

96 Phil. 37

[ G.R. No. L-5572. October 26, 1954 ]

**PEDRO GUERRERO, PETITIONER, VS. SERAPION D. YÑIGO AND THE COURT OF APPEALS, RESPONDENTS.**

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

**PADILLA, J.:**

This is a petition for a writ of certiorari to review the judgment of the Court of Appeals which reversed that of the Court of First Instance of Nueva Ecija (Civil No. 207). The last mentioned Court held that the plaintiff therein, now petitioner, is—

\*\*\* the legal owner of the western part of the land described in 'Certificate of Title No. 19251, Exhibit B, subject to a lien for P1,847.22 in favor of defendant Yñigo within the stipulated period mentioned in Exhibits 3, 4 and 5;

voided and annulled Exhibit 2, the deed of sale in favor of the defendants therein, the spouses Serapion D. Yñigo and Francisca D. Batañgan, as to the western half of the parcel of land described in the certificate of title above mentioned, and—

\*\*\* for the purpose of final adjudication of the corresponding half, plaintiff Guerrero and defendant Yñigo are hereby ordered to cause the measurement and subdivision of the property described in Certificate of Title No. 19251. Certificate of Title No. T-520 is ordered cancelled. With costs against defendant Catabona.

On appeal the Court of Appeals reversed the foregoing judgment of the Court of First Instance of Nueva Ecija and absolved the defendants from the complaint and declared them the absolute and exclusive owners of the parcel of land on the ground that the plaintiff therein, now the petitioner, was a purchaser in bad faith. The Court of Appeals further held that as the parcel of land was sold with *pacto de retro* and the corresponding deed was executed and registered prior to the purchase of one-half of the land by Guererro from Catabona, Yñigo has a better right.

The Court of Appeals found the following:

\* \* \* the defendant Amando Catabona who has been adjudged in default had been mortgaging the land described in the complaint, as follows:

“A parcel of land, situated in Maranac, barrio of Baquiao, municipality of Guimba, bounded on the North by Maranac Creek; on the east, by property of Fernando Pimentel; on the south, by property of Casimiro de la Cruz; and on the west, by a creek and property of Engracio Pilapil. Containing an area of one hundred seventy-five thousand forty-one square meters,” in favor of Serapion Yñigo and his wife, Francisca D. Batañgan prior to March 2, 1944 when again he mortgaged it in favor of the same parties for the sum of P18,000 payable within five years from said date on condition, among others, “that should he desire to convey or sell in the future the above described land he promised to sell the same to the mortgagees for the sum of P18,000, and that the amount of the mortgage, to wit P18,000, shall be treated as payment of one-half, or 87,520 square meters more or less, of the above described parcel of land covered by Transfer Certificate of Title No. 19251 of the land records of Nueva Ecija, and further warrants that he shall sell the said mentioned and to no other except to the said spouses and by virtue thereof shall give the latter the right to sue him for damages which they may incur plus reasonable attorney’s fees. Said mortgage was duly registered in the Office of the Register of Deeds on March 18, 1944.

On April

20, 1944, Amando Catabona again secured a loan of P4,000 from Serapion Yñigo and his wife, and to insure payment thereof executed a second mortgage on the same parcel of land payable within two months after the expiration of five years from said date and subject to the same condition that should Catabona desire to sell the above described land he promised to sell the same to the same mortgagees, at the price of 1\*2,000 per hectare and that should he sell it to others, the mortgagees may sue him for damages, plus reasonable attorney's fees (Exhibit 4). Said mortgage was registered on the back of Transfer Certificate of Title No. 19251 on May 18, 1944.

On July 11,

1944, Catabona again mortgaged or sold the land to Serapion Yñigo and his wife for the sum of P5,000 on condition that should he fail to redeem the property after the period of five years by paying back and returning the above mentioned amount and the right of possession, and within the said period, title thereto shall pass to and become vested absolutely in the said spouses. Again the corresponding deed, Exhibit 5, was registered on the back of "Transfer Certificate of Title No. 19251 on the same date, July 11, 1944.

On August 4, 1944,

Catabona sold one-half of the same land and executed a deed of absolute sale in favor of Pedro L. Guerrero married to Consolacion Silvestre for the sum of P90,000. Guerrero said that Catabona offered to sell one-half of the land to him with the information that one-half of the land was mortgaged in favor of Atty. Yñigo and that he offered to sell the land to the mortgagees but the latter ' could not afford to pay the price he was asking for it. He then invited Catabona to see Yñigo and Serapion himself told Catabona that he could not afford to pay the high price that Catabona was asking. He asked Yñigo "How is it then, do you not resent if I buy the property?" to which Yñigo answered "*I will not, provided that the obligation to me is paid.*" (Italics supplied)

After

the execution of the deed of sale, Exhibit A, and the payment Guerrero

and Catabona went to see Yñigo but only found his wife to whom they talked about the matter. Mrs. Yñigo told them that her husband was in Manila and advised them to return upon his arrival. They again went to see Yñigo in September to pay the obligation and get the certificate of title but again failed to see him. Guerrero was not able to take possession of the land because Catabona requested him to allow him to plant palay until the harvest was over. Catabona, however, kept the land from 1944 up to 1947 on the pretext that because he was paid in Japanese war notes which were rendered worthless, he wanted to continue in possession of the land so as to be able to compensate his loss, and since 1947 Yñigo has the one in possession including the one-half portion involved which, according to Guerrero's compadre, Catabona yields four (4) cavanos annually and that was the net share Catabona was to receive from the tenants.

On July 20, 1945 Atty. Lauro Sansano filed a petition for the surrender of the owner's duplicate of Transfer Certificate of Title No. 19251, Exhibit C, to which Atty. Espinosa, in behalf of Serapion Yñigo, filed an opposition, Exhibit C-1. On August 6 the petition was denied (Exhibit C-2). A motion to reconsider said order was again denied on September 26, 1945. On October 18, however, the order was reconsidered and Serapion Yñigo, the holder of Transfer Certificate of Title No. 19251, was ordered to surrender the same to the register of deeds for the registration of the sale above-mentioned subject to his preferential right.

On October 24 Exhibit A, the deed of sale in favor of Guerrero, and Exhibit B, the deed of partition entered into between Catabona and Guerrero whereby the eastern half of the land was adjudged to Catabona and the western half to Guerrero were presented to the register of Deeds of Nueva Ecija for registration, but because of the failure of Guerrero to produce the owner's duplicate of the owner's copy of the corresponding Transfer Certificate of Title, the registration was not completed. Guerrero secured on October 24 the issuance of Tax Declaration No. 21868, Exhibit F, in his favor, for one-half of the land in question and paid the corresponding tax for the year 1946.

On

November 16, 1946, Amando Catahona executed a deed of absolute sale of the land in question in favor of Yñigo for the sum of P6,000, Exhibit 2, which was presented for registration in the office of the Register of Deeds on November 18, 1946, as a result of which Transfer Certificate of Title No. T-520, Exhibit 1, was issued in favor of Yñigo married to Francisca D. Batañgan, subject to the *lis pendens* field in connection with Civil Case No. 207 of the Court of First Instance of Nueva Ecija.

All the instruments attached to the complaint executed by Amando Catabona conveying the parcel of land, half of which is involved in this litigation, to the spouses Serapion D. Yñigo and Francisca D. Batañgan, the first for P18,000 executed on 2 March 1944, the second for P4,000 executed on 20 April 1944 and the third for P5,000 executed on 11 July 1944, are mortgages to secure the payment of the loans. It is true that in the last instrument the words “mortgage with conditional sale” were used and the following was stipulated:

That the Party of the First Part, by these presents, reserves for himself and his heirs the right to redeem the said property after the period of five years from the date hereof by paying back and returning the above-mentioned amount and the right of possession and use within the said period; and that on failure of the “Party of the First Part to exercise the said right to redeem the said property according to the terms hereof, titio thereto shall pass to and become vested, absolutely, in the Party of the Second Part.

The first clause was an attempt to stipulate the time when payment of the loan was to be made but except as to the period of five years from the date of the instrument within which the mortgagor may not redeem the property there is no period after the five years within which the mortgagor may redeem it;<sup>[1]</sup> and if the second clause fee construed as giving the mortgagees the right to own the property upon failure of the mortgagor to pay the loan on the stipulated time-which is not provided-that would be *pactum commissorium* which is unlawful and void.<sup>[2]</sup> The clause is conclusive proof that it is a mortgage and not a sale with

*pacto de retro*

because if it were the latter title to the parcel of land would pass unto the vendee upon the execution of the sale and not later as stipulated that “title thereto shall pass to and become vested, absolutely, in the Party of the Second Part” “on failure of the Party of the First Part to exercise the said right to redeem the said property according to the terms hereof.” Therefore, no sale of the parcel of land with the right to repurchase was made by Amando Catabona to the spouses of Serapion D. Yñigo and Francisca D. Batafigan. The registration of the three instruments created a real right in favor of the mortgagees. But the fact that in the instruments the mortgagor undertook, bound and promised to sell the parcel of land to the mortgagees, such undertaking, obligation or promise, to sell the parcel of land to the mortgagees does not bind the land. It is just a personal obligation of the mortgagor. So that when Amando Catabona sold one-half of the parcel of land (the western part) on 4 August 1944 to Pedro Guerrero the sale was legal and valid. If there should be any action accruing to Yñigo it would be a personal action for damages against Catabona. If Guerrero contributed to the breach of the contract by Catabona, the former together with the latter may also be liable for damages. If Guerrero was guilty of fraud which would be a ground for rescission of the contract of sale in his favor, Catabona and not Yñigo would be the party entitled to bring the action for annulment.

The judgment of the Court of Appeals is reversed and the petitioner is declared the lawful owner of one-half of the parcel of land (the western part) described in transfer certificate of title No. 19251, subject to a mortgage to secure the payment of P1,847.22<sup>[1]</sup> in favor of the spouses Serapion D. Yñigo and Francisca D. Batañgan payable within such period of time as may be fixed by the Court upon petition, without pronouncement as to costs.

*Paras, C J., Pablo, Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion, and Reyes, J. B. L., JJ., concur.*

<sup>[1]</sup> Lack of stipulation as to such period may be supplied by the Court upon application (Article 1128, Old Civil Code or Article 1197, New Civil Code).

<sup>[2]</sup> Articles 1859 and 1884, Old Civil Code; 2088 and 2137, New Civil Code; *Tan Chun Tic vs. West Coast Life Insurance Co. et al.*, 54 Phil., 361.

<sup>[1]</sup> This sum is a reduction of the several sums paid in Japanese war notes to the currency of the Republic made by the trial court as per Ballantyne schedule.

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