



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

JUAN P. CABRERA,  
Petitioner,

G.R. No. 166790

Present:

CARPIO, J., *Chairperson*,  
BRION,  
DEL CASTILLO,  
MENDOZA, and  
LEONEN, JJ.

-versus-

HENRY YSAAC,  
Respondent.

Promulgated:

NOV 19 2014

*HR Cabalag Jr.*

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DECISION

LEONEN, J.:

Unless all the co-owners have agreed to partition their property, none of them may sell a *definite portion* of the land. The co-owner may only sell his or her *proportionate interest* in the co-ownership. A contract of sale which purports to sell a specific or definite portion of unpartitioned land is null and void ab initio.

In this petition for review on certiorari,<sup>1</sup> Juan P. Cabrera assails the Court of Appeals' decision dated June 19, 2003<sup>2</sup> and resolution dated January 3, 2005.<sup>3</sup> These decisions ruled that a specific performance to

<sup>1</sup> Rollo, pp. 10-22.

<sup>2</sup> *Cabrera v. Ysaac*, docketed as CA-G.R. CV No. 65869 and decided by the Court of Appeals' Eight Division. The decision was penned by Associate Justice Rosmari D. Carandang, with Associate Justices Conrado M. Vasquez, Jr. and Mercedes Gozo-Dadole concurring.

<sup>3</sup> Resolved by the Court of Appeals' Special Former Eighth Division. The resolution was penned by Associate Justice Rosmari D. Carandang, with Associate Justices Conrado M. Vasquez, Jr. and Rodrigo V. Cosico concurring.

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execute a deed of sale over a parcel of land is not available as a relief for Juan Cabrera.

It appears that the heirs of Luis and Matilde Ysaac co-owned a 5,517-square-meter parcel of land located in Sabang, Naga City, covered by Original Certificate of Title (OCT) No. 506.<sup>4</sup> One of the co-owners is respondent, Henry Ysaac.

Henry Ysaac leased out portions of the property to several lessees. Juan Cabrera, one of the lessees, leased a 95-square-meter portion of the land beginning in 1986.<sup>5</sup>

On May 6, 1990, Henry Ysaac needed money and offered to sell the 95-square-meter piece of land to Juan Cabrera.<sup>6</sup> He told Henry Ysaac that the land was too small for his needs because there was no parking space for his vehicle.<sup>7</sup>

In order to address Juan Cabrera's concerns, Henry Ysaac expanded his offer to include the two adjoining lands that Henry Ysaac was then leasing to the Borbe family and the Espiritu family. Those three parcels of land have a combined area of 439-square-meters. However, Henry Ysaac warned Juan Cabrera that the sale for those two parcels could only proceed if the two families agree to it.

Juan Cabrera accepted the new offer. Henry Ysaac and Juan Cabrera settled on the price of ₱250.00 per square meter, but Juan Cabrera stated that he could only pay in full after his retirement on June 15, 1992.<sup>8</sup> Henry Ysaac agreed but demanded for an initial payment of ₱1,500.00, which Juan Cabrera paid.<sup>9</sup>

According to Juan Cabrera, Henry Ysaac informed him that the Borbe family and the Espiritu family were no longer interested in purchasing the properties they were leasing. Since Mamerta Espiritu of the Espiritu family initially considered purchasing the property and had made an initial deposit for it, Juan Cabrera agreed to reimburse this earlier payment. On June 9, 1990, Juan Cabrera paid the amount of ₱6,100.00.<sup>10</sup> Henry Ysaac issued a receipt for this amount. ₱3,100.00 of the amount paid was reimbursed to

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<sup>4</sup> *Rollo*, pp. 80-81.

<sup>5</sup> *Id.* at 58.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 38.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

Mamerta Espiritu and, in turn, she gave Juan Cabrera the receipts issued to her by Henry Ysaac.<sup>11</sup>

On June 15, 1992, Juan Cabrera tried to pay the balance of the purchase price to Henry Ysaac. However, at that time, Henry Ysaac was in the United States. The only person in Henry Ysaac's residence was his wife. The wife refused to accept Juan Cabrera's payment.<sup>12</sup>

Sometime in September 1993, Juan Cabrera alleged that Henry Ysaac approached him, requesting to reduce the area of the land subject of their transaction. Part of the 439-square-meter land was going to be made into a barangay walkway, and another part was being occupied by a family that was difficult to eject.<sup>13</sup> Juan Cabrera agreed to the proposal. The land was surveyed again. According to Juan Cabrera, Henry Ysaac agreed to shoulder the costs of the resurvey, which Juan Cabrera advanced in the amount of ₱3,000.00.

The resurvey shows that the area now covered by the transaction was 321 square meters.<sup>14</sup> Juan Cabrera intended to show the sketch plan and pay the amount due for the payment of the lot. However, on that day, Henry Ysaac was in Manila. Once more, Henry Ysaac's wife refused to receive the payment because of lack of authority from her husband.<sup>15</sup>

On September 21, 1994, Henry Ysaac's counsel, Atty. Luis Ruben General, wrote a letter addressed to Atty. Leoncio Clemente, Juan Cabrera's counsel.<sup>16</sup> Atty. General informed Atty. Clemente that his client is formally rescinding the contract of sale because Juan Cabrera failed to pay the balance of the purchase price of the land between May 1990 and May 1992. The letter also stated that Juan Cabrera's initial payment of ₱1,500.00 and the subsequent payment of ₱6,100.00 were going to be applied as payment for overdue rent of the parcel of land Juan Cabrera was leasing from Henry Ysaac.<sup>17</sup> The letter also denied the allegation of Juan Cabrera that Henry Ysaac agreed to shoulder the costs of the resurveying of the property.<sup>18</sup>

Juan Cabrera, together with his uncle, Delfin Cabrera, went to Henry Ysaac's house on September 16, 1995 to settle the matter.<sup>19</sup> Henry Ysaac

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<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id. at 16.

<sup>14</sup> Id.

<sup>15</sup> Id. at 39.

<sup>16</sup> Id. at 40.

<sup>17</sup> Id. at 108.

<sup>18</sup> Id. at 40.

<sup>19</sup> Id. at 39.

told Juan Cabrera that he could no longer sell the property because the new administrator of the property was his brother, Franklin Ysaac.<sup>20</sup>

Due to Juan Cabrera's inability to enforce the contract of sale between him and Henry Ysaac, he decided to file a civil case for specific performance on September 20, 1995.<sup>21</sup> Juan Cabrera prayed for the execution of a formal deed of sale and for the transfer of the title of the property in his name.<sup>22</sup> He tendered the sum of ₱69,650.00 to the clerk of court as payment of the remaining balance of the original sale price.<sup>23</sup> On September 22, 1995, a notice of *lis pendens* was annotated on OCT No. 560.<sup>24</sup>

In his answer with counterclaim,<sup>25</sup> Henry Ysaac prayed for the dismissal of Juan Cabrera's complaint.<sup>26</sup> He also prayed for compensation in the form of moral damages, attorney's fees, and incidental litigation expenses.<sup>27</sup>

Before the Regional Trial Court decided the case, the heirs of Luis and Matilde Ysaac, under the administration of Franklin Ysaac, sold their property to the local government of Naga City on February 12, 1997.<sup>28</sup> The property was turned into a project for the urban poor of the city.<sup>29</sup>

During the trial, Corazon Borbe Combe of the Borbe family testified that contrary to what Juan Cabrera claimed, her family never agreed to sell the land they were formerly leasing from Henry Ysaac in favor of Juan Cabrera.<sup>30</sup> The Borbe family bought the property from Naga City's urban poor program after the sale between the Ysaacs and the local government of Naga City.<sup>31</sup>

On September 22, 1999, the Regional Trial Court of Naga City ruled that the contract of sale between Juan Cabrera and Henry Ysaac was duly rescinded when the former failed to pay the balance of the purchase price in the period agreed upon.<sup>32</sup> The Regional Trial Court found that there was an agreement between Juan Cabrera and Henry Ysaac as to the sale of land and

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<sup>20</sup> Id.

<sup>21</sup> Id. at 24-28. The case was docketed as Civil Case No. 95-3443 in the Regional Trial Court, Fifth Judicial Region, Branch 24 of Naga City.

<sup>22</sup> Id. at 28.

<sup>23</sup> Id. at 39.

<sup>24</sup> Id. at 81.

<sup>25</sup> Id. at 29-34.

<sup>26</sup> Id. at 33.

<sup>27</sup> Id. at 29-34.

<sup>28</sup> Id. at 40.

<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> Id. at 37-42. The decision dated September 22, 1999 was rendered by Judge Corazon A. Tordilla.

the corresponding unit price.<sup>33</sup> However, aside from the receipts turned over by Mamerta Espiritu of the Espiritu family to Juan Cabrera, there was no “evidence that the other adjoining lot occupants agreed to sell their respective landholdings” to Juan Cabrera.<sup>34</sup> The Regional Trial Court also doubted that Juan Cabrera was willing and able to pay Henry Ysaac on June 15, 1992. According to the trial court:

[A]fter the said refusal of Henry Ysaac’s wife, plaintiff [Juan Cabrera] did not bother to write to the defendant [Henry Ysaac] or to any of the co-owners his intention to pay for the land or he could have consigned the amount in court at the same time notifying [Henry Ysaac] of the consignment in accordance with Article 1256 of the Civil Code. Furthermore, in September, 1993 [Juan Cabrera] was able to meet [Henry Ysaac] when the latter allegedly talked to him about the reduction of the area he was going to buy. There is no showing that [Juan Cabrera] again tendered his payment to Henry Ysaac. Instead, he allegedly made his offer after he had the land resurveyed but defendant was then in Manila. There is no evidence as to what date this offer was made. . .

. . . [T]he court does not see any serious demand made for performance of the contract on the part of [Juan Cabrera] in 1992 when he allegedly promised to pay the balance of the purchase price. Neither could he demand for the sale of the adjoining lots because the occupants thereof did not manifest their consent thereto. At the most, he could have demanded the sale of the lot which he was occupying. If his payment was refused in 1995, he cannot demand for damages because the rescission of the contract was relayed to him in writing in Exhibit “4”.<sup>35</sup>

The Regional Trial Court dismissed Juan Cabrera’s complaint and Henry Ysaac’s counterclaim.<sup>36</sup> Juan Cabrera appealed the Regional Trial Court’s decision.<sup>37</sup>

The Court of Appeals agreed with the Regional Trial Court that there was a perfected contract of sale between Juan Cabrera and Henry Ysaac.<sup>38</sup> According to the Court of Appeals, even if the subject of the sale is part of Henry Ysaac’s undivided property, a co-owner may sell a definite portion of the property.<sup>39</sup>

The Court of Appeals also ruled that the contract of sale between Juan Cabrera and Henry Ysaac was not validly rescinded.<sup>40</sup> For the rescission to

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<sup>33</sup> Id. at 40.

<sup>34</sup> Id. at 41.

<sup>35</sup> Id.

<sup>36</sup> Id. at 42.

<sup>37</sup> Id. at 43.

<sup>38</sup> Id. at 60.

<sup>39</sup> Id. at 60-61.

<sup>40</sup> Id. at 61.

be valid under Article 1592 of the Civil Code, it should have been done through a judicial or notarial act and not merely through a letter.<sup>41</sup>

However, due to the sale of the entire property of the Ysaac family in favor of the local government of Naga City, the Court of Appeals ruled that the verbal contract between Juan Cabrera and Henry Ysaac cannot be subject to the remedy of specific performance.<sup>42</sup> The local government of Naga City was an innocent purchaser for value, and following the rules on double sales, it had a preferential right since the sale it entered into was in a public instrument, while the one with Juan Cabrera was only made orally.<sup>43</sup> The only recourse the Court of Appeals could do is to order Henry Ysaac to return the initial payment of the purchase price of ₱10,600.00 (₱1,500.00 and ₱6,100.00 as evidenced by the receipts issued by Henry Ysaac to Juan Cabrera, and ₱3,000.00 for the surveying expenses) as payment of actual damages. The Court of Appeals likewise awarded attorney's fees and litigation costs. To wit:

WHEREFORE, premises considered, the assailed decision of the lower court is hereby SET ASIDE and a new one is entered as follows:

1. Declaring that there is no valid rescission of the contract of sale of the subject lot between plaintiff-appellant [Juan P. Cabrera] and defendant-appellee [Henry Ysaac]; however, specific performance is not an available relief to plaintiff because of the supervening sale of the property to the City of Naga, an innocent purchaser and for value;
2. Ordering [Henry Ysaac] to pay [Juan P. Cabrera] actual damages in the amount of ₱10,600.00, with legal interest of 12% per annum from September 20, 1995 until paid;
3. Ordering [Henry Ysaac] to pay [Juan P. Cabrera], the amount of thirty thousand pesos (₱30,000.00) by way of attorney's fees and litigation expenses.

Henry Ysaac filed his motion for reconsideration dated July 14, 2003 of the decision of the Court of Appeals.<sup>44</sup> On the other hand, Juan Cabrera immediately filed a petition for review on certiorari with this court.<sup>45</sup> In the resolution dated October 15, 2003, this court denied the petition "for being premature since respondent's motion for reconsideration of the questioned decision of the Court of Appeals is still pending resolution."<sup>46</sup>

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<sup>41</sup> Id.

<sup>42</sup> Id. at 61-62.

<sup>43</sup> Id. at 62.

<sup>44</sup> Id. at 65-75.

<sup>45</sup> The petition was docketed as G.R. No. 159094.

<sup>46</sup> *Rollo*, p. 76.

In the resolution dated January 3, 2005, the Court of Appeals denied Henry Ysaac's motion for reconsideration. On February 24, 2005, Juan Cabrera filed another petition with this court, questioning the propriety of the Court of Appeals' decision and resolution.

This court initially noted that the petition was filed out of time. The stamp on the petition states that it was received by this court on March 24, 2005,<sup>47</sup> while the reglementary period to file the petition expired on February 28, 2005. Thus, the petition was dismissed in this court's resolution dated April 27, 2005.<sup>48</sup> Petitioner filed a motion for reconsideration.<sup>49</sup> However, the same was denied with finality in this court's resolution dated August 17, 2005.<sup>50</sup>

In a letter addressed to the Chief Justice, petitioner argued that it would be unfair to him if a clerical error would deprive his petition from being judged on the merits. Petitioner emphasized that the registry receipts show that he filed the petition on February 24, 2005, not March 24, 2005, as noted by this court in his pleading.<sup>51</sup> This court treated the letter as a second motion for reconsideration. In the resolution dated March 31, 2006, this court found merit in petitioner's letter.<sup>52</sup> The petition was reinstated, and respondent was ordered to file his comment.<sup>53</sup> Respondent filed his comment on September 18, 2006.<sup>54</sup> This court required petitioner to file a reply,<sup>55</sup> which petitioner complied with on January 15, 2007.<sup>56</sup>

The issues raised by petitioner and respondent are summarized as follows:

1. Whether this court could take cognizance of issues not raised by petitioner but by respondent in his comment to the petition for review;
2. Whether there was a valid contract of sale between petitioner and respondent;
3. Whether the contract of sale still subsisted;
  - a. Whether the contract was terminated through rescission;

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<sup>47</sup> Id. at 10.

<sup>48</sup> Id. at 84.

<sup>49</sup> Id. at 85-90.

<sup>50</sup> Id. at 92.

<sup>51</sup> Id. at 82-83.

<sup>52</sup> Id. at 101-103.

<sup>53</sup> Id. at 103.

<sup>54</sup> Id. at 106-124.

<sup>55</sup> Id. at 126.

<sup>56</sup> Id. at 135-137.

- b. Whether the contract was no longer enforceable due to the supervening sale of the property to the local government of Naga City;
4. Whether petitioner is entitled to the execution of a deed of sale in his favor; and
5. Whether petitioner is entitled to actual damages, attorney's fees, and costs of litigation.

The petition should be denied.

## I

### **This court can resolve issues raised by both parties**

Petitioner stated that the errors in this case are: (1) “the [Court of Appeals] erred in holding that the relief of specific performance is not available to [petitioner] supposedly because of the supervening sale of [the] property to the City Government of Naga”;<sup>57</sup> and (2) “consequently, the [Court of Appeals] erred in not ordering the execution of the necessary deed of sale in favor of [petitioner].”<sup>58</sup> Petitioner argues that this court should limit its adjudication to these two errors.<sup>59</sup>

On the other hand, respondent raised issues on the validity of the contract of sale in favor of petitioner, and the propriety of the award of actual damages with interest, attorney's fees, and litigation expenses.<sup>60</sup>

For petitioner, if respondent wanted to raise issues regarding the Court of Appeals' decision, respondent should have interposed a separate appeal.<sup>61</sup>

Petitioner's position is erroneous. This court can resolve issues and assignments of error argued by petitioner and respondent.

This court “is clothed with ample authority to review matters, *even if they are not assigned as errors in their appeal*, if it finds that their consideration is necessary to arrive at a just decision of the case.”<sup>62</sup> We can

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<sup>57</sup> Id. at 18.

<sup>58</sup> Id.

<sup>59</sup> Id. at 136-137.

<sup>60</sup> Id. at 111-122.

<sup>61</sup> Id. at 136.

<sup>62</sup> *Globe Telecom, Inc. v. Florendo-Flores*, 438 Phil. 756, 764 (2002) [Per J. Bellosillo, Second Division], citing *Barons Marketing Corp v. Court of Appeals*, 349 Phil. 966 (1998) [Per J. Puno, Second Division]



consider errors not raised by the parties, more so if these errors were raised by respondent.

Respondent raised different issues compared with those raised by petitioner. However, the assignment of error of respondent was still responsive to the main argument of petitioner. Petitioner's argument works on the premise that there was a valid contract. By attacking the validity of the contract, respondent was merely responding to the premise of petitioner's main argument. The issue is relevant to the final disposition of this case; hence, it should be considered by this court in arriving at a decision.

## II

### **There was no valid contract of sale between petitioner and respondent**

Petitioner agrees with the decision of the Court of Appeals that there was a perfected contract of sale between him and respondent.<sup>63</sup>

Respondent, however, argues that there was no contract between him and petitioner because under Article 1475 of the Civil Code, there has to be a meeting of the minds as to the price and the object of the contract.<sup>64</sup> Respondent argues that there was no meeting of the minds as to the final price<sup>65</sup> and size<sup>66</sup> of the property subject of the sale.

In addition, while respondent admits that he was willing to sell the property being leased from him by the Borbe family and the Espiritu family, petitioner presented no evidence to show that these families agreed to the sale in favor of petitioner. During trial, Corazon Borbe Combe of the Borbe family testified that her family never agreed to allow the sale of the property in favor of petitioner.<sup>67</sup> Respondent likewise alleged that Mamerta Espiritu of the Espiritu family eventually bought the property occupied by her family, which is contrary to the claim that petitioner obtained the consent of Mamerta Espiritu to have the land sold in his favor.<sup>68</sup>

Petitioner replied that respondent sold 113 square meters of the 321-square-meter property to the Espiritu family on January 17, 1996.<sup>69</sup>

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(Emphasis supplied).

<sup>63</sup> *Rollo*, p. 18.

<sup>64</sup> *Id.* at 112.

<sup>65</sup> *Id.* at 112-113.

<sup>66</sup> *Id.* at 114.

<sup>67</sup> *Id.* at 39-40.

<sup>68</sup> *Id.* at 113-114.

<sup>69</sup> *Id.* at 20-21.

Petitioner argued that Mamerta Espiritu was not a buyer in good faith because in 1990, she voluntarily agreed to surrender the lot for sale in favor of petitioner because she did not have the money to pay for the lot. Hence, the sale in favor of Mamerta Espiritu should not supersede the sale in favor of petitioner.<sup>70</sup>

The Regional Trial Court ruled that there was a valid contract of sale, although it found that there was no evidence to support petitioner's claim that he was able to secure the consent of the Espiritu family and the Borbe family to the sale of the land.<sup>71</sup> There was a valid contract of sale subject to a suspensive condition, but the suspensive condition was not complied with.

For the Court of Appeals, there was a valid contract of sale.<sup>72</sup> The Court of Appeals' ruling was based on the idea that a co-owner could sell a definite portion of the land owned in common, and not because the suspensive conditions of the contract were complied with. In ruling this way, the Court of Appeals relied on *Pamplona v. Morato*,<sup>73</sup> which stated that:

. . . [A] "co-owner may validly sell his undivided share of the property owned in common. (If the part sold happens to be his allotted share after partition, the transaction is entirely valid). Now then if there has been no express partition as yet, but the co-owner who sells points out to his buyers the boundaries of the part he was selling, and the other co-owners make no objection, there is in effect already a *partial partition*, and the sale of the *definite portion* can no longer be assailed."<sup>74</sup>

We find that there was no contract of sale. It was null *ab initio*.

As defined by the Civil Code, "[a] contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service."<sup>75</sup> For there to be a valid contract, there must be *consent* of the contracting parties, an *object* certain which is the subject matter of the contract, and *cause* of the obligation which is established.<sup>76</sup>

Sale is a special contract. The seller obligates himself to deliver a determinate thing and to transfer its ownership to the buyer. In turn, the buyer pays for a price certain in money or its equivalent.<sup>77</sup> A "contract of

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<sup>70</sup> Id.

<sup>71</sup> Id. at 40-41.

<sup>72</sup> Id. at 60.

<sup>73</sup> 185 Phil. 556 (1980) [Per J. Guerrero, First Division].

<sup>74</sup> The Court of Appeals decision did not cite directly from the *Pamplona* case. Instead, it lifted the digest in E. Paras, CIVIL CODE OF THE PHILIPPINES ANNOTATED, vol. II, 15<sup>th</sup> Ed. 351 (2002).

<sup>75</sup> CIVIL CODE, art. 1305.

<sup>76</sup> CIVIL CODE, art. 1318.

<sup>77</sup> CIVIL CODE, art. 1458.

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.”<sup>78</sup> The seller and buyer must agree as to the certain thing that will be subject of the sale as well as the price in which the thing will be sold. The thing to be sold is the *object* of the contract, while the price is the *cause* or consideration.

The object of a valid sales contract must be owned by the seller. If the seller is not the owner, the seller must be authorized by the owner to sell the object.<sup>79</sup>

Specific rules attach when the seller *co-owns* the object of the contract. Sale of a portion of the property is considered an alteration of the thing owned in common. Under the Civil Code, such disposition requires the unanimous consent of the other co-owners.<sup>80</sup> However, the rules also allow a co-owner to alienate his or her part in the co-ownership.<sup>81</sup>

These two rules are reconciled through jurisprudence.

If the alienation precedes the partition, the co-owner cannot sell a definite portion of the land without consent from his or her co-owners. He or she could only sell the undivided interest of the co-owned property.<sup>82</sup> As summarized in *Lopez v. Ilustre*,<sup>83</sup> “[i]f he is the owner of an undivided half of a tract of land, he has a right to sell and convey an undivided half, but he has no right to divide the lot into two parts, and convey the whole of one part by metes and bounds.”<sup>84</sup>

The *undivided interest* of a co-owner is also referred to as the “ideal or abstract quota” or “proportionate share.” On the other hand, the *definite portion* of the land refers to specific metes and bounds of a co-owned property.

To illustrate, if a ten-hectare property is owned equally by ten co-owners, the undivided interest of a co-owner is one hectare. The definite portion of that interest is usually determined during judicial or extrajudicial partition. After partition, a definite portion of the property held in common is allocated to a specific co-owner. The co-ownership is dissolved and, in effect, each of the former co-owners is free to exercise autonomously the rights attached to his or her ownership over the definite portion of the land.

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<sup>78</sup> CIVIL CODE, art. 1475.

<sup>79</sup> *Francisco v. Chemical Bulk Carriers, Inc.*, G.R. No. 193577, September 7, 2011, 657 SCRA 355, 365 [Per J. Carpio, Second Division].

<sup>80</sup> CIVIL CODE, art. 491.

<sup>81</sup> CIVIL CODE, art. 493.

<sup>82</sup> *Oliveras v. Lopez*, 250 Phil. 430, 435-436 (1988) [Per C.J. Fernan, Third Division].

<sup>83</sup> 5 Phil. 567 (1906) [Per J. Willard, En Banc].

<sup>84</sup> *Id.* at 568-569.

It is crucial that the co-owners agree to which portion of the land goes to whom.

Hence, prior to partition, a sale of a definite portion of common property requires the consent of all co-owners because it operates to partition the land with respect to the co-owner selling his or her share. The co-owner or seller is already marking which portion should redound to his or her autonomous ownership upon future partition.

The object of the sales contract between petitioner and respondent was a definite portion of a co-owned parcel of land. At the time of the alleged sale between petitioner and respondent, the entire property was still held in common. This is evidenced by the original certificate of title, which was under the names of Matilde Ysaac, Priscilla Ysaac, Walter Ysaac, respondent Henry Ysaac, Elizabeth Ysaac, Norma Ysaac, Luis Ysaac, Jr., George Ysaac, Franklin Ysaac, Marison Ysaac, Helen Ysaac, Erlinda Ysaac, and Maridel Ysaac.<sup>85</sup>

The rules allow respondent to sell his *undivided interest* in the co-ownership. However, this was not the object of the sale between him and petitioner. The object of the sale was a *definite portion*. Even if it was respondent who was benefiting from the fruits of the lease contract to petitioner, respondent has “no right to sell or alienate a concrete, specific or determinate part of the thing owned in common, because his right over the thing is represented by quota or ideal portion without any physical adjudication.”<sup>86</sup>

There was no showing that respondent was authorized by his co-owners to sell the portion of land occupied by Juan Cabrera, the Espiritu family, or the Borbe family. Without the consent of his co-owners, respondent could not sell a definite portion of the co-owned property.

Respondent had no right to define a 95-square-meter parcel of land, a 439-square-meter parcel of land, or a 321-square-meter parcel of land for purposes of selling to petitioner. The determination of those metes and bounds are not binding to the co-ownership and, hence, cannot be subject to sale, unless consented to by all the co-owners.

In finding that there was a valid contract of sale between petitioner and respondent, the Court of Appeals erred in the application of *Pamplona v.*

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<sup>85</sup> *Rollo*, p. 80 (front and back).

<sup>86</sup> *Sanchez v. Court of Appeals*, 452 Phil. 665, 677 (2003) [Per J. Bellosillo, En Banc], citing A. Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, vol. II, 201 (1994).

*Moreto*.<sup>87</sup> The ruling in *Pamplona* should be read and applied only in situations similar to the context of that case.

*Pamplona* involved the Spouses Moreto who owned three (3) parcels of land with a total area of 2,346 square meters. The spouses had six (6) children. After the wife had died, the husband sold one of the parcels to the Pamplona family, even if the conjugal partnership had not yet been liquidated. The parcel sold measured 781 square meters, which was less than the ideal share of the husband in the estate. This court allowed the sale to prosper because of the tolerance from the husband's co-heirs. This court ruled:

The title may be pro-indiviso or inchoate but the moment the co-owner as vendor pointed out its location and even indicated the boundaries over which the fences were to be erected *without objection, protest or complaint by the other co-owners, on the contrary they acquiesced and tolerated such alienation, occupation and possession*, We rule that a factual partition or termination of the co-ownership, although partial, was created, and barred not only the vendor, Flaviano Moreto, but also his heirs, the private respondents herein from asserting as against the vendees-petitioners any right or title in derogation of the deed of sale executed by said vendor Flaviano Moreto.<sup>88</sup> (Emphasis supplied)

In *Pamplona*, the co-heirs of Flaviano Moreto only questioned the sale to the Pamplona family nine (9) years after the sale. By then, the Pamplona family had exercised several acts of ownership over the land. That is why this court considered it acquiescence or tolerance on the part of the co-heirs when they allowed the Pamplonas to take possession and build upon the land sold, and only questioned these acts several years later.

The ruling in *Pamplona* does not apply to petitioner. There was no evidence adduced during the trial that respondent's co-owners acquiesced or tolerated the sale to petitioner. The co-owners tolerated petitioner's possession of a portion of their land because petitioner was a lessee over a 95-square-meter portion of the property, not the buyer of the 321-square-meter portion.

There was also no evidence of consent to sell from the co-owners. When petitioner approached respondent in 1995 to enforce the contract of sale, respondent referred him to Franklin Ysaac, the administrator over the entire property. Respondent's act suggests the absence of consent from the co-owners. Petitioner did not show that he sought Franklin Ysaac's consent as administrator and the consent of the other co-owners. Without the consent of the co-owners, no partial partition operated in favor of the sale to

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<sup>87</sup> 185 Phil. 556 (1980) [Per J. Guerrero, First Division].

<sup>88</sup> *Pamplona v. Moreto*, 185 Phil. 556, 564 (1980) [Per J. Guerrero, First Division].

petitioner.

At best, the agreement between petitioner and respondent is a *contract to sell*, not a contract of sale. A contract to sell is a promise to sell an object, subject to suspensive conditions.<sup>89</sup> Without the fulfillment of these suspensive conditions, the sale does not operate to determine the obligation of the seller to deliver the object.

A co-owner could enter into a contract to sell a definite portion of the property. However, such contract is still subject to the suspensive condition of the partition of the property, and that the other co-owners agree that the part subject of the contract to sell vests in favor of the co-owner's buyer. Hence, the co-owners' consent is an important factor for the sale to ripen.

**A non-existent contract cannot be a source of obligations, and it cannot be enforced by the courts**

Since petitioner believes that there was a perfected contract of sale between him and respondent, he argues that a deed of sale should be formally executed. Petitioner agrees with the Court of Appeals' finding that there was no valid rescission of the contract in accordance with Article 1592 of the Civil Code.<sup>90</sup> However, petitioner disagrees with the Court of Appeals when it ruled that the contract was no longer enforceable due to the supervening sale with the local government of Naga City. Petitioner argues that the sale in favor of the local government of Naga City was not made in good faith. Before the sale was finalized between the local government and the heirs of Luis and Matilde Ysaac, petitioner had a notice of *lis pendens* annotated to OCT No. 506.<sup>91</sup> It was presumed that the local government had due notice of petitioner's adverse claim, thus, it cannot be considered an innocent purchaser.

For respondent, due to the inexistence of a valid contract of sale, petitioner cannot demand specific performance from respondent.<sup>92</sup> Respondent disagrees with the Court of Appeals when it stated that Article 1592 of the rescission of contract of sale applies. There is no need to apply Article 1592 because there was no contract to begin with.<sup>93</sup> The contract between respondent and petitioner was terminated by virtue of the letter dated September 21, 1994.<sup>94</sup>

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<sup>89</sup> *Roque v. Lapuz*, 185 Phil. 525, 540 (1980) [Per J. Guerrero, First Division].

<sup>90</sup> *Rollo*, p. 18.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 115.

<sup>93</sup> *Id.* at 116.

<sup>94</sup> *Id.* at 116-117.

We rule in favor of respondent.

The absence of a contract of sale means that there is no source of obligations for respondent, as seller, or petitioner, as buyer. Rescission is impossible because there is no contract to rescind. The rule in Article 1592 that requires a judicial or notarial act to formalize rescission of a contract of sale of an immovable property does not apply. This court does not need to rule whether a letter is a valid method of rescinding a sales contract over an immovable property because the question is moot and academic.

Even if we assume that respondent had full ownership of the property and that he agreed to sell a portion of the property to petitioner, the letter was enough to cancel the contract to sell.

Generally, “[t]he power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent on him.”<sup>95</sup>

For the sale of immovable property, the following provision governs its rescission:

Article 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by notarial act. After the demand, the court may not grant him a new term.

This provision contemplates (1) a *contract of sale* of an immovable property and (2) a stipulation in the contract that failure to pay the price at the time agreed upon will cause the rescission of the contract. The vendee or the buyer can still pay even after the time agreed upon, if the agreement between the parties has these requisites. This right of the vendee to pay ceases when the vendor or the seller demands the rescission of the contract judicially or extrajudicially. In case of an extrajudicial demand to rescind the contract, it should be notarized.

Hence, this provision does not apply if it is not a contract of sale of an immovable property and merely a *contract to sell* an immovable property. A contract to sell is “where the ownership or title is retained by the seller and is not to pass until the full payment of the price, such payment being a positive suspensive condition and failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey

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<sup>95</sup> CIVIL CODE, art. 1191.

title from acquiring binding force.”<sup>96</sup>

In a similar case entitled *Manuel v. Rodriguez*,<sup>97</sup> Eusebio Manuel offered to buy the land owned by Payatas Subdivision, Inc. The Secretary-Treasurer of Payatas Subdivision, Eulogio Rodriguez, Sr., agreed to sell the land to Eusebio Manuel after negotiations. Similar to this case, the agreement was only made orally and not in writing. An initial payment was made, and a final payment was to be made nine (9) to ten (10) months later. Manuel never paid for the latter installment; hence, Eulogio Rodriguez cancelled their agreement and sold the land to someone else.

In *Manuel*, this court categorically stated that Article 1592 “does not apply to a contract to sell or promise to sell, where title remains with the vendor until fulfillment to a positive suspensive condition, such as full payment of the price.”<sup>98</sup> This court upheld that the contract to sell was validly cancelled through the non-payment of Eusebio Manuel. The same conclusion applies in this case.

The law does not prescribe a form to rescind a contract to sell immovable property. In *Manuel*, the non-payment operated to cancel the contract. If mere non-payment is enough to cancel a contract to sell, the letter given to petitioner’s lawyer is also an acceptable form of rescinding the contract. The law does not require notarization for a letter to rescind a *contract to sell* immovable property. Notarization is only required if a *contract of sale* is being rescinded.

Petitioner argued that he was willing to comply with the suspensive condition on the contract to sell because he was ready to pay the balance of the purchase price on June 15, 1992.<sup>99</sup> However, his argument is unmeritorious. As ruled by the Regional Trial Court, petitioner should have resorted to the various modes of consignment when respondent’s wife refused to accept the payment on respondent’s behalf.<sup>100</sup>

Therefore, even if we assumed that the contract between petitioner and respondents were perfected, the strict requisites in Article 1592 did not apply because the only perfected contract was a contract to sell, not a contract of sale. The courts cannot enforce the right of petitioner to buy respondent’s property. We cannot order the execution of a deed of sale between petitioner and respondent.

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<sup>96</sup> *Roque v. Lapuz*, 185 Phil. 525, 540 (1980) [Per J. Guerrero, First Division].

<sup>97</sup> 109 Phil. 1 (1960) [Per. J. J.B.L. Reyes, En Banc].

<sup>98</sup> *Manuel v. Rodriguez*, 109 Phil. 1, 9 (1960) [Per. J. J.B.L. Reyes, En Banc].

<sup>99</sup> *Rollo*, p. 18.

<sup>100</sup> *Id.* at 41.



The question of double sale also becomes moot and academic. There was no valid sale between petitioner and respondent, while there was a valid sale between the local government of Naga City and respondent and his co-owners. Since there is only one valid sale, the rule on double sales under Article 1544 of the Civil Code does not apply.<sup>101</sup>

**Compensatory damages, attorney's fees, and costs of litigation**

Respondent argued that petitioner is not entitled to the compensatory damages that the Court of Appeals awarded. According to respondent, petitioner continues to occupy the 95-square-meter property that he has been leasing since 1986 because the parcel was not included in the sale to the local government of Naga City.<sup>102</sup> Since April 30, 1990, petitioner has not been paying rent to respondent despite his continued occupation of the property.<sup>103</sup> Therefore, there was no unjust enrichment on the part of respondent when he applied petitioner's initial payment over the sale of the property as payment for rent.

Respondent argued further that the award of attorney's fees and litigation expenses in favor of petitioner was also erroneous because prior to this litigation, respondent already informed petitioner that his claim has no basis in law and fact.<sup>104</sup> Yet, petitioner persisted on filing this case.<sup>105</sup>

We rule that petitioner is entitled to the return of the amount of money because he paid it as consideration for ownership of the land. Since the ownership of the land could not be transferred to him, the money he paid for that purpose must be returned to him. Otherwise, respondent will be unjustly enriched.

Respondent's claim for rent in arrears is a separate cause of action from this case. For petitioner's earnest money payment to be considered payment for his rent liabilities, the rules of compensation under Article 1279 of the Civil Code must be followed.<sup>106</sup>

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<sup>101</sup> Article 1544. If the same thing should have been sold to different vendees. . . .

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

<sup>102</sup> *Rollo*, p. 118.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 120-122.

<sup>105</sup> *Id.* at 122.

<sup>106</sup> Article 1279. In order that compensation may be proper, it is necessary:

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consumable,

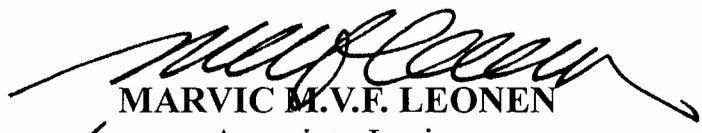
It was not proven during trial if petitioner's rental liability to respondent is due, or if it is already liquidated and demandable. Hence, this court is limited to uphold the ruling of the Court of Appeals, but such payment could be subject to the rule on compensation.

However, petitioner is not entitled to attorney's fees and the costs of litigation. The Court of Appeals awarded attorney's fees to petitioner "just to protect his right [because petitioner] reached this court to seek justice for himself."<sup>107</sup>

Contrary to the Court of Appeals' ruling, we find that petitioner did not have a clear right over the property in question. The Court of Appeals awarded attorney's fees and litigation costs on the premise that the contract between petitioner and respondent was perfected. Without a valid contract that stipulates his rights, petitioner risked litigation in order to determine if he has rights, and not to protect rights that he currently has. Hence, the award of attorney's fees and litigation costs was not properly justified.

**WHEREFORE**, the petition is **DENIED**. The Court of Appeals' decision dated June 19, 2003 in CA-GR. CV No. 65869 is **SET ASIDE**. The contract between petitioner and respondent is **DECLARED** invalid and, therefore, cannot be subject to specific performance. Respondent is **ORDERED** to return ₱10,600.00 to petitioner, with legal interest of 12% per annum from September 20, 1995 until June 30, 2013 and 6% per annum from July 1, 2013 until fully paid. The award of attorney's fees and litigation expenses is **DELETED**.

**SO ORDERED.**

  
MARVIC M.V.F. LEONEN  
Associate Justice

WE CONCUR:

  
ANTONIO T. CARPIO  
Associate Justice  
Chairperson


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they be of the same kind, and also of the same quality if the latter has been stated;  
(3) That the two debts be due;  
(4) That they be liquidated and demandable;  
(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

<sup>107</sup> *Rollo*, p. 62.


  
**ARTURO D. BRION**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice


### ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice