

EUGENIA CORPUS, PETITIONER, VS. COURT OF APPEALS, MARIANO LUDAN AND FRANCISCA RAMOS, AND GENOVEVA ITO RESPONDENTS.

G.R. No. L-19280. February 10, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal by certiorari to review the decision of the Court of Appeals in its CA-G.R. No. 22073-R.

The facts, as stated by said Court, are as follows:

"It appears from the stipulation and the additional evidence Presented that the disputed area of four hectares is part of the and situated in Dupax, Nueva Vizcaya acquired by intervenor Genoveva Ito as a homestead. On April 22, 1948 she sold a retro one hectare thereof to defendant Jose Molina. On September 15, 1952, she sold the whole four hectares to defendant-appellant Eugenia Corpus also subject to the former's right of redemption. Both sales e unregistered. Appellant and Molina cultivated the land and paid its taxes. After the present action was commenced, Molina conveyed his one hectare to appellant who presently is in possession of the entire property. After the transfer to appellant, intervenor mortgaged the land to Dr. Leon Velasco. The mortgage was annotated in intervenor's title. On June 25, 1953, intervenor again sold the land to plaintiffs with the right to redeem it in one year. With the proceeds of the sale she paid her debt to Velasco and the mortgage annotation was accordingly cancelled. Plaintiffs, who had no knowledge of any prior conveyance of, or encumbrance on, the land except the mortgage in favor of Velasco, registered in good faith the sale in their favor. The sale had the approval of the Secretary of Agriculture and Natural Resources. Intervenor having failed to redeem the land within the stipulated period of one year plaintiffs secured a court order consolidating their title thereto. Defendant Molina and appellant refused to vacate the property so plaintiffs brought this action to recover it."

The plaintiffs below were the spouses Mariano Ludan and Francisca Ramos, now respondents; and the defendants were Eugenia Corpus and Jose Molina, the former now the sole petitioner. Genoveva Ito was intervenor, who sought a reconveyance of the property from the plaintiffs. The Court of First Instance rendered judgment as follows:

"In view of the foregoing considerations, decision is hereby rendered declaring the plaintiffs, spouses Mariano Ludan and Francisca Ramos as owners of the parcel of land in question consisting of 4 hectares which is a portion of that parcel of land described in Original Certificate of Title No. 1579 (Annex A and Exhibit AA-intervenor); ordering the defendant Eugenia Corpus to restore the possession of said parcel of land in question to the plaintiffs the spouses Mariano Ludan and Francisca Ramos; and declaring the intervenor Genoveva Ito with right to repurchase the said parcel of land in question from the plaintiffs, the spouses Mariano Ludan and Francisca Ramos upon payment by her to them of the sum of P6,000.00, the consideration of the deed of sale with right of repurchase (Annex E) to be effected in a legal deed oi conveyance. The complaint with respect to the defendant Jo& Molina is hereby dismissed. And without special pronouncenien as to the costs."

Defendant Eugenia Corpus appealed to the Court o Appeals, which thereafter affirmed the judgment with the only

modification that it declared the intervenor to without right to redeem the property in dispute, since the period of one year mentioned in the contract of sale to the plaintiffs had already expired. In other words, the plaintiffs were recognized as the owners of the property without any qualification, and hence entitled to its possession. Review of this decision is now sought by Eugenia Corpus alone, who avers that the Court of Appeals erred (1) in not applying the provision of Article 1602 of the New Civil Code; (2) in not granting to petitioner the right to redeem the land in question; and (3) in reviewing and reversing the judgment of the lower court in favor of respondents Mariano Ludan and Francisca Ramos, who did not appeal from said judgment.

On the first point, petitioner contends that the pacto de retro sale executed by Genoveva Ito in favor of the spouses Mariano Ludan and Francisca Ramos should be interpreted as an equitable mortgage in the light of Article 1602 of the New Civil Code. The contention is untenable. This issue could not have been raised in the trial court by petitioner and cannot now be raised before us because she was not a party to the said pacto de retro sale. Genoveva Ito did raise it in her complaint in intervention, but the trial court did not rule upon it in her favor and instead declared the transaction to be a real sale, although recognizing her right to redeem pursuant to section 119 of the Public Land Act, which provides:

"SEC. 119. Every conveyance of land acquired under the free 'tent or homestead provisions, when proper, shall be subject to Purchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance."

However, as already pointed out, this right of redemption eliminated in the judgment of the Court of Appeals, Genoveva Ito has not sought a review thereof insofar as she is concerned. The question is now closed.

The foregoing disposes likewise of petitioner's second assignment of error, for if Genoveva Ito herself has lost her right of redemption by the judgment of the Court of Appeals, with which she is obviously in agreement, not having come to us for review, petitioner cannot exercise that right in her own behalf- Nor can she pretend to have acquired it by derivative title from Genoveva Ito pursuant to section 119 of the Public Land Act. Petitioner does not come within the scope of this provision, for she is neither the widow nor a legal heir of Ito, the original applicant and homestead owner.

In view of the considerations already set forth, it is unnecessary to pass upon petitioner's third assignment of error.

The judgment of the Court of Appeals is affirmed, with costs against petitioner.

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

Decision affirmed.

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