

[ G.R. No. 1239. July 28, 1905 ]

**ANGELA JOAQUIN Y PATRICK), PLAINTIFF AND APPELLEE, VS. INOOENCIO ARAGON, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**TORRES, J.:**

On the 20th of September, 1884, Inocencio Aragon and his wife, Felipa Cabrera, sold on condition of redemption to one Eleuterio Joaquin a frame house with a galvanized iron, together with the lot upon which it stood, in Calle San Koque, district of Malate, for the sum of 600 pesos, repurchase to be made within two years, extendable at the will of the purchaser; the vendors to continue to occupy the house as tenants for the term of two years from the said date, the rent to be at the rate of 60 pesos per annum, payable every six months in advance, and the vendors to pay costs and any other expenses which might be incurred in case of litigation.

The two years expired, the vendors failed to redeem the property, and they were twice directed to vacate the premises.

On the 16th of November, 1893 Inocencio Aragon instituted proceedings to compel the heirs of the deceased purchaser to consent to the repurchase of the house and lot sold by him on condition of redemption, as aforesaid.

The case having been tried in accordance with the old Spanish procedure, the court found that the plaintiff vendor had no right to repurchase the property because he had failed to repay to the purchaser the price agreed upon within the time stipulated, and that the latter had acquired an irrevocable title to the property; and dismissed the complaint filed by the vendor, Inocencio Aragon. Judgment was accordingly entered April 28, 1894. Aragon appealed from the said judgment, but on account of his nonappearance his appeal was dismissed by the appellate court June 14, 1894.

Notwithstanding the aforesaid judgment, Aragon continued in possession, and refused to vacate the premises, and on September 10, 1896, counsel for the guardian of Angela Maria Rosario Joaquin, the minor child of the deceased, Eleuterio Joaquin, brought this action of illegal detainer against the said Aragon and his wife, for the purpose of compelling the latter to vacate the property sold by them to the deceased Eleuterio Joaquin on condition of redemption within two years from September 20, 1884.

During the course of the proceedings and in accordance with the old Code of Civil Procedure, the guardian, Pedro Casimiro, was succeeded in his trust by Teodoro Patricio, the parties having subsequently stipulated that the case

be tried in accordance with the provisions of the new Code of Civil Procedure now in force.

An answer to the complaint having been filed and the various motions presented by the parties having been decided, the court, in view of the allegations contained in the pleadings and the evidence introduced during the trial, entered judgment on the 21st of October, 1902, declaring that the defendant, Inocencio Aragon, had no right to occupy the house in question; that he was wrongfully in possession, and directed him to vacate the premises and pay the costs of proceedings.

Counsel for defendant not having appealed from the said order in due time, he having excepted thereto November 14, execution was issued at the request of the plaintiff, who was given possession of the property December 6, 1902. Attorney Martinez Llano&, on behalf of the heirs of the deceased, Inocencio Aragon, asked the court on the 24th of the same month and year to allow him to file a bill of exceptions, to which petition counsel for plaintiffs objected.

The question whether an action for ejectment lies in this case depends upon whether the defendant still had a right to repurchase the house and lot sold by him to Eleuterio Joaquin September 20, 1884.

The right to repurchase exists where the vendor has reserved to himself the right to redeem the property sold by him upon the repayment of the price paid by the purchaser within the time stipulated in the contract, and the payment of such legal expenses as may have been incurred. (Arts. 1507, 1508, and 1518 of the Civil Code.)

It is absolutely essential that the purchase price be repaid within the time stipulated before the property can be redeemed. Article 1509 of the Civil Code provides that “if the vendor

does not comply with the provisions of article 1518 by repaying the purchase price and reimbursing the purchaser for any expenses which may have been incurred, the purchaser shall acquire an irrevocable title to the property.”

Inocencio Aragon and his wife failed to repay the purchase price within the two years stipulated in the contract, and for this reason Eleuterio Joaquin or his heirs acquired an irrevocable title to the house and lot sold to them.

Under these circumstances in the action instituted by Aragon to compel the heirs of the purchaser, Eleuterio Joaquin, to consent to the repurchase of the property, judgment was entered April 28, 1894, dismissing the case as to some of the heirs, on the ground that the vendor had no right to repurchase the said house and lot, the ownership of which was vested in the original purchaser irrevocably.

Notwithstanding this, the vendor, Aragon, insisted on retaining possession of the house and lot without paying the stipulated rent in spite of the fact that demand had been made upon him to vacate the premises. He used and occupied the property wrongfully and to the prejudice of the owners, who, under article 1547 of the old Code of Civil Procedure, and section 80 of the new Code of Civil Procedure, had a right to maintain an action for ejectment. The judgment appealed from is therefore in accordance with the law. The appellant did not move for a new trial under section 145 of the Code of Civil Procedure now in force or take any steps to have the said judgment set aside.

As to the jurisdiction of the Court of First Instance to try this case, it should be noted that the parties stipulated that the case be tried in accordance with the provisions of the new Code of Civil Procedure, and that the complaint in the action for ejectment was filed and considered in accordance with the old Code of Civil Procedure, which conferred jurisdiction upon the Court of First Instance to try such cases. Therefore, when the Court of First Instance decided that the present ‘case should be tried in accordance with the new Code of Civil Procedure, it merely followed the provisions contained in paragraphs 3 and 4 of section 795 of the said code.

The court as well as the parties, deemed it expedient to follow in this case the provisions of the new Code of Civil Procedure in accordance with section 795 of the said code. Therefore the parties can not object to the order of the court so deciding because there was no error of law nor any violation of the statutes, but a strict compliance with the aforesaid section of the Code of Civil Procedure.

By virtue of the right thus acquired by the purchaser to the said house and lot sold to him on condition of redemption, a right which was expressly recognized in a final judgment rendered in an action brought to redeem the aforesaid property, the present action was instituted, which, although termed an action for ejectment, relates, in our mind, to the plaintiff's ownership of the house, wrongfully detained by the vendor under an assumed right, and against the express stipulation of the contracting parties. The Court of First Instance, therefore, had original jurisdiction to try this case under section 56, paragraph 2 of Act No. 136.

The foregoing relates only to the questions of law raised in this case and to whether the appeal was taken in due time. We shall now consider those questions relating to the procedure.

In case the defendant, Inocencio Aragon, has died, although there is no proof to this effect, the executor or administrator of his estate is the person who should have represented him and continued the case then pending. In order that his heirs could have appeared in this cause, they must have proved that they had a right to do so and that they themselves were qualified to intervene. (Sees. 114, 119, 702, and 704 of the Code of Civil Procedure.)

The attorneys who represented the heirs of the defendant, Aragon, after the rendition of final judgment, have not proved the date on which he died, nor who the actual heirs of the deceased were.

When counsel, Llanos, presented his bill of exceptions on the 24th of December, 1902, to the judgment of the 21st of October of the same year, no mention was made of the death of his client, Aragon.

The defendant, Aragon, excepted to the judgment twenty four days after its rendition. He should have filed his exception thereto forthwith, or as soon thereafter as possible. He did not prove that he was unable to do so because of any justifiable circumstance. The bill of exceptions and the assignment of errors were presented after the lapse of forty days, and long after the period of ten days allowed by section 143 of the Code of Civil Procedure had expired. For the foregoing reasons the trial court, at plaintiff's request, directed that the judgment be executed, and that the adjudged owners of the property be given possession thereof.

The bill of exceptions was, however, transmitted to this court, and in view of the orders entered herein on the 5th of May and the 6th of August, 1903, the case having been regularly tried, we are of opinion that the case should be decided on its merits, and that the judgment appealed from should be accordingly affirmed.

The judgment of the court below, dated the 21st of October, 1902, is hereby affirmed in all respects, with costs in favor of the appellee and against the appellant. After the expiration of twenty days let judgment be entered accordingly, and the record be remanded to the court below for further proceedings in accordance herewith. So ordered.

*Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.*

*Willard, J.,* did not sit in this case.

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