

## PASTOR AMIGO AND JUSTINO AMIGO, PETITIONERS, VS. SERAFIN TEVES, RESPONDENT.

*G.R. No. L-6389. November 29, 1954*

Ponente: BAUTISTA ANGELO, J.

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### BAUTISTA ANGELO, J.:

This is a petition for review of a decision of the Court of Appeals modifying that of the court of origin in the sense that plaintiffs, now petitioners, should not be made to pay the sum of P100.00 as attorney's fees.

This petition stems from an action filed by petitioners in the Court of First Instance of Negros Oriental praying that judgment be rendered: (a) declaring that the contract entered into between Marcelino M.; Amigo and Serafin Teves on October 30, 1938 is merely a contract of mortgage and not a sale with right to repurchase; (b) declaring that even if said contract be one of sale with right to repurchase the offer to repurchase by the vendors was made within the period agreed upon; (c) condemning respondents to execute a deed of reconveyance; and (d) condemning respondents to restore the property to petitioners and to pay P2,500 as damages.

The important facts which need to be considered for purposes of this petition as found by the Court of Appeals may be briefly summarized as follows: On August 11, 1937, Macario Amigo and Anaclea Galalitan executed in favor of their son, Marcelino Amigo, a power of attorney granting to the latter, among others, the power "to lease, let, bargain, transfer, convey and sell, remise, release, mortgage and hypothecate, part or any of the properties \* \* \* upon such terms and conditions, and under such covenants as he shall think fit."

On October 30, 1938, Marcelino Amigo, in his capacity as attorney-in-fact, executed a deed of sale of a parcel of land for a price of P3,000 in favor of Serafin Teves stipulating therein that the vendors could re-purchase the land within a period of 18 months from the date of the sale. In the same document, it was also stipulated that the vendors would remain in possession of the land as lessees for a period of 18 months subject to the following terms and conditions: (a) the lessees shall pay P80 as rent every six months from the date of the agreement; (b) the period of the lease shall terminate on April 30, 1940; (c) in case of litigation, the lessees shall pay P100.00 as attorney's fees; and (d) in case of failure to pay any rental as agreed upon, the lease shall automatically terminate and the right of ownership of vendee shall become absolute.

On July 20, 1939, the spouses Macario Amigo and Anaclea Galalitan donated to their sons Justino Amigo and Pastor Amigo (several parcels of land including their right to repurchase the land in litigation. The deed of donation was made in 4 public instrument, was duly accepted by the donees, and was registered in the Office of the Register of Deeds.

The vendors-lessees paid the rental corresponding to the first six months, but not the rental for the subsequent semester, and so on January 8, 1940, Serafin Teves, the vendee-lessor, executed an "Affidavit of Consolidation of Title" in view of the failure of the lessees to pay the rental as agreed upon, and registered said affidavit in the Office of the Register of Deeds of Negros Oriental, who, on January 28, 1940, issued to Serafin Teves the corresponding transfer certificate of title over the land in question.

On March 9, 1940, Justino Amigo and Pastor Amigo, as donees of the right to repurchase the land in question, offered to repurchase the land from Serafin Teves by tendering to him the payment of the redemption price but the latter refused on the ground that the ownership had already been consolidated in him as purchaser a retro. Hence, on April 26, 1940, before the expiration of the 18-month period stipulated for the redemption of the land, the donees instituted the present action.

The issues posed by petitioners are: (1) The lease covenant contained in the deed of sale with pacto de retro executed by Marcelino Amigo as attorney-in-fact in favor of Serafin Teves is not germane to, nor within the purview of, the powers granted to said attorney-in-fact and, therefore, is ultra vires and null and void; (2) the penal clause stipulated in the lease covenant referring to the automatic termination of the period of redemption is null and void; and (3) petitioners should be allowed to repurchase the land on equitable grounds considering the great disproportion between the redemption price and the market value of the land on the date the period of redemption is supposed to expire.

Petitioners contend that, while the attorney-in-fact, Marcelino Amigo, had the power to execute a deed of sale with right to repurchase under the power of attorney granted to him, however, the covenant of lease contained in said deed whereby the vendors agreed to remain in possession of the land as lessees is not germane to said power of attorney and, therefore, Marcelino Amigo acted in excess of his powers as such attorney-in-fact. The Court of Appeals, therefore, committed an error in not declaring said covenant of lease ultra vires and null and void.

The Court of Appeals, after analyzing the extent and scope of the powers granted to Marcelino Amigo in the power of attorney executed in his favor by his principals, found that such powers are broad enough to justify the execution of any contract concerning the lands covered by the authority even if this be a contract of lease. The court even went further: even in the supposition that the power to take the land under lease is not included within the authority granted, petitioners cannot now impugn the validity of the lease covenant because such right devolves upon the principals, who are the only ones who can claim that their agent has exceeded the authority granted to him, and because said principals had tacitly ratified the act done by said agent.

We find no plausible reason to disturb this finding of the Court of Appeals. The same, in our opinion, is in consonance with the evidence presented and with the conclusions that should be drawn from said evidence. This can be shown from a mere examination of the power of attorney (Exhibit D). A cursory reading thereof would at once reveal that the power granted to the agent is so broad that it practically covers the celebration of any contract and the conclusion of any covenant or stipulation. Thus, among the powers granted are: "to bargain, contract, agree for, purchase, receive, and keep lands, tenements, hereditaments, and accept the seizing and possession of all lands," or "to lease, let, bargain, transfer, convey and sell, remise, release, mortgage and hypothecate \* \* \* upon such terms and conditions, and under such covenants as he shall think fit." (Italics supplied) When the power of attorney says that the agent can enter into any contract concerning the land, or can sell the land under any term or condition and covenant he may think fit, it undoubtedly means that he can act in the same manner and with the same breadth and latitude as the principal could concerning the property. The fact that the agent has acted in accordance with the wish of his principals can be inferred from their attitude in donating to the herein petitioners the right to redeem the land under the terms and conditions appearing in the deed of sale executed by their agent.

On the other hand, we find nothing unusual in the lease covenant embodied in the deed of sale for such is common in contracts involving sales of land with pacto de retro. The lease that a vendor executes on the property may be considered as a means of delivery or tradition by constitutum possessorium. Where the vendor a retro continues to occupy the land as lessee, by fiction of law, the possession is deemed to be constituted in the vendee by virtue of this mode of tradition (10 Kanresa, 4th ed. p. 124). We may say therefore that this covenant regarding

the lease of the land sold is germane to the contract of sale with pacto de retro.

While the lease covenant may be onerous or may work hardship on the vendor because of its clause providing for the automatic termination of the period of redemption, however, the same is not contrary to law, morals, or public order, which may serve as basis for its nullification. Rather than obnoxious or oppressive, it is a clause common in a sale with pacto de retro, and as it received the sanction of our courts. As an instance, we may cite the case of *Vitug Dimatulac vs. Coronel*, 40 Phil., 686, which, because of its direct bearing on our case, we will presently discuss.

In that case, Dimatulac sold a piece of land to Dolores Coronel for the sum of P9,000, reserving the privilege to repurchase within the period of 5 years. The contract contained a provision "commonly found in contracts of this character" converting the vendor into a lessee of the vendee at an agreed rental, payable annually in the months of January and February, and permitting the vendor to retain possession of the property as lessee until the time allowed for its repurchase. It was also stipulated that in the event the vendor should fail to pay the agreed rental for any year of the five, the right to repurchase would be lost and the ownership consolidated in the vendee. The vendor failed to perform this obligation and continued in arrears in the payment of rent for at least three years, and taking advantage of the clause by which the consolidation of the property was accelerated, the vendee impleaded the vendor in a civil action to compel him to surrender the property. This case, however, was settled by a compromise by virtue of which the vendor agreed to place the property at the disposal of the vendee so that the latter may apply the products of the land to the payment, of the rent. Later, the vendor offered to redeem the property under the contract of sale with pacto de retro, the period of redemption not having as yet expired. The vendee refused the offer on the ground that her title to the property had already been consolidated. This Court declared the lease covenant contained in the contract as lawful, although it found that the act of the vendee in taking possession of the land by way of compromise constituted a waiver of the penal provision relative to the acceleration of the period of redemption. On this point, the Court said:

"It is undeniable that the clause in the contract of sale with pacto de retro of June 30, 1911, providing for extinction of the right of the plaintiff to repurchase in case he should default in the payment of the rent for any year was lawful. The parties to a contract of this character may legitimately fix any period they please, not in excess of ten years, "for the redemption of the property by the vendor; and no sufficient reason occurs to us why the determination of the right of redemption may not be made to depend upon the delinquency of the vendor-now become lessee- in the payment of the stipulated, rent. The supreme court of Spain sustains the affirmative of this proposition (decision of January 18, 1900); and although such a provision, being of a penal nature, may involve hardship to the lessee, the consequences are not worse than such as follow from many other forms of agreement to which contracting parties may lawfully attach their signatures. Nevertheless, admitting the validity of such a provision, it is not to be expected that any court will be reluctant to relieve from its effects wherever this can be done consistently with established principles of law."

We have not failed to take notice of the Court's warning that "admitting the validity of such a provision, it is not to be expected that any court will be reluctant to relieve from its effects wherever this can be done consistently with established principles of law." We only wish that in this case, as in the *Dimatuie* case, a way may be found consistent with law whereby we could relieve the petitioners from the effects of the penal clause under consideration, but, to our regret, none we have found, for respondent has been alert and quick enough to assert his right by consolidating his ownership when the first chance to do so has presented itself. He has shown no vacillation, nor offered any compromise which we may deem as a waiver or a justification for forfeiting the privilege given him under the penal clause. The only alternative left is to enforce it as stipulated in the agreement.

Petitioners also contend that as the assessed value of the land in 1938, when the contract was celebrated, was P4,280, the selling price of P3,000 agreed upon is unconscionable and, therefore, the penal clause should be

considered as not written, and petitioners should be allowed to exercise the right to repurchase on equitable considerations. And in support of this contention, counsel presented evidence to show that the market price of the land in 1940, the year the period of redemption was supposed to expire, was fourteen times more than the money paid for it by respondent such that, if that should be taken as basis, the value of the land would be P43,000.50.

While this contention may have some basis when considered with reference to an absolute contract of sale, it loses weight when applied to a contract of sale with pacto de retro, where the price is usually less than in absolute sales for the reason that in a sale with pacto de retro, the vendor expects to reacquire or redeem the property sold. Another flaw we find is that all the evidence presented refers to sales which were executed in 1940 and 1941 and none was presented pertaining to 1938, or its neighborhood, when the contract in question was entered into. And the main reason we find for not entertaining this claim is that it involves a question of fact and as the Court of Appeals has found that the price paid for the land is not unreasonable as to justify the nullification of the sale, such finding, in an appeal by certiorari, is final and conclusive upon this Court.

Finding no error in the decision appealed from, the same is hereby affirmed, without pronouncement as to costs.

Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, and Concepcion, JJ. concur.

Paras, C.J., reserves his vote.

Mr. Justice Labrador, on leave.

Reyes, J.B.L., J., took no part.

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