

EVANGELINO LASERNA, PETITIONER AND APPELLEE VS. MARIA JAVIER AND JOSE MA. CRUZ, OPPOSITORS AND APPELLANTS.*G.R. No. L-14611. November 29, 1960*

Ponente: GUTIERREZ DAVID, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/31f9f2388801/>**GUTIERREZ DAVID, J.:**

This is an appeal from an order of the Court of First Instance of Rizal granting the herein appellee's petition for consolidation of title to certain properties in Mandaluyong, Rizal, and for the issuance of a transfer certificate of title in the name of Jose M. League as appellee's vendee.

The record shows that on September 13, 1949, the spouses Jose Ma. Cruz and Maria Javier Cruz, the appellants herein, executed a deed whereby for the sum of P13,000.00 they sold to Evangelino Laserna a parcel of land, together with the improvements thereon, situated in Mandaluyong, Rizal, and covered by Transfer Certificate of Title No. 41100, subject to their right to repurchase within a year from the date of the execution of the contract. As the appellant spouses failed to repurchase the properties, the vendee, who is now the appellee, on November 29, 1950, petitioned the Court of First Instance of Rizal to consolidate in his name the title to said properties. Acting¹ upon the petition, the court on December 7, 1950 ordered the cancellation of Transfer Certificate of Title No. 41100 in the name of the spouses Jose Ma. Cruz and Maria Javier Cruz and the issuance of a new title covering the properties in the name of the petitioning vendee. Upon appeal by the spouses to the Court of Appeals (CA-G.R. No. 7885-R) on the ground that they were not duly notified of the hearing of the petition, that court on April 22, 1955, set aside the order "without prejudice to the right of the appellee (vendee) to file another petition for the same purpose * * *."

In the meantime, or shortly after the vendee Evangelino Laserna filed his petition for consolidation of title, the appellant spouses instituted an action in the same Court of First Instance of Rizal for the annulment of the deed of pacto de retro sale, claiming that it was a mortgage to secure a loan. The court, however, decided the case against them and upheld the validity of the instrument as one of sale with right to repurchase. This decision was affirmed by the Court of Appeals also on April 22, 1955 (C.A.-G.R. No. 9882-R).

Claiming that the period for redemption has long expired without the vendors having exercised their right under the contract the vendee, on July 15, 1955, commenced the present proceedings in the court below with a petition praying that title to the properties in question be consolidated in his name and that afterwards his title be cancelled and a new one issued in the name of one Jose M. League who purchased the properties from him. The petition was opposed by the spouses for the reason that the decision of the Court of Appeals in CA-G.R. No. 9882-R became final only on July 20, 1955, and under the third paragraph of Article 1606 of the new Civil Code, they may, as vendors a retro, still repurchase the properties within thirty (30) days from the time the said final judgment had been rendered. After reply to the opposition was filed, the lower court in its order dated August 6, 1955 ruled that Article 1606 of the new Civil Code had no application to the case and granted the petition for consolidation, directing the Register of Deeds of the province to cancel Transfer Certificate of Title No. 41100 in the name of the Cruz spouses and to issue in lieu thereof a transfer certificate of title in the name of the vendee,

herein appellee; to cancel the new title in the latter's name and to issue a new transfer certificate of title in the name of Jose M. League. The appellants moved for reconsideration of this order, but the court on September 19, 1955 denied the same with the following findings:

"In the hearing, no competent proof of service of the notice of hearing of the motion was presented in Court. Moreover, the Court finds no justifiable reasons to reconsider and revise its view that Article 1606 is not applicable to the present case. Be that as it may, the thirty (30) days period provided in said provision has long elapsed even if we should take July 30 as the day when the decision of the Court of Appeals in C.A.—G.R. No. 7885-R became final, it not appearing that oppositors have tendered or made a judicial deposit of the redemption money up to the present."

In this appeal, we are asked to determine whether or not, under the circumstances of the case, the appellants, as vendors, may still repurchase the properties subject of the pacto de retro sale.

The new Civil Code in Article 1606, thereof gives the vendors 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 the right to repurchase." This provision has been construed to mean that "after the courts have decided by a final or executory judgment that the contract was a pacto de retro and not a mortgage, the vendor (whose claim as mortgagor had definitely been rejected) may still have the privilege of repurchasing within 30 days." (Perez, et al. vs. Zulueta, 106 Phil., 264.) Conformably to the above, appellant could still repurchase the properties in question within thirty days after the finality of the decision of the Court of Appeals in CA-G.R. No. 9882-R, wherein appellants' contract with appellee was held to be a pacto de retro sale and not a mortgage.

There is, however, no showing that appellants exercised their right to repurchase within the thirty-day period above referred to, even assuming, as proposed by them, that the decision of the Court of Appeals became final only on July 20, 1955. As found by the court below, up to as late as September 19, 1955, when the order denying appellants' motion for reconsideration was issued, the said appellants failed to tender payment or make a judicial deposit of the redemption money. This finding has never been contested by appellants. And they do not allege that a bona fide offer to repurchase was made by them. Such being the case, appellants must be deemed to have lost their right of redemption. The rule is that in the exercise of that right, the vendor a retro must complete the repurchase before the expiration of the redemption period. It is not sufficient that he makes manifestations of his desire to repurchase; this statement of intention must be accompanied by an actual and simultaneous tender of payment, which constitutes the legal use or exercise of the right to repurchase. (10 Manresa 366; Angao vs. Clavano, 17 Phil., 152, cited in Civil Code of the Philippines by Tolentino, Vol. V, p. 154.) It is only when the vendee has flatly refused to permit repurchase that tender of payment is not necessary. (See Gonzaga vs. Go, 69 Phil., 678.) In view of the foregoing, the order appealed from is hereby affirmed, with costs against the appellants.

Paras, C.J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

Order affirmed.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.