

[G.R. Nos. L-7906 and L-10176. October 22, 1957]

ENRIQUE KARE AND HONESTO K. BAUSA, PETITIONERS VS. JOSE H. IMPERIAL, JR., JUDICIAL EXECUTOR OF THE TESTATE ESTATE OF JOSE F. IMPERIAL, SAMSON IN SUBSTITUTION OF THE LATTER AND THE COURT OF APPEALS, RESPONDENTS.

D E C I S I O N

MONTEMAYOR, J.:

On June 12, 1944, Jose F. Imperial Samson (now deceased) executed a document entitled "Escritura de Venta con Pacto de Retro", conveying to Buensoselita Morales a lot in the *poblacion* of Tabaco, Albay, with an area of about 1,000 square meters with a building of strong material on it, for the sum of P25,000 (apparently Japanese military notes). The period for redemption is expressed in the third paragraph of the deed, which we quote below:

"3.º Que la Segunda Parte por la presente concede a la Primera Parte el derecho de recomprar la propiedad arriba mencionada, entendiendose expresamente sin embargo, que dicha recompra se podra ejecutar por dicha Primera Parte solamente dentro del periodo de un (1) año a partir de la expiracion de seis (6) meses despues de la terminacion de la presente guerra en el Asia Oriental Mas Grande, y que dicho retracto no se efectuara en ningun caso antes de la expiracion de dichos seis (6) meses aqui estipulados. Las partes convienen ademas que, expirado dicho periodo de un (1) año o sea un periodo de dieciocho (18) meses despues de la terminacion de esta guerra sin que la Primera Parte haya ejercitado dicho derecho de recompra, el derecho de propiedad sobre el terreno arriba descrito sera consolidado a nombre de dicha Segunda Parte, sus herederos, sucesores, cesionarios y causahabientes."

The price and kind of currency to be used in the repurchase is stated in the fourth paragraph of the deed, the pertinent portion of which is reproduced below:

“4.º Que para ejercitar el derecho de recompra, la Primera Parte se compromete y se obliga a devolver dicha Segunda Parte la cantidad de Veinticinco Mil (25,000) Pesos en moneda legal y corriente (legal tender) al hacerse dicha recompra, mas los gastos que se incurriesen * * *.

It would appear that two-thirds of the sales price of P25,000 paid by Morales for the lot was furnished by Enrique Kare and Honesto K. Bausa, and so on the same date of the “escritura”, June 12, 1944, vendee Morales executed a document acknowledging receipt of two-thirds of P25,000 from Kare and Bausa, and in consideration thereof, assigned, transferred, and conveyed to them two-thirds undivided interest in the property acquired by her from Imperial Samson, with the stipulation that should the latter exercise his right to repurchase, the repurchase price shall be divided between them, Morales, Kare and Bausa, share and share alike.

On March 26, 1946, Imperial Samson sent a letter Exhibit 5, to Morales offering to redeem the property in Philippine currency, the repurchase price to be at the rate of 1 to 150, supposed to be the prevailing rate between the Philippine peso and the Japanese war notes in 1944. This offer was rejected, and in the course of further negotiation, Samson raised his offer to P15,000, Philippine currency, which offer was also rejected by Morales. Thereafter, Samson filed the present action on March 12, 1947 to declare the deed (Escritura de Venta con Pacto de Retro) null and void and of no effect, for the reason that the contract between them was a mere mortgage, the lot in question having been given as mere security for the payment of the loan of P25,000; to allow the plaintiff to give in full payment of the loan of P25,000, Japanese war notes, its equivalent in Philippine currency, and to order defendant to return the possession of the property.

With the permission of the lower court, Kare and Bausa filed an answer in intervention. Defendant Morales and intervenors claim that plaintiff had failed to exercise his right to repurchase within the period of eighteen months after the termination of the last war, and so they had become owners of the lot in question.

After hearing, the trial court in its decision of October 17, 1951, held that the contract between Imperial Samson and Morales was a sale with right of repurchase; that, in relation to the period of redemption, the parties had in mind the ordinary, not the legal meaning of "termination of the war of Greater East Asia", namely, the signing of the armistice or the surrender of Japan on September 2, 1945, and that the period of redemption should be computed from said date; that plaintiff's offer made in Exhibit 5 on March 26, 1946, was not a valid exercise of his right to repurchase under the law, because he offered in payment an amount different from the stipulated repurchase price; and that inasmuch as he, plaintiff, failed to exercise his right to repurchase within eighteen months from September 2, 1945, he lost said right and so it dismissed the complaint.

On appeal taken by plaintiff to the Court of Appeals, the latter in its decision of May 19, 1954, agreed with the trial court that the contract in question was one of sale with *pacto de retro*, and not of mortgage; but it held that the Greater East Asia War had not yet ended, and consequently, the period of repurchase as stipulated by the parties had not yet commenced to run, much less expired, and so it modified the appealed judgment in the sense that the complaint should be dismissed, not because the period of redemption of the property had expired, but because "the action had been instituted before the period of repurchase or redemption had commenced". Incidentally, the appellate court said that plaintiff-appellant "in order to repurchase or redeem the property, should pay the repurchase price in Philippine currency, which is the legal tender, in the amount of P25,000."

Defendant Morales and intervenors Kare and Bausa filed a joint motion for reconsideration, which was denied by minute resolution. Thereafter, intervenors appealed the case to us. Imperial Samson also filed a motion for reconsideration, which motion took longer to decide for, at the request of the parties, it was set for oral argument. Said motion was finally decided by the Court of Appeals by its resolution of December 16, 1955.

The Court of Appeals in its resolution said that the contract involved was that of sale with *pacto de retro*; that it reiterated its previous holding "that the Greater East Asia War had not yet ended; that the agreement of the parties as to the repurchase after said war would result in exceeding ten years, contrary to the provisions of Article 1508 of the Civil Code, consequently said agreement is null and void. The court also said that judging from the term of the contract, it was the intention of the parties that the price of repurchase be in Philippine currency. It concluded by modifying the original decision in the sense that the appealed decision of the court was to be reversed and the defendant-appellee and the

intervenors were ordered to allow plaintiff-appellant to repurchase, the lot with its improvements and to execute the deed of repurchase in his favor on payment of the sum of P25,000, Philippine currency, and the expenses specified in the contract. The plaintiff, or rather, the judicial executor of his testate estate, Imperial Jr., and intervenors now seek the review of the decision as modified.

On the question whether or not the filing of the present suit on March 12, 1947 can be considered an action to enforce plaintiff's right to reconvey the lot in question, while the Court of Appeals in its resolution answers the question in the affirmative, the intervenors-appellants claim that the action was only to declare void the contract between plaintiff and defendant Morales, the former contending that said contract was one only of mortgage. We agree with the Court of Appeals that plaintiff's action, instituted on March 12, 1947, may be regarded as one to enforce, his right to repurchase. In plaintiff's testimony, part of which is quoted on pages 51-53 of the brief of respondent Imperial Jr., he told the trial court that on various occasions, he wanted to repurchase the property from Morales, but that the latter repeatedly asked him for time because she wanted to first reimburse herself of certain expenses she had incurred in the maintenance or preservation of the property, and that because of her request in the course of which she even wept, he granted the extension. Then he was asked the following questions to "which he gave the following answer:

"P. Recuerda usted las veces y las fechas en que usted ha tomado pasos para retrotraer esa propiedad en cuestion?

R. Muchas veces. Yo calculo que de parte mia unas cuatro veces, y mi hijo el abogado Jose Imperial tambien fue a verla en su oficina pero no hemos conseguido ninguna contestacion definitiva sobre su conformidad. La Srta. Morales ha estado evadiendo siempre.

P. En vista de esa actitud demostrada por la demandada, que hizo usted"?

R. No he tenido otro remedio mas que presentar esta accion contra ella para salvaguardar mis derechos de retracto.”

From this we can conclude that plaintiff commenced the present action to safeguard his right of repurchase. Furthermore, it would appear that the parties themselves brought up the issue of redemption or repurchase in the trial court and it was extensively discussed by them, as may be gathered from a portion of the decision of the trial court, a portion of which we quote:

“Three question are raised by the parties: first, whether the contract is a sale with *pacto de retro* or an equitable mortgage; second, granting that the contract is pacto de retro sale, whether or not the period of redemption has already expired; and third, the amount of the redemption price.”

The Court of Appeals is, therefore, correct in its finding that plaintiff tried and made a valid offer to repurchase within the period of redemption agreed to by the parties.

But the period of redemption can be viewed and resolved from another angle. As already stated, the parties stipulated that the repurchase could be made at the end of the Greater East Asia War, not sooner than six months, but not later than eighteen months, thereafter. The question to determine is when did said war of Greater East Asia end. This Court in the case of *De la Paz Fabie vs. Court of Appeals*, 96 Phil., 683, said:

“Anyway, in this jurisdiction the language of a writing ‘is to be interpreted according to the *legal meaning* it bears in the place of its execution! * * * (Rule 123 section 68) and as stated in the *Raquiza, Yamashita and Untal* cases, the war terminates *in a legal sense*, upon official proclamation.”

Now, if under the contract of sale with right of repurchase, the termination of the Greater East Asia War is to be based on its legal meaning or legal sense, namely, official proclamation, the next question that arises is, when was said official proclamation made. In

the case of *Navarre vs. Barredo et al.*, (99 Phil., 164, 53 Off. Gaz., [21] 7696) we said:

“In the legal sense, war formally ended in the Philippines the moment President Truman officially issued a proclamation of peace on December 31, 1946 upon the theory that the Philippines, even if already independent, was an ally of the United States because, according to this Court ‘war terminates when peace is formally proclaimed’ (De la Paz Fabie vs. Court of Appeals, G.R. No. L-6386.) And if counsel meant that there should be a formal treaty of peace, the purpose has been accomplished when the treaty of peace with Japan had been signed in San Francisco, California on September 8, 1951 by the United States and the Allied Powers including the Philippines.” (Italics supplied).

It is, therefore, clear that the Greater East Asia War ended officially on December 31, 1946. In this connection, it may be stated in justice to the Court of Appeals that at the time that said court, in its original decision of May 19, 1954 and its resolution of December 16, 1955, held that the Greater East Asia War had not yet ended, our decision in the *Navarre vs. Barredo* case had not yet been promulgated. From December 31, 1946 to the filing of said action on March 12, 1947, there was an interval of only about three months, so that the offer to repurchase was made well within the period fixed by the parties.

The last question to be decided is the repurchase price. This does not require much discussion. In a long line of cases,^[1] we have held that; when a monetary obligation is contracted during the Japanese occupation, to be discharged after the war, the payment should be made in Philippine currency. One of the reasons for that ruling is that the parties in stipulating to have the monetary obligation discharged not before but after- the termination of the war, intended to have the said obligation paid not in the Japanese war notes, but in Philippine currency. This is made clear in the fourth paragraph of the “*Escritura de Ventu con Facto de Retro*”, reproduced in part at the beginning of this decision, wherein it stipulated that the repurchase price of P25,000 shall be in legal tender (“*en moneda legal y corriente*”) when the repurchase is made.

In view of the forgoing, the appealed decision, as modified by the resolution aforecited, is affirmed in so far as it reverses the decision of the trial court and permits repurchase and orders the defendant Morales and the intervenors Kare and Bausa to execute a deed of

repurchase in favor of the plaintiff upon the latter's payment of P25,000, Philippine currency, plus the expenses specified in the contract. No costs.

Bengzon, Reyes, A., Bautista Angelo, and Labrador JJ., concur.

Concepcion and Felix, JJ., concur in the result.

Padilla, J. concurring and dissenting:

I concur in the opinion of the majority on the point as to when the Greater East Asia war terminated. I disagree, however, with the writer of the majority opinion as to the amount of the repurchase price. My view is that P25,000 of the present currency has very much more value than P25,000 in Japanese military or war notes lent on 12 June, 1944. I reiterate herein the reasons for my dissent in the case of *De Leon vs. Syjuco*, 90 Phil., 311.

Paras, C.J., concurs.

Appealed decision, as modified by the resolution died therein, affirmed in so far as it reverses the decision of the trial court.

^[1] *Roño vs. Gomez*, 83 Phil., 890, 46 Off. Gaz. (11) 859; *Gomez vs. Tabia*, 84 Phil., 269, 47 Off. Gaz. 641; *De Leon vs. Syjuco*, G. 90 Phil., 311; *Garcia vs. De los Santos*, 98 Phil., 683, 49 Off. Gaz., [11] 4830).