

RUBY H. GARDNER, PETITIONER, VS. HON. COURT OF APPEALS, EUGENIO DE CASTRO AND TRINIDAD MAR, RESPONDENTS.

G.R. No. L-31340. November 29, 1977

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is an appeal by certiorari from the decision of the Court of Appeals[1] in CA-G.R. No. 38388-R entitled "Ruby H. Gardner, plaintiff-appellee, versus Eugenio de Castro, et al., defendants-appellants" which affirmed the decision of the Court of First Instance of Laguna insofar as it declared valid the consignment of the amount of P10,436.75 by the plaintiff-appellee with the trial court but modified it in the sense that in addition to the amount of P10,436.75, plaintiff-appellee was also ordered to pay the defendants-appellants the sum of P30,000.00 for actual losses plus P100,000.00 for unrealized profits by reason of the breach of contract committed by plaintiff-appellee, with costs against her.

The records establish the facts that on various occasions prior to October 23, 1957, petitioner, Ruby H. Gardner, obtained on credit from the grocery store of the private respondents, spouses Eugenio de Castro and Trinidad Mar, located in Los Baños, Laguna, some petty cash and a variety of consumer goods such as groceries, toilet articles, rice, and other necessities for home use, which totalled P7,000.00. Without enough cash to pay her debt, petitioner executed on October 23, 1957 in favor of the private respondents a public instrument entitled "Deed of Sale With Right of Repurchase" (Exhibit A), hereunder reproduced:[2]

"DEED OF SALE WITH RIGHT OF REPURCHASE

KNOW ALL MEN BY THESE PRESENTS:

That I, RUBY HENRY GARDNER, of legal age, American Citizen, married to Frank Gardner, with residence and postal address at Los Baños, Laguna, hereby voluntarily state:

That I am the owner and possessor of the following described parcel of land together with all the improvements thereon:

'A parcel of "secano" land, known as Lot No. 1440 of the Calamba Estate, together with all the improvements thereon, located at Sucol, Calamba, Laguna, bounded on the NORTH by the Provincial Road; on the EAST by Andrew Monroe; on the SOUTH by 4194 Hugo Tubang; and on the WEST by 1440-pt. Miguel Bonifacio; containing an area of EIGHTY SIX THOUSAND ONE HUNDRED AND THIRTY ONE (86,131) square meters, more or less, assessed in the amount of P2,150.00 for the current year in the name of James Henry under Tax Declaration No. 3258. The visible boundaries around the land are stone monuments of the Calamba Subdivision and wood fences.'

That for and in consideration of the amount of SEVEN THOUSAND (P7,000.00) pesos, Philippine Currency, which I have this date received to my entire satisfaction from the spouses EUGENIO DE CASTRO and TRINIDAD MAR, both of legal age, Filipino citizens, with residence and postal address at Batungmalake, Los

Baños, Laguna, do hereby sell, transfer and convey by SALE WITH RIGHT OF REPURCHASE the above-described parcel of land, together with all the improvements thereon under the following terms and conditions:

1. That I shall have the right to repurchase the land described above within a period of ten (10) years from the date of the execution of this document by paying back unto the said EUGENIO DE CASTRO and TRINIDAD MAR, or their heirs and assigns, the sum of seven thousand (P7,000.00.) pesos, Philippine currency;
2. That in case the land and its improvements will be sold, the vendee spouses (Eugenio de Castro and Trinidad Mar) shall be given the first opportunity to buy the land under the condition that the price for the same will be at the rate of ONE THOUSAND FIVE HUNDRED (P1,500.00) pesos per hectare;
3. That I, as the owner and vendor a retro shall make the necessary steps to have the land titled as early as possible to give more facility for negotiation; and
4. That during the period of time that I have not yet made the repurchase of the land described above, the possession thereof shall be transferred exclusively to the vendees a retro, the spouses Eugenio de Castro and Trinidad Mar.

That if I shall be able to repurchase the land mentioned above within the period of time herein stipulated by paying back unto the spouses Eugenio de Castro and Trinidad Mar, or their heirs and assigns, the sum of SEVEN THOUSAND (P7,000.00) Pesos, Philippine Currency, then this deed shall be automatically cancelled and of no further force or effect and absolute ownership of the land shall revert in my favor.

That this land is free from all forms of liens and encumbrances and I do hereby warrant the vendees, or their heirs and assigns, against the claim of all third persons whomsoever.

That this land is not registered under Act. No. 496 or the Spanish Mortgage Law and registration of this document is requested under Act. 3344.

IN WITNESS WHEREOF, I hereby set my signature this 23rd day of October, 1957, at Sta. Cruz, Laguna.

(Sgd.) RUBY HENRY GARDNER

With my consent:

(Sgd.) FRANK GARDNER

Husband of Ruby Henry Gardner

In the presence of:

(Sgd.) Illegible (Sgd.) Illegible

(Acknowledgment Omitted)

After the execution of the above instrument, petitioner continued her credit line with the private respondents' store incurring additional obligations totalling P3,436.75. Still unable to pay, petitioner on April 10, 1958 executed in favor of the private respondents another public instrument entitled "Document of the Increase of the Amount Involved in the Deed of Sale with Right of Repurchase" (Exhibit B), which reads as follows:[3]

"DOCUMENT OF THE INCREASE OF AMOUNT
INVOLVED IN THE DEED OF SALE

WITH RIGHT OF REPURCHASE

KNOW ALL MEN BY THESE PRESENTS:

That I, RUBY GARDNER, of legal age, American citizen, married to Frank Gardner, with residence and postal address at Los Baños, Laguna, by virtue of the Deed of Sale with right of repurchase dated October 23, 1957, which I executed before the faith of Notary Public Celso N. Caba-lones, a notary public for and in the Province of Laguna, at Santa Cruz, have sold for the sum of SEVEN THOUSAND (P7,000.00) pesos to the spouses EUGENIO DE CASTRO and TRINIDAD MAR, both of legal age, Filipino citizens with residence and postal address at Batungmalake, Los Baños, Laguna, the following described parcel of land:

'A parcel of "secano" land known as Lot No. 1440 of the Calamba Estate, together with all the improvements thereon, located at Sucol, Calamba, Laguna, bounded on the NORTH by the Provincial Road, on the EAST by Andrew Monroe, on the SOUTH by 4194 Hugo Tubang; and on the WEST by 1440-pt. Miguel Bonifacio; containing an area of 86,131 square meters, more or less, assessed in the amount of P2,150.00 for the current year in the name of James Henry under Tax Declaration No. 3258, the visible boundaries around the land are stone monuments of the Calamba Subdivision and wood fences.'

The said deed of sale is designated as Document No. 47, page 11, Book 1, Series of 1957, of the said notary public.

That on this date I received to my entire satisfaction from the said spouses EUGENIO DE CASTRO and TRINIDAD MAR, the sum of THREE THOUSAND FOUR HUNDRED THIRTY SIX PESOS AND SEVENTY FIVE (P3,436.75) as additional consideration thereby making a total of TEN THOUSAND FOUR HUNDRED THIRTY SIX PESOS AND SEVENTY FIVE (P10,436.75) centavos as the total consideration of the sale with right of repurchase, it being understood that all the other terms of the said deed of sale with right of repurchase dated October 23, 1957 and which is mentioned above shall remain in full force and effect.

IN WITNESS WHEREOF, I hereby set my signature this 10th day of April, 1958, at Los Baños, Laguna.

(Sgd.) RUBY HENRY GARDNER

Vendor A Retro

WITH MY CONSENT:

(Sgd.) FRANK GARDNER

Husband of Ruby Henry Gardner

In the presence of:

(Sgd.) Mauricio Rabajo (Sgd.) Rosa Tison"

(Acknowledgment Omitted)

From the evidence of the petitioner, it appears that on various dates before the lapse of the stipulated ten (10) year period within which she may repurchase the land, specifically on April 2, 10 and 11, 1965, she offered and actually tendered the agreed repurchase price of P10,436.75 to the private respondents at their house in Los Baños, Laguna. The offer and tender of payment was turned down on the alleged ground that the two children of the private respondents, Eduardo and Tony, were not agreeable to the said sum, as they demanded P50,000.00, later reduced to P45,000.00 as the repurchase price.

Due to the persistent refusal by the private respondents to accept the tendered amount of P10,436.75, petitioner's lawyer sent them a letter on April 13, 1965 informing them that his client, Ruby H. Gardner, will deposit for

consignation the amount of P10,436.75 with the Court of First Instance of Laguna, Biñan Branch, on April 19, 1965 at 8:00 o'clock in the morning. Since the private respondents failed to accept the said amount before April 19, 1965, petitioner consequently deposited the sum of P10,436.75 for consignation with the above court on the said date, and by another letter to the private respondents, informed them of the consignation.

On the other hand, the private respondents alleged that they refused to accept the amount of P10,436.75 as repurchase price of the property because the said amount was grossly inadequate to compensate for the improvements introduced by them on the said land; that the value of the improvements alone aggregates to not less than P30,000.00, specifically: 100 rambutan trees, 300 lanzones trees, 40 indian mango trees, 30 Bangkok santol trees, 40 marcotted chico trees, 2,000 coffee seedlings, 2,000 cacao seedlings, a residential house worth P10,000.00, and the clearings of the undergrowth of cogon and grass on the property; that these improvements were introduced by the respondents spouses on the faith of a stipulation in the Deed of Sale with Right of Repurchase executed by the petitioner giving them the preferential right to buy the land in dispute at the rate of One Thousand Five Hundred Pesos (P1,500.00) per hectare; that this stipulation was breached by the petitioner because on April 7, 1965, the land was sold to one Bienvenido Banaag for P232,551.00 and the remaining portion thereof measuring about 7,130 square meters was sold to one Sally Lopez for P5,000.00 plus other considerations.

On her alleged breach of contract, petitioners countered that she had offered her land for sale to the private respondents since 1961; that, in fact, prior to April 19, 1965 she again offered to sell to the private respondents and informed them that if they were not in a position to buy the land, she was selling the same to others, and allegedly, the private respondents had no objections to such sale and even offered to locate a buyer for her; that, therefore, there was no breach of contract.

With respect to private respondents' claim for value of the improvements introduced by them on the land, petitioner contended that at the time of the execution of the contracts (Exhibits A and B), there were on the land, visible or growing fruit-bearing trees, specifically: 100,000 banana plants, 17 chico trees, 100 calamansi trees, 100 orange trees, 9 casoy trees, 2 siniguelas trees, 25 lucban trees, 9 avocado trees, 3 guyabano trees, 5 nangka trees, and half of the whole land area was planted to rice and corn; that, when she repossessed the land, she found that most of what she planted was either destroyed or dead; that the residential house constructed on the land by the private respondents was actually used for sometime as a cabaret; that, therefore, whatever improvements made by the private respondents could not even compensate for the damage done to her property while in their possession.

On the basis of the above evidence, the lower court declared that the Contract of Sale with Right of Repurchase is really a contract of equitable mortgage; denied the claim of spouses Eugenio de Castro and Trinidad Mar for the value of the improvements introduced by them; and rendered judgment for plaintiff Ruby H. Gardner declaring the consignation properly made with the effect of releasing her from her obligation to the defendant spouses under the contracts, Exhibits A and B.

On appeal filed by the defendants, the appellate court, on September 6, 1969, rendered its decision which, while affirming the lower court's decision declaring the consignation validly made, went further and declared the plaintiff-appellee, Ruby H. Gardner, guilty of breach of contract upon its finding that Gardner sold the land to third persons at a much higher price instead of selling the land to the spouses De Castro for the stipulated price of P1,500.00 per hectare.

Not entirely satisfied with the above decision, Ruby H. Gardner filed this present appeal by certiorari seeking the affirmation of the judgment declaring the consignation validly made, and the setting aside of the award of damages consisting of reimbursement for actual losses and unrealized profits to the spouses De Castro.

Anent the issue of the validity of the con-signation, We affirm and uphold that part of the appealed decision declaring the consignation to be validly made. The law and related jurisprudence are clear that in order that consignation may be effective, the debtor must first comply with certain requirements prescribed by law. The debtor must show (1) that there was a debt due; (2) that the consignation of the obligation had been made because the creditor to whom tender of payment was made refused without reason to accept it or refuses to give receipt thereof, or because several persons claimed to be entitled to receive the amount due, or because the title of the obligation has been lost (Art. 1256, New Civil Code); (3) that previous notice of the consignation had been given to the person interested in the performance of the obligation (Art. 1257, New Civil Code); (4) that the amount due was placed at the disposal of the court (Art. 1258, New Civil Code); and (5) that after the consignation had been made the person interested was notified thereof (Art. 1258, New Civil Code).[4]

From the undisputed facts of the case, it is admitted that a debt was owing from the petitioner to the private respondents; there was tender of payment of the agreed stipulated repurchase price of P10,436.75; the tender was refused without reason, i.e., the contention that the agreed repurchase price was grossly inadequate to cover the alleged improvements introduced by the private respondents is not an adequate reason for refusal because the terms of the contracts (Exhibits A and B) are clear that petitioner can repurchase the pro-perty by merely paying back to the private respondents the amount of P10,436.75 within a period of ten (10) years from the date of execution of the contracts, without any stipulation as to any improvements that may be introduced by the respondents-spouses on the land; there was also previous notice to the respondents-spouses of the desire of petitioner to deposit the said amount in court, which in fact was deposited on April 19, 1965 with the Court of First Instance of Laguna, Biñan Branch; and lastly, notice of the fact of consignation was given to the private respondents. These facts prove that a valid consignation was made with the resultant effect of releasing petitioner Ruby H. Gardner from her indebtedness to the respondents-spouses Eugenio de Castro and Trinidad Mar.

The second issue before Us is whether or not the Court of Appeals can properly make a finding of breach of contract in a purely consignation case. Under the circumstances of the case at bar, the answer must be in the affirmative. Although this is a case where the only question properly before the lower court and likewise, the appellate court, is the validity of the consignation and its effectivity to extinguish the obligation of the plaintiff, We find that during the trial the parties had presented evidence, testimonial and documentary, on their respective contentions with respect to the alleged breach of contract. Thus, by their consent and acquiescence, they had broadened the issues to include petitioner's alleged breach of contract which in fact was litigated by them before the trial court, and hence throwing the entire case open for the appellate court's review.

The last issue raised by the petitioner which We deem decisive is the correctness of that part of the appealed decision declaring that Ruby H. Gardner committed breach of contract and ordering her to pay the private respondents, damages consisting of P30,000.00 as actual losses and P100,000.00 as unrealized profits, by reason of the alleged breach.

To this part of the appealed decision, We do not agree.

The pertinent stipulation alleged to have been violated states:

"(2) That in case the land and its improvements will be sold, the vendee spouses (Eugenio de Castro and Trinidad Mar) shall be given the first opportunity to buy the land under the condition that the price for the same will be at the rate of ONE THOUSAND FIVE HUNDRED (P1,500.00) pesos per hectare;"

We have examined the records carefully and We find the positive testimony of petitioner Ruby H. Gardner that she had offered her land for sale to the respondents-spouses in 1961 (t.s.n., pp. 14-15, Hearing of October 27, 1965 cited in CA Decision, 55, Records), and this is not denied by the latter. The records also clearly disclose the

oral evidence given by petitioner that prior to April 19, 1965, she told the respondents that if they would not be in a position to buy the land, she was selling it to another person; that in answer, the De Castros told her that she could proceed in selling the property to another person; that in fact they told her that they are willing to help her locate a buyer. (t.s.n., Hearing of October 27, 1965, pp. 23-24 cited in Motion for Reconsideration, Records, p. 69). This also was not denied or contradicted by respondents.

The clear and convincing evidence shown above constrains Us to find that petitioner had substantially complied with the stipulation. We hold that said stipulation must be strictly construed to mean that if the best price obtainable by the petitioner was at P1,500.00 per hectare, then the respondents must be given the first opportunity to buy the land, otherwise if the price offered by any prospective buyer was more than or above P1,500.00 per hectare, the petitioner was not under obligation to sell the land to the respondents-spouses.

As was actually the case at bar, petitioner was able to find two buyers who bought the land, namely, Bienvenido Banaag and Sally Lopez at a price considerably much higher than P1,500.00 per hectare. It would be contrary to common sense and ordinary prudence to construe that under the stipulation in question, the parties intended that the price of the land be pegged or tied to a specified price per hectare when it is of general knowledge that the value of real property tends always to rise especially in the particular area of the land in question, which is at Los Baños, Laguna, a highly agricultural region and a most valued health resort community.

Be that as it may, the deed of sale with pacto de retro having been declared by the trial court and the appellate court as an equitable mortgage, to which We agree, it follows as a legal consequence that the land was constituted as a mortgage or security for the loan obtained by the petitioner from the respondents in the total amount of P10,436.75. In other words the consideration for such mortgage was the loan secured from the mortgagees, the respondents herein. The mortgage being merely an accessory to the principal obligation of the obligor, We find no other consideration for the stipulation inserted in the instrument denominated "Deed of Sale with Right of Repurchase" and, therefore, the stipulation is null and void.

Since We find no breach of contract committed by the petitioner, the award of damages granted by the respondent court consisting of alleged losses to the respondents-spouses in the amount of P30,000.00 and unrealized profits in the sum of P100,000.00 has no legal or factual basis and is, therefore, a reversible error.

As a general rule, the mortgagee who is in possession of the mortgaged property and introduces improvements therein is not entitled to reimbursement for the value thereof upon the redemption of the mortgage for according to Art. 2125, par. 2, N.C.C., "the persons in whose favor the law establishes a mortgage have no other right than to demand execution and the recording of the document in which the mortgage is formalized."

In the case at bar, respondents-spouses have no right to claim for reimbursement of the value of the improvements introduced by them on the land, for the possession of the mortgagee is subject to the right of redemption by the mortgagor who at any time may exercise such right within the period stipulated. If the mortgagee improves the land, he does so at his risk.

To hold otherwise would render redemption oppressive and onerous to the owner-redemptioner, if not nugatory and inoperative, for all that a scheming mortgagee interested in owning the land would do is to saddle the land with so much improvements that the owner will find himself financially incapable of redeeming the mortgage. The value of the improvements will have to be added to the principal indebtedness thereby driving the debtor deeper and deeper into debt until he is finally "improved out" of his property.

WHEREFORE, the judgment appealed from is affirmed insofar as it declares the validity of the consignment thereby releasing the petitioner from her obligation to the private respondents; the award of damages for losses

and unrealized profits is set aside with costs against the private respondents.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, Martin, and Fernandez, JJ., concur.

[1] Third Division; Rodriguez, J., ponente; Villamor and Martin, JJ., concurring.

[2] pp. 37-39, Records.

[3] pp. 40-41, Records.

[4] Limkako v. Teodoro, 77 Phil. 313; Ponce de Leon v. Syjuco, Inc., 90 Phil. 311.

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