

CONSOLACION COCJIN, PLAINTIFF AND APPELLEE, VS. AGRIPINA LIBO, DEFENDANT AND APPELLANT.*G.R. No. L-4250. August 21, 1952*

Ponente: MONTEMAYOR, J.

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On April 13, 1929, defendant-appellant Agripina Libo sold to plaintiff-appellee Consolacion Cocjin a portion of one hectare from her lot No. 2086 of the cadastral survey of the municipality of Dueñas, Province of Iloilo, for the sum of P50 plus twenty cavans of palay (provincial measure) subject to repurchase within five years, by virtue of Exhibit B, a private instrument. The portion sold remained in the possession of the vendor because of a contract of lease, Exhibit C, under which Agripina as lessee was to pay as rent six cavans of palay every year. At the time, lot No. 2086 was still unregistered under the provisions of the Land Registration Act although the vendor was already awaiting her certificate of title possibly because of registration proceedings previously instituted by her. It was the understanding between the parties that as soon as she received the corresponding certificate of title, she would deliver it to the vendee.

The instrument or deed of sale provided that the repurchase was to be made within the month of March, 1934 by returning the sum of P50 plus the twenty cavans of palay, and that if the vendor could not effect the repurchase, the parties would renew the deed and execute a new one according to their agreement and in the meantime the land was to continue in the possession of the vendee Consolacion.

On July 26, 1930, appellant Agripina received from Consolacion an additional six cavans of palay as additional consideration of the sale.

In 1934 when the period for repurchase was about to expire, with the vendor unable to effect it, the parties agreed to extend the period of repurchase for another five years, that is to say, until April 13, 1939. Consolacion asked Agripina to execute the corresponding deed of renewal in a public instrument but the vendor excused herself saying that she had not yet received her certificate of title to the land. So the renewal remained verbal.

On May 10, 1934, defendant-appellant again received from the vendee an additional one cavan and one fanega of palay to form part of the sales price, so that, said price totaled P50 and twenty-seven cavans and one fanega of palay.

In 1939 defendant-appellant again failed to make the repurchase because she did not have the necessary money and palay and the parties again agreed to extend the period of repurchase for another five years, that is to say, up to April 13, 1944. Because defendant-appellant again failed to make the repurchase in April 1944, the parties again agreed to extend the period to repurchase for another five years, that is to say, up to April 13, 1949. On the occasions of the renewals in 1939 and 1944, when Consolacion asked the vendor to execute the corresponding deed of sale in a public instrument so that it could be registered in the office of the register of deeds, Agripina gave the same excuse given by her in 1934, namely, that she had not yet received her certificate of title. It turned out, however, that Agripina had received the corresponding certificate of title for the whole lot 2086 since 1935,

but had withheld that fact from the vendee. This was discovered by Consolacion only in 1945.

Because Agripina failed or refused to execute the cor-responding deed of sale by public instrument as promised by her, the present action was commenced by plaintiff-appellee to compel her to execute said deed of sale with right to repurchase up to April 13, 1949. At the hearing Agripina tried to prove that she had already redeemed or repurchased the land in the year 1934 by returning or delivering to the vendee Consolacion the sum of P185.80 as repurchase price and that the redemption was evidenced by a receipt issued by Consolacion but that said receipt was lost during the last world war. The Court of First Instance of Iloilo presided over by Judge Manuel Blanco found that no such repurchase or delivery of P185.80 was ever made. The trial court equally found that contrary to the claim of Consolacion, what was sold to her was lot the whole lot 2086 with a total area of almost ten hectares, but only a portion with an area of about one hectare. In its decision the court ordered defendant-appellant to execute a deed of sale by public instrument of a portion of one hectare from lot 2086, for the sum of P50 plus twenty-seven cavans and one fanega of palay (provincial measure at the rate of 150 liters per cavan) in favor of Consolacion Cocjin with right to repurchase up to April 13, 1949, which portion was still in the possession of Agripina as lessee thereof, with the understanding that if within ten days after the decision became final Agripina failed or refused to comply with the order Atty. Ramon A. Espino was designated to execute the corresponding deed of sale which was to have equal efficacy as though executed by Agripina herself.

Agripina in her notice of appeal (R. A. p. 43) stated that she was appealing to the Court of Appeals on the ground that the decision was against the statute of frauds and the statute of limitations. She did not question the court's findings of fact. The Court of Appeals where the appeal was taken received the corresponding record on appeal and the briefs of the parties, but upon discovering that only questions of law were raised in the appeal as may be gathered from the brief of defendant-appellant, certified the case to this court. This explains why the appeal from the decision of Judge Blanco of July 13, 1948, is being decided only now. The date (April 13, 1949) fixed for the repurchase of the land by Agripina has now long expired.

As already stated, defendant-appellant raises only questions of law in her appeal. Naturally, she has to abide by the findings of fact made by the trial court, findings which we had to adopt and follow in our statement of facts.

For a better understanding of the theory of appellant, we reproduce her assignment of errors, to wit:

I

The Trial Court erred in voluntarily omitting out and in not taking into account the special legal defense of the statute of frauds which is specially pleaded in the answer of the defendant-appellant.

II

The Trial Court erred in likewise voluntarily omitting out and in not taking into account the special legal defense of the .statute of limitations which is specially also pleaded in the answer of the defendant-appellant.

III

The Trial Court erred in ordering the defendant-appellant to execute the contract of pacto de retro in favor of the plaintiff-appellee on a portion of lot No. 2086 for a consideration of P50 and 27 "bultos" and 1 fanega of palay expiring on April 13, 1949 and the payment of costs.

Appellant claims that the decision appealed from violates the statute of frauds. From what we can gather from her argument which is not entirely clear, the sale of the land subject to repurchase within five years and the lease of the same land to the vendor for the same period, in order to be effective, should be reduced to writing as required by the statute of frauds now embodied in section 21, Rule 123 of the Rules of Court, which rule requires that an

agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein, must be evidenced by writing. The sale with right to repurchase within five years made in 1929 was evidenced by Exhibit B through a private instrument. So was the contract of lease entered into that same year evidenced by Exhibit C. Consequently, both fulfill the requirement of the law about the sale of land, or the lease thereof for a longer period than one year. So, appellant must be referring to the renewals of the period of repurchase made in 1934, 1939 and 1944 with the corresponding renewals of the lease, which were not reduced to writing. In the first place, the statute of frauds or Rule 123, section 21 of the Rules of Court apply only to executory contracts and only to their enforcement. Both the extensions of the period of repurchase and the extensions of the lease contract are no longer executory, because they have already been performed and consummated. What plaintiff-appellee seeks in this action is not to enforce these extensions of the period to repurchase and the period of the lease, but to compel defendant-appellant to execute the corresponding deed of sale by public instrument of the land sold to her still with the right to repurchase up to 1949, so that said instrument could be properly registered in the office of the register of deeds, because she discovered that since 1935 when Agripina received her certificate of title, the land had become registered land under the provisions of Act No. 496 and so all deeds of sale of the same to operate must be duly recorded. Furthermore, it is for the vendee and lessor of the property in question rather than for the defendant-appellant vendor and lessee to invoke the provisions of the statute of frauds, because the former is the one prejudiced by the extension of the period to repurchase and the lease. If said vendee-lessor chose to deny or not to recognize the extensions of repurchase and the lease, for the reason that they were not reduced to writing, then the sale became absolute and a consolidation of her title ensued when the defendant-appellant vendor failed to make the repurchase in 1934, 1939 and 1944 as found by the trial court; equally, the lease expired on those dates when it was not renewed. So that, the appellee became the absolute owner of the land and could recover possession of the same from the appellant. For this reason, we do not quite understand the legal import of the theory of appellant, but one thing we are sure, that her invoking the provisions of the statute of frauds is untenable.

Appellant next invokes the statute of limitations on the theory that in February, 1947, when appellee filed the suit, her action had already prescribed on the ground that her right to commence the same arose in 1934 when appellant failed or refused to execute the corresponding deed of sale. Again, we fail to exactly understand the theory of appellant on this point. The sale of the land in 1929 although evidenced by a private instrument, was valid and was binding on both parties, vendor and vendee. The land then was still unregistered under the provisions of the Land Registration Act (Act No. 496). It was the understanding or agreement between the parties that ^ soon as the land became registered and appellant received the corresponding certificate of title, she was to deliver it to the appellee, and that the corresponding deed of sale in a public instrument would be executed. Appellant acting in bad faith since 1935, led the appellee to believe that she had not yet received the certificate of title to the land, and that the land was still unregistered, when as a matter of fact, she had received it since that year. Even following the theory of appellant, the right of appellee to compel the execution of the corresponding deed of sale in a public instrument arose only in 1945 when she discovered the fraud practised by appellant, and she filed the corresponding suit two years after, in 1947.

As we have already stated, the trial court found that contrary to the pretensions of appellant, she had not repurchased the land in 1934. In order to give her theory and her invoking the provisions of the statute of frauds, a color of relevancy, she should have in her appeal questioned this finding of fact by the trial court, and insisted that she had really made the repurchase in 1934, and that consequently, the renewals and extensions of the period of repurchase and of the lease are irrelevant and immaterial because there was no reason for them, aside from their violating the statute of frauds at the time they were allegedly made. But as things stand, in view of that finding of the trial court that the land had not yet been repurchased, which finding we have to adopt and accept, the claim of

appellant about the applicability of the statute of frauds became irrelevant and immaterial.

Because of the expiration of the period fixed by the lower court for the execution by appellant of the corresponding deed of sale, as well as the period for repurchase, it is hereby ordered that appellant Agripina Libo execute said deed of sale, within fifteen (15) days after this decision becomes final, and that in case she fails or refuses to do so, the Provincial Sheriff execute said deed for her, the expense incident thereto to form part of the costs. The period of repurchase will be six months to be counted from the day this decision becomes final. With this modification, the decision appealed from is affirmed with costs.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Bautista Angelo, and Labrador, JJ., concur.

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