

[G.R. No. L-5977. February 17, 1955]

FERNANDO FERNANDEZ, ET AL., PLAINTIFFS AND APPELLEES, VS. CARIDAD SUPLIDO, ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

PARAS, C.J.:

On January 22, 1947, the plaintiffs, Fernando Fernandez and Natividad Sumatra, filed an action against the defendants, Caridad Suplido, Virgilio Suplido, Expectacion Suplido, Eleno Niervo and Elpidio Suplido, in the Court of First Instance of Iloilo, for the purpose of recovering possession of a lot alleged to have been sold to the plaintiffs on November 11, 1946 by Jose Suplido, Virgilio Suplido and Expectacion Suplido for the price of P1,500.00, with the right on the part of the vendors to repurchase the property within two years, the sale being evidenced by a public instrument acknowledged before notary public Cirilo Zorrilla. The defendants, Virgilio Suplido and Expectacion Suplido, filed an answer alleging that the transaction was in fact a loan of P900.00 with usurious interest, secured by a mortgage. After trial the Court of First Instance of Iloilo rendered on April 20, 1950, a decision in favor of the plaintiffs, sustaining the validity and authenticity of the document relied upon by the plain tiffs. This decision was affirmed by the Court of Appeals on February 18, 1952.

On March 19, 1952, the defendants filed a motion, alleging that they had deposited with the clerk of the Court of First Instance of Iloilo the sum of P1,545.00 covering the repurchase price plus costs of suit and other expenses, and praying that the plaintiffs be ordered to execute a deed of resale in favor of the defendants and the register of deeds of Iloilo to cancel the notice of *lis pendens* annotated on the back of Original Certificate of Title No. 49535. The defendants invoked article 1606 of the new Civil Code which provides

that “the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase.” On April 7, 1952, the Court of First Instance of Iloilo issued an order denying the defendants’ motion, on the ground that its decision and that of the Court of Appeals in favor of the plaintiffs, upholding the validity of the *pacto de retro* sale, had become final, and article 1606 is not applicable because the plaintiffs had already acquired a vested right to the land in question by reason of the defendants’ failure to repurchase within two years from November 11, 1946. From this order the defendants have appealed.

Appellants in their brief have exerted efforts to reopen the question whether the document sued upon by the plaintiff is a *pacto de retro* sale or an equitable mortgage. Said efforts are clearly out of place, in view of the finality of the decisions of the Court of First Instance of Iloilo and the Court of Appeals. However, appellants’ contention that they should be allowed to redeem the property, having deposited with the clerk of the Court of First Instance of Iloilo on March 14, 1952, or less than 30 days after the promulgation of the decision of the Court of Appeals, is tenable. It is clear that, after the plaintiffs had filed the present action on January 22, 1947, or less than three months after the execution of the *pacto de retro* sale on November 11, 1946, and until the decision of the Court of Appeals promulgated on February 18, 1952, had become final, the defendants could not fairly be expected to exercise their right of redemption, for the simple reason that they were claiming that the transaction was not a *pacto de retro* sale but merely an equitable mortgage securing a loan with usurious interest. The appellants can not be said to have acted in bad faith, as they had a right to wait for the final outcome of the present action. As pointed out in *Ong Chua vs. Carr*, 53 Phil. 975, the pendency of an action brought in good faith and relating to the validity of a sale with *pacto de retro* tolls the term for the right of redemption. Strictly speaking, therefore, the two-year period within which the defendants could repurchase under the sale executed on November 11, 1946, was suspended after filing of this case on January 22, 1947, and again , commenced to run only after the decision of the Court of Appeals had become final, and this could not have been earlier than fifteen days after February 18, 1952, even assuming that the defendants received notice of said

decision on the same date and they did not file any motion for reconsideration. It follows that the deposit made by the defendants with the clerk of the Court of First Instance of Iloilo on March 14, 1952 was well within the period stipulated in the *pacto de retro* sale.

The appellants argue that they are entitled to redeem, under article 1606 of the new Civil Code, because article 2253 provides that "if a right should be declared for the first time in this Code, it shall be effective at once, even though the act or event which gives rise thereto may have been done or may have occurred under the .prior legislation, provided said new right does not prejudice or impair any vested or acquired right, of the same origin." In view, however, of what we have already stated regarding the suspension of the two-year period within which the appellants could repurchase, it is unnecessary to discuss the applicability of article 1606.

Wherefore, the appealed order is reversed and the plaintiffs are ordered to execute in favor of the defendants a deed reconveying the land in question, after the amount deposited with the clerk of the Court of First Instance of Iloilo shall have been delivered to the plaintiffs, it ibeing understood that said amount shall cover the repurchase price plus other legal expenses; and the register of deeds of Iloilo is hereby directed to cancel the notice of lis pendens annotated on the back of Original Certificate of Title No.- 49535. Without costs.

Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., concur.

Order reversed.