

SECOND DIVISION

[G.R. No. 119679, May 18, 2001]

SPS. ALFREDO AND SUSANA BUOT, PETITIONERS, VS. COURT OF APPEALS, ENCARNACION DIAZ VDA. DE RESTON, ET AL., RESPONDENTS.

D E C I S I O N

DE LEON, JR., J.:

This is an appeal from the Decision^[1] of the Court of Appeals^[2] promulgated on March 9, 1995 setting aside the Amended Decision/Order^[3] dated December 5, 1990 of the Regional Trial Court, Branch 17, Cebu City, and reinstating the latter's Decision dated July 30, 1990^[4] dismissing petitioners' action for recovery of property, cancellation of original certificate of title and damages against private respondents, the heirs of Encarnacion Diaz Vda. de Reston and spouses Mariano Del Rosario and Sotera Dejan.

The facts are as follows:

Plaintiffs-spouses Alfredo and Susana Buot (petitioners herein), alleged in their second amended complaint^[5] that on December 6, 1974 defendant Encarnacion Diaz Vda. de Reston (private respondent herein), sold to them the eastern portion of her property covered by Tax Declaration No. 14887 (1967), with an area of 19,042 square meters situated at Tulay (previously known as Tungkop), Minglanilla, Cebu, as evidenced by a Memorandum of Agreement.^[6]

The Memorandum of Agreement stated that the purchase price of P19,042.00 shall be paid as follows: (a) the amount of one thousand pesos (P1,000.00) in the concept of earnest money, upon the execution of the said instrument; and (b) the balance thereof, in the amount of eighteen thousand forty-two pesos (P18,042.00), within six (6) months from the date the vendees are notified by the vendor of the fact that the Certificate of Title to the eastern portion of the vendor's lot is ready for transfer in the names of the vendees. It was also agreed that title to, ownership, possession and enjoyment of the portion sold shall remain with the vendor until the full consideration of the sale shall have been received by her and acknowledged in a document duly executed for said purpose. Expenses for the registration of the lot under the Torrens system, with a view to securing a certificate of title for the same, as well as for the portion sold, shall be borne by the parties share and share alike. However, it shall be the vendor who must initiate the filing of the necessary petition in the proper court.^[7]

The Buot spouses, as vendees, paid Encarnacion Diaz Vda. de Reston the earnest money of P1,000.00. From April 1975 to March 1977, Encarnacion asked Alfredo Buot for additional sums of money totalling P2,774.00, duly receipted^[8] as part

payment of the subject lot.^[9] As the land was not titled, Alfredo Buot protected his interest by informing the Provincial Assessor of Cebu in a letter dated October 23, 1974 that he had acquired "certain rights" on said parcel of land covered by Tax Declaration No. 14887 (old) or 004970 (new) and requested that his said rights be annotated on the face of said tax declaration.^[10] He also wrote a similar letter dated November 4, 1974 to the Municipal Assessor of Minglanilla, Cebu.^[11] The Provincial Assessor annotated his said right on Tax Declaration No. 006847^[12] effective in 1975, instead of Tax Declaration No. 004970 as requested, effective in 1974.^[13]

On May 18, 1977, Alfredo Buot received a subpoena from the Philippine Constabulary, signed by Lt. Col. Rueb Yap, requiring him to appear on May 20, 1977. On said date, they had a confrontation with Encarnacion Diaz Vda. de Reston.^[14]

On June 14, 1977, Encarnacion Diaz Vda. de Reston filed Case No. IX-10474 before the then Court of First Instance of Cebu for the registration of title to land consisting of 29,532 square meters situated in Tulay, Minglanilla, Cebu, including the portion sold to the plaintiffs.^[15]

The plaintiffs (petitioners) alleged that on August 5, 1977, Encarnacion Diaz Vda. de Reston maliciously executed a Deed of Absolute Sale for the whole parcel of land (29,532 square meters) described under Tax Declaration No. 14887 (1967), which included the portion (19,042 square meters) already sold to them, to defendants-spouses Mariano Del Rosario and Sotera Dejan, who had previous knowledge of the sale to them.^[16] Alfredo Buot said that he met Mariano Del Rosario in April 1977 as he came with Encarnacion and Judge Pedro Godinez to his house.^[17]

The plaintiffs also alleged that on December 27, 1977, the spouses Del Rosario, by means of fraud were able to secure a Free Patent Title to the entire property, including the eastern portion previously sold to them. Notwithstanding the separate application by Encarnacion Diaz Vda. de Reston for a free patent on May 26, 1965, the Bureau of Lands accepted the free patent application of the Del Rosario spouses, which was approved on December 27, 1977. They never received a notice of the Free Patent Application of the Del Rosario spouses although they are the adjacent owners of the property applied for, and the previous protestant of Encarnacion's first application for a free patent.^[18]

Plaintiffs prayed for the cancellation of the title of Mariano Del Rosario, the reconveyance of the eastern portion of the property to them, and damages.^[19]

In her Answer, defendant (private respondent) Encarnacion Diaz Vda. de Reston stated that in the latter part of 1973, the plaintiffs offered to purchase the land in question. They agreed that the plaintiffs would be given an option to buy the land "if he could furnish amounts in order to have the land registered under the Torrens system." As a result of the negotiation, they executed a Memorandum of Agreement. The amount of P1,000.00 that was given by the plaintiffs was only earnest money for the option to buy the land. It was agreed that any consummated sale of the property would be reflected in another instrument. Plaintiffs knew that at that time she was badly in need of money and that the expenses for registration

should initially be shouldered by them, which would thereafter be applied as part payment of the purchase price, in case the sale would be consummated.^[20]

Encarnacion said that she exerted effort to register the property. While plaintiffs advanced several amounts on several occasions, they were in small amounts insufficient to pay for the registration expenses.^[21]

It later became apparent that the plaintiffs had no intention to buy the property and were only interested in dealing with other interested buyers to make a profit.^[22]

Encarnacion alleged that she pleaded with plaintiffs several times that they purchase the property as there were other interested buyers, and she was badly in need of money. She even sought the help of the Philippine Constabulary so that plaintiffs would exercise their option. ^[23]

In financial distress, she informed plaintiffs that she could no longer wait for them to exercise the option, and offered to reimburse the amounts which they have advanced, including the earnest money. Plaintiffs refused reimbursement, although they were not willing to consummate the sale. Plaintiffs, therefore, have no cause of action, and their action is barred by laches.^[24]

Encarnacion reserved her right to file a cross-claim against her co-defendants spouses Mariano Del Rosario and Sotera Dejan. She asked the trial court for the dismissal of the complaint, and that she be awarded damages.^[25]

On April 6, 1979, Encarnacion filed a cross-party claim against her co-defendants spouses Mariano Del Rosario and Sotera Dejan and prayed for the annulment of the Deed of Sale dated August 5, 1977 for non-payment of the long overdue balance of P80,000.00, and damages.^[26]

Joaquin Reston testified that petitioner Encarnacion Diaz Vda. de Reston was his mother, and that she died on June 2, 1979. He, together with his brothers and sisters, namely, Venancio Reston, Erlinda Reston, Hayde Angeles Reston, Yolanda Reston and Valdemar Reston substituted their mother in this case. He knows Mariano Del Rosario as the vendee of their land, which has not yet been fully paid as shown in the affidavit^[27] of Mariano Del Rosario and the contract of sale.^[28] The affidavit stated that the correct consideration of the deed of sale was P100,000.00 and of this amount, only P20,000.00 was actually paid. Mariano Del Rosario promised to pay the balance of P80,000.00 in the following manner: P15,000.00 would be paid to Encarnacion Diaz Vda. de Reston upon the first release of any bank loan; P10,000.00 would be paid on the second release; P10,000.00 on the third release; and another P10,000.00 on the fourth release. The balance of P80,000.00, however, remains unpaid.^[29]

On the other hand, defendant Mariano Del Rosario testified that Encarnacion Diaz Vda. de Reston mortgaged a parcel of land to him with an area of about 29,532 square meters evidenced by a deed of real estate mortgage executed on May 17, 1977.^[30] As mortgagee, he was given an option to purchase the property. About three months later, he purchased the property for P40,000.00 as evidenced by a Deed of Sale dated August 5, 1977.^[31] On the same date, an affidavit was also

executed by the Del Rosario spouses stating that the correct consideration of the aforementioned Deed of Sale was P100,000.00, and that the Del Rosarios have paid Encarnacion Diaz Vda. de Reston P20,000.00, leaving a balance of P80,000.00.^[32]

Mariano Del Rosario averred that before said mortgage and sale, Encarnacion Diaz Vda. de Reston represented to him that she was the absolute owner of the property and showed him her tax declarations and tax receipts. She assured him that the land was to be titled soon as she had filed an application for registration of title to the property with the Court of First Instance, Branch II, Province of Cebu, in the sala of Judge Francisco Burgos. He talked with the Branch Clerk of Court, Atty. Amparo Gomez, who gave him the impression that the application might be disapproved because the property was public land. Thereafter, he approached the Special Attorney of the Solicitor General assigned at the Bureau of Lands and found out that there was an Opposition^[33] by the Solicitor General to said application. He showed the Special Attorney the Deed of Sale in his favor and was told that the document was null and void because the property involved was public land. The Special Attorney advised him to apply for a free patent.^[34]

Mariano Del Rosario said that he filed an application for free patent to the land in Cebu. He told Encarnacion Diaz Vda. de Reston about the verification he made in Manila, and that they had to help each other. Encarnacion agreed to cooperate and she appeared and manifested during the investigation at the Bureau of Lands that she waived her right over the land in his favor. He was relying on Encarnacion's right of possession in his application. His application for free patent was approved on December 27, 1977,^[35] and thereafter Original Certificate of Title No. 0-15255 was issued in his name.^[36]

After acquiring the property by free patent title, Mariano Del Rosario started clearing the property and constructed separate fishponds. He spent about P300,000.00. He developed only 60 to 70 per cent of the property, because he ran short of money.^[37]

Mariano Del Rosario declared that at the time he applied for free patent, he did not know of any transaction between Encarnacion and the Buot spouses. At the time he filed his application for free patent, no opposition was filed by the Buot spouses. He first came to know Alfredo Buot at the time the latter filed the instant case against Encarnacion.^[38]

He also stated that before he executed the mortgage contract, he did not check whether Encarnacion was the owner of the property mortgaged, but he merely relied on the representation of Encarnacion. Prior to the sale, Encarnacion did not inform him that there was a transaction between her and the Buot spouses. On the basis of the documents presented to him, it did not appear that there was a transaction between Encarnacion and the Buots. He did not check with the Office of the Provincial Assessor whether there was an annotation on the tax declaration of the property owned by Encarnacion.^[39]

Mariano Del Rosario prayed for the dismissal of the complaint and damages.^[40]

On July 30, 1990, the trial court dismissed the complaint for lack of cause of action

and ordered defendant Mariano Del Rosario to pay the heirs of Encarnacion Diaz Vda. de Reston the sum of eighty thousand (P80,000.00) pesos, representing the balance of the purchase price of the property in question, with interest of twelve (12%) per cent per annum from the time of the filing of the cross-claim. Plaintiffs and cross-claim defendants spouses Mariano Del Rosario and Sotera Dejan were also jointly and severally ordered to pay the costs.^[41]

Plaintiffs and defendants-heirs of Encarnacion Diaz Vda. de Reston filed their respective motion for reconsideration. On December 5, 1990, the trial court reconsidered and set aside its decision dated July 30, 1990, and modified the dispositive portion, thus:

WHEREFORE, premises considered, judgment is hereby rendered:

Declaring plaintiffs Alfredo A. Buot Sr. and Susana Buot the absolute owners of the eastern portion of the property of Encarnacion Vda. de Reston situated at Tungkop, but more known as Tulay, Minglanilla, Cebu described under the Memorandum of Agreement (Exhibit "A") containing an area of Nineteen Thousand Forty Two (19,042) square meters; ordering defendants Mariano Del Rosario and his spouse to convey in favor of the plaintiffs the eastern portion of the aforementioned property, now covered under Free Patent FPA No. F-VII-17483 issued on December 28, 1977 (Exhibit "4" Del Rosario) and described under OCT No. 15255 upon payment by plaintiffs the balance of Fifteen Thousand Two Hundred Sixty-eight (P15,268.00) pesos to the heirs of Encarnacion Diaz Vda. de Reston the substituting defendants; ordering defendant Mariano Del Rosario and his spouse to reconvey in favor of the heirs of Encarnacion Diaz Vda. de Reston the remaining portion of Free Patent No. F-VII-17483 (OCT No. 15255) issued in his name and comply with the provisions of paragraph 5 in his affidavit (Exhibit "1"-Reston); ordering the defendants to jointly and severally pay plaintiffs the sum of Three Thousand (P3,000.00) pesos for actual or compensatory damages, Three Thousand (P3,000.00) pesos for attorney's fees and costs of this action.

Should defendant Del Rosario refuse or fail to execute the deeds of conveyance and reconveyance in favor of the plaintiffs and his co-defendants, respectively, the Deputy sheriff of this Court is ordered to execute the same with equal effect or validity as if they were executed by the aforementioned defendants.

SO ORDERED.^[42]

Only defendant Mariano Del Rosario seasonably filed a motion for reconsideration to the amended decision, which was denied in an Order dated March 12, 1991.^[43]

Defendants spouses Mariano Del Rosario and the heirs of Encarnacion Diaz Vda. de Reston appealed to the Court of Appeals. In its Decision promulgated on March 9, 1995, the Court of Appeals found that the Memorandum of Agreement between Encarnacion and the Buot spouses was merely an option to purchase; there was no perfected contract of sale. Moreover, the appellate court found that the allegation