

**FEDERICO R. CASTRO AND REGINA BALTAZAR,
PLAINTIFFS-APPELLEES, VS. MATILDE PARA-ON, ET AL.,
DEFENDANTS-APPELLANTS.**

G.R. No. L-24147. February 10, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

In this, a direct appeal, defendants challenge the correctness of an order of the Court of First Instance of Iloilo denying their motion to enforce an alleged right of repurchase of a parcel of land.

The following proceedings are controlling, viz: On January 13, 1950, plaintiffs lodged a complaint (amended on January 15, 1952) with the Court of First Instance of Iloilo[1] for ownership of Lot 3366 of the January Cadastre and for damages. On August 23, 1951, Asuncion, Jesus, Modesta, Roque and Meliton, all surnamed Para-on, intervened in the case. On June 16, 1952, upon the amended complaint, the amended answer thereto, and the answer in intervention, and after trial, the Iloilo court, at the time presided over by then Judge, now Associate Justice, Querube C. Makalintal, rendered judgment, as follows:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered: (a) declaring the plaintiffs-spouses Federico R. Castro and Regina Baltazar as owners, pro-indiviso of 11/15 of Lot No. 3366 of the Cadastral Survey of Janiway and the intervenors Modesta, Roque and Meliton, together with the defendant Primo, all surnamed Para-on, as the owners pro-indiviso of the remainder, or 4/15 of the same land; (b) ordering all the defendants and the intervenors to pay the plaintiffs the sum of P411.00 by way of damages corresponding to the produce for the years 1948 to 1951 inclusive; (c) ordering the said defendants and intervenors to deliver to the plaintiffs 11/15 of the land in question, after the proper proceeding of partition, judicial or extra-judicial; and (d) ordering the defendants and intervenors to deliver to the plaintiffs 3-2/3 bultos of palay or their equivalent value thereof at the rate of P22. 00 a bulto every year beginning 1952 until possession of the plaintiffs' share of the land is finally restored to them. With costs against the defendants and intervenors."

On appeal by defendants and intervenors, the Court of Appeals,[2] January 6, 1964, affirmed the appealed judgment without costs.

The facts as found by the Court of Appeals are -

"Martina Para-on is the registered owner of a parcel of land known as Lot No. 3366 of the Cadastral Survey of Janiway, Iloilo, having an area of 30,913 square meters. She died, single sometime in 1939, leaving as her heirs her brother Domingo Para-on, the children of her deceased brother Marciano Para-on namely, Jesus, Modesta, Roque, and Meliton, the last three being intervenors herein, and Primo; one of the defendants herein, all surnamed Para-on, and a niece by the name of Maria Quintilla. On May 20, 1939, Domingo Para-on, Jesus Para-on and Maria Quintilla, each claiming to be the owner of one third (1/3) of the land in question by inheritance from Martina Para-on, executed in favor of the spouses Federico R. Castro and Regina Baltazar, plaintiffs herein, a deed of sale with right to repurchase within a period of three years. Upon its execution, plaintiffs took possession of the land while Domingo Para-on remained therein as their tenant. Plaintiffs paid

the taxes and Domingo used to deliver to them 1/3 of the produce. In 1948 Domingo died, survived by his children Matilde, Tomas, Fortunata, and Aurea, all surnamed Para-on, defendants herein. Asuncion, who is one of the children of Domingo, however, was not included is party de-fendant for reasons which the record fails to disclose. After Domingo's death in 1948, defendants and inter-venors took possession of the land and since the month of October of said year, refused to deliver to the plain-tiffs their share of the produce."

On February 7, 1964, defendants and intervenors - having received copy of the foregoing judgment of the Court of Appeals on January 24, 1964 - moved for a rehearing and reconsideration, which was denied on February 18, 1964. On March 5, 1964, defendants and intervenors received copy of the resolution of February 18 denying their motion to reconsider.

On April 2, 1964, in the very same case, Civil Case 1735, in which the judgment was affirmed by the Court of Appeals as aforesaid, defendants filed in the Court of First Instance of Iloilo a motion to repurchase the property adjudicated to plaintiffs. They deposited with the clerk of the Iloilo court the sum of P150.00 representing the repurchase price. Plaintiffs opposed. On August 13, 1964, the court denied the motion to repurchase. Reconsideration was refused on September 26, 1964.

Hence, the present appeal.

Defendants plant their right of repurchase upon the third paragraph, Article 1606 of the present Civil Code, which gives the vendor a retro "the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase." It is defendants' view that since they sought repurchase within thirty days from the time final judgment was rendered, they could, as heirs of Maria Quintilla, Domingo Para-on and Jesus Para-on, repurchase the property (11/15 share) adjudicated by final judgment to plaintiffs.

For two reasons, we reject this view.

First. When the pacto de retro sale was consummated (May 20, 1939), and when the three-year period stipulated in the deed to repurchase expired (May 20, 1942), the law then controlling was the Spanish Civil Code of 1889. Pursuant to Article 1509 of the said old Code, upon a vendor's failure to repurchase, the vendee "shall irrevocably acquire the ownership" of the property sold. Ownership is consolidated in the vendee by operation of law.[3]

Second. Defendants may-not summon to their aid Article 2253 of the Civil Code, which reads:

"ART. 2253. The Civil Code of 1889 and other previous laws shall govern rights originating, under said laws, from acts done or events which took place under their regime, even though this Code may regulate them in a different manner, or may not recognize them. But if a right should be declared for the first time in this Code, it shall be effective at once, even though the act or event which gives rise thereto may have been done or may have occurred under the prior legislation, provided said new right does not prejudice or impair any vested or acquired right, of the same origin."[4]

It is correct to say that the 30-day period for repurchase granted in Article 1606 is declared for the first time under the present Code. And, normally, it "shall be effective at once." But, under the facts here obtaining, the proviso in Article 2253 negates effectivity of that right. Because, the same would prejudice or impair the vested or acquired right of plaintiffs under the old law. Plaintiffs' right of ownership had already been consolidated in their favor prior to the effectivity of the new Civil Code on August 30, 1950. And, defendants not now assert any right of repurchase. Indeed, the uniform juris-prudence of this Court is that when the period of redemption expired without repurchase having been made during the effectivity of the old Civil Code, the vendee a retro consolidated his ownership over the property sold by operation of law and the vendor a retro can no longer repurchase said property upon the provisions of Article 1606 of the new Civil Code.[5]

For the reasons given, the order of August 13, 1964 of the Court of First Instance of Iloilo denying defendants' motion to repurchase, and the order of September 26, 1964 denying reconsideration, are hereby affirmed.

Costs against defendants-appellants.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Bengzon, J.P., Zaldivar, Ruiz Castro, and Fernando, JJ., concur.

[1] Civil Case 1735, the present case, entitled "Federico R. Castro and Regina Baltazar, Plaintiffs, vs. Matilde Para-on, Fortunata Para-on, Aurea Para-on, Tomas Para-on and Primo Para-on, Defendants."

[2] CA-G. R. No. 11017-R; entitled "Federico R. Castro and Regina Baltazar, Plaintiffs-Appellees, vs. Matilde Para-on, Fortunata, Aurea, Tomas, Primo, also surnamed Para-on, Defendants-Appellants."

[3] Manalansan vs. Manalang, 60 O.G. No. 20, pp. 2776, 2778, citing Rafols vs. Rafols, 22 Phil. 236; Dorado vs. Viriña, 34 Phil. 284; Gonzales vs. Salas, 49 Phil. 1; Krapfenbauer vs. Orbeta, 52 Phil. 201. Almirañez vs. De Vera, L-19496, February 27, 1965.

[4] Emphasis supplied.

[5] De la Cruz vs. Muyot, 102 Phil. 318, 320; Siopongco vs. Castro, L-12167, April 29, 1959; Fernandez vs. Fernandez, 60 O.G. No. 44, pp. 7214, 7215; Villalobos vs. Catalan L-17723, June 29, 1962.

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