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Date: 10-2-15

Republic of the Philippines
National Capital Judicial Region
Metropolitan Trial Court
Branch 38-Quezon City

VILMA VDA. DE JOSON,
Plaintiff,

-versus-

Civil Case No. 41385
FOR: *EJECTMENT*

SPS. LEANDRO PALMA AND
GRACIA PALMA,
Defendants.

DECISION

This resolves the complaint for ejectment filed last May 2, 2012 by the plaintiff, Vilma Vda. De Joson, against the defendants, Spouses Leandro and Gracia Palma.

The Antecedent Facts

The Complaint was immediately raffled to Branch 31 of this jurisdiction on May 3, 2012.

On June 21, 2012, the defendants filed their Answer to the Complaint. The case was then set for Preliminary Conference.

The parties, as required by the Rules of Procedure, were referred to the Philippine Mediation Center and underwent Judicial Dispute Resolution for a possible amicable settlement of the case, but these were unsuccessful between the parties.

The case was then re-raffled to this court for preliminary conference proper and for judgment.

In the preliminary conference, the parties stipulated on the following facts:

1. There was an agreement between the parties to sell the subject property;
2. Sometime in November 20, 2003, the plaintiff prepared a handwritten summary of the payments of defendant Gracia Palma;
3. Sometime in May 15, 2000, the plaintiff wrote a letter to defendants reiterating the sale of the subject property;
4. The defendants are not paying rentals;

5. Defendants mortgaged the subject property;
6. The defendants were not able to redeem the title of the subject property from the mortgagee;
7. The subject property is still registered in the name of the plaintiff;
8. The defendants did not know what happened to the title of the subject property after it was mortgaged.

The following evidences were also marked in evidence:

- Exhibit A - Title
- Exhibit B - Demand Letter
- Exhibit B-1 - Registry Receipt
- Exhibit B-2 - Return Card
- Exhibit B-3 - LBC Letter
- Exhibit C - Certificate to File Action
- Exhibit D - Levy of Property
- Exhibit D-1 - Final Notice of Levy
- Exhibit E - Certificate of Redemption (submarkings were the succeeding pages)
- Exhibit F - List of Payments of the defendants
- Exhibit F-1 - the entry November 14, 1999
- Exhibit G - The defendant still owe the plaintiff the amount of P650,000.00
- Exhibit G-1 - The balance of P650,000.00
- Exhibit H - Annex B of the Answer of the defendant
- Exhibit I - UCPB Check issued by the defendant

For the defendants:


- Exhibit 1 - List of payment with respect to the sale of the property
- Exhibit 1-A - List of Payment
- Exhibit 2 - Letter addressed to the defendant signed by the plaintiff;
- Exhibit 3 - List of Unpaid Rentals
- Exhibit 4 to 4-G - Cash Vouchers

The parties also defined the issues, for resolution:

1. *Whether or not the plaintiff has a cause of action to eject the defendants;*
2. *Whether or not the parties are entitled to their respective money claims.*

With the termination of the preliminary conference last March 14, 2013, the parties were then directed by the court to file their respective position papers.

The defendants filed their position paper last May 6, 2013, while the plaintiff filed her ex-parte motion for leave of court to admit position paper and exhibit "B" on May 29, 2013. On June 29, 2013, the court admitted the position paper but not exhibit B. Thereafter, the court declared the case submitted for decision.



The Plaintiff's Allegations

The plaintiff alleged that she is the owner of a house and lot located at No. 2728 J.P. Rizal St. New Capitol Estate, Commonwealth Avenue, Quezon City which is covered by TCT No. 004-2012003303.¹ Plaintiff and defendant Grace or Gracia Palma were good friends and neighbors. Sometime first quarter of 1999, plaintiff sought financial assistance from the defendant. Without any written contract to sell, the parties agreed for the defendant to buy the property subject of this case in consideration of the sum of money to be given to the plaintiff. Defendants offered to buy the property for P3,800,000.00 less 3.5% commission and the agreed price was then pegged at P3,667,000.00.

Sometime November 14, 1999, defendants moved into the property subject of the case as allowed by the plaintiff. The defendants also, in a span of 2 years, paid, on installment basis, the total sum of P2,925,000.00². Plaintiff now claims that defendant still has an outstanding balance of P650,000.00³.

On May 15, 2000, plaintiff demanded for the full payment of the purchase price of the subject property but the same was not acceded to by the defendant⁴.

Last February 17, 2012, or after more than 10 years, plaintiff, through counsel, wrote a demand letter for the defendants to vacate the subject property and pay the monthly rental of P50,000.00. Such demand was not heeded. A referral to the barangay also failed to result in any agreement⁵. Thus, this case was filed.

The Defendant's Allegations

Plaintiff and defendants were friends and neighbors at New Capitol Estates, Commonwealth Avenue, Quezon City. Sometime July 1999, plaintiff persistently offered for sale to the defendant the subject property. Plaintiff offered the property to the defendants for P3,100,000.00 which plaintiff said is definitely much lower than its present market value. In addition, plaintiff also offered the property on a very liberal and easy payment basis. After sometime, defendants acceded and agreed to buy the property at P3,100,000.00. Defendants then paid a total amount of P2,925,000.00 from August 1999 to December 28, 2001. As of April 25, 2000, plaintiff summarized in a handwritten entry, the total payments made by the defendants which was P1,000,000.00. Defendants further alleged that sometime May 15, 2000, plaintiff wrote to the defendant

¹ Exhibit A

² Exhibits F and G

³ Exhibit G

⁴ Exhibit H

⁵ Exhibit C

seeking full payment of the property thus itemizing the needed payments P525,000.00 each from May 30, 2000 to July 15, 2000 thus totaling to P2,100,000.00⁶. Such documents show that for the defendants, the alleged purchase price of the subject property was P3,100,000.00 and not P3,667,500.00. The defendants now allege that the plaintiff owe them the amount of P91,650.00⁷ as rentals over a property located at Jacinto Building, Quezon Avenue, Quezon City. Thus, applying the law on legal compensation, the defendants sought to offset the arrears in rental by the plaintiff to the balance of the purchase price of the subject property.

The Issues

1. *Whether or not the plaintiff has a cause of action to eject the defendants;*
2. *Whether or not the parties are entitled to their respective money claims.*

The Court's Ruling

The court finds the complaint bereft of merit.

The action filed by the plaintiff is unlawful detainer under Rule 70 of the Revised Rules of Civil Procedure against the defendants.

Section 1 of Rule 70 states:

Section 1. Who may institute proceedings, and when. – Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

Based on the above provision of law, the aggrieved party may file possessory actions for ejectment, either for forcible entry or for unlawful detainer. These are summary procedures intended to expeditiously determine the possessory rights of the parties to the property in question.

⁶ Exhibit 2

⁷ Exhibits 4 to 4-G

Plaintiff asserted in this case that, as the owner of the property, plaintiff is entitled to enjoy the use and occupation of the property⁸. Plaintiff alleged that she merely tolerated the stay/possession of the defendants over the property. Upon demand by the plaintiff to surrender the property, defendant failed to do so. Thus, as the owner, plaintiff has a cause of action against the holder and possessor in order to recover it.

The right of the plaintiff, however, must be done in accordance with law. With the facts as presented by the parties, ejectment in this case cannot prosper.

As mentioned above, an unlawful detainer case is a summary proceeding over which the only issue is possession. The court cannot conclusively rule on issue of ownership except provisionally for purposes of determining ownership.

In the case at bar, the plaintiff and the defendants stipulated that they have entered into a contract of sale over the disputed property. There now exists a contract between the two parties which as of yet is existing and enforceable. The plaintiff and the defendants have also stipulated on the fact that there were partial payments made in the total amount of P2,925,000.00.

From the facts stipulated upon and agreed upon by the parties, the possession of the house was turned over by the plaintiff in consideration of the agreement or contract for the sale of the property. Thus, the element of "tolerance" in this unlawful detainer case is not present. The admission by the plaintiff of the existence of the oral contract of sale clearly shows the cause of action of the plaintiff is for recovery of full ownership and a nullification of the contract of sale. The issue is thus not merely one for possession but more for recovery of ownership.

The plaintiff attempted to confuse the issue and deny the existence of the contract when it said that there was a contract to sell and not a contract of sale. The confusion arose due to the lack of a written contract between the parties. However, under Article 1356 of the Civil Code, a contract is obligatory to the parties and may be in whatever form and need not be written⁹. To the point of view of this court, the contract, whether a contract of sale or a contract to sell still exists and thus cannot be negated by the simple act of filing an ejectment case.

⁸ Article 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

⁹ Art. 1356. Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. In such cases, the right of the parties stated in the following article cannot be exercised.

In *Soliva v. Intestate Estate of Villalba*¹⁰, the Supreme Court upheld the validity of an oral contract of sale over a realty and ruled that no invalidation of the sale due to nonpayment of full price can happen just because the contract of sale was an oral contract of sale. "... (T)he nonpayment of the full consideration did not invalidate the contract of sale. Under settled doctrine, nonpayment is a resolatory condition that extinguishes the transaction existing for a time and discharges the obligations created thereunder. The remedy of the unpaid seller is to sue for collection or, in case of a substantial breach, to rescind the contract..."¹¹

Clearly then, the case does not make a case for unlawful detainer.

Ejectment is a summary proceeding intended to protect the present occupant and is a proceeding where ownership of the property is not an issue. When the complainant fails to aver facts constitutive of forcible entry or unlawful detainer, the remedy should either be an accion publiciana or a reivindicatoria in the proper Regional Trial Court and not a summary ejectment proceeding.

While the plaintiff, as a registered owner has a right over the property¹², still, the proper remedy must be utilized, i.e., for recovery of ownership or for nullification of a contract.

As above discussed, in an ejectment case, the only issue is possession. In this case, the defendant has established by preponderance of evidence her right to possess the property for now.

In the case of *Spouses Pascual v. Spouses Coronel*¹³, the Supreme Court stated:

"In an unlawful detainer case, the sole issue for resolution is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. However, where the issue of ownership is raised, the courts may pass upon the issue of ownership to determine who has the right to possess the property. We stress, however, that this adjudication is only an initial determination of ownership for the purpose of settling the issue of possession, the issue of ownership being inseparably linked thereto. The lower court's adjudication of ownership in the ejectment case is merely provisional and would not bar or prejudice an action between the same parties involving title to the property."

¹⁰ G.R. No. 154017, December 3, 2003

¹¹ *Ibid.*,

¹² Article 428 of the Civil Code provides: The owner has the right to enjoy or dispose of the thing without other limitations than those established by law. The owner has also the right of action against the holder and possessor of the thing in order to recover it.

¹³ G.R. No. 159292, July 12, 2007

The possession of the defendant was voluntarily surrendered by the plaintiff herself as part of their contract of sale or even by their contract to sell. There was, in effect, a delivery of the property by the vendor to the vendee. To recover possession by the vendor, the contract which legitimized the possession of the defendant, plaintiff must first take action on the original contract over the property, whether a contract to sell or contract of sale.


Without a doubt, the registered owner is entitled to its possession. However, the owner cannot simply wrest possession thereof from whoever is in actual occupation of the property. To recover possession, he must resort to the proper judicial remedy and, once he chooses what action to file, he is required to satisfy the conditions necessary for such action to prosper.¹⁴

WHEREFORE, based on the foregoing discussions, judgment is hereby rendered **DISMISSING** the complaint for lack of merit.

No pronouncement as to cost.

SO ORDERED.

Given this 25th of July 2013 at Quezon City, Philippines.


LYN EBORA CACHA
Acting Presiding Judge

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¹⁴ Carbonilla v. Abiera, G.R. No. 177637, July 26, 2010

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REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
NATIONAL CAPITAL JUDICIAL REGION
BRANCH 100, QUEZON CITY

VILMA VDA. DE JOSON,
Plaintiff-Appellant,

- versus -

R-QZN-13-04567-CV
For: Ejectment (Appeal)

**SPS. LEANDRO and GRACIA
PALMA,**
Defendants-Appellees.

x- - - - -x

DECISION

This is an appeal from the Decision dated July 25, 2013 of the Metropolitan Trial Court of Quezon City, Branch 38, dismissing the ejectment suit filed by plaintiff-appellant Vilma Vda. De Joson against defendants-appellees spouses Leandro and Gracia Palma, on the following rationalization:

"From the facts stipulated upon and agreed upon by the parties, the possession of the house was turned over by the plaintiff in consideration of the agreement or contract for the sale of the property. Thus, the element of "tolerance" in this unlawful detainer case is not present. The admission by the plaintiff of the existence of the oral contract of sale clearly shows the cause of action of the plaintiff is for recovery of full ownership and a nullification of the contract of sale. The issue is thus not merely one for possession but more for recovery of ownership.

The plaintiff attempted to confuse the issue and deny the existence of the contract when it said that there was a contract to sell and not a contract of sale. The confusion arose due to lack of a written contract between parties. However, under Article 1356 of the Civil Code, a contract is obligatory to the parties and may be in whatever form and need not be written. To the point of view of this court, the contract, whether a contract of sale or a contract to sell still exists and thus cannot be negated by the simple act of filing an ejectment case.

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In *Soliva v. Intestate Estate of Villalba*, the Supreme Court upheld the validity of an oral contract of sale over a realty and ruled that no invalidation of the sale due to nonpayment of full price can happen just because the contract of sale was an oral contract of sale. "... (T)he nonpayment of the full consideration did not invalidate the contract of sale. Under settled doctrine, nonpayment is a resolatory condition that extinguishes the transaction existing for a time and discharges the obligations created thereunder. The remedy of the unpaid seller is to sue for collection or, in case of a substantial breach, to rescind the contract..."

Clearly then, the case does not make a case for unlawful detainer.

Ejectment is a summary proceeding intended to protect the present occupant and is a proceeding where ownership of the property is not an issue. When the complainant fails to aver facts constitutive of forcible entry or unlawful detainer, the remedy should either be an *accion publiciana* or a *reivindicatoria* in the proper Regional Trial Court and not a summary ejectment proceeding.

While the plaintiff, as a registered owner has a right over the property, still, the proper remedy must be utilized, i.e., for recovery of ownership or for nullification of a contract.

As above discussed, in an ejectment case, the only issue is possession. In this case, the defendant has established by preponderance of evidence her right to possess the property for now

xxx

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The possession of the defendant was voluntarily surrendered by the plaintiff herself as part of their contract of sale or even by their contract to sell. There was, in effect a delivery of the property by the vendor to the vendee. To recover possession by the vendor, the contract which legitimized the possession of the defendant, plaintiff must first take action on the original contract over the property, whether a contract to sell or contract of sale.

(Record, pp. 166-168; Underscoring Ours)

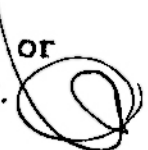
Dissatisfied with the lower Court's ruling, plaintiff-appellant filed the instant appeal.

In the main, plaintiff-appellant argues that the lower Court erred in dismissing the case *a quo* because her contract with the defendants-appellants is a contract to sell, thus she retains ownership over the subject property. Plaintiff-appellant further argues that since defendants-appellees failed to pay the full amount of the contract price, and since their stay on the subject property is only because of her tolerance, a suit for ejectment is warranted.

Plaintiff-appellant has lost sight of the lower Court's ruling - *"that the contract between the parties, whether a contract of sale or a contract to sell still exists and thus cannot be negated by the simple act of filing an ejectment case. xxx While the plaintiff, as a registered owner has a right over the property, still, the proper remedy must be utilized, i.e., for recovery of ownership or for nullification of a contract"*.

With the plaintiff-appellant's admission of defendants-appellees' payment of P2,925,000.00 for the purchase price of the subject property, coupled with the defendants-appellees' occupancy on the subject property, and plaintiff-appellant's claim that she retains her ownership over the property, the case *a quo* certainly involves the issue of ownership.

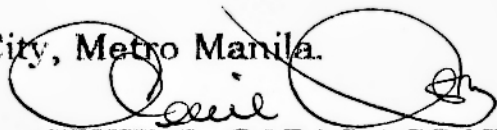
As correctly ruled by the lower court, the proper remedy of plaintiff-appellant is an action for recovery of ownership or for nullification of a contract and not by ejectment which is a summary proceeding. The Rules in Summary Procedure applies in ejectment suit because the ejectment case involves only the restoration of the physical possession of the subject land/property and not its ownership (*Joven vs. CA, et al.*, G.R. No. 80739, Aug. 20, 1992). The only issue involved in ejectment proceedings is as to who is entitled to the physical or material possession of the premises (*Regalado, Remedial Law Compendium*, 8th Ed., Vol. 1, p. 782). Certainly, in the case *a quo*, the issue as to the right of ownership is involved. Hence, an ejectment suit is not the proper remedy of plaintiff-appellant.

Verily, plaintiff-appellant fails to show any cause or reason for this Court to depart from the lower Court's ruling. 

WHEREFORE, foregoing considered, the appealed Decision dated July 25, 2013 of the Metropolitan Trial Court of Quezon City, Branch 38, is hereby **AFFIRMED en toto**.

SO ORDERED.

October 31, 2014, Quezon City, Metro Manila.


GENIE G. GAPAS-AGBADA
Acting Presiding Judge

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VILMA VDA. DE JOSON
Plaintiff Appellant

SPS. LEANDRO and GRACIA PALMA
Defendants Appellees

The Chief Librarian
Supreme Court, Manila

Republic of the Philippines
REGIONAL TRIAL COURT
National Capital Judicial Region
Branch 100, Quezon City

VILMA VDA. DE JOSON

Plaintiff-Appellant,

- versus -

Civil Case No. Q-13-04567

SPS. LEANDRO and GRACIA

PALMA

Defendant- Appellants

x - - - - -x

ORDER

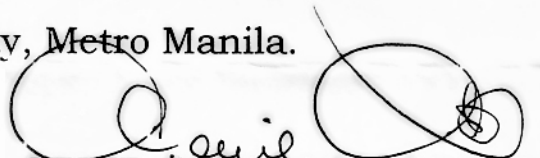
Before the Court is plaintiff-appellant's Motion for Reconsideration to the Decision dated October 31, 2014 which affirmed the court a quo's dismissal of plaintiff-appellant's ejectment suit.

The Court denies the motion for reconsideration. The grounds raised by the plaintiff-appellant in her motion for reconsideration, to wit: 1) the Court erred in holding that the case at bar involves the issue of ownership; and 2) the Court erred in holding that ejectment suit is not the proper remedy - are mere rehash of the grounds raised by plaintiff-appellant in her Appeal Memorandum which were already considered and passed upon by the Court in the assailed Decision.

WHEREFORE, finding no cogent reason to set aside the Decision dated October 31, 2014, the instant motion for reconsideration is DENIED for lack of merit.

SO ORDERED.

March 9, 2015, Quezon City, Metro Manila.


GENIE G. GAPAS- AGBADA
Acting Presiding Judge