

THIRD DIVISION

[G.R. No. 129103, September 03, 1999]

**CLAUDIO DELOS REYES AND LYDIA DELOS REYES, PETITIONERS,
VS. THE HON. COURT OF APPEALS AND DALUYONG GABRIEL,
SUBSTITUTED BY HIS HEIRS, NAMELY: MARIA LUISA G.
ESTEBAN, MARIA RITA G. BARTOLOME & RENATO GABRIEL,
RESPONDENTS.**

D E C I S I O N

GONZAGA-REYES, J.:

In this petition for review on certiorari, petitioners seek to set aside the Decision^[1] of the Court of Appeals^[2] in CA-G.R. CV No. 36955 reversing the consolidated Decision^[3] of the Regional Trial Court, Branch I, Tagum, Davao del Norte in Civil Case Nos. 2326 and 2327.

This petition was originally filed with the Court on June 16, 1997. In a Resolution (of the Third Division) dated October 13, 1997,^[4] the petition was denied for failure to show that the respondent Court of Appeals committed any reversible error. However, the motion for reconsideration filed by petitioners on November 14, 1997 was granted by the Court in its Resolution dated December 03, 1997^[5] and the petition was reinstated.

The antecedents are:

1. Private respondent Daluyong Gabriel, (who died on September 14 1995 and was substituted herein by his children RENATO GABRIEL, MARIA LUISA B. ESTEBAN and MARIA RITA G. BARTOLOME) was the registered owner under Transfer Certificate of Title No. T-17932 of the Registry of Deeds of Tagum, Davao del Norte of a 5,010 square meter parcel of land situated in Barrio Magugpo, Tagum, Davao del Norte,^[6] having acquired the same by hereditary succession sometime in 1974 as one of the children and heirs of the late Maximo Gabriel.
2. Because Daluyong Gabriel together with his family was then residing in Mandaluyong, Metro Manila, his sister Maria Rita Gabriel de Rey acted as administratrix of the said parcel of land and took charge of collecting the rentals for those portions which have been leased to certain tenants/lessees. One of these lessees is LYDIA DE LOS REYES who by virtue of a Contract of Lease executed on June 21, 1985 by and between Maria Rita G. de Rey as lessor and Lydia de los Reyes as lessee, leased a portion of One Hundred Seventy Six (176) square meters for a term of one year beginning June 15, 1985 renewable upon agreement of the parties at the rental rate of Two Hundred (P200.00) pesos, per month.^[7]

3. Sometime in 1985 Daluyong Gabriel sent his son Renato Gabriel to Tagum reportedly with instructions to take over from Maria Rita G. de Rey as administrator of the said parcel of land. Upon agreement of the parties, the June 21, 1985 Contract of Lease covering the one hundred seventy-six square meter portion of land was novated and replaced by a Contract of Lease executed on September 26, 1985 by and between RENATO GABRIEL as Lessor and Lydia de los Reyes as Lessee.^[8] The term of the lease was changed to six (6) years from and after June 15, 1985 or up to June 15, 1991; receipt of the payment in advance of the total rental amount of Fourteen Thousand Four Hundred (P14,400.00) Pesos was acknowledged by Lessor Renato Gabriel.
4. Sometime in November 1987, during the effectivity of the lease contract, Lydia de los Reyes verbally agreed to buy two hundred fifty (250) square meters (including the 176 square meters leased by her), and thereafter an additional fifty (50) square meters or a total of three hundred (300) square meters of Daluyong Gabriel's registered property, at three hundred pesos (P300.00) per square meter or for a total amount of P90,000.00. Receipt of the payment of the purchase price made in several installments by Lydia de los Reyes was acknowledged by Renato Gabriel as evidenced by official receipts issued and signed by him dated November 25, 1987, November 26, 1987, January 8, 1988, February 10, 1988, February 15, 1988 and February 29, 1988 all bearing the letter head "Gabriel Building." No deed of sale was executed covering the transaction. Purchaser Lydia de los Reyes however proceeded with the construction of a two-storey commercial building on the said 300 square meter lot after obtaining a building permit from the Engineer's Office in Tagum.
5. Acting on the information given by his daughter Maria Luisa Gabriel Esteban upon the latter's return from a trip to Tagum that spouses Claudio and Lydia de los Reyes were constructing a two-storey building on a portion of his land, Daluyong Gabriel, through his lawyer, sent a letter on August 30, 1989 to the De los Reyes couple demanding that they cease and desist from continuing with their construction and to immediately vacate the premises, asserting that the construction was unauthorized and that their occupancy of the subject portion was not covered by any lease agreement.
6. On September 20, 1989, spouses Claudio and Lydia de los Reyes through counsel sent their letter reply explaining that the De los Reyeses are the innocent party who entered into the lease agreement and subsequent sale of subject portion of land in good faith and upon the assurance made by the former administratrix, Maria Rita G. Rey, her nephew Tony Rey, Mrs. Fe S. Gabriel and Mr. Daluyong Gabriel himself that Renato Gabriel is the new administrator authorized to enter into such agreements involving the subject property.
7. Dissatisfied with the explanation, Daluyong Gabriel commenced an action on November 14, 1989 against spouses Claudio and Lydia de los Reyes for the recovery of the subject portion of land before the Regional Trial Court, Branch 1, Tagum, Davao del Norte docketed as Civil Case

No. 2326. In his complaint Daluyong maintained that his son Renato was never given the authority to lease nor to sell any portion of his land as his instruction to him (Renato) was merely to collect rentals.

8. Spouses Claudio and Lydia delos Reyes countered that the sale to them of the subject portion of land by Renato Gabriel was with the consent and knowledge of Daluyong, his wife Fe and their other children, and filed before the same trial court a complaint for specific performance, docketed as Civil Case No. 2329 against Daluyong and his children, namely Renato Gabriel, Maria Luisa Gabriel Esteban and Maria Rita Gabriel Bartolome praying that the defendants therein be ordered to execute the necessary deed of conveyance and other pertinent documents for the transfer of the 300 square meter portion they previously bought from Renato.
9. Civil Case Nos. 2326 and 2327 were heard jointly and on September 10, 1991 the trial court rendered a consolidated decision, the dispositive portion^[9] of which reads:

“WHEREFORE” premises considered, Daluyong Gabriel, Renato Gabriel, Maria Luisa Esteban and Maria Rita G. Bartolome are hereby ordered to execute a Deed of Conveyance and other necessary documents in favor of Claudio delos Reyes and Lydia delos Reyes over an area of 300 square meters from TCT No. T-17932 comprising of 5,010 square meters located at Tagum, Davao which portion is presently occupied by Delos Reyes couple.

SO ORDERED”

10. On appeal by the Gabriels, the Court of Appeals reversed and set aside the decision of the Regional Trial Court and rendered a new one “ORDERING appellee spouses Claudio and Lydia delos Reyes to immediately vacate the 300 square meter portion of that land covered by TCT No. T-17932 which they presently occupy and to turn over possession thereof to the appellants. x x x x”^[10]

Not satisfied with the decision of the Court of Appeals, petitioners came to this Court by way of petition for review, alleging that:

"a. The Court of Appeals gravely abused its discretion in overlooking facts extant in the record;

b. The Court of Appeals erred in not finding the document of sale and receipts (exhibits for the herein Petitioners), as valid and enforceable;

c. The Court of Appeals erred in its apprehension and appreciation of the undisputed facts for the Petitioners;

d. The Court of Appeals erred in making speculative conclusions on the facts of the case;

e. The Court of Appeals erred in reversing the Decision of the Regional

Trial Court based on credible, relevant and material evidence adduced by the Petitioners in the lower court.”^[11]

Petitioners aver that respondent Court of Appeals gravely abused its discretion when it totally disregarded the oral and documentary evidence adduced by appellees, and in giving credence to the oral testimonies of appellants, which are replete with inconsistencies and contradictions. Petitioners cite specifically Exhibits “1” to “19” consisting of a contract of lease involving the subject property and certain official receipts with the letterhead “Gabriel Building” showing payments received (by Renato Gabriel) for the lease and/or sale of portions of subject real property of Daluyong Gabriel e.g. sale by installment of portion (700 square meters) of land to spouses Ruben Carriedo and Abdula Sanducan (Exhs. 13, 14, 15 & 16) and lease (Exhs. 3-3-BBBB, 5, 6 & 7) and sale (Exhs. 8, 9, 10, 11 & 12) of land made by Renato Gabriel to petitioners-spouses. In other words, respondent Court of Appeals “gravely abused its discretion” in the misapprehension and misappreciation of the facts of the case and in going beyond the issues involved contrary to the admissions of both the appellants and appellees. And since the appellate court’s findings of facts contradict that of the trial court a thorough review thereof by the Supreme Court is necessary.

In their Comment, private respondents restated their arguments to support the appellate court’s conclusion that the alleged sale made by Renato Gabriel to the petitioners in 1987 without authority from Daluyong Gabriel is not valid and therefore unenforceable.

Petitioners submitted their Reply to the Comment contending that the assailed decision of the Court of Appeals is “patently fallacious” in that while petitioners’ payment to Renato Gabriel of the amount of P90,000.00 as purchase price of the three hundred (300) square meter portion of subject land was neither denied nor controverted, the appellate court’s decision failed to order private respondent Renato Gabriel to refund or reimburse petitioners the said amount together with the value of the improvements and the two-storey commercial building which petitioners constructed thereon in violation of Articles 2142, 2143 and 2154 of the Civil Code and the time-honored principle of substantial justice and equity.

Petitioners allege further that even if Renato Gabriel was not (yet) the owner of the subject portion of land when he sold the same to petitioners, after the death of his parents Daluyong and Fe Gabriel, he, as heir, inherited and succeeded to the ownership of said portion of land by operation of law thereby rendering valid and effective the sale he executed in favor of petitioners. Petitioners also maintain that on the basis of the facts proven and admitted during the trial, Daluyong Gabriel appears to have not only authorized his son Renato Gabriel to sell the subject portion of land but also ratified the transaction by his contemporaneous conduct and actuations shown during his lifetime.

In their respective memorandum submitted by petitioners and private respondents, substantially the same arguments/contentions were raised. Petitioners maintain that the sale is valid or validated pursuant to Articles 1433 and 1434 of the Civil Code and identified the legal issues involved as follows:

“1. Whether or not the sale by respondent Renato Gabriel of the land registered in the name of his deceased father Daluyong Gabriel, during

the lifetime of the latter, in favor of the herein petitioners, by operation of law, automatically vests title on the latter under the principle of estoppel as provided for in Arts. 1433 and 1434 of the New Civil Code;

2. Whether or not the sale by Renato Gabriel of the land registered in the name of his deceased father during the lifetime of the latter, to the herein petitioners is null and void.”^[12]

On the other hand, private respondents contend that the petition has no legal or factual basis. It is argued that petitioners changed their theory of the case in that while in the regional trial court, petitioners claim that the subject property was sold to them by the late Daluyong Gabriel through his son Renato Gabriel, in the instant petition, they claim that it was Renato Gabriel who sold the property to them and that although at that time, Renato was not yet the owner of the property, he is nonetheless obligated to honor the sale and to convey the property to the petitioners because after the death of Daluyong Gabriel, Renato became the owner of the subject property by way of hereditary succession. According to private respondents, litigants are barred from changing their theory, more especially so in the appeal, and that the only issue to be resolved in the instant petition is whether or not Renato Gabriel can be compelled to convey the subject property to petitioners. Private respondents maintain that Renato Gabriel cannot be compelled to convey subject property (to petitioners) because the land never passed on to Renato either before or after the death of Daluyong Gabriel and that the whole property is now owned by Ma. Rita G. Bartolome per Transfer Certificate of Title No. T-68674 entered in the Registry of Deeds of Davao del Norte on January 10, 1991.

^[13] In short, Renato Gabriel cannot convey that which does not belong to him.^[14]

Essentially, the issue here is whether or not the verbal agreement which petitioners entered into with private respondent Renato Gabriel in 1987 involving the sale of the three hundred (300) square meter portion of land registered in the name of Renato’s late father Daluyong Gabriel is a valid and enforceable contract of sale of real property.

By law^[15] a contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. It is a consensual contract which is perfected by mere consent.^[16] Once perfected, the contract is generally binding in whatever form (i.e. written or oral) it may have been entered into^[17] provided the three (3) essential requisites for its validity prescribed under Article 1318 *supra*, are present. Foremost of these requisites is the consent and the capacity to give consent of the parties to the contract. The legal capacity of the parties is an essential element for the existence of the contract because it is an indispensable condition for the existence of consent.^[18] There is no effective consent in law without the capacity to give such consent. In other words, legal consent presupposes capacity.^[19] Thus, there is said to be no consent, and consequently, no contract when the agreement is entered into by one in behalf of another who has never given him authorization therefor^[20] unless he has by law a right to represent the latter.^[21] It has also been held that if the vendor is not the owner of the property at the time of the sale, the sale is null and void,^[22] because a person can sell only what he owns or is authorized to sell.^[23] One exception is when a contract entered into in behalf of another who has not authorized it, subsequently