

WELGO DICHOSO, ET AL., PLAINTIFFS AND APPELLEES, VS. LAURA ROXAS, ET AL., DEFENDANTS. CELSO BORJA AND NELIA ALANGUILAN, DEFENDANTS AND APPELLANTS.

G. R. No. L-17441. July 31, 1962

Ponente: DIZON, J.

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DIZON, J.:

Appeal from the following decision of the Court of First Instance of Laguna:

"Wherefore, the Court renders judgment ordering the plaintiffs to deposit with the Clerk of this Court for the account of defendant Laura A. Roxas the amount of P320.00 and, upon the deposit of the said amount, defendant Laura A. Roxas is ordered to execute a document transferring her rights, title and interest in the land in controversy to plaintiffs Welgo Dichoso and Emilia Hernandez within five (5) days from such deposit. In the event that Laura A. Roxas fails to execute the document within the aforementioned period, the same shall be executed by the Clerk of Court in her behalf.

"Defendants Celso Borja and Nelia Alanguilan are ordered to execute a deed of re-sale of the land in controversy and the improvements thereon in favor of plaintiffs Welgo Dichoso and Emilia Hernandez within five (5) days after the document of transfer has been executed by or on behalf of Laura A. Roxas. If defendants Celso Borja and Nelia Alanguilan fail to do so, the Clerk of Court shall execute the document in their behalf. At any time after the execution of the deed of re-sale, defendants Celso Borja and Nelia Alanguilan may withdraw from the People's Bank and Trust Company of San Pablo City the amount of P850.00 which had been deposited by plaintiff Welgo Dichoso as repurchase price and the People's Bank & Trust Company is ordered to deliver the said amount to the aforementioned defendants.

"The Court considers defendants Celso Borja and Nelia Alanguilan as possessors in good faith and are not required to account for the fruits that they have received from the land in controversy up to the time this decision becomes final.

"Laura A. Roxas is ordered to return to defendants Celso Borja and Nelia Alanguilan the amount of P1,684.00 which she received as additional purchase price for the land in controversy.

"All defendants are jointly and severally ordered to pay the costs."

The complaint alleged, in substance, that on December 13, 1954 Laura A. Roxas sold to appellants for the sum of P850.00 a parcel of unregistered coconut land with an area of 16,965 square meters and with 393 coconut trees, situated in Barrio San Diego, San Pablo, Laguna, subject to the condition, inter alia, that the vendor could repurchase it for the same amount within five years, but not earlier than three years, from the date of the sale, which was evidenced by a public document attached to the complaint as Annex A; that from November 26, 1955 to July 5, 1957, Roxas had received from appellees several sums of money amounting to P770.00, their agreement being that after December 13, 1957 Roxas would sell the same property, by absolute sale, to appellees for the total sum of P2,000.00, the aforesaid sum of P770.00 to be considered as initial or advance payment on the purchase

price; that out of the balance of P1,230.00, appellees would use the sum of P850.00 to repurchase the property from appellants after December 13, 1954 but within the five years stipulated for the exercise of Roxas' right to repurchase; that on October 22, 1957, pursuant to Roxas' request made on July 23, 1957, appellees sent her a check for the sum of P320.00 "in full payment of the P2,000.00 consideration for the deed of absolute sale" and thereafter they informed appellants of their readiness to repurchase the property; that on November 29, 1957 Roxas sent them back the check just referred to with the request that they endorse the same to appellants when they make the repurchase, because it appeared that, aside from the P850.00 consideration of the pacto de retro sale, Roxas had received additional sums from appellants; that again, after December 13, 1957, appellees made representations to appellants that they were ready to make the repurchase, as well as to Roxas for the latter to be ready to execute the corresponding deed of absolute sale in their favor after they had made the repurchase; that notwithstanding these demand and representations, Roxas and appellants had deliberately failed to execute the corresponding deed of absolute sale and deed of resale already mentioned.

On January 8, 1958 appellants filed a motion to dismiss the complaint upon the ground that appellees had no cause of action against them because their contract was not with them but with Laura A. Roxas. After due hearing, the lower court sustained the motion and dismissed the complaint because, according to the same, "there exists no written contract of assignment of rights executed by Laura A. Roxas in favor of the herein plaintiffs concerning the property which said Laura A. Roxas sold to her co-defendants under a deed of pacto de retro sale, and that the purpose of the present action is precisely to compel Laura A. Roxas to execute the corresponding deed of assignment."

However, on July 31, 1958, over appellants' objection, the lower court admitted the amended complaint previously filed by appellees. The principal amendment introduced consisted in the allegation that on July 5, 1957, for the sum of P770.00, Laura A. Roxas had ceded to appellees her right to repurchase the property from appellants; that on November 29, 1957 Roxas had "ordered and authorized the said plaintiffs spouses to repurchase the said parcel of land from the defendants vendee-a-retro after the 3 years period, which would terminate on December 13, 1957," and that on December 13, 1957 appellees tendered to appellants the required sum with which to effect the repurchase, but that the latter refused to accept the same, thus compelling appellees to consign the amount with the Office of the Clerk, Court of First Instance of Laguna.

Upon petition of appellants the lower court, on August 18, 1958, ordered appellees to furnish, and the latter furnished appellants, with a copy of the alleged deed of assignment dated July 8, 1958 referred to in paragraph 4 of the amended complaint, which deed reads as follows:

"TALASTASIN NG SINO MAN:

Tinangap ko ngayong Julio 6, 1957 ang halagang Pitong Daan at Pitong Pong (P770.00) peso cuartang pang kasalukuyan sa mag-asawa ni Welgo Dichoso at Emilia Hernandez, bilang paunang bayad sa isang puesto kong lupa humigit kumulang sa apat na raang tanim na niog.

Ang aming pinagkasandoan pag dating ng halagang dalawang libong (P2,000.00) pesong pagkakautang pate tubos na walong daan at limang pong (P850.00) peso sa pagka pagbili na mabibiling muli (o sanla) sa magasawa ni Celso Borja at Nelia Alanguilan ay mag gagawaan ng documento o kasulatan na bilihing toloyan o bintarial absoluta sa halagang dalawang libong (P2,000.00) peso na nasabe sa itaas nito.

Ang nasabing lupa ay nakatayo sa Salang lupa kung tawagin Bo. San Diego sakop ng Ciudad ng San Pablo. Sa katonayan na hinde ako sisira sa mga pinagusapan ay lumagda ako ng pangalan at apellido na kaharap ang isang testigo.

(Lgda.) Cosme Punto (Lgda.) Laura A. Roxas"

A motion to dismiss the amended complaint was denied by the lower court for the reason that the grounds relied upon therein did not appear to be indubitable and their consideration was deferred until after trial on the merits. Thereafter appellants filed their answer in which, after making specific denial of some facts averred in the amended complaint, they alleged the following affirmative defenses:

"1. That the alleged transfer of right to repurchase supposedly executed by defendant Laura A. Roxas in favor of plaintiffs herein is not in any manner a transfer of right to repurchase but at most a receipt of indebtedness;

"2. That even assuming although not admitting that there was a transfer of right to repurchase made by the defendant Laura Roxas in favor of the plaintiffs regarding the property in question, yet said right to repurchase could not be exercised by the plaintiffs considering that before December 13, 1957 arrived, the period within which the repurchase might be made, said land in question had already become the absolute and exclusive property of the answering defendants herein.

"3. That defendants spouses in the exercise of the rights of dominion over the property, had since December 13, 1957 harvested and are harvesting the fruits to date; and paid the taxes therefor; and had attended to the disposition of the proceeds therefrom;

"4. That whatever alleged agreement may have been entered into between plaintiffs and defendant Laura Roxas cannot in any way affect third persons like defendant spouses Gelso Borja and Nelia Alanguilan, unless the same is in a public document;

"5. That even assuming, although not admitting, that the plaintiffs tendered into the answering defendants the repurchase price of the land in question on or immediately after December 13, 1957, yet the answering defendants have all the reasons and are justified in refusing to accept the said repurchase price considering that before said date of December 13, 1957, answering defendants were already the absolute and exclusive owners of the land in question, subject to no other conditions."

As counterclaim, appellants alleged in their answer the following facts:

"1. That the answering defendants incorporate and make part hereof paragraph 1 of the plaintiffs' amended complaint;

"2. That before this case was filed, plaintiffs knew fully well that the property in question is already owned absolutely by answering defendants; and which, therefore, cannot be the subject of repurchase anymore;

"3. That plaintiff Welgo Dichoso was the agent who was responsible for the consummation of the sale with right to repurchase as a matter of fact he was the witness to the said document;

"4. That a parcel of land abutting this parcel in question was likewise offered by plaintiff Welgo Dichoso to defendant spouses who acceded to buy the same on the representation by the former (Dichoso) that inasmuch as answering defendants are now the owners of the land in question, this smaller one if united with the bigger piece of property here in question would not only enhance agriculture but would afford them greater benefits as the two parcels are adjoining to each other;

"5. Defendant spouses would not have bought the property, in question if not for the assurance of Welgo Dichoso that co-defendant would sooner or later sell same to them by way of absolute sale;

"6. That in filing this case, plaintiffs have acted with evident bad faith, considering that this case was only intended to harass answering defendants who are his first cousins and, therefore, must be required to pay answering defendants the amount of P500.00 as exemplary damages;

"7. That because of the unwarranted and unjustified filing of this case, the answering defendants suffered damages in the amount of P500.00 and will continue to suffer the same by way of litigation expenses; and at the same time were compelled to retain the services of counsel and are obliged to pay the amount of P1,000.00

in the concept of attorney's fees."

On September 19, 1958 appellees filed a reply in which they alleged, inter alia, that when they offered to repurchase the property from appellants, on behalf of Laura A. Roxas, appellants had not become absolute and exclusive owners of the property in question; that after the offer to repurchase made on December 13, 1957, appellants became possessors in bad faith and were in duty bound to account for the fruits of the property; that although the agreement between appellees, on the one hand, and Roxas, on the other, was not contained in a public instrument, appellants were bound by it because they knew of the agreement. Appellees also denied the facts alleged in the counterclaim.

On April 1, 1959 appellees filed a supplementary complaint wherein, on the claim that after July 23, 1958 the price of coconuts had considerably gone up, they prayed that the judgment for damages they sought in the amended complaint be increased in amount accordingly.

After trial upon the issues stated above, the lower court rendered the appealed judgment, from which the Borja spouses appealed claiming that the court committed the following errors:

"1. In not finding defendants-appellants Celso Borja and Nelia Alanguilan as the true, lawful and absolute owners of the land in question, their title thereto being evidenced by public and private documents coupled by possession in good faith and for value.

"2. In not finding appellants Celso Borja and Nelia Alanguilan possessors as absolute owners from December 8, 1957, the date of the execution of the deed of absolute sale (Exh. '7') in their favor.

"3. In not giving weight to the deed of confirmation (Exh. '8') a public document executed to cure defects in proof only.

"4. In construing Exhibit 1' (a private document) as a document of sale and in extending its effects to third parties (appellants) who are total strangers to it.

"5. In not sustaining the plea of res adjudicata by the defendants-appellants."

The pertinent portions of the decision appealed from are the following:

"It appears from the evidence that Laura A. Roxas had sold her rights to the land in controversy to two different parties. The first one was on July 5, 1957 in favor of the plaintiffs Welgo Dichoso and Emilia Hernandez (Exhibit T), and the second one allegedly of December 8, 1957 in favor of defendants Celso Borja and Nelia Alanguilan (Exhibit '7'). The principal question to be determined is which of these two documents shall prevail. Both the documents in favor of the plaintiffs Exhibit 'T' and that in favor of the defendants Exh. '7' are private documents same not having been acknowledged before a Notary Public.

"The Court is of the opinion that the document in favor of the plaintiffs being of an earlier date than the document in favor of the defendants shall prevail in accordance with the provisions of paragraph 3 of Article 1544 of the Civil Code of the Philippines which read as follows:

'If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

'Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

'Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the eldest title, provided there is good faith.'
(Italics supplied)

"While it may be true that the defendants were in possession of the land in controversy at the time Laura A. Roxas executed the deed of sale in favor of the plaintiffs, such possession was merely that of a 'vendee a retro' and not as vendee in an absolute sale. It has also been held that with reference to unregistered lands, an earlier instrument, be it a sale or a mortgage, shall prevail over a later one, and the registration of any one of them is immaterial (*Nisce vs. Milo*, G.R. No. 42546, Jan. 1936; *Nota vs. Concepcion*, 56 Phil. 712, cited in *Noblejas*, 'Land Titles and Deeds, 1955 ed., P. 207).

"The deed of confirmation of sale executed by Laura A. Roxas in favor of defendants Celso Borja and Nelia Alanguilan on September 5, 1958, Exh. '8', cannot in any manner prejudice the rights of the plaintiffs because the said deed of confirmation was made more than nine (9) months after this case was filed. If the execution of the said deed of confirmation proves anything at all it is the awareness of defendants Celso Borja and Nelia Alanguilan of the weakness of their position under the facts as they existed at the time of the execution of said deed of confirmation. It also proves the joint efforts of all the defendants to circumvent the effects of the document, Exh. 'I', executed by Laura A. Roxas in plaintiffs' favor."

It is obvious that, in deciding the case, the lower court failed to give due weight to the private document Exhibit 7 (deed of absolute sale) executed by Laura A. Roxas in favor of appellants on December 8, 1957—in effect superseding the pacto de retro sale mentioned heretofore—for a total consideration of P1,684.00, of which the amount of P850.00 paid as consideration for the pacto de retro sale was considered as a part. There is no dispute at all as to the genuineness of this private deed of absolute sale nor as to its execution on December 8, 1957, that is, five days prior to December 13, 1957, when, according to appellees themselves, they made the first attempt to repurchase the property in question, and on which occasion appellants refused to allow the repurchase "because Laura A. Roxas was not with them", according to the lower court. After December 8, 1957 appellants' rights were no longer based on the superseded pacto de retro sale but on the aforesaid deed of absolute sale—which was a perfectly valid contract as between the parties. In plain words, after that date Laura A. Roxas no longer had any right to repurchase the property.

Upon the other hand, appellees' contention that appellants were aware of their agreement with Laura A. Roxas has not been sufficiently substantiated. Appellees' own evidence shows that appellants became aware of their claim to the property when they tried, for the first time, to exercise the right to repurchase on December 13, 1957— five days after the deed of absolute sale in favor of said appellants.

After a careful consideration of the issues and the evidence, we believe that the lower court also erred in considering Exhibit I, executed on July 5, 1957, as a deed of sale of the land in question in favor of appellees.

In the first place, the phraseology employed therein shows that the contract between the parties was a mere promise to sell, on the part of Roxas, because the latter merely promised to execute a deed of absolute sale upon appellees' completing payment to her of the total sum of P2,000.00, of which the P850.00 to be paid to appellants for the repurchase of the property would be an integral part. This repurchase had not yet been made on July 5, 1957 when this Exhibit I was executed. In the second place, on that date all that Roxas could possibly sell or convey in relation to the property in question was her right to repurchase the same from appellants. Consequently, the best consideration that could be given to the private document Exhibit I is that it was an assignment by Roxas to appellees of her right to repurchase of which— according to the evidence—appellants had no knowledge until December 13, 1957 when appellees attempted to make the repurchase. Such being its condition, it could not possibly give rise to the case of one and the same property having been sold to two different purchasers. The sale in favor of appellants was of the property itself, while the one in favor of appellees, if not a mere promise to assign, was at most an actual assignment of the right to repurchase the same property. The provisions of paragraph 3, Article 1544 of the Civil Code of the Philippines do not, therefore, apply.

Having arrived at the above conclusions, we are constrained to hold that, upon the facts of the case, appellees are not entitled to the reliefs sought in their amended complaint and that whatever remedy they have is exclusively against Laura A. Roxas to recover from her, among other things, what they paid as consideration for the execution of the private document Exhibit I.

Wherefore, the decision appealed from is reversed, with the result that this case is dismissed, with costs, reserving to appellees, however, the right to file a separate action against Laura A. Roxas to enforce whatever rights they may have against her in consonance with this decision.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Regala, and Makalintal, JJ., concur.

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