

PAZ Y. OCAMPO, JOSEFA Y. OCAMPO, ISIDRO Y. OCAMPO, GIL Y. OCAMPO, MAURO Y. OCAMPO, AND VICENTE Y. OCAMPO, PLAINTIFFS AND APPELLEES, VS. CONRADO POTENCIANO, VICTOR POTENCIANO AND...

G. R. No. L-2263. May 30, 1951

Ponente: REYES, J.

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REYES, J.:

This is an appeal by certiorari from a decision of the Court of Appeals.

From the findings of fact of said court, which are conclusive for the purposes of this appeal, it appears that on February 3, 1930, Edilberto Ocampo, married to Paz Yatco, executed a deed purporting to convey to his relative, Conrado Potenciano, and the latter's wife, Rufina Reyes, by way of sale with pacto de retro for the sum of P2,500, a town lot with a house of strong materials standing thereon. On that same day, Ocampo signed another document, making it appear that, for an annual rental of P300, which, as may be noted, is equivalent to 12 per cent of the purchase price, the vendees were leasing to him the house and lot for the duration of the redemption period.

The property involved in the above transaction is located at the center of the poblacion of Binan, Laguna, and, in the opinion of the Court of Appeals, worth between 20 and 25 thousand pesos. Though registered in the name of Ocampo alone, it in reality belonged to him and his wife as conjugal property.

The period originally fixed for the repurchase was one year, "extensible to another year," but several extensions were granted, with the vendor paying part of the principal in addition to interests. The last extension granted was for one year from February 3, 1937, and the period having elapsed without the repurchase having been made, Potenciano, on January 24, 1939, filed with the register of deeds of Laguna an affidavit for the consolidation of title, on the strength of which the register of deeds issued transfer certificate of title No. 18056 in the name of Potenciano and his wife. This, however, did not close the avenue for settlement, for on February 28, 1939, with Edilberto Ocampo and Rufina Reyes already dead, Potenciano gave Paz Yatco an option to repurchase the property for P2,500 within 5 years, and a lease thereon for the same period of time at an annual rental of P300 which, as may again be noted, is equivalent to 12 per cent of the purchase price. On or about February 7, 1944, Paz Yatco sought to exercise the option by tendering to Potenciano at his clinic in Manila the sum of P4,000, an amount sufficient to cover both principal and interest, and upon the tender being rejected, deposited the money in court and brought an action in her own name and as judicial administratrix of the estate of her deceased husband to compel Potenciano to accept it and to have the title to the property reinstated in her name and that of her husband.

Intervening in the case, Potenciano's children, Victor and Lourdes, filed a cross-complaint, alleging that the option to purchase granted by their father to plaintiff on February 28, 1939, was null and void as to the share of their deceased mother Rufina Reyes in the property in litigation, which share passed to them by right of inheritance, and that as to their father's share in the same property they, the intervenors, were exercising the right of

redemption accorded by law to co-owners of property held in common, for which purpose they had already tendered him the sum of P1,250 on the fifth day after they learned of said option through plaintiff's complaint. To meet these allegations, plaintiff amended her complaint by including the intervenors as defendants and alleging, in effect, that the pacto de retro sale in question was in reality a mortgage to secure a pre-existing debt, with the rental contract thrown in to cover the stipulated interest of 12 per cent; that the option agreement for the repurchase of the property within five years from February 28, 1939, and for the payment of rental for that period in an amount equal to an annual interest of 12 per cent on the loan, was also meant to be in reality an extension of the life of the mortgage; and that the tender of payment was valid, the same having been made within the extended period. The Court of First Instance, after trial, upheld these allegations and gave judgment in favor of the children of Edilberto Ocampo and Paz Yatco, who had substituted the latter after her death.

When the case was elevated to the Court of Appeals, that court took a somewhat different view and rendered judgment declaring:

"(a) That contract Exhibit A entered into between Edilberto Ocampo and Conrado Potenciano was one of mortgage, with interest at the rate of 12 per cent per annum;

"(b) That the 'option to purchase' and the 'contract of lease' (Exhibits E and E-1) were validly executed by defendant Conrado Potenciano and binding upon the property in litigation;

"(c) That appellants were not co-owners of said property, by inheritance of one-half of the same from their deceased mother Rufina Reyes;

"(d) That appellants were not entitled to exercise the right of legal redemption (*retracto legal*) of the other half of the property belonging to their father Conrado Potenciano;

"(e) That the late Paz Yateo exercised her option to purchase the property in litigation within the time she had to do so;

"(f) That the consignment of the P4,000 in Japanese military notes, made with the Clerk of the Court of First Instance of Laguna in payment of the property in question, was in accordance with law and relieved the heirs of the spouses Ocampo-Yatco from paying anew said purchase price;

"(g) Ordering defendant Conrado Potenciano to execute the corresponding deed of conveyance, sufficient in law to transfer the title of the property in litigation to the heirs of the deceased spouses Edilberto Ocampo and Paz Yatco; and

"(h) Ordering the Register of Deeds of Laguna to cancel transfer certificate of title No. 18056 (Exhibit 1) and issue in lieu thereof a new transfer certificate of title for said property in favor of the heirs of the spouses Edilberto Ocampo and Paz Yatco, upon payment by appellees of the corresponding fees and the registration in his office of the deed of conveyance mentioned in the next preceding paragraph."

This is the judgment that is now before us for review.

First thing to be noted is that the Court of Appeals found and it is not disputed that the pacto de retro sale made by Edilberto Ocampo in favor of Conrado Potenciano and his wife was in reality a loan with security or an equitable mortgage, with simulated rental for interest. Such being the case, the lenders had no right, through the unilateral declaration of one or both of them, to consolidate title in themselves over the property given as security. The consolidation of title effected by Potenciano in this case was, therefore, null and void.

The Court of Appeals, however, held that the mortgage contract was superseded, through novation, by the option agreement for the repurchase of the property mortgaged, and the appellants now contend that this was error because Potenciano had no authority to enter into that agreement after the death of his wife. To this contention we

have to agree. The Court of Appeals erred in supposing that the surviving spouse had such authority as de facto administrator of the conjugal estate. As pointed out by appellants, the decisions relied on by that court in support of its view are now obsolete. Those decisions laid down the rule that, upon the dissolution of the marriage by the death of the wife, the husband must liquidate the partnership affair. But the procedure has been changed by Act No. 3176 (approved on November 24, 1924), now section 2, Rule 75, of the Rules of Court, which provides that when the marriage is dissolved by the death of either husband or wife, the partnership affairs must be liquidated in the testate or intestate proceedings of the deceased spouse (Moran, Comments on the Rules of Court, 3d ed., Vol. II, p. 324).

Furthermore, there is ground to believe that, as alleged by the appellees, the option agreement in question was nothing more than a mere extension of time for the payment of the mortgage debt, since in the mind of the parties the real transaction had between them was that of loan with security, or equitable mortgage, though, as is usual in these cases, it was given the form of a sale with right to repurchase.

It follows from the foregoing that at the time Paz Yatco made the tender of payment and consigned the necessary amount in court, the said contract of loan with security was still in effect, and as the tender was made in legal currency (Haw Pia vs. China Banking Corporation, [*] 45 O. G. [Supp. 9] 229), the tender and consignment must be held to produce their legal effect, which is that of relieving the debtor from liability. (Art. 1176, Civil Code; Limkako vs. Teodoro, 74 Phil, 313.)

Under this view of the case, it is not necessary to consider the claim of the appellants Victor Potenciano and Lourdes Potenciano that the Court of Appeals erred in not declaring them owners of the property in question, they having inherited one-half of it from their mother and acquired the other half from their father in the exercise of their right of legal redemption as co-owners. As ownership in the property never passed to their parents, these appellants acquired nothing.

Wherefore, with the modification of the judgment below, let judgment be entered, declaring the obligation evidenced by Exhibit "A", which is hereby held to be a mere contract of loan with security or equitable mortgage, already discharged, and ordering the Register of Deeds of Laguna to cancel transfer certificate of title No. 18056 and to issue in lieu thereof a new certificate of title for said property in favor of the heirs of the spouses Edilberto Ocampo and Paz Yatco upon payment of the corresponding fees. With costs against the appellants.

Paras, C. J., Bengzon, Montemayor, Jugo and Bautista Angelo, JJ., concur.
Tuason, J., concurs in the result.

[*] 80 Phil., 604.

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