

THIRD DIVISION

[G.R. No. 169681, November 05, 2009]

THE ESTATE OF PEDRO C. GONZALES AND HEIRS OF PEDRO C. GONZALES, PETITIONERS, VS. THE HEIRS OF MARCOS PEREZ, RESPONDENTS.

DECISION

PERALTA, J.:

This resolves the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court praying for the nullification of the Decision^[1] of the Court of Appeals (CA) dated April 25, 2005 in CA-G.R. CV No. 60998 and its Resolution^[2] dated September 14, 2005. The challenged Decision of the CA reversed and set aside the judgment of the Regional Trial Court (RTC) of Marikina City, Branch 272 in Civil Case No. 94-57-MK while its assailed Resolution denied petitioners' motion for reconsideration.

The antecedent facts are as follows:

The former Municipality of Marikina in the Province of Rizal (now City of Marikina, Metro Manila) used to own a parcel of land located in Barrio Concepcion of the said municipality covered by Original Certificate of Title (OCT) No. 629^[3] of the Register of Deeds of Rizal. The said property was subdivided into three (3) lots, namely, lots A, B and C, per subdivision plan (LRC) Psd-4571.^[4]

On January 14, 1966, the Municipal Council of Marikina passed Resolution No. 9, series of 1966 which authorized the sale through public bidding of Municipal Lots A and C.

On April 25, 1966, a public bidding was conducted wherein Pedro Gonzales was the highest bidder. Two days thereafter, or on April 27, 1966, the Municipal Council of Marikina issued Resolution No. 75 accepting the bid of Pedro. Thereafter, a deed of sale was executed in favor of the latter which was later forwarded to the Provincial Governor of Rizal for his approval. The Governor, however, did not act upon the said deed.

Sometime in September 1966, Pedro sold to Marcos Perez a portion of Lot C, denominated as Lot C-3, which contains an area of 375 square meters. The contract of sale was embodied in a Deed of Sale^[5] which, however, was not notarized. To segregate the subject property from the remaining portions of Lot C, Marcos had the same surveyed wherein a technical description of the subject lot was prepared by a surveyor.^[6]

Subsequently, Pedro and Marcos died.

On February 7, 1992, the Municipality of Marikina, through its then Mayor Rodolfo Valentino, executed a Deed of Absolute Transfer of Real Property over Lots A and C in favor of the Estate of Pedro C. Gonzales.^[7] On June 25, 1992, Transfer Certificate of Title (TCT) No. 223361, covering Lot C, was issued in the name of the said estate.^[8]

Subsequently, herein petitioners executed an extra-judicial partition wherein Lot C was subdivided into three lots. As a result of the subdivision, new titles were issued wherein the 370-square-meter portion of Lot C-3 is now denominated as Lot C-1 and is covered by TCT No. 244447^[9] and the remaining 5 square meters of the subject lot (Lot C-3) now forms a portion of another lot denominated as Lot C-2 and is now covered by TCT No. 244448.^[10]

On October 1, 1992, herein respondents sent a demand letter to one of herein petitioners asking for the reconveyance of the subject property.^[11] However, petitioners refused to reconvey the said lot. As a consequence, respondents filed an action for "Annulment and/or Rescission of Deed of Absolute Transfer of Real Property x x x and for Reconveyance with Damages."^[12]

On February 2, 1998, the RTC rendered its Decision with the following dispositive portion:

WHEREFORE, foregoing premises, judgment is hereby rendered as follows:

1. DISMISSING the complaint subject of the case in caption for lack of merit;
2. DECLARING VALID both Transfer Certificates of Title Nos. 244447 and 244448 issued by the Register of Deeds of Marikina;
3. DISMISSING the defendants' counterclaim.

No pronouncement as to costs.

SO ORDERED.^[13]

The RTC ruled that since the Deed of Sale executed between Pedro and Marcos was not notarized, the same is considered void and of no effect. In addition, the trial court also held that Pedro became the owner of the subject lot only on February 7, 1992; as such, he could not have lawfully transferred ownership thereof to Marcos in 1966.

Herein respondents appealed the RTC Decision to the CA contending that the RTC erred in relying only on Articles 1356 and 1358 of the Civil Code. Instead, respondents assert that the RTC should also have applied the provisions of Articles 1357, 1403 (2), 1405 and 1406 of the same Code.

On April 25, 2005, the CA rendered its presently assailed Decision disposing as

follows:

WHEREFORE, premises considered, the instant Appeal is hereby **GRANTED** and the assailed Decision dated February 2, 1998 is **REVERSED** and **SET ASIDE**. TCT No. 244447 and partially, TCT No. 244448, with respect to five (5) square meters, are declared NULL and VOID and defendants-appellees are ordered to reconvey in favor of the plaintiffs-appellants the subject property covered by said Transfer Certificates of Title (five square meters only with respect to TCT No. 244448). The trial court's dismissal of defendants-appellees' counterclaim is, however, **AFFIRMED**.

SO ORDERED.^[14]

The CA held that a sale of real property, though not consigned in a public instrument, is nevertheless valid and binding among the parties and that the form required in Article 1358 of the Civil Code is not essential to the validity or enforceability of the transactions but only for convenience.

Petitioners filed a motion for reconsideration, but the same was denied by the CA in its Resolution of September 14, 2005 on the ground that the said motion was filed out of time.

Hence, the present petition with the following assignment of errors:

WITH DUE RESPECT TO THE HONORABLE COURT OF APPEALS, ITS FINDINGS OF FACT RUN COUNTER TO THOSE OF THE TRIAL COURT, THUS, IT HAS DECIDED THE CASE IN A WAY NOT IN ACCORD WITH LAW AND JURISPRUDENCE.

WITH DUE RESPECT, THE ALLEGED DEED OF SALE IS SUSPECT AND RIDDEN WITH INCONSISTENCIES. IN FACT, THE LOWER COURT HELD THAT THE DEED OF SALE FAILED TO MEET THE SOLEMNITY REQUIREMENTS PROVIDED UNDER THE LAW FOR ITS VALIDITY.

WITH DUE RESPECT, THE COURT OF APPEALS ERRED IN DISREGARDING THE FINDINGS OF FACT AND THE APPLICATION OF LAW BY THE REGIONAL TRIAL COURT THAT UNDER THE PURPORTED DEED OF SALE THE VENDOR COULD NOT HAVE TRANSFERRED OWNERSHIP.^[15]

In their first and last assigned errors, petitioners contend that Marcos, who is respondents' predecessor-in-interest, could not have legally bought the disputed parcel of land from petitioners' predecessor-in-interest, Pedro, in September 1966 because, during that time, Pedro had not yet acquired ownership of the subject lot. Petitioners' assertion is based on the premise that as of February 29, 1968, the Deed of Sale between Pedro and the Municipality of Marikina was still subject to approval by the Provincial Governor of Rizal, as required under Section 2196 of the Revised Administrative Code. Considering that on the supposed date of sale in favor of Marcos, the requisite approval of the Provincial Governor was not yet secured,

petitioners conclude that Pedro could not be considered as the owner of the subject property and, as such, he did not yet possess the right to transfer ownership thereof and, thus, could not have lawfully sold the same to Marcos.

The Court does not agree.

Section 2196 of the Revised Administrative Code provides:

SECTION 2196. *Execution of deeds.* - When the government of a municipality is a party to a deed or an instrument which conveys real property or any interest therein or which creates a lien upon the same, such deed or instrument shall be executed on behalf of the municipal government by the mayor, upon resolution of the council, with the approval of the governor.

In *Municipality of Camiling v. Lopez*,^[16] the Court found occasion to expound on the nature and effect of the provincial governor's power to approve contracts entered into by a municipal government as provided for under Section 2196 of the Revised Administrative Code. The Court held, thus:

x x x The approval by the provincial governor of contracts entered into and executed by a municipal council, as required in [S]ection 2196 of the Revised Administrative Code, is part of the system of supervision that the provincial government exercises over the municipal governments. It is not a prohibition against municipal councils entering into contracts regarding municipal properties subject of municipal administration or control. It does not deny the power, right or capacity of municipal councils to enter into such contracts; such power or capacity is recognized. Only the exercise thereof is subject to supervision by approval or disapproval, *i.e.*, contracts entered in pursuance of the power would ordinarily be approved if entered into in good faith and for the best interests of the municipality; they would be denied approval if found illegal or unfavorable to public or municipal interest. **The absence of the approval, therefore, does not *per se* make the contracts null and void.**^[17]

This pronouncement was later reiterated in *Pechueco Sons Company v. Provincial Board of Antique*,^[18] where the Court ruled more emphatically that:

In other words, as regards the municipal transactions specified in Section 2196 of the Revised Administrative Code, the Provincial Governor has two courses of action to take - either to approve or disapprove the same. **And since absence of such approval does not necessarily render the contract entered into by the municipality null and void, the transaction remains voidable until such time when by subsequent unfavorable action of the governor, for reasons of public interest, the contract is thereby invalidated.**^[19]

It is clear from the above-quoted pronouncements of the Court that, pending approval or disapproval by the Provincial Governor of a contract entered into by a municipality which falls under the provisions of Section 2196 of the Revised Administrative Code, such contract is considered voidable. In the instant case, there is no showing that the contract of sale entered into between Pedro and the Municipality of Marikina was ever acted upon by the Provincial Governor. Hence, consistent with the rulings enunciated above, the subject contract should be considered voidable. Voidable or annulable contracts, before they are set aside, are existent, valid, and binding, and are effective and obligatory between the parties.

[20]

In the present case, since the contract was never annulled or set aside, it had the effect of transferring ownership of the subject property to Pedro. Having lawfully acquired ownership of Lots A and C, Pedro, in turn, had the full capacity to transfer ownership of these parcels of land or parts thereof, including the subject property which comprises a portion of Lot C.

It is wrong for petitioners to argue that it was only on June 25, 1992, when TCT No. 223361 covering Lot C was issued in the name of the estate of Pedro, that he became the owner thereof.

Article 1496 of the Civil Code provides:

The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee.

In conjunction with the above-stated provision, Article 1497 of the Civil Code states that:

The thing sold shall be understood as delivered when it is placed in the control and possession of the vendee.

In the present case, there is no dispute that Pedro took control and possession of the said lot immediately after his bid was accepted by the Municipal Government of Marikina. In fact, herein petitioners, in their Answer with Compulsory Counterclaim admit that both Pedro and Marcos, together with their respective heirs, were already occupying the subject property even before the same was sold to Pedro and that, after buying the same, Pedro allowed Marcos and his family to stay thereon.^[21] This only shows that upon perfection of the contract of sale between the Municipality of Marikina and Pedro, the latter acquired ownership of the subject property by means of delivery of the same to him.

Hence, the issuance of TCT No. 223361, as well as the execution of the Deed of Absolute Transfer of Real Property on February 7, 1992 by the Municipal Mayor of Marikina, could not be considered as the operative acts which transferred ownership of Lot C to Pedro. Pedro already acquired ownership of the subject property as early as 1966 when the same was delivered to him by the Municipality of Marikina, and