

**LEON BORLAZA AND LEONCIA BORGONIA, PETITIONERS, VS.
GREGORIO RAMOS AND GUILLERMA ARVISU, RESPONDENTS.***G. R. No. L-3433. July 16, 1951*

Ponente: PADILLA, J.

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This is a petition for a writ of certiorari to review a judgment rendered by the Fifth Division of the Court of Appeals affirming that of the trial court which held that a deed purporting to sell two parcels of land in the municipality of Lilio, province of Laguna, to Isidro Borgonia and Gregorio Ramos, executed by Severino Pile, in his behalf and of his brother and sister, is in fact a sale with the right to repurchase, as the instrument shows on its face, and not an equitable mortgage, as claimed by the herein petitioners, the plaintiffs and appellants in the courts below; that Leon Borlaza, one of the petitioners herein, not only was the notary public before whom acknowledgment of the execution of the deed of sale was made by the contracting parties, but also drew up the said deed of sale with the right to repurchase reserved by the vendors; that for that reason he is estopped from asserting that it is only an equitable mortgage; and that there being no agreement as to the time for repurchase, it expired at the end of the fourth year from the date of the execution of the instrument.

The petitioners claim that the erroneous application of the rule on estoppel against them is a question of substance not heretofore decided by this Court, and that the period of four years for the repurchase, as held by the courts below, is contrary to the rule laid down by this Court in several cases and more particularly in the case of *Estiva vs. Alvero*, 37 Phil. 497.

The Court of Appeals found that on 26 December 1936, for and in consideration of P200, Severino Pile, in his behalf and of his brother and sister, executed a deed purporting to convey two adjoining parcels of land in Lilio, Laguna, described therein, to Isidro Borgonia and Gregorio Ramos, both taking possession of the northern and southern parts of the said parcels of land, respectively. Subsequently, for and in consideration of P100 paid to Isidro Borgonia, the Piles repurchased and took possession of the northern part of the two adjoining parcels of land. Sometime later, or on 27 March 1943, the Piles sold the two parcels of land to the spouses Leon Borlaza and Leoncia Borgonia. In May 1943, the latter tendered payment of P100 to Gregorio Ramos to repurchase the southern part of the two adjoining parcels of land, but the latter refused giving as reason for his refusal the expiration of the time for repurchase. In view of the refusal, the spouses Borlaza and Borgonia deposited the sum of P100 with the clerk of the court of first instance of Laguna on 13 May 1943. Gregorio Ramos, on the other hand, executed an affidavit of consolidation of his title to the southern part of the two adjoining parcels of land on 21 June, the same year. An action was brought by the spouses Leon Borlaza and Leoncia Borgonia praying that the deed of sale with the right reserved by the vendors to repurchase the two parcels of land be held to be an equitable mortgage; and that Gregorio Ramos, the vendee, be compelled to accept the sum of P100 deposited in the clerk's office, as the consideration for the repurchase of that part of the two adjoining parcels of land held by him, and to deliver the possession thereof to the plaintiffs. After trial, the court of first instance of Laguna held that the instrument was a sale with the right to repurchase reserved by the vendors; that there was no agreement or

stipulation as to the time for repurchase; that title to the southern part of the two adjoining parcels of land was consolidated in Gregorio Ramos, the vendee, upon the expiration of four years from the date of the execution of the instrument, the plaintiffs having lost the right to repurchase it. This is the judgment affirmed by the Court of Appeals.

The Court of Appeals upheld the finding of the trial court that plaintiff Leon Borlaza, having acted not only as notary public before whom the execution of the deed of sale with the right to repurchase was acknowledged but also having drawn up the said deed, was estopped from claiming and asserting that the document was different or distinct from what it purports to be. Technically or legally speaking, the estoppel applied by the trial court and upheld by the Court of Appeals is not such as is defined in the rules of court (sec. 68, Rule 123). A perusal of the opinion of the Court of Appeals discloses that the principle of estoppel in its technical sense was not applied to the plaintiffs, the herein petitioners. Here, there is no legal estoppel by judicial or legislative record; neither is there a legal estoppel by contract or by deed; nor is there an equitable estoppel or estoppel in pais or by misrepresentation, because only the vendors and the vendees would be chargeable with misrepresentation as against each other. The term "estoppel" is used by the courts below not in its technical sense, as contemplated in the rules of court, which would preclude the party against whom it is invoked from showing that the instrument is different from what it purports to be, but as an aid in weighing the evidence and determining the true character of the instrument and the intent of the parties thereto. Proof of this assertion is the reproduction of the whole deed in the decision of the Court of Appeals. The judgment of the Court of Appeals is based mainly upon the contents or terms of the deed of sale with the right to repurchase reserved by the vendors. We hold with the said Court that, as there is no ambiguity as to the meaning of the terms of the deed, the same is a sale with the right to repurchase reserved by the vendors. There is no finding of the Court of Appeals on the alleged badges of equitable mortgage and we are not at liberty to inquire into them and make our findings thereon.

On the second point, we also hold with the Court of Appeals that there is no express agreement as to the time within which the repurchase may and should be made. Such being the case, the time within which such repurchase may and should be made is four years. The stipulation on this point reads, as follows:

That, from now on and until the repurchase has not as yet (been) done, the Party in the Second Party, * * * shall be entitled to the possession, ownership and usufruct of the real properties described above and to all improvements herein contained, all of which are free from encumbrances and charges whatsoever.

In a contract of sale with the right to repurchase reserved by the vendor, such right must be expressly stipulated or agreed upon, for without such express agreement, the contract would be an absolute and unconditional sale. An agreement or stipulation that the realty or chattel sold is subject to repurchase by the vendor is not an express stipulation or agreement as to the time within which the repurchase may and should be made. Where there is no express agreement or stipulation as to such time, the law supplies it by providing that it shall be four years counted from the date of the execution of the contract (art. 1508, par. 1, Civil Code). The second paragraph of the article is a limitation to the will of the contracting parties, where there is an express agreement or stipulation as to the time for the exercise of the right to repurchase reserved by the vendor, which exceeds ten years from the date of the execution of the instrument. In the instant case the phrase "from now on and until the repurchase has not as yet (been) done" is a stipulation by which the vendors reserved for themselves the right to repurchase the two parcels of land sold and is not an express agreement as to the time within which such repurchase may or should be made. There being no express agreement as to such time for repurchase, the same must be four years, as provided for in article 1508, paragraph 1, of the Civil Code.

The judgment appealed from is affirmed, with costs against the petitioners.

Paras, C.J., Feria, Pablo, Bengzon, Tuason, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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