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FIRST DIVISION

[G.R. No. L-37976. July 16, 1985]

PABLO R. ROMAN, *petitioner, vs.* **COURT OF APPEALS and PABLO M. SARANGAYA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; WHEN JUDGMENT IMPROPER.**— The Order/Decision of the trial Court of January 9, 1965 was erroneous on two substantial points. In the first place, considering that the settlement offer and counter-offer of the parties were subsequently abandoned by them, the adjudication of the controversy between SARANGAYA and ROMAN on the basis of those offer and counter-offer was improper. The judgment was not a resolution of the issues joined by the pleadings.

2. **CIVIL LAW; CONTRACTS; RESCISSION; JUST CAUSE, REQUIRED.**— In the second place, even conceding that the Complaint was for rescission and damages under Article 1191 of the Civil Code, the trial Court did not fix a period (*plazo*) within which ROMAN could comply with his obligation under the contract to sell. Moreover, there would have been no "just cause," a requirement in Article 1191, for fixing a period. After institution of the action against him, what ROMAN should have done, which he did not do, was to pay SARANGAYA within 60 days after service of summons. It would not have been just to grant him an extension of more than six (6) years, from October 11, 1958 to January 9, 1965, to comply with his 60-day obligation.

APPEARANCES OF COUNSEL

Filoteo T. Banzon for petitioner.

Salonga, Ordoñez, Yap, Africano & Associates for respondent.

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DECISION

MELENCIO-HERRERA, *J.*:

For review is the Decision of the then Court of Appeals in the case entitled *Pablo M. Sarangaya vs. Porfirio Belgica, et al.* (CA-G.R. No. 37395) for Breach of Contract and Damages.

From the evidence adduced, it appears that, on December 12, 1957, a Contract to Sell, covering five (5) parcels of land situated in Barrio Dolores, Municipality of Taytay, Rizal, with an aggregate area of 116,243 sq. ms., more or less, was executed between Pablo M. SARANGAYA, as Vendor, and Pablo R. ROMAN, Porfirio Belgica and Emilio Yangco, as Vendees. The contract provided, among others, that SARANGAYA must, within one year from the date thereof, be able to secure titles to the lands in his name, otherwise, the Vendees would be relieved from buying the same; that within 60 days from the issuance of the titles, the Vendees would pay SARANGAYA the total purchase price of ₱116,243.00; and that in the event of failure to comply with this condition, the Vendees would be *jointly* liable to SARANGAYA for liquidated damages in the sum of ₱50,000.00 (or ₱16,666.00 for each).

SARANGAYA obtained titles to the land in his name on August 5, 1958 (Exhibits "B" and "B-1"), and notice thereof was received by vendee Porfirio Belgica on August 12, 1958 (Exhibit "C-2"). As the contract between the parties stipulated that notice served on any of the three Vendees shall be notice to all of them, the Vendees became obligated, on October 11, 1958, either to pay the agreed purchase price of ₱116,243.00, or the liquidated damages of ₱50,000.00. The Vendees having defaulted, SARANGAYA, on January 12, 1959, filed suit against them for the recovery of the liquidated damages, plus costs of suit, and ₱5,000.00 as attorney's fees.

SARANGAYA's complaint was predicated on the implicit or tacit rescission of the reciprocal obligations to sell and to buy. As Manresa has commented:

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"x x x. *La sentencia de 19 de junio de 1917, manifiesta que con arreglo al parrafo 1. del presente articulo, supuesto el incumplimiento de una obligacion reciproca, puede darse por resuelto el contrato de una manera implicita o tacita sin necesidad de la declaracion previa de los Tribunales, y tanto mas si la excepcion se alego en la contestacion y fue objeto de debate; doctrina que repite el fallo de 19 de junio de 1913.*

En la Sentencia de 24 de Octubre de 1941, el Tribunal Supremo precisa aun mas este extremo, con la siguiente doctrina: El Codigo español, separandose de los precedentes que le marcaban algunos Codigos extranjeros, como el frances y el italiano, en los cuales se dice que la resolucion debe ser pedida judicialmente (1) regula dicha resolucion, como una facultad atribuida a la parte perjudicada por el incumplimiento del contrato, la cual tiene un derecho de opcion entre exigir el cumplimiento o la resolucion de lo convenido, que puede ejercitarse (segun el sentido en que se ha orientado la jurisprudencia de esta Sala en repetidas sentencias, entre ellas, las de 17 de febrero de 1912, 19 de junio de 1913 y 10 de abril de 1929), ya en la via judicial, ya fuera de ella por declaracion del acreedor; a reserva, claro es, de que si la declaracion de resolucion, hecha por una de las partes se impugna por la otra, queda aquella sometida al examen y sancion de los Tribunales, que habran de declarar en definitiva bien hecha la resolucion o por el contrario no ajustada a Derecho. (En parecidos terminos se expresa la de 28 de enero de 1943, que cita la anterior.)"[1]

SARANGAYA's complaint can be deemed a "*declaracion*" of rescission, similar to a complaint being deemed a demand for payment.

The vendee, Porfirio Belgica, was served with summons and having failed to interpose an Answer to the complaint, was declared in default. The vendee, Emilio Yangco, was served with summons through publication and afterwards improperly declared in default, the suit against him being *in personam*.[2] The vendee ROMAN had answered the Complaint, but failing to appear at the trial scheduled for March 1, 1960, where

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[1] 8 Vol. 1. Manresa. 5th Ed., pp. 358. 359.

[2] *Pantaleon vs. Asuncion*. 105 Phil. 761 (1959).

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SARANGAYA proved his case, the trial Court, on March 30, 1960, promulgated a Decision ordering the three Vendees to pay plaintiff ₱50,000.00 as liquidated damages, and ₱1,000.00 as attorney's fees.

It appears that on March 29, 1960, ROMAN had filed a Motion[3] explaining his failure to appear at the hearing of March 1, 1960 and praying that the case be re-set for trial. On April 11, 1960,[4] ROMAN filed a Motion for Reconsideration of the Decision of March 30, 1960, based substantially on his allegations previously made in his Motion of March 29, 1960.

In his Answer,[5] ROMAN had defended on the allegation that he had not received notice that SARANGAYA had already secured title to the land except through the summons served on him; but he did not then ask for time to comply with his obligation. In his Motion for Reconsideration, to which an Affidavit of Merits was attached,[6] he asked the Court to grant him an extension of time, under Article 1191 of the Civil Code, within which to pay.

After the filing of the Motion for Reconsideration, SARANGAYA and ROMAN began to talk of settling their differences.[7] When ROMAN's Motion for Reconsideration of April 11, 1960 was heard on August 20, 1960, ROMAN, in chambers, suggested, as one of two propositions, to purchase the entire property (116, 243 sq. m.) in cash in the original price of ₱1.00 per square meter (₱116.243.00).[8] That offer was accepted on September 20, 1960 by SARANGAYA provided ROMAN would pay:

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[3] Record on Appeal, p. 23.

[4] *Ibid.*, p. 37.

[5] *Ibid.*, p. 11.

[6] *Ibid.*, p. 30.

[7] *Ibid.*, p. 40.

[8] *Ibid.*, p. 41.

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(1) Legal costs and attorney's fees.

(2) Interest at the legal rate starting October 12, 1968 which is the last day set to purchase and pay the property in question.

(3) Documentary stamps and registration fees of the Deed of Sale.[9]

The counter-proposal was never accepted by ROMAN. He could have objected to the 2-year legal interest on ₱116,243.00, to undetermined attorney's fees, and to the stamp tax, all of which could be substantial amounts. Later, it appeared he was no longer agreeable to settle.[10] It is a matter of fact that the trial Court, when it decided the controversy between the parties, said "the full settlement of this case has not been arrived at by the parties."[11]

On September 15, 1961, the trial Court granted the reconsideration petitioned by ROMAN, and allowed him to present his evidence before the Clerk of Court, which was done on October 26, 1961. After the lapse of more than three years, or on January 9, 1965, and invoking the provisions of Article 1191 of the Civil Code, the trial Court issued an Order, actually a decision in respect of ROMAN, the dispositive portion of which reads as follows:

"WHEREFORE, defendant Pablo R. Roman is hereby ordered, upon execution and registration by the plaintiff of the deed of absolute sale over the lands subject of Exhs. 'A' or '1' at the original price of ₱1.00 per square meter together with the legal cost and attorney's fees in the amount of ₱1,000.00, the interest at the legal rate from October 12, 1958, and the documentary stamps and registration fees of the deed of sale."[12]

It will be noted that the Order, or Decision, was in effect an approval of the previous offer to settle made by ROMAN,

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[9] *Ibid.*, p. 42.

[10] *Ibid.*, p. 50.

[11] *Ibid.*, p. 56.

[12] *Ibid.*, pp. 57, 58.

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and of the counter-proposal submitted by SARANGAYA with attorney's fees being determined at ₱1,000.00 but which, as already pointed out, were never subsequently accepted by the parties as a final settlement. The trial Court justified its Order/Decision as follows:

"x x x. Considering the said offer and counter-offer by the parties, which constitute a just cause for fixing the period within which the defendant can comply, in pursuance of the provision of Art. 1191, New Civil Code, the Court hereby grants him an opportunity to comply with his obligations."[13]

ROMAN accepted the trial Court's judgment. The substance of SARANGAYA's counter-offer may have lost relevance in reference to the then value of the land.

The Order/Decision of the trial Court of January 9, 1965 was erroneous on two substantial points. In the first place, considering that the settlement offer and counter-offer of the parties were subsequently abandoned by them, the adjudication of the controversy between SARANGAYA and ROMAN on the basis of those offer and counter-offer was improper. The judgment was not a resolution of the issues joined by the pleadings. In the second place, even conceding that the Complaint was for rescission and damages under Article 1191 of the Civil Code,[14] the trial Court did not fix a period (*plazo*) within which

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[13] *Ibid.*, pp. 56, 57.

[14] "ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

"The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

"The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

"This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law."

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ROMAN could comply with his obligation under the contract to sell. Moreover, there would have been no "just cause," a requirement in Article 1191, for fixing a period. After institution of the action against him, what ROMAN should have done, which he did not do, was to pay SARANGAYA within 60 days after service of summons. It would not have been just to grant him an extention of more than six (6) years, from October 11, 1958 to January 9, 1965, to comply with his 60-day obligation.

SARANGAYA appealed from the Order/Decision of the trial Court to the Court of Appeals which, on October 26, 1973, reversed it and ordered ROMAN to pay SARANGAYA ₱16,666.00 (one-third of the liquidated damages), with interest at the legal rate from the filing of the complaint until fully paid. On the basis of what has been related in regards to the proceedings before the trial Court, and what has been expounded in regards to its Order/Decision of January 9, 1965, we see no valid reason to set aside the judgment of respondent Appellate Court.

WHEREFORE, the Petition for Review on *Certiorari* filed in this case is hereby denied, with costs against petitioner.

SO ORDERED.

Teehankee (Chairman), Plana, Relova, Gutierrez, Jr., De la Fuente, and *Alampay, JJ.*, concur.