

FIRST DIVISION

[G.R. NO. 158227, October 19, 2005]

**KEPPEL BANK PHILIPPINES, INC., PETITIONER, VS. PHILIP
ADAO, RESPONDENT.**

D E C I S I O N

QUISUMBING, J.:

On appeal is the **Decision**^[1] dated April 30, 2003 of the Court of Appeals in CA G.R. SP No. 71477. The Court of Appeals affirmed the Decision of the Regional Trial Court which had earlier sustained the Decision of the Metropolitan Trial Court, dismissing the ejectment case against respondent Philip Adao.

The case stemmed from the court-approved Compromise Agreement between petitioner Keppel Bank and Project Movers Realty and Development Corporation (PMRDC).^[2] By virtue of the agreement, PMRDC through its President Mario P. Villamor assigned, transferred and conveyed to petitioner, by way of *dacion en pago*,^[3] twenty-five properties consisting of townhouses, condominium units and vacant lots, as partial settlement of their two hundred million pesos (P200,000,000) outstanding obligation. Pursuant thereto, petitioner secured Condominium Certificates of Title over the units.

Upon inspection, petitioner found respondent Philip Adao occupying Unit 4 of the Luxor Villas Townhouse, one of the 25 properties above-mentioned. On February 18, 2000, petitioner sent a written demand to respondent to vacate the unit within 30 days from receipt of the notice. Respondent refused and, instead, offered to purchase the unit. However, the parties failed to reach an agreement on the matter.

On October 19, 2000, petitioner sent respondent a final demand to vacate. Since the demand was not heeded, petitioner filed a civil case for ejectment docketed as Civil Case No. 8911 against respondent.

In his defense, respondent alleged that he has long been occupying the contested unit by virtue of a Contract to Sell^[4] dated February 7, 1995 between him and PMRDC. He stated that to avoid litigation, he offered to purchase the unit for 2.5 million pesos, in addition to the 3 million pesos he already paid to PMRDC. He added that had his pre-agreed marketing services with PMRDC been duly audited to his credit, the unit would have already been fully paid. Respondent contended that petitioner's remedy is to demand from PMRDC the immediate replacement of the property as provided in their Compromise Agreement and *Dacion en Pago*.^[5]

On August 6, 2001, the MeTC dismissed the complaint and held Adao as the lawful possessor of the property. Petitioner appealed to the Regional Trial Court, which, on March 4, 2002, affirmed *in toto* the MeTC decision.^[6] The RTC held that, by virtue of

the *dacion en pago*, petitioner merely stepped into the shoes of PMRDC. Hence, petitioner must respect the contract to sell between PMRDC and respondent. It also held that petitioner failed to show non-payment by respondent, and that in case of non-payment, the remedy of the vendor is either rescission with recovery of possession or specific performance based on breach of contract, but not ejectment. [7] Petitioner moved for reconsideration but it was denied on June 5, 2002.

Petitioner elevated the case to the Court of Appeals. The appellate court held that petitioner must respect the contract to sell though such is not annotated in the certificate of title because petitioner was not a purchaser in good faith, having failed to exercise due diligence required of banks. As an unpaid seller, petitioner can only rescind the contract under Article 1526 [8] of the Civil Code which does not sanction the filing of an action for ejectment. The Court of Appeals affirmed the RTC decision and, subsequently, denied reconsideration. It decreed as follows:

WHEREFORE, premises considered, the instant petition is DENIED. The assailed March 4, 2002 decision of the RTC is hereby AFFIRMED.

SO ORDERED. [9]

Petitioner now comes before us and alleges that the Court of Appeals seriously erred when:

i. ... it ruled that the petitioner Bank must respect the terms and conditions of the Contract to Sell allegedly executed on 07 February 1995 despite the fact that petitioner had no knowledge thereof and that said Contract to Sell was not annotated on CCT No. 9522-R prior to the execution of the court-approved Compromise Agreement and Dacion en Pago between the petitioner and PMRDC.

ii. ... it affirmed the finding of the RTC that respondent had fully paid the purchase price under the Contract to Sell on the basis of respondent's unsubstantiated and general allegation in his Answer with Compulsory Counterclaim and when it shifted the burden of proof upon petitioner to prove that respondent had not fully paid the alleged purchase price. Such ruling contravenes the well-settled legal rule that "he who alleges must prove the same."

iii. ... it affirmed the ruling of the RTC that the complaint for ejectment filed by petitioner is not the proper remedy.

iii.a The RTC's suggested remedy, as affirmed by the Court of Appeals, of filing an action for "rescission with recovery of possession based on breach of contract" wrongfully presumes that the alleged Contract to Sell is binding on the petitioner.

iii.b The RTC's suggested remedy, as affirmed by the Court of Appeals, is contrary to law and jurisprudence because in a contract to sell, ownership is retained by the seller until the buyer has fully paid the purchase price;

iv. ... it affirmed the ruling of the RTC that petitioner's recourse must be against PMRDC and/or its President, Mario P. Villamor.

v. ... it affirmed the RTC's position that it was not duty-bound to rule on the issue of ownership to settle the issue of possession and relied heavily on the alleged Contract to Sell as the basis of respondent's right to possess the Subject Property.^[10]

In sum, the issues for our resolution are: (1) Is petitioner bound by the contract to sell? (2) Is the remedy of ejectment legally available to the petitioner? and (3) Who is entitled to physical possession of the property?

Petitioner contends he is not bound by the contract to sell as it was not annotated in the certificate of title. It maintains that the contract to sell specifically provides that title shall be transferred to the respondent only after full payment of the purchase price. Not having fully paid the price, respondent is not the owner. Petitioner adds that respondent has the burden of proving payment since under the rules on evidence, a party must prove his own affirmative allegation. Petitioner also maintains that PMRDC merely tolerated the possession by the respondent but such possession became illegal when, as the new owner, it demanded that respondent immediately vacate the property.

Respondent counters that an ejectment suit is merely concerned with possession *de facto* and the issue of ownership need not be resolved. He claims to have a better right of possession having fully paid the purchase price. Further, respondent asserts that petitioner, being a successor-in-interest of PMRDC, is bound by the Contract to Sell. Finally, respondent avers that ejectment cases are governed by the Rules on Summary Procedure which relies merely on affidavits and position papers submitted. Hence, his Affidavit^[11] dated June 25, 2001 was sufficient to prove full payment.

Prefatorily, this case started with a complaint for ejectment filed with the MeTC. In previous cases, this Court consistently held that the only issue for resolution in an ejectment case is physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants.^[12] Ejectment cases are designed to summarily restore physical possession to one who has been illegally deprived of such possession, without prejudice to the settlement of the parties' opposing claims of *juridical* possession in appropriate proceedings.^[13] We also said that the question of ownership may be provisionally ruled upon for the sole purpose of determining who is entitled to possession *de facto*.^[14]

Respondent bases his right of possession on the Contract to Sell. On the other hand, petitioner argues it is not bound by the said contract since the same is not annotated in the Certificate of Title.

It is true that persons dealing with registered property can rely solely on the certificate of title and need not go beyond it.^[15] However, as correctly held by the Court of Appeals, this rule does not apply to banks. Banks are required to exercise more care and prudence than private individuals in dealing even with registered properties for their business is affected with public interest.^[16] As master of its business, petitioner should have sent its representatives to check the assigned properties before signing the compromise agreement and it would have discovered