

FIRST DIVISION

[G.R. NO. 169341, November 22, 2006]

**CITY OF CEBU, PETITIONER, VS. VICENTE B. DEL ROSARIO,
REPRESENTED BY HIS ATTORNEY-IN-FACT PANTALEON U. DEL
ROSARIO, RESPONDENT.**

DECISION

CALLEJO, SR.,J.:

This is a Petition for Review on *Certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. Ceb-SP No. 00090 and its Resolution^[2] denying the motion for reconsideration of the said decision.

The Antecedents

Teresita Reyes-de Leon and her uncle, Vicente S. del Rosario, were co-owners of 17 parcels of land with a total area of 21,000 square meters located in Mambaling, Basak-Sur, Cebu City. Among the properties were Lots 3113, 3114, 3147, 3148, and 8401, 8403, 8494 and 8405, collectively known as the "*Asinan* Fishpond," later renamed "Alumnus." On December 13, 1983, Teresita de Leon executed a Contract of Sale in favor of her uncle's eldest son, Pantaleon U. del Rosario, covering her share, rights and interests over the property consisting of "salt beds, fishponds, coconuts and other improvements thereon, and the other properties she inherited from the estate of Ceferina Flores Vda. del Rosario." The purchase price of P250,000.00 was payable via downpayment of P50,000.00 and monthly installments of P50,000.00.^[3]

On August 24, 1984, Vicente S. del Rosario and Pantaleon U. Del Rosario executed a Contract to Buy and Sell covering the *Asinan* Fishpond in favor of the City of Cebu, through then Mayor Ronald R. Duterte. The contract price was P113.00 per square meter, or a total of P2,156,040.00. The lots were to be used for the construction of a modern abattoir to replace the already dilapidated and almost unsanitary one.^[4] The parties agreed that the contract shall become effective upon the approval by the President of the Philippines, Commission on Audit (COA), and Ministry of Finance, and that the purchase price would be deposited in an escrow account in a bank authorized by the city, to be payable to the vendors after the titles to the properties shall have been transferred in the buyer's name pursuant to COA regulations.

On January 20, 1985, Teresita de Leon executed a Deed of Absolute Sale covering her rights, shares and interests over the 17 parcels of land, including those she inherited from Ceferina Vda. del Rosario, in favor of her nephew Vicente B. del Rosario, son of Pantaleon, as vendee, also for P250,000.00, receipt of which was duly acknowledged.^[5] Vicente S. Del Rosario wrote his son a letter dated August 25, 1985, which reads:

Capt. Pantaleon U. del Rosario Metro Cebu Abattoir and Meat Processing Services City of Cebu

Sir:

When we jointly signed the contract to Buy and Sell a portion of the Asinan Property to the City of Cebu, it was agreed that you will comply with the following conditions, to wit:

1. THAT the areas sold to the City of Cebu for its abattoir project, the subject of the above contract, will be entirely taken from the share of Teresita R. Reyes de Leon bought by your son Vicente B. del Rosario per Deed of Absolute Sale dated January 20, 1985, entered as Doc. 490, page 98, Book 52, series of 1985 of the Notarial Registry of Notary Public Carlito P. Valente;
2. THAT all proceeds in connection with the sale of the above-mentioned properties shall accrue in your favor only;
3. THAT you will pay me for the cost of the house and bodega which will be demolished when the abattoir building will be constructed;
4. THAT modern sanitation and pollution controls be implemented in accordance with the standards acceptable to the National Pollution Control Commission;
5. THAT the City of Cebu will provide a ten (10)-meter road right of way for passage to our property at their expense.

THESE FOREGOING CONDITIONS were mutually agreed upon precedent to our signing of the above-stated contract, so please sign your conformity in the space provided for to make this agreement final, executory and effective immediately.

Truly yours,

(Signature)
VICENTE S. DEL ROSARIO

(Signature)
PANTALEON U. DEL ROSARIO
Conforme^[6]

The Contract to Buy and Sell was approved by the President on January 7, 1986. Thereafter, respondent and his father Pantaleon executed an Agreement which, in part, reads:

NOW, THEREFORE, the City of Cebu represented by the City Mayor, Ronald R. Duterte, through the Office of the City Treasurer, hereby deposits in escrow with the Philippine National Bank, Cebu Branch the total amount of P2,156,040.00 and the Vendors pursuant to their obligations under the contract hereby allows the peaceful and uninterrupted possession by the Vendee of the aforementioned parcels of land which shall take effect on January 7, 1986, subject to the following conditions:

1. *The vendors Vicente S. del Rosario and Pantaleon U. del Rosario may not withdraw any amount from said deposit in escrow until they shall have delivered to the Vendee City of Cebu all the clean titles to the aforementioned eight parcels of land, however, if the titles are not issued at one and the same time, the Vendee may allow the Vendors to partially collect for every title or titles they could deliver to the City of Cebu.*
2. *The City of Cebu shall immediately facilitate the release of the sum deposited as soon as the clean title or titles shall have been delivered to the City of Cebu.*
3. That in spite of the delay in the delivery of the clean titles and therefore the vendors cannot withdraw the amount deposited, the Vendee City of Cebu shall have the absolute right of possession of the aforementioned parcels of land and the Vendors undertake not to disturb said possession and that as agreed upon in the Contract to Buy and Sell the Vendors shall cause the immediate clearing of the properties from any and all obstructing improvements and the filling up of the existing fishponds.^[7]

As agreed upon, the City of Cebu deposited in escrow the purchase price with the Philippine National Bank, Cebu City Branch. The City also engaged the services of the H. Franco Construction Company for the construction of the abattoir. The contractor commenced the work and as of early 1986 had completed 40% of the work.

Meanwhile, respondent was able to have two lots titled to the City under TCT Nos. 55557 and 40590. On February 10, 1986, the City remitted to Vicente S. del Rosario P167,353.00 in payment for said lots.^[8]

After the EDSA People Power upheaval in 1986, John Osmena was appointed as Officer-in-Charge of the Office of the City Mayor of Cebu City. After assuming office, Osmena ordered the construction of the abattoir stopped. In a letter dated July 3, 1986, he proposed the following to the Del Rosarios:

- 1) The ownership of the vendees of Lot 3443, 3447 and 3448 subject of the Contract to Buy and Sell be documented;
- 2) If the City decides to relocate the abattoir, the properties will be used for the relocation of squatters;
- 3) A renegotiation of the purchase price;

4) The decision of the RTC in Bohol had been annotated at the dorsal portion of the titles of the property. Steps should be undertaken to deliver titles to the property to the City free from any other liens or encumbrances.^[9]

All these were rejected by respondent in his reply letter^[10] dated July 8, 1986, where he emphatically stated that he could not agree to the proposal to make the area into a relocation site for squatters, and that such proposal was a naive attempt to taunt and harass him.

On January 22, 1987, respondent filed a complaint in the Regional Trial Court (RTC) of Cebu against Cebu City for Specific Performance and/or Rescission of Contract and Damages, with a plea for injunctive relief. The case was docketed as Civil Case No. 5705.

On February 26, 1987, the City, through John Osmena, and the Dakay Construction and Development Corporation, executed a contract for the construction of a modern abattoir at the reclamation area.^[11]

Meanwhile, Vicente S. del Rosario died on May 9, 1987. He was survived by Ceferina del Rosario and their children, including Pantaleon U. del Rosario, Carlos U. del Rosario and Manuel U. del Rosario.

In a letter dated July 16, 1991, incumbent City Mayor Tomas Osmena informed Pantaleon U. del Rosario of the City's intention to use the property as *lechon* area or chicken slaughter house.^[12] On October 16, 1991, Pantaleon, acting as attorney-in-fact of all the heirs of Vicente S. del Rosario, wrote the City Mayor that they had no objection to reduce the land area of the lot to be purchased by the City - from the original 10,000 sq m to 5,945 sq m area - and for the return of Lot No. 4147 to them in exchange for the same area to be taken from the 5,945 sq m. The heirs declared that they were willing to withdraw their claim for loss of income and damages, provided that all interest earned by the escrow account in the PNB amounting to P1,882,627.49 as of September 1991 be given to them.^[13]

However, the parties did not arrive at a settlement. On February 26, 1992, the complaint in Civil Case No. 5705 was dismissed without prejudice.^[14]

The heirs of Vicente S. del Rosario did not refile the complaint. Instead, Pantaleon U. del Rosario and his son, Vicente B. del Rosario, filed a Complaint on September 24, 1994, and Amended and Second Amended Complaints, against Ceferina Vda. del Rosario, Carlos U. del Rosario and Manuel U. del Rosario for partition of the estate of Vicente S. del Rosario, including the "*Asinan* properties."^[15] The case was docketed as Civil Case No. Ceb-17236 and raffled to Branch 5 of the court. On March 30, 1998, the court issued an Order placing the property under receivership, including the lots where the abattoir was to be constructed. On July 16, 1998, the RTC granted the motion of Carlos del Rosario to lease out the *Asinan* properties for one year.^[16]

On December 10, 1999, Teresita Reyes-de Leon filed a complaint against Vicente B.

del Rosario in the RTC of Cebu City for the nullification of the Contract of Sale dated January 20, 1985, on the ground, *inter alia*, that the document of sale in favor of Vicente B. del Rosario was fraudulent. The case was docketed as Civil Case No. 24698.^[17] On August 15, 2000, the RTC issued an Order, dismissing the complaint on the ground that the issue of the ownership of the properties subject matter of the case should be ventilated in Civil Case No. 17236 which was the partition case. The plaintiff moved to reconsider the order but the court denied the motion on February 19, 2002. The plaintiff filed a petition for review the resolution before this Court docketed as G.R. No. 152862.

On January 21, 2002, Vicente B. del Rosario, as plaintiff, through his father, Pantaleon del Rosario, as his attorney-in-fact, filed a complaint against the City of Cebu in the RTC of Cebu for the rescission of the Contract to Buy and Sell, and the Agreement. The case was docketed as Civil Case No. 27334. The plaintiff amended his complaint, alleging that he and his grandfather, Vicente S. del Rosario, were co-owners of the subject property; he filed the complaint as the sole plaintiff because they had an agreement that the abattoir would be constructed on his (plaintiff's) property. He alleged that the City of Cebu had breached the contract and agreement, as follows:

10. That immediately after assuming office as OIC-Mayor of the City of Cebu, John H. Osmena publicly announced that the City of Cebu will not proceed with the construction of the abattoir in plaintiff's property;
11. That consistent with his foregoing public pronouncement, and imposing his unilateral will and decision, OIC-Mayor John H. Osmena ordered the stoppage of the construction of the abattoir at plaintiffs property and in lieu thereof constructed another abattoir in another site located in the City of Mandaue, Cebu;
12. That by constructing another abattoir in another place, i.e., in the City of Mandaue, defendant City of Cebu, through then OIC-Mayor John H. Osmena have effectively abandoned its original plan of constructing and operating an abattoir at the site acquired by defendant City of Cebu from herein plaintiff and the late Vicente S. del Rosario, thereby breaching the contract it entered into with the latter;
13. That plaintiff had never intended that his property be used for any other purpose than as a site for the Cebu City Abattoir only, its use for any other purpose will never be allowed and, in fact, the civil works on the abattoir in his property was already in advanced stage and the stoppage of the contraction and eventual abandonment of the project thereat had caused irreparable damages consisting of among others, of the destruction of fishponds and saltworks which deprived and will continue to deprive plaintiff of income in the amount estimated to be not less than P250,000.00, or as may be proven during the trial on the merits of the case;
14. That the excavations for the foundation of the abattoir which rendered the area unproductive and the presence of the unfinished