

SECOND DIVISION

[G.R. No. 166458, February 14, 2008]

**MR. SERGIO VILLADAR, JR. & MRS. CARLOTA A. VILLADAR,
Petitioners, vs. ELDON ZABALA and SAMUEL ZABALA, SR.,
Respondents.**

DECISION

QUISUMBING, J.:

Petitioners Mr. and Mrs. Sergio Villadar, Jr. appeal the Decision^[1] dated November 28, 2003 of the Court of Appeals in CA-G.R. SP No. 71439 and the Resolution^[2] dated December 1, 2004, denying the motion for reconsideration. The Court of Appeals had reversed the Decision^[3] dated April 15, 2002 of the Regional Trial Court (RTC), Branch 58, Cebu City in Civil Case No. CEB-27050, and ordered petitioners to surrender possession of portions of Lot Nos. 5095-A and 5095-B to respondents Eldon Zabala and Samuel Zabala, Sr.

The antecedent facts are as follows:

Respondent Samuel Zabala, Sr. was the owner of Lot No. 5095 covered by Transfer Certificate of Title (TCT) No. 78269,^[4] located at San Nicolas, Cebu City, and comprising 438 square meters. On January 13, 1995, Samuel, Sr., together with his wife Maria Luz Zabala, sold one-half of Lot No. 5095 to his mother-in-law Estelita Villadar for P75,000 on installment basis. Except for a note of partial payment of P6,500,^[5] no contract was executed nor was there an agreement on when Estelita shall pay all installments.

On February 28, 1997, Samuel, Sr. sold the other half of Lot No. 5095 to respondent Eldon Zabala. Lot No. 5095 was subdivided and upon cancellation of TCT No. 78269, Lot No. 5095-A under TCT No. 145182^[6] was registered in Eldon's name. Lot No. 5095-B under TCT No. 145183^[7] was registered in Samuel, Sr.'s name.

On April 20, 1997, Estelita made an additional payment of P22,500,^[8] leaving a balance of only P36,500 after deducting all previous payments. Later, however, the spouses Samuel, Sr. and Maria Luz decided to cancel the sale after a confrontation with Estelita at the Office of the Barangay Captain of Barangay Basak, San Nicolas, Cebu City.

Samuel, Sr. together with his son Samuel Zabala, Jr. also filed a complaint for ejectment with the Office of the *Lupong Tagapamayapa* of Barangay Basak against Estelita's son, petitioner Sergio Villadar, Jr., who occupied one of the houses that stood on the property. On June 14, 1998, said office issued to Samuel, Sr. a certificate to file action after petitioner Sergio Villadar, Jr. failed to appear for

conciliation.

On October 27, 1998, Eldon and Samuel, Sr. filed a Complaint^[9] for unlawful detainer against petitioners Sergio Villadar, Jr. and his wife Carlota Alimurung before the Municipal Trial Court in Cities (MTCC), Branch 8, Cebu City. In their complaint, they alleged that they own Lot Nos. 5095-A and 5095-B, and that in the latter part of 1986, they allowed petitioners to stay in a vacant store on the lot out of pity, subject to the condition that petitioners would leave once respondents need the premises for the use of their own families. In January 1998, they demanded that petitioners vacate the store because they needed the store for the use of their children but petitioners refused to leave.

In their Answer,^[10] petitioners claimed that one-half of Lot No. 5095 was sold on installment to Sergio Villadar, Jr.'s mother, Estelita Villadar, on January 13, 1995 for P75,000; that on January 13, 1995, Estelita made a downpayment of P6,500 and had an unpaid balance of only P36,500 as of April 20, 1997; that by virtue of the sale, Estelita became the owner of the premises where their house stood; that they derive their title from Estelita who promised and agreed to give them one-half of one-half of Lot No. 5095 after she has fully paid the price and obtained a separate title in her name; that they constructed a residential house, which now straddles Lot Nos. 5095-A and 5095-B because of respondents' wrongful subdivision of Lot No. 5095; that Estelita tried to tender the balance of the purchase price, but Samuel, Sr. unjustifiably refused to receive the payment; that because of such refusal, Estelita and Sergio Villadar, Jr. sought the intervention of the *Lupon* Authority of Barangay Basak, San Nicolas, Cebu City but no settlement was reached; that assuming that they and Estelita are adjudged to have an inferior right over one-half of the lot, they are builders in good faith and they should be allowed to retain the lot until they are paid or reimbursed the amount of P80,000, which is the value of the house they built on the premises.

On August 27, 2001, the MTCC dismissed the complaint.^[11] The MTCC ruled that petitioners could not be deprived of their possession of the disputed portion because one-half of Lot No. 5095 had already been sold in 1995 to Estelita Villadar, who was the source of petitioners' right to possess it. The dispositive portion of the decision states:

WHEREFORE, upon the premises, judgment is hereby rendered against [p]laintiffs and this case is DISMISSED; [de]fendants are hereby granted to recover the costs of this litigation in the sum of P10,000.00 from [p]laintiffs who are hereby directed to pay the same.

SO ORDERED.^[12]

Respondents Eldon and Samuel, Sr. appealed to the RTC which affirmed the MTCC's ruling.

Upon appeal, the Court of Appeals in a Decision dated November 28, 2003 reversed the rulings of the MTCC and RTC. The Court of Appeals ruled that although there was an oral agreement between Samuel Zabala, Sr. and Estelita Villadar for the sale of one-half of Lot No. 5095, Samuel Zabala, Sr. had reserved title to the property in his name until full payment of the purchase price had been made by Estelita. The pertinent portions of the Court of Appeals' decision state:

It is undisputed that ... there was a verbal agreement between petitioner Samuel Zabala, Sr. and the respondents for the sale of Lot No. 50[95]-B for P75,000.00 on January 13, 1995. The sale of Lot No. 5095-B, although not in writing, had been perfected as the parties had agreed upon the object of the contract, which was Lot 5095-B, and the price, which was P75,000.00 (**Article 1475, Civil Code of the Philippines**). Similarly, We sustain the validity of the oral sale as no written form is really required for the validity of a contract of sale (**Article 1483, Civil Code of the Philippines**). But, as correctly observed by the trial court, the term or manner of payment of the purchase price had not been agreed upon by the parties in which case petitioner Samuel Zabala, Jr. should seek the intervention of the court to fix the period when Estelita vda. De Villadar should pay in full the consideration of the sale. Where the period has been fixed by the court and Estelita refused to pay the remaining balance of P36,500.00, that would be the opportune time for petitioner Samuel Zabala, Sr. to cause the rescission of the oral contract. As it is, however, petitioner Samuel Zabala, Sr. could not rescind or cancel the contract on the ground that Estelita failed to pay the remaining balance of the purchase price because he had no cause for cancellation or rescission yet in view of fact that no period had been agreed upon by him and Estelita when the P36,500.00 should be paid. Thus, unless the contract of sale is rescinded, it remains to be valid.

On a different light, however, We note and We are inclined to believe, based on the evidence submitted to Us and in determining the intentions of petitioner Samuel Zabala, Sr. and the respondents spouses, that the sale, being one on installment basis, petitioner Samuel Zabala, [Sr.] had reserved title to the property in his name until full payment of the purchase price had been made by Estelita. This explains why title of Lot No. 5095-B, specifically TCT No. 145183, was registered in his name when Lot No. 5095 was divided into two lots and Estelita had not sought the registration of the lot in her name. Although respondents occupied the store or house on the common boundary of [Lot Nos.] 50[95]-A and 50[95]-B, their occupation or possession did not constitute delivery of the land subject of the oral contract of sale so as to have effectively transferred ownership thereof to Estelita. Therefore, even assuming that respondents were the ones who constructed the house or store on Lot No. 50[95]-B, they had no right to construct any structure thereon because their mother, Estelita, did not own the land until she had fully paid the consideration of the sale.

As no right was acquired by the respondents better than the right pertaining to Estelita, the occupancy and possession by the respondents of the subject land was merely tolerated by the owner, herein plaintiff-petitioner Samuel Zabala, Sr. Similarly, respondents did not have the right to possess or occupy that portion of the land belonging to petitioner Eldon Zabala. Their occupation with respect to that portion was, likewise, merely tolerated by the owner and, thus, it was the duty of the respondents to surrender possession thereof upon demand by petitioner Eldon. From July 23, 1998 then, when a formal demand (Rollo, p. 63)

was made upon the respondents to vacate the premises, the possession of the respondents had become unlawful and they were subject to ejection.

Respondents could not claim that they were builders in good faith of the house. From their allegations in their Answer with Counterclaim (par. 2.3), respondent Sergio Villadar, Jr. knew and admitted that Lot No. 5095-B was not yet fully paid and a separate title thereto had not yet been issued in the name of Estelita (Rollo, p. 55) from whom he and his wife allegedly derived their title. Being builders in bad faith, they cannot, as a matter of right, recover the value of the house or the improvements thereon, if any, from the petitioners, much less retain possession of the premises (**Article 449, Civil Code of the Philippines**). Respondents have no right, whatsoever, except the right to be reimbursed for necessary expenses which they had incurred for the preservation of both portions of [Lot] Nos. 50[95]-A and 50[95]-B (**Article 452, Civil Code of the Philippines**) occupied by them.

WHEREFORE, in view of the foregoing, the petition is **GIVEN DUE COURSE**. The Decision dated April 15, 2002 of the Regional Trial Court, Branch 58, Cebu City affirming the Decision dated August 27, 2001 of the Municipal Trial Court in Cities, Branch 8, Cebu City, is hereby **REVERSED** and **SET ASIDE**, and another one entered ordering defendants-respondents to surrender the physical and material possession of that portion of Lot No. 50^[95]-A and Lot No. 50^[95]-B upon which their house was constructed to petitioners Samuel Zabala, Sr. and Eldon Zabala.

SO ORDERED.^[13]

On December 1, 2004, the Court of Appeals likewise denied petitioners' motion for reconsideration. Hence, this petition.

Petitioners raise the following issues in their Memorandum:

I.

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED IN GIVING DUE COURSE TO RESPONDENTS' PETITION FOR REVIEW AND RENDERING A DECISION THERE[O]N, INSTEAD OF DISMISSING THE SAME FOR VIOLATION OF SEC. 2(d) OF RULE 42 OF THE 1997 RULES OF CIVIL PROCEDURE.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION, AND MISAPPREHENSION OF FACTS, IN RULING THAT THERE WAS NO DELIVERY OF POSSESSION TO ESTELITA VILLADAR OF THE ½ PORTION OF LOT [NO.] 5095 SOLD TO HER IN PETITIONERS' EXH. "1" BY RESPONDENT SAMUEL ZABALA[,] SR. AND WIFE, WHICH IS THE RECEIPT DATED JANUARY 13, 1995 OF THE PARTIAL PAYMENT OF ESTELITA VILLADAR OF ITS CONSIDERATION ADMITTED BY

RESPONDENT SAMUEL ZABALA SR. [SIC]

III.

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED IN HOLDING THAT ESTELITA VILLADAR DID NOT OWN THE LAND WHERE HER AND PETITIONERS' HOUSES STAND BECAUSE SHE HAD NOT FULLY PAID THE CONSIDERATION OF THE SALE.

IV.

WHETHER OR NOT THE HON. COURT OF APPEALS' HOLDING. . . THAT PETITIONERS' OCCUPANCY OF THE ½ PREMISES OF LOT [NO.] 5095 WAS BY MERE TOLERANCE OF THE RESPONDENTS [WAS RIGHT].

V.

WHETHER OR NOT PETITIONERS ARE EJECTIBLE [SIC] FROM THE PREMISES OF LOT [NO.] 5095.

VI.

ASSUMING THAT THEY ARE, WHETHER OR NOT THE HON. COURT OF APPEALS' HOLDING [WAS] RIGHT THAT PETITIONERS WERE NOT BUILDERS IN GOOD FAITH OF THEIR RESIDENTIAL HOUSE IN THE PREMISES AT A COST OF P80,000.00 (P.3. CA'S DECISION – ANNEX "A", PETITION); HENCE NOT REIMBURSABLE FOR SAID EXPENSES THEREOF, AND HAVE NO RIGHT OF RETENTION.

VII.

WHETHER THE COURT *A QUO* WAS RIGHT OR NOT IN NOT DISMISSING OUTRIGHTLY THE [RESPONDENTS'] COMPLAINT, FOR NON-COMPLIANCE WITH THE *KATARUNGANG PAMBARANGAY* LAW AND THIS HON. COURT'S ADM. CIR. NO. 14-93, AND RULE 16, SEC. 1 (j) OF THE 1997 RULES OF CIVIL PROCEDURE.

VIII.

WHETHER OR NOT THE RESPONDENTS' COMPLAINT AT THE COURT *A QUO* IS DISMISSABLE UNDER THE RULING OF THE SUPREME COURT IN THE CASE OF *SARM[I]ENTO V. COURT OF APPEALS*, G.R. NO. 116192, NOV. 16, 1995, ON THE GROUND THAT IT IS NOT COGNIZABLE BY THE SAID COURT.^[14]

Essentially, the main issue for our resolution is whether the appellate court erred in reversing the RTC's ruling that the respondents can not validly eject petitioners.

Petitioners argue that Estelita owns one-half of Lot No. 5095 and that their possession of the disputed portion was based on their agreement with Estelita, not upon respondents' tolerance. Petitioners also add that they cannot be summarily ejected from the disputed portion without first resolving the ownership of the land