

SECOND DIVISION

[G.R. No.171692, June 03, 2013]

SPOUSES DELFIN O. TUMIBAY AND AURORA T. TUMIBAY-DECEASED; GRACE JULIE ANN TUMIBAY MANUEL, LEGAL REPRESENTATIVE, PETITIONERS, VS. SPOUSES MELVIN A. LOPEZ AND ROWENA GAY T. VISITACION LOPEZ, RESPONDENTS.

D E C I S I O N

DEL CASTILLO, J.:

In a contract to sell, the seller retains ownership of the property until the buyer has paid the price in full. A -buyer who covertly usurps the seller's ownership of the property prior to the full payment of the price is in breach of the contract and the seller is entitled to rescission because the breach is substantial and fundamental as it defeats the very object of the parties in entering into the contract to sell.

This Petition for Review on *Certiorari*^[1] assails the May 19, 2005 Decision^[2] of the Court of Appeals (CA) in CA-G.R CV No. 79029, which reversed the January 6, 2003 Decision^[3] of the Regional Trial Court (RTC) of Malaybalay City Branch 9 in Civil Case No. 2759-98, and the February 10, 2006 Resolution^[4] denying petitioner-spouses Delfin O. Tumibay and Aurora^[5] T. Tumibay's Motion for Reconsideration.^[6]

Factual Antecedents

On March 23, 1998, petitioners filed a Complaint^[7] for declaration of nullity *ab initio* of sale, and recovery of ownership and possession of land with the RTC of Malaybalay City. The case was raffled to Branch 9 and docketed as Civil Case No. 2759-98.

In their Complaint, petitioners alleged that they are the owners of a parcel of land located in Sumpong, Malaybalay, Bukidnon covered by Transfer Certificate of Title (TCT) No. T-25334^[8] (subject land) in the name of petitioner Aurora; that they are natural born Filipino citizens but petitioner Delfin acquired American citizenship while his wife, petitioner Aurora, remained a Filipino citizen; that petitioner Aurora is the sister of Reynalda Visitacion (Reynalda);^[9] that on July 23, 1997, Reynalda sold the subject land to her daughter, Rowena Gay T. Visitacion Lopez (respondent Rowena), through a deed of sale^[10] for an unconscionable amount of P95,000.00 although said property had a market value of more than P2,000,000.00; that the subject sale was done without the knowledge and consent of petitioners; and that, for these fraudulent acts, respondents should be held liable for damages. Petitioners prayed that (1) the deed of sale dated July 23, 1997 be declared void *ab initio*, (2) the subject land be reconveyed to petitioners, and (3) respondents be ordered to pay damages.

On May 19, 1998, respondents filed their Answer^[11] with counterclaim. Respondents averred that on December 12, 1990, petitioners executed a special power of attorney (SPA)^[12] in favor of Reynalda granting the latter the power to offer for sale the subject land; that sometime in 1994, respondent Rowena and petitioners agreed that the former would buy the subject land for the price of P800,000.00 to be paid on installment; that on January 25, 1995, respondent Rowena paid in cash to petitioners the sum of \$1,000.00; that from 1995 to 1997, respondent Rowena paid the monthly installments thereon as evidenced by money orders; that, in furtherance of the agreement, a deed of sale was executed and the corresponding title was issued in favor of respondent Rowena; that the subject sale was done with the knowledge and consent of the petitioners as evidenced by the receipt of payment by petitioners; and that petitioners should be held liable for damages for filing the subject Complaint in bad faith. Respondents prayed that the Complaint be dismissed and that petitioners be ordered to pay damages.

On May 25, 1998, petitioners filed an Answer to Counterclaim.^[13] Petitioners admitted the existence of the SPA but claimed that Reynalda violated the terms thereof when she (Reynalda) sold the subject land without seeking the approval of petitioners as to the selling price. Petitioners also claimed that the monthly payments from 1995 to 1997 were mere deposits as requested by respondent Rowena so that she (Rowena) would not spend the same pending their agreement as to the purchase price; and that Reynalda, acting with evident bad faith, executed the deed of sale in her favor but placed it in the name of her daughter, respondent Rowena, which sale is null and void because an agent cannot purchase for herself the property subject of the agency.

Ruling of the Regional Trial Court

On January 6, 2003, the RTC rendered a Decision in favor of petitioners, viz:

WHEREFORE, Decision is hereby rendered, as follows;

(1) Ordering the [petitioners], jointly and severally, to return the said amount of \$12,000.00 at the present rate of exchange less the expenses to be incurred for the transfer of the property in question under the name of the [petitioners];

(2) Ordering the Register of Deeds of Bukidnon to cancel TCT No. T-62674 in the name of the [respondent] Rowena Gay T. Visitacion-Lopez and to issue a new TCT in the name of the [petitioners];

(3) Ordering [respondents,] spouses Melvin and Rowena Gay Lopez[,] to execute a Deed of Reconveyance in favor of the [petitioners], or if said [respondents] should refuse to do so or [are] unable to do so, the Clerk of Court of the RTC and ex-officio Provincial Sheriff to execute such Deed of Reconveyance;

(4) No x x x damages are awarded. The respective parties must bear their own expenses except that [respondents], jointly and severally, must

pay the costs of this suit.

SO ORDERED.^[14]

In ruling in favor of petitioners, the trial court held: (1) the SPA merely authorized Reynalda to offer for sale the subject land for a price subject to the approval of the petitioners; (2) Reynalda violated the terms of the SPA when she sold the subject land to her daughter, respondent Rowena, without first seeking the approval of petitioners as to the selling price thereof; (3) the SPA does not sufficiently confer on Reynalda the authority to sell the subject land; (4) Reynalda, through fraud and with bad faith, connived with her daughter, respondent Rowena, to sell the subject land to the latter; and, (5) the sale contravenes Article 1491, paragraph 2, of the Civil Code which prohibits the agent from acquiring the property subject of the agency unless the consent of the principal has been given. The trial court held that Reynalda, as agent, acted outside the scope of her authority under the SPA. Thus, the sale is null and void and the subject land should be reconveyed to petitioners. The trial court further ruled that petitioners are not entirely free from liability because they received from respondent Rowena deposits totaling \$12,000.00. Under the principle of unjust enrichment, petitioners should, thus, be ordered to reimburse the same without interest.

Petitioners filed a partial motion for reconsideration^[15] praying for the award of attorney's fees. In its January 14, 2003 Order^[16] denying the aforesaid motion, the trial court clarified that the reimbursement of \$12,000.00 in favor of respondents was without interest because there was also no award of rental income in favor of petitioners. Both parties are deemed mutually compensated and must bear their own expenses.

From this Decision, respondents appealed to the CA.

Ruling of the Court of Appeals

On May 19, 2005, the CA rendered the assailed Decision reversing the judgment of the trial court, *viz*:

WHEREFORE, premises considered, the appealed Decision of the Court a quo is hereby **REVERSED** and **SET ASIDE**. Accordingly, title to the subject property shall remain in the name of the Appellant **ROWENA GAY VISITACION-LOPEZ**. The latter and her spouse **MELVIN LOPEZ** are directed to pay the balance of Four Hundred Eighty Eight Thousand Pesos (P488,000.00) to the [petitioners] effective within 30 days from receipt of this Decision and in case of delay, to pay the legal rate of interests [sic] at 12% per annum until fully paid.

SO ORDERED.^[17]

In reversing the trial court's Decision, the appellate court ruled that: (1) the SPA sufficiently conferred on Reynalda the authority to sell the subject land; (2) although there is no direct evidence of petitioners' approval of the selling price of

the subject land, petitioner Aurora's acts of receiving two money orders and several dollar checks from respondent Rowena over the span of three years amount to the ratification of any defect in the authority of Reynalda under the SPA; (3) petitioners are estopped from repudiating the sale after they had received the deposits totaling \$12,000.00; (4) the sale is not contrary to public policy because there is no rule or law which prohibits the sale of property subject of the agency between the agent and his children unless it would be in fraud of creditors which is not the case here; (5) petitioners impliedly ratified the subject SPA and contract of sale as well as its effects; and, (6) the selling price of P800,000.00 for the subject land is deemed reasonable based on the testimony of respondent Rowena as this was the selling price agreed upon by her and petitioner Delfin. Considering that respondent Rowena proved that she remitted a total of \$12,000.00 to petitioners and pegging the exchange rate at that time at P26.00 per dollar, the appellate court ruled that P312,000.00 of the P800,000.00 selling price was already received by petitioners. Thus, respondents are only liable for the balance of P488,000.00.

Hence, this Petition.

Issues

Petitioners raise the following issues for our resolution:

- I. Whether the CA erred in [resolving] the issue in the case at bar.
- II. Whether under the SPA Reynalda had the power to sell the subject land.
- III. Whether the actuations of petitioner Aurora in receiving money from respondent Rowena amounted to the ratification of the breach in the exercise of the SPA.
- IV. Whether the CA erred in not declaring the sale void on grounds of public policy.
- V. Whether the CA erred in adopting the testimony of respondent Rowena as to the P800,000.00 selling price of the subject land.^[18]

Petitioners' Arguments

Petitioners argue that the appellate court went beyond the issues of this case when it ruled that there was a contract of sale between respondent Rowena and petitioner Aurora because the issues before the trial court were limited to the validity of the deed of sale dated July 23, 1997 for being executed by Reynalda beyond the scope of her authority under the SPA. Further, the existence of the alleged contract of sale was not proven because the parties failed to agree on the purchase price as stated by petitioner Aurora in her testimony. The money, in cash and checks, given to petitioners from 1995 to 1997 were mere deposits until the parties could agree to the purchase price. Moreover, Reynalda acted beyond the scope of her authority under the SPA because she was merely authorized to look for prospective buyers of the subject land. Even assuming that she had the power to sell the subject land under the SPA, she did not secure the approval as to the price from petitioners

before executing the subject deed of sale, hence, the sale is null and void. Petitioners also contend that there was no ratification of the subject sale through petitioners' acceptance of the monthly checks from respondent Rowena because the sale occurred subsequent to the receipt of the aforesaid checks. They further claim that the sale was void because it was not only simulated but violates Article 1491 of the Civil Code which prohibits the agent from acquiring the property subject of the agency. Here, Reynalda merely used her daughter, respondent Rowena, as a dummy to acquire the subject land. Finally, petitioners question the determination by the appellate court that the fair market value of the subject land is P800,000.00 for lack of any factual and legal basis.

Respondents' Arguments

Respondents counter that the issue as to whether there was a perfected contract of sale between petitioners and respondent Rowena is inextricably related to the issue of whether the deed of sale dated July 23, 1997 is valid, hence, the appellate court properly ruled on the former. Furthermore, they reiterate the findings of the appellate court that the receipt of monthly installments constitutes an implied ratification of any defect in the SPA and deed of sale dated July 23, 1997. They emphasize that petitioners received a total of \$12,000.00 as consideration for the subject land.

Our Ruling

The Petition is meritorious.

As a general rule, we do not disturb the factual findings of the appellate court. However, this case falls under one of the recognized exceptions thereto because the factual findings of the trial court and appellate court are conflicting.^[19] Our review of the records leads us to conclude that the following are the relevant factual antecedents of this case.

Petitioners were the owners of the subject land covered by TCT No. T-25334 in the name of petitioner Aurora. On December 12, 1990, petitioners, as principals and sellers, executed an SPA in favor of Reynalda, as agent, to, among others, offer for sale the subject land provided that the purchase price thereof should be approved by the former. Sometime in 1994, petitioners and respondent Rowena agreed to enter into an oral contract to sell over the subject land for the price of P800,000.00 to be paid in 10 years through monthly installments.

On January 25, 1995, respondent Rowena paid the first monthly installment of \$1,000.00 to petitioner Aurora which was followed by 22 intermittent monthly installments of \$500.00 spanning almost three years. Sometime in 1997, after having paid a total of \$10,000.00, respondent Rowena called her mother, Reynalda, claiming that she had already bought the subject land from petitioners. Using the aforesaid SPA, Reynalda then transferred the title to the subject land in respondent Rowena's name through a deed of sale dated July 23, 1997 without the knowledge and consent of petitioners. In the aforesaid deed, Reynalda appeared and signed as attorney-in-fact of petitioner Aurora, as seller, while respondent

Rowena appeared as buyer. After which, a new title, *i.e.*, TCT No. 62674,^[20] to the