

**ALFONSO FLORES AND VALENTIN GALLANO,
DEFENDANTS-APPELLANTS, VS. JOHNSON SO, PLAINTIFF-APPELLEE.**

G.R. No. L-28527. June 16, 1988

Ponente: YAP, C.J.

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YAP, C.J.:

This case was certified to us by the Court of Appeals there being no question of fact involved, but the application of the pertinent provisions of the old and new Civil Code on the "Pacto de Retro Sale" executed by defendant Valentin Gallano on February 27, 1950 in favor of defendant-appellant Alfonso Flores over the land in question which sale is contested by plaintiff-appellee Johnson So on the ground that in truth and in fact, it was an equitable mortgage to secure a loan of P2,550.00, the supposed purchase price. Valentin Gallano, impleaded as co-defendant by order of the lower court, has aligned himself with the cause of Johnson So.

The antecedent facts are:

On August 2, 1958, Johnson So filed an action for specific performance before the Court of First Instance (now Regional Trial Court) of Sorsogon, Tenth Judicial District, and docketed as Civil Case No. 1305, against Alfonso Flores to effect the redemption of a parcel of coconut and rice land situated in Matnog, Sorsogon, containing an area of 165,056 square meters which was alleged to have been ostensibly sold to the latter by Valentin Gallano on February 27, 1950, with right of repurchase within four (4) years from the date of the sale, for a price of P2,550.00. Valentin Gallano sold in an absolute manner the same land to Johnson So on February 26, 1958 for the price of P5,000.00. On the allegation that the Pacto de Retro Sale did not embody the real intent and nature of the agreement between the parties, the transaction being a mere mortgage to secure a loan, Johnson So prayed that the court declare the said Pacto de Retro Sale as a mere equitable mortgage and order Alfonso Flores to receive the sum of P2,550.00 deposited with the court in Civil Case No. 1224 and to consider the land in question redeemed from the latter for all legal purposes. On September 24, 1960, the lower court ruled that, on the issue of the nature of the contract in question, it is a contract of sale of a parcel of land with the reservation in favor of the vendor a retro of the right to repurchase it within a period of four (4) years from execution thereof; that the execution of the affidavit of consolidation of ownership by Flores on March 6, 1958 and its subsequent registration in the Office of the Register of Deeds of Sorsogon did not make his ownership over the land in question absolute and indefeasible because of non-compliance with Articles 1606 and 1607 of the New Civil Code, which require a judicial order for consolidation of the title of vendee a retro; and that the right of redemption belonging to Valentin Gallano was, ipso facto, acquired by Johnson So when he bought the land in question. Thus, the Court ordered Alfonso Flores to deliver the possession of the land in question to Johnson So and to execute the necessary deed of resale in favor of the latter and authorized Flores to withdraw for his own use and benefit the redemption money in the sum of P2,550.00. Valentin Gallano was absolved from liability.

Alfonso Flores moved for a reconsideration of the above decision but the motion was denied. On appeal to the Court of Appeals, the latter certified the case to this Court as involving purely questions of law.

In essence, the question to be resolved is whether or not the execution of the affidavit of consolidation of ownership by Alfonso Flores and its subsequent registration in the Office of the Register of Deeds of Sorsogon made his ownership over the land in question absolute and indefeasible.

In its determination of the nature of the contract, the lower court ruled that, based on the document itself which is the only evidence, its terms being clear, explicit and without any confusion, it is pacto de retro sale with the vendor a retro being given four years from execution thereof to redeem the subject property; however, notwithstanding the fact that Valentin Gallano had four years from February 27, 1950, or until February 27, 1954 only to redeem the property, he could still exercise the right of redemption in 1958 when he sued the vendee, Flores, for redemption, since, upon the effectivity of the New Civil Code on August 30, 1950, Flores' right of ownership over the land was not yet absolute and indefeasible for his failure to comply with the requirements of Articles 1606 and 1607 of the said Code.

We disagree. The pacto de retro sale between Gallano and Flores was executed when the Civil Code of Spain was still in effect. It is provided in Article 1509 thereof that if the vendor does not comply with the provisions of Article 1518, (i.e. to return the price, plus expenses) the vendee shall acquire irrevocably the ownership of the thing sold.

Under the old Civil Code, the ownership was consolidated in the vendee a retro by operation of law. Accordingly, upon the failure of Valentin Gallano, as the vendor a retro, to redeem the property subject of the pacto de retro sale within the period agreed upon, the vendee a retro, Alfonso Flores, became the absolute owner of the subject property.

This right of ownership which had already vested in Alfonso Flores way back in 1954 upon Gallano's failure to redeem within the stipulated period cannot be defeated by the application of Articles 1606 and 1607 of the New Civil Code which requires registration of the consolidation of ownership in the vendee a retro only by judicial order. Article 2252 on Transitional Provisions in the New Civil Code provides that:

"Art. 2252. — Changes made and new provisions and rules laid down by this Code which may prejudice or impair vested or acquired rights in accordance with the old legislation shall have no retroactive effect, x x x."

Furthermore, Article 2255 thereof states that:

"Art. 2255. — The former laws shall regulate acts and contracts with a condition or period which were executed or entered into before the effectivity of this Code, even though the condition or period may still be pending at the time this body of laws goes into effect."

In *Manalansan v. Manalang*, 108 Phil. 1041, we held that in a sale with the right of redemption, the ownership over the thing sold is transferred to the vendee upon execution of the contract, "subject only to the resolutive condition that the vendor exercise his right of repurchase within the period agreed upon." Consequently, since the pacto de retro sale in question, which was executed in February of 1950, before the effectivity of the New Civil Code in August of 1950, was a contract with a resolutive condition, and the condition was still pending at the time the new law went into effect, the provisions of the old Civil Code would still apply.

The trial court, therefore, erred in allowing redemption of the subject property by plaintiff-appellee, Johnson So. Valentin Gallano was no longer the owner of the same at the time of sale to Johnson So, thus, no right whatsoever was transmitted to the latter, except the right to redeem the property. Ownership over the subject property had long vested upon the defendant appellant Alfonso Flores.

IN VIEW OF THE FOREGOING, the decision appealed from is reversed and defendant-appellant Alfonso Flores is hereby declared the absolute owner of the land subject of the controversy. Plaintiff-appellee Johnson So

is hereby ordered to pay the defendant-appellant the sum of P500.00 as attorney's fees plus costs of suit pursuant to their agreement.[1]

SO ORDERED.

Melencio-Herrera, Paras, Padilla, and Sarmiento, JJ., concur.

[1] Supplementary and Amendatory Stipulation, Record on Appeal, p. 65.

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