

ADELA ROSARIO, ET AL., PLAINTIFFS AND APPELLANTS VS. MARIA S.F. ROSARIO, DEFENDANT AND APPELLEE.*G.R. No. L-13018. December 29, 1960*

Ponente: PARAS, C.J.

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On June 8, 1953, the plaintiffs and the defendant entered into a contract of sale with right to repurchase. The land sold is in Binmaley, Pangasinan, and the period of redemption was to be within one year from June 8, 1953. Unsuccessful in several attempts to repurchase the property after the stipulated period had expired, the plaintiffs brought an action in the Court of First Instance of Pangasinan, praying for reconveyance by the defendant. The latter admitted all the material allegations in the complaint but moved to dismiss it for lack of cause of action. Judgment was in due course rendered dismissing the complaint. After denial of their motion for reconsideration, the plaintiffs have taken this appeal.

Admitting that the transaction herein involved is a "Deed of Sale with Right to Repurchase" and the period for redemption had expired, the appellants contended that the appellee has not as yet acquired any title, in the absence of any consolidation of ownership in accordance with article 1607 of the new Civil Code which provides that "in case of real property, the consolidation of ownership in the vendee by virtue of the failure of the vendor to comply with the provisions of article 1616 shall not be recorded in the Registry of Property without a judicial order, after the vendor has been duly heard."

Appellants' contention cannot be sustained. Article 1607 is a reproduction of article 1509 of the old Civil Code to the effect that the vendee shall irrevocably acquire the ownership of the thing sold upon failure of the vendor to fulfill what is prescribed in article 1581 (now article 1616). Under both codal provisions, ownership is consolidated by operation of law in the vendee, and the vendor loses his rights over the property by the same token. The requirement of a judicial order in article 1607 is merely for purposes of registering the consolidation of title which, pursuant to the old rule, could be accomplished by just presenting an affidavit to the Register of Deeds.

The appellants have also missed the proper application of article 1606 of the new Civil Code which was taken from article 1508 of the old Civil Code, except the last paragraph which provides for the first time that "the vendor may still exercise 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." The new provision contemplates a case involving a controversy as to the true nature of the contract, and the court is called upon to decide whether it is sale with pacto de retro or an equitable mortgage. In the case at bar, the transaction is admittedly a deed of sale and the stipulated period of redemption had expired.

Wherefore, the decision appealed from is affirmed with costs against the appellants. So ordered.

Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion., Reyes, J.B.L., Barrera, Gutierrez David, and Paredes, JJ., concur.

Judgment affirmed.

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