 12464 issued in the year 2000.^[33] Such being the case, Tuatis posits that she is entitled to buy the land at a price to be determined by the Court or, alternatively, she is willing to sell her house to Visminda in the amount of P502,073.00.

In addition, Tuatis attributes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Court of Appeals for dismissing outright her Petition for *Certiorari*, Prohibition and *Mandamus* with Prayer for the Issuance of a