422 Phil. 292

SECOND DIVISION

[G.R. No. 128516, November 28, 2001]

DULOS REALTY AND DEVELOPMENT CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS AND VICENTA PELEAS, RESPONDENTS.

DECISION

QUISUMBING, J.:

Petitioner urges this Court to review and reverse the decision[1] dated January 24, 1997, by the Court of Appeals in CA-G.R. CV No. 29366, which nullified and set aside the amended decision[2] dated November 28, 1989, of the Regional Trial Court of Makati, Branch 58, and reinstated its original decision[3] dated April 12, 1989, dismissing petitioner's complaint for rescission of contract, as well as private respondent's counterclaim.

The facts are as follows:

Petitioner Dulos Realty and Development Corporation (Dulos, for brevity) is the owner and developer of Airmen's Village Subdivision located at Las Piñas, Metro Manila. On January 10, 1981, it entered into a contract to sell a house and lot with private respondent Vicenta Peleas[4] for P168,180 payable as follows: (a) P20,000 upon the signing of the contract, and (b) P148,180 in monthly amortization of P2,010.36.[5] The parties agreed that in case private respondent defaulted in the payment of any monthly installment, she would have a grace period of not less than 120 days within which to pay. If despite the grace period she still failed to pay, petitioner could declare the contract cancelled. The right to cancel, however, would not obtain if private respondent's non-payment were due to petitioner's failure to complete development within the period allowed by the National Housing Authority. [6]

Upon payment of P20,000, Vicenta Peleas and her family occupied the premises. Thereafter, she failed to pay the monthly amortizations when they became due. This resulted in demands made by Dulos for her to vacate the premises, otherwise a civil case would be filed against her. However, before it could initiate the appropriate civil case, on January 21, 1985, she filed with the then Human Settlements Regulatory Commission (now Housing and Land Use Regulatory Board or HLURB) a complaint docketed as HLRB Case No. REM-991285-2615 against the company and its president, for failure to develop the subdivision in accordance with its approved plan, thus violating Presidential Decree No. 957 and related laws.

A month later, or on July 17, 1985, Dulos filed a complaint docketed as Civil Case No. 11112 against Vicenta Peleas, for rescission of contract and recovery of possession with damages before the Regional Trial Court of Makati, alleging among

others, that she failed to pay her obligation under the contract. In her answer, she reiterated her allegation regarding petitioner's failure to develop the subdivision.

Pending resolution of the case by the trial court, the HLURB rendered its decision on January 2, 1989, dismissing her complaint, ratiocinating that:

> . . .records show that complainant did not adduce any evidence to support her allegations of incomplete development which is vehemently denied by respondents. Such being the case, the said allegation of fact of incomplete development has not been established by substantial evidence.
>
> With respect to the second issue, records show that no evidence has been adduced by complainant to support her allegation that she herself had to workout the installation of electrical facilities in her house or how and to what extent the omission of respondent caused her untold inconveniences and consequently damages. Such being the case, the allegation of damage to complainant and any act or omission by respondent to cause the same has not been established by substantial evidence.[7]

On April 12, 1989, the trial court rendered its decision in Civil Case No. 11112 dismissing the complaint of Dulos on the ground that both parties are in *pari delicto*. The decision reads:

> From the totality of the evidence on record, the Court is convinced that as established by preponderance of proof, both parties to the Contract to Sell are guilty of breach of the contract. While it appears that the defendants incurred in delay in the payment of its amortization to the house and lot in question, the plaintiff likewise fails to comply with its contractual obligation to complete certain specified improvements including the provision for electrical, water and other facilities in the subdivision. (Exhs. 5, 5-A, 6 and 7). In this connection, the Supreme Court held that "if the subdivision owner or seller fails to comply with its contractual obligation to complete certain specified improvements in the subdivision within the specified period, xxx from the date of the execution of the contract of (sic) sell, it is not entitled to exercise its options under the contract. It could neither rescind the Contract to Sell nor treat the installment payments made by the buyer as forfeited in its favor. (Antipolo Realty v. National Housing Corporation, GR. 50444, August 31, 1987).
>
> The foregoing findings notwithstanding, the defendant's counterclaim for damages, should however, be denied there being no sufficient and convincing proof adduced in support thereof.
>
> WHEREFORE, premises considered, judgment is hereby rendered dismissing the instant complaint as well as defendant's counterclaim.[8]

On April 27, 1989, Dulos filed a Motion for Reopening/Clarification and Reconsideration, alleging that Vicenta Peleas had voluntarily relinquished possession of the subject property. During the hearing, Dulos reiterated the aforecited decision in HLRB Case No. REM-991285-2615.

On November 28, 1989, the trial court rendered its amended decision that reads:

> After a careful review and evaluation of the records of this case, particularly the introduction of additional evidence by the plaintiff, wherein said plaintiff has shown that it is entitled to the possession of the property in question due to the voluntary relinquishment/abandonment by defendant Vicenta Peleas of the property subject of this case, the Court finds preponderance of evidence to support plaintiff's complaint in this case. Furthermore, the non-payment by defendant of her monthly amortization gives right to the plaintiff to cancel and/or rescind the contract to sell pursuant to paragraph 6 thereof. (Exh. A-1). It is to be noted that a violation by a party of any of the stipulations of a contract or agreement to sell real property would entitle the other party to rescind it and that it is not always necessary for the injured party to resort to court for rescission of the contract. (Nera vs. Vacante, L-15725, November 29, 1961, 3 SCRA 503; Univ. of the Phils. vs. Delos Angeles, L-28602, September 29, 1970, 35 SCRA 102). Finally, it may be stated that there is no basis on the part of the defendant to refuse payment for alleged non-development of the subdivision since as previously mentioned the complaint for alleged non-development against plaintiff herein before the Housing and Land Use Regulatory Board has already been dismissed.
>
> WHEREFORE, premises considered, the Decision dated April 12, 1989 is hereby reconsidered to the effect that judgment is rendered in favor of the plaintiff Dulos Realty & Development Corporation and against defendant Vicenta Peleas by declaring as rescinded and/or cancelled the contract to sell dated January 20, 1989 entered into by and between the plaintiff and the defendant herein.[9]

Vicenta Peleas appealed to the Court of Appeals. On January 24, 1997, it promulgated the decision subject of the instant petition. It held that:

> In fine, we rule and so hold that the lower court committed reversible error in having the case re-opened in response to either a motion to reopen or a motion for a new trial on the ground of supposedly newly discovered evidence. Worse still, the lower court erred in eventually reversing its original decision solely based on evidence which are already known and available to, but not offered by, the appellee before the rendition thereof.
>
> WHEREFORE, the amended decision appealed from is hereby NULLIFIED and SET ASIDE. The original decision dated April 21, 1989 is hereby AFFIRMED AND REINSTATED.[10]

Hence this petition where petitioner avers that the Court of Appeals erred in not holding that:

> I. THE HEARING CONDUCTED ON THE MOTION FOR RECONSIDERATION AND/OR REOPENING FOR THE RECEPTION OF EVIDENCE ON A DECISION RENDERED BY THE HSRC IN THE NON-DEVELOPMENT CASE AND THE VOLUNTARY RELINQUISHMENT OF THE PREMISES WAS WELL WITHIN THE POWER OF THE TRIAL (SIC)

UNDER PAR. 2 SECTION 3 RULE 129 OF THE REVISED RULES ON EVIDENCE.

II. THE EVIDENCE ADDUCED ARE MATTER MATERIALLY DECISIVE OF THE ISSUE AT HAND WHICH MAYBE TAKEN JUDICIAL NOTICE OF AND THUS NEED NOT COMPLY WITH THE REQUIREMENTS UNDER RULE 37 ON NEWLY DISCOVERED EVIDENCE.

III. THE AMENDED DECISION IS IN ACCORD WITH LAW AND JURISPRUDENCE AND THE FINAL AND CONCLUSIVE FINDING OF THE HUMAN SETTLEMENT REGULATORY COMMISSION VESTED UNDER THE LAW WITH ORIGINAL AND EXCLUSIVE JURISDICTION TO HEAR COMPLAINTS OF LOT BUYERS ON ALLEGED OWNERS' / DEVELOPERS' FAILURE TO COMPLY WITH SPECIFIED SUBDIVISION DEVELOPMENT UNDER PRESIDENTIAL DECREE NO. 957 AS AMENDED.[11]

We find the following issues for resolution now: a) Did the appellate court err in treating petitioner's motion for reopening/clarification and reconsideration dated April 12, 1989, as a motion for new trial? b) Was the amended decision of the trial court dated November 28, 1989, in accord with law and jurisprudence?

On the first issue, petitioner contends that the Court of Appeals erred in treating petitioner's Motion for Reopening/Clarification and Reconsideration as a motion for new trial on the ground of newly discovered evidence under Section 1(b) Rule 37 of the Rules of Court, prior to its amendment on July 1 1997.[12] According to petitioner, the motion was intended to direct the attention of the trial court to the HLURB decision on private respondent's complaint for non-development, which was mentioned in petitioner's memorandum submitted to the trial court and which the court could take judicial notice of under Rule 129 Section 3 paragraph 2 of the Revised Rules of Court,[13] and to private respondent's abandonment of the subject premises which was admitted by private respondent herself in her pleadings, and thus fell under Section 4 of the same rule.[14] Petitioner alleges that the HLURB decision settled the issue in the trial court that petitioner did not fail to complete the specified development, which in turn made private respondent's refusal to pay the monthly amortizations unjustifiable, hence a ground for rescission of the contract to sell. Petitioner also avers that private respondent's abandonment of the premises rendered the complaint before the trial court moot and academic.

Private respondent, in turn, argues that the additional evidence adduced by petitioner in its Motion for Reconsideration/Clarification and Reconsideration does not qualify as a newly discovered evidence to allow a new trial. It is a suppressed evidence that must be taken adversely against petitioner. Further, private respondent refutes the HLURB's finding of petitioner's non-violation of PD 957. According to her, administrative rulings are persuasive on the court, except in cases where it found contrary evidence, as in this case.

Did the appellate court err in treating petitioner's motion as one for new trial? We note that petitioner's motion was captioned alternatively, for reopening/clarification and reconsideration. Under Section 1 (c) of Rule 37 of the Rules of Court, before it was amended on July 1, 1997,[15] a motion for new trial was aimed to convince the