

5 Phil. 360

[G.R. No. 1619. December 02, 1905]

**FILOMENA VILLARRUEL Y BASILIO, PETITIONER AND APPELLANT, VS.
PETRONILA ENCARNACION, RESPONDENT AND APPELLEE.**

D E C I S I O N

WILLARD, J.:

This case comes from the Court of Land Registration. The petitioner, Filomena Villarruel y Basilio, was the owner of the land described in the petition, but prior to the presentation thereof she had sold a part of the same to Miguel Herrera and the remainder to Petronila Encarnacion, the appellee. In the deed of sale to Miguel Herrera there was a clause which gave the petitioner the right to repurchase the property within two years from the date of the sale, and in the deed to Petronila Encarnacion there was a similar clause giving the petitioner the right to repurchase the property within one year. At the time the petition was presented the periods named in these deeds had not expired, and the only right or interest which the petitioner had was the right secured to her by the deeds to repurchase the land according to the terms thereof. Miguel Herrera and Petronila Encarnacion appeared in the court below and opposed the registration of the land.

The question in the case is whether the petitioner had a right at that time to register her aforesaid interest.

Act No. 496, section 19, gives the owner in fee simple the right to register the land. There is no claim made in this case that the petitioner was such owner.

That section also gives to a mortgagor the right to have his interest registered, and it is claimed by the petitioner that she is a

mortgagor within the meaning of that section. The contract evidenced by the deeds in this case is defined and governed by article 1507 *et seq.* of the Civil Code. It is known as the contract of *pacto de retro*.

The rights and obligations of the parties to such a contract are stated in those articles and the two contracts in question come exactly within the terms of those articles. The law in regard to mortgages is found in the Mortgage Law, and in title 15 of book 4 of the Civil Code. An examination of these provisions of the law will show that there is a radical difference between a contract of *pacto de retro* and a mortgage. Under the former if the seller does not repurchase the property upon the very day named in the contract, by the express terms of article 1509 he loses all interest therein, whereas by the provisions in regard to mortgages the mortgagor does not lose his interest in the property if he fails to pay the debt at its maturity.

It is the duty of the mortgagee to foreclose the mortgage if he wishes to secure a perfect title thereto, and after the maturity of the debt secured by the mortgage, and before foreclosure, the mortgagor has a right to redeem. In the case of a *pacto de retro* there is no obligation resting upon the purchaser to foreclose. Neither does the vendor, as has been said, have any right to redeem the property after the maturity of the debt. When the word "mortgage" was used in section 19 of Act No. 496 there was in existence a contract of that name, and it must be considered that the intention was to refer to that contract, and not to any other. If it had been the intention of the Commission to have included in section 19 rights derived from contracts differing from mortgages both in name and nature, it would have undoubtedly so stated. Since this case has been removed to this court a law has been passed which expressly gives to a person in the situation of the petitioner the right to have his interest registered. (Act No. 1108, sec. 6.)

We hold, in conformity with the decision of the court below, that the petitioner, at the time she presented her petition for registration, was not entitled to have the land registered, and the decision of that court is affirmed, and, after the expiration of twenty days, judgment shall be entered accordingly and this decision certified

to the Court of Land Registration. Sa ordered.

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

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