

SECOND DIVISION

[G.R. No. 122611, March 08, 2001]

**NAPOLEON H. GONZALES, PETITIONER, VS. HONORABLE COURT
OF APPEALS AND SPOUSES GABRIEL AND LUZVIMINDA
CABALLERO, RESPONDENTS.**

D E C I S I O N

QUISUMBING, J.:

This petition for review seeks the reversal of the decision^[1] of the Court of Appeals in CA-G.R. CV No. 41154 promulgated August 4, 1995, as well as its resolution^[2] dated November 9, 1995, denying petitioner's motion for reconsideration.

The facts in this case are as follows:

Private respondents, Mr. and Mrs. Gabriel Caballero, are the registered owners of two parcels of land situated in Cubao, Quezon City described in Transfer Certificate of Title No. 247309 (Lot 1) and Transfer Certificate of Title No. 247310 (Lot 2). The spouses' residence stood in Lot 2.

Sometime in 1979, they obtained a loan from the Cavite Development Bank in the amount of P225,000.00. The two lots were mortgaged to secure their loan. The loan matured in 1984. To pay the loan they offered Lot 1 for sale. The offer was advertised in the *Bulletin Today*. However, offers to purchase from prospective buyers did not materialize.

On October 24, 1985, a certain Mrs. Lagrimas approached the spouses offering to broker the sale to an interested buyer. Initially, the spouses told the broker that they were selling only to direct buyers. Nonetheless, Mrs. Lagrimas brought to the spouses her buyer, herein petitioner Napoleon H. Gonzales, who turned out to be Mrs. Lagrimas' relative.

Petitioner offered to buy the vacant lot for P470,000.00. Initially, respondents refused to reduce their asking price. Petitioner bargained for a lower price with the suggestion that on paper the price will be markedly lower so the spouses would pay lower capital gains tax. Petitioner assured the spouses this could be done since he had connections with the Bureau of Internal Revenue. The spouses agreed to sell at P470,000.00. Petitioners paid the bank P375,000.00, to be deducted from the purchase price. After the mortgage was cancelled and upon release of the two titles, Gonzales asked for the deeds of sale of the two lots and delivery of the titles to him. Defendants signed the deed of sale covering only Lot 1 but refused to deliver its title until petitioner paid the remaining balance of P70,000.00.

This prompted petitioner to file a complaint for specific performance and damages before the Regional Trial Court, Branch 102, in Quezon City, docketed as Civil Case

No. Q-7686. Petitioner asked that the spouses be ordered to execute the deeds of sale and transfer the certificates of titles of Lots 1 and 2 to them. Private respondents replied, however, that the sale was only for Lot 1 and did not cover Lot 2.

On July 5, 1991 the RTC dismissed the complaint but ordered the spouses to deliver the TCT of Lot 1 upon payment of the balance of the purchase price. It also dismissed petitioner's counterclaim for damages.

On appeal, the Court of Appeals affirmed the decision of the trial court *in toto*.^[3]

Now, petitioner avers that:

- I. THE RESPONDENT COURT GRAVELY ERRED IN NOT REVERSING THE DECISION OF THE TRIAL COURT WHICH DID NOT REFLECT TO THE REAL INTENTION OF THE PARTIES AMOUNTING TO EXCESS OR LACK OF JURISDICTION
- II. THE TRIAL COURT AND THE RESPONDENT COURT SERIOUSLY ERRED IN FINDINGS OF FACTS, ERRONEOUS INTERPRETATION OF THE INTENTION OF THE PARTIES, ERRONEOUS INTERPRETATION AND CONCLUSIONS OF LAW
- III. THUS, THIS PETITION PRINCIPALLY INVOLVES QUESTION, INTERPRETATION AND CONCLUSION OF LAW."^[4]

Prefatorily, we find that contrary to respondents' claim in their Memorandum, petitioner complied with Section 2, Rule 45 of the Revised Rules of Court^[5] requiring that a verified statement of the date when notice of judgment and denial of his motion for reconsideration by the court were received by petitioner. This is found on page two of the petition.

Principally, the issue here is whether the contract of sale between the parties involved Lot 1 and 2 as claimed by petitioner or only Lot 1 as private respondents contend. In a case where we have to judge conflicting claims on the intent of the parties, as in this instance, judicial determination of the parties' intention is mandated.^[6] Contemporaneous and subsequent acts of the parties material to the case are to be considered.^[7]

In his Memorandum, petitioner submits that the Court of Appeals committed serious and grave reversible error in its decision when it upheld the lower court and declared that the contract of sale pertained only to Lot 1. First, he claims that Mrs. Caballero herself admitted the existence of two contracts of sale. Petitioner quotes a portion of the transcript of her testimony dated March 23, 1988. Second, that the notarial books and records show the registration and the sale of two lots. One, dated November 11, 1985 in his favor and entered as Doc. No. 1110, Page No. 47, Book No. 26, Series of 1985 and the other, in favor of his sister Corazon Gonzales dated November 13, 1985 and entered as Doc. 1160, Page No. 48, Book No. 26, Series of 1985. He also points out that the alleged Deed of Absolute Sale executed by private respondent spouses concerning only one lot does not exist in the notarial book

where it purportedly was notarized.^[8] Third, he claims in his testimony that two lots were sold to him and not just one, is not self-serving and cannot be excluded under the Statute of Frauds inasmuch as the statute pertains only to executory and not executed contracts like the contracts presently in controversy. Nor can it be considered, he said, an exception to the parole evidence rule as a contract that has failed to express the true and real intent of the parties. Fourth, he says the purchase price of P470,000.00 is not an unreasonable price for the two lots because at the time of the purchase in 1985, the value of money was greater and the price of land was cheaper. Besides the lots were about to be foreclosed, he said, and private respondents agreed to undervalue the price to pay less capital gains tax. Fifth, he concludes it was error for the Court of Appeals to anchor its decision on the testimony that only one lot was advertised for sale.

On Mrs. Caballero's alleged admission that the sale pertained to two lots, as can be gleaned from the transcripts of her testimony on March 23, 1988, Mrs. Caballero avers that petitioner is attempting to mislead this Court. She points out that petitioner deliberately omitted portions of her testimony particularly her explanation why there were two deeds of sale. According to her, two deeds were prepared not as separate deeds of sale for Lots 1 and 2 but two deeds of sale involving only Lot 1. One indicated the undervalued price of P180,000.00 intended to be presented to the BIR to avoid paying a high capital gains tax. The other, stated the actual sale price of P470,000.00 in case the BIR would not believe the first, since the price of the lot as advertised in *Bulletin Today* was P1,150.00 per square meter.^[9] She further explains that she had another deed drafted to present to the BIR after Mrs. Lagrimas, the agent, failed to give her the original of the two deeds of sale they earlier prepared. Respondent wife insists that the two deeds of sale petitioner attached to his Manifestation and Motion dated January 10, 1997 and presented for the first time before this Court, are fake and falsified. They were not only not presented before the trial court, they were also not presented to the appellate court nor the Quezon City Prosecutor's Office nor the Secretary of Justice. She also says she never appeared before the notary public who notarized the forged deeds. She insists that only the sale of Lot 1 was agreed upon by petitioner and her.

The records of the case include documentary evidence presented before the trial court. Among them: (1) Xerox copies of pages 25 and 27, of the March 30, 1985 and April 28, 1985 issues respectively of the *Bulletin Today* with an ad of private respondents offering to sell 501 sq. m. at P1,150.00 per sq. m. with shop and fence located 150 meters from EDSA;^[10] (2) a Deed of Absolute Sale of Real Property covered by TCT 247309 only for a consideration of P180,000.00;^[11] (3) a Certification dated November 6, 1985 that the certificate signed only by Napoleon H. Gonzales alone "acknowledges that payment of the bank for the two titles, an area of 532 sq. m. and 501 sq. m. is consummated. An advance in the amount of twenty-five thousand (P25,000.00) for capital gains tax, etc. is also consummated. Balance payment in terms of post dated check will be paid upon release of titles in the bank";^[12] (4) a certification from Cavite Development Bank that upon clearance of Metrobank Check No. 367704 for the account of Mr. Gabriel Caballero for P375,000.00 dated November 6, 1985, drawn by Napoleon Gonzales, CDB shall release TCT Nos. 247309 and 247310 together with the Cancellation of Mortgage;^[13] (5) a certification also by CDB that it received the aforementioned check for the account of Gabriel Caballero;^[14] (6) a Xerox copy of the aforesaid Metrobank check