

**FORTUNATO BOLLOZOS, ANDREA BOLLOZOS VDA. DE RAPANOT,
PABLO B. CALAM, EPIFANIA B. BEVERA, SERGIO B. CALAM,
GUALBERTO B. CALAM, IGNACIO B. CALAM, JOSE B. CALAM, JR. AND
CAROLINA B...**

G.R. No. L-29442. November 11, 1987

Ponente: CRUZ, J.

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CRUZ, J.:

The original protagonists in this controversy have long since passed away into "the tongueless silence of the dreamless dust" and are now but mute witnesses to this litigation. We can now go only by the musty records that will take us back to more than half a century ago, before the period of the Commonwealth.

This case was formally commenced on January 20, 1968, with the filing of a complaint for the recovery of a 1.2 hectare parcel of land and accounting for its use from defendant Yu, the herein appellant. The plaintiffs claimed that the said land had been delivered to him only for administration so he could apply the produce thereof to the indebtedness of Paulino Bollozos, their predecessor-in-interest. It was alleged that Yu had refused to return the land despite demand and to make the required accounting although the debt had long been paid.[1]

In his answer, the defendant averred that he had acquired ownership of the land in question by virtue of two documents executed in his favor by Paulino Bollozos, to wit, a deed of sale with right of repurchase dated September 1, 1934, and a deed of absolute sale dated September 21, 1936. He therefore had no obligation to return it. Additionally, Yu claimed that the suit was barred by prescription, the complaint having been filed only after all of 26 years.[2]

Issues having been joined, the parties later entered into a stipulation of facts before the trial court, reading in full as follows:

"1. That both parties hereby agree on the identity of the parcel of land in litigation as described in paragraph II of the amended complaint, which parcel of land is covered by OCT No. 5033 in the name of Paulino Bollozos;

"2. That plaintiffs Fortunato Bollozos and Andrea Bollozos are the only surviving children of the late Paulino Bollozos while the rest of the above-named plaintiffs are the grandchildren of said Paulino Bollozos;

"3. That sometime on September 1, 1934, the late Paulino Bollozos executed a document entitled 'Escritura de Compra y Venta Con Pacto de Retro,' the original of which is hereto attached as Annex A to form part hereof and another document was executed by the late Paulino Bollozos entitled 'A Definite and Absolute Purchase and Sale' dated September 21, 1936, the original copy of which is hereto attached to form an integral part of this complete stipulation of facts;

"4. That the parties agree to submit the entitled case for decision on the basis of the following issue or issues:

"(a) Whether a valid conveyance of ownership was made of the parcel of land in litigation on September 1,

1934 as appearing in Annex A, entitled 'Escritura de Compra y Venta Con Pacto de Retro,' or on September 21, 1936 as appearing in Annex B, entitled 'A Definite and Absolute Purchase and Sale' of the parcel of land in litigation, and for the Honorable Court to determine the legality or nullity of the above-mentioned documents." [3]

On the basis of this agreement and of the memoranda filed subsequently by the parties, the lower court,* without receiving further evidence, rendered judgment in favor of the plaintiffs.[4] It held, first, that the deed of sale with pacto de retro executed on September 1, 1934, was in reality an equitable mortgage and did not transfer ownership of the land to the defendant; and second, that the subsequent sale executed in 1936 was null and void ab initio because by that time the transfer of agricultural lands to aliens was already prohibited by the Commonwealth Constitution, which became effective on November 15, 1935. Yu was a Chinese national.

The above rulings are the subject of this appeal,** which we find meritorious. We shall reverse.

It is important to note at the outset that there is nothing in the record to show that the disputed property had merely been entrusted to Yu for administration in connection with Paulino Bollozos' indebtedness to him, as claimed by the plaintiff. Neither is there any evidence of such indebtedness. This allegation, which was the very basis of the complaint, was not among those admitted in the stipulation of facts and indeed had been categorically denied in the answer. It thus remained a bare averment without any actual or presumptive support.

It should also be noted that, by contrast, the defendant, to substantiate his answer, produced the two above-cited documents Annexes "A" and "B", which clearly indicate the intention of the parties regarding the owner-ship and disposition of the land in question. These documents are the best and, as it happens, the only evidence adduced of such intention.

Annex "A" reads as follows:

"ESCRITURA DE COMPRA Y VENTA CON PACTO DE RETRO

"Nosotros, PAULINO BOLLOZOS, de 71 anos de edad y FAUSTINA LILOC, de 58 anos de edad, marido y mujer respectivamente, filipinos y vecinos y residentes del barrio de Bonbon, Municipio de Catarman, Provincia de Misamis Oriental, Islas Filipinas, por la presente hacemos constar que consideracion a la suma de SEISCIENTOS TREINTA Y SEIS PESOS (P636.00), en moneda filipina que nos ha pagado y hemos recibido a nuestra entera satisfaccion del SR. YU TIENG SU, de 34 anos de edad, chino, casado de la SRA. SIA PUTE, de 29 anos de edad, china y residente de este Municipio de Catarman, Provincia de Misamis Oriental, Islas Filipinas, VENDEMOS, CEDEMOS ENTREGAMOS y TRASPASAMOS al referido SR. YU TIENG SU, sus herederos y causahabientes una parcela de terreno con todas sus mejoras existentes situada en el distrito de Quilambon, barrio de Bonbon, Municipio de Catarman, Provincia de Misamis Oriental, Islas Filipinas bajo el numero del Lote Cadastral de este Municipio Catarman, Misamis Oriental, Caso No. 9m y cuya descripcion tecnica es como sigue: ?

(Technical Description)

"Hacemos constar tambien que queda pacto y convenido con el referido SR. YU TIENG SUR; que si nosotros devolvieramos o mandamos devolver dentro del termino de SIETE (7) ANOS contados desde esta fecha la suma de SEISCIENTOS TREINTA Y SEIS PESOS (P636.00) en moneda filipina, y le abonaremos ademas los gastos que ocasione el presente contrato, nos otorgaran el comprador o sus representantes escritura de retroventa; pero si transcorre dicho plazo sin haberse utilizado el derecho de redencion, adquirira la presente el caracter de absolutamente consumada, y entretanto solo podra el comprador disponer la finca con las limitaciones presritas en la Ley Hipotecaria.

"En testimonio de rado lo cual firmamos la presente en este Municipio de Catarman, Provincia de Misamis

Oriental hoy 1, o-de Septiembre, 1934, A.D.

"(Sgd.) PAULINO BOLLOZOS y

"(Sgd.) FAUSTINA LILOC

"Firmada en presencia de:

"(Sgd.) JOSE LIM PATUNGAN y

"(Sgd.) EUFROSINO LIMBACO"

The second instrument, Annex "B", declared the following:

"DEFINITE AND ABSOLUTE PURCHASE AND SALE

"That I, PAULINO BOLLOZOS, 72 years of age, filipino, married to Faustina Liloc, 60 years of age, and resident of the barrio of Bonbon, Municipality of Catarman, Province of Oriental Misamis, P.I. do hereby declare and say: -

"1st. That I am the lawful owner of one parcel of land together with all existing improvements thereon, located in the sitio of Kilambon, barrio of Bonbon, Municipality of Catarman, Province of Oriental Misamis, P.I., particularly described as follows:

(Technical Description)

"2nd. That the said parcel of land together with all existing improvements thereon is registered in my name in the Office of the Register of deeds of the Province of Oriental Misamis, as evidenced by the ORIGINAL CERTIFICATE OF TITLE number FIVE THOUSAND THIRTY THREE (5033).

"3rd. That the said parcel of land, together with all existing improvements thereon was sold by me to Mr. YU TIENG SU, married Sia Pute on September 1, 1934 for the sum of SIX HUNDRED THIRTY SIX (P636.00) under the instrument of purchase with right or repurchase (Compra venta con pacto de retro) and said document is ratified before Notary Public Mr. Eufrosino Limbaco, of Mambajao, Misamis Oriental, on the 1st day of September 1934, Not. Reg. No. 149-Page No. 97-Book No. 8-Series of 1934.

"4th. That by these presents I do hereby declare and say that I will forever renounce and repudiate my rights and privileges to repurchase the said parcel of land together with all its existing improvements thereon and for and in consideration of an additional sum of TWO HUNDRED NINETY-FIVE PESOS (P295.00), Philippine Currency to me in hand paid and the receipt whereof is hereby acknowledged by Mr. YU TIENG SU, 36 years of age, Chinese, married to Sia Pute, 31 years of age, Chinese and resident of this Municipality of Catarman, Misamis Oriental, P.I., by these presents I do hereby sell, transfer and forever convey a deliver unto said Mr. YU TIENG SU, his heirs, executors, administrators and assigns that parcel of land together with all its existing improvements thereon, particularly described above (Lot No. 473). Original Certificate of Title number Five Thousand Thirty-three.

"5th. Lastly, I do hereby declare and say that I will forever warrant and defend unto said Mr. YU TIENG SU, his heirs, executors, administrator and assigns all lawful claims of all persons whomsoever of his right of ownership of the said parcel of land together with its existing improvements thereon described above.

"IN WITNESSETH WHEREOF, I have hereunto signed my name in this Municipality of Catarman, Province of Misamis Oriental, P.I., on this 21st day of September 1936.

"(Sgd.) PAULINO BOLLOZOS

"Signed in the presence of:

"(Sgd.) JOSE LIM PATUNGAN and

"(Sgd.) JOSE L. RIVERA"

It is clear from the first document that Paulino Bollozos actually sold the land in question to Yu for the sum of P636.00, subject only to the former's right to repurchase it within a period of seven years. There is nothing in this instrument suggesting a different arrangement such as that alleged by the plaintiffs-appellees in their complaint, nor have they submitted any evidence in proof of such arrangement.

The intention clearly embodied in Annex "A" was affirmed in the second transaction between the same parties as reduced to writing in Annex "B", denominated as "A Definite and Absolute Purchase and Sale." Concluded two years later, it specifically referred to the first sale made in 1934 by virtue of which, as Paulino Bollozos declared, the land in question and its improvements were "sold by me to Mr. Yu Tieng Su" for the agreed consideration of P636.00. He further stated in Annex "B" that "by these presents I do hereby declare and say that I will forever renounce and repudiate my right and privilege to repurchase" the said property as reserved by him in the first instrument. For such renunciation, Bollozos acknowledged receipt of an additional sum of P295.00, thus increasing the total purchase price of the land to P931.00.

The Court holds that the first transaction was a valid sale with right of repurchase and effectively transferred ownership of the land in dispute to the defendant-appellant. All the elements of a valid contract were present, and in any case the plaintiffs-appellees themselves have stipulated on its authenticity. As it was concluded in 1934, the prohibition against the acquisition of agricultural lands by aliens was not yet applicable, having become effective only from November 15, 1935, under the Commonwealth Constitution. Moreover, the title acquired by Yu was recognized in the said Constitution as a vested right that could no longer be disturbed under the new provisions of that charter reserving ownership of such lands to Filipino citizens.[5]

The plaintiffs-appellees err in suggesting that the first transaction, being conditional, did not effectively transfer the ownership of the land to the vendee. It did, certainly, subject only to the right of the vendor to redeem it within the period specified. As we said in an earlier case:

"In the deed of pacto de retro sale executed by Ignacio Reyes in favor of Lim Kiam on May 30, 1932, covering Lot 9203, the period of repurchase was not fixed. The Court of Appeals correctly held that in accordance with Article 1508 of the old Civil Code the right could be exercised within four years from the date of execution of the conveyance – in this case up to May 30, 1936. The fact, however, that on this date the Constitution was already in force did not affect the right acquired by Lim Kiam. We have held in a number of cases decided under the provisions of the old Civil Code that the nature of a sale with the right of repurchase is such that the ownership over the thing sold is transferred to the vendee upon execution of the contract, subject only to the resolutive condition that the vendor exercise his right of repurchase within the period agreed upon. *Manalansan v. Manalang*, L-13646, July 26, 1960; *Almiranez v. Devera*, L-19496, February 27, 1965; *Rosario v. Rosario*, L-13018, December 29, 1960." [6]

"A sale with pacto de retro transfers the legal title to the vendee and this, in the absence of an agreement to the contrary, carries with it the right of possession. In the case of *Santos v. Heirs of Crisostomo and Tiongson* (41 Phil. 342), this court, in discussing the nature of sale with pacto de retro, said: 'x x x It is our opinion, however, that the insertion of a stipulation for repurchase by the vendor in a contract of sale does not necessarily create any right inconsistent with the right of ownership in the purchaser. Such a stipulation is in the nature of an option, and the possible exercise of it rests upon contingency.' x x x." [7]

To be sure, Paulino Bollozos could have repurchased the property within seven years pursuant to the first contract. However, he did not choose to do so and in fact "renounced and repudiated" this right two years later in the second contract. It is noted that this contract also purported to convey the same property to Yu but this was

merely an affirmation or reiteration of the parties' intention in the first transaction. It was not really necessary to repeat the sale because the first contract had already been perfected and consummated. Indeed, the sale could not have been made for the first time then for it would have been illegal under the provisions of the new Constitution that had come into force in 1935. Actually, the real purpose of the second contract was to manifest Paulino Bollozos' waiver of his right to repurchase, for which he received the additional sum of P295.00.

The plaintiffs-appellees make such of the admitted fact that the disputed property is still in the name of Paulino Bollozos as so too are the tax declarations. This circumstance, it is argued, proves that ownership of the land was retained by Bollozos and later transferred to his heirs, besides being an indication as well that the first contract was really only an equitable mortgage and not a deed of sale. The contention is that as long as the land had not yet been registered in the name of the defendant-appellant, title hereto remained with Bollozos.

This is not correct. The first deed of sale took effect on September 1, 1934, and legally transferred ownership of the land subject thereof from the vendor to Yu on the said date. Failure to register the sale did not vitiate it or render it unenforceable. As we have held in several cases, an unrecorded deed of sale is binding between the parties and their privies because actual notice is equivalent to registration. The real purpose of registration being to give notice to third persons, deed of sale that has not been registered does not lose its efficacy insofar as the parties thereto and their heirs are concerned.[8]

It is settled that registration is not a mode of acquiring ownership. Thus:

"Registration does not confer ownership. It is not a mode of acquiring dominion, but only a means of confirming the fact of its existence with notice to the world at large."[9]

And with particular reference to problems such as the one at bar, we have ruled that:

"Title and ownership over lands within the meaning and for the purposes of the constitutional prohibition, dates back to the time of their purchase, not later. Any other ruling would be illegal and unjust, and would operate to dispossess alien owners who had acquired their lands in good faith before the prohibition was established, but either failed wholly to register them or registered them only after the Constitution was adopted."[10]

As for the finding of the trial court that the deed of sale with the right of repurchase was an equitable mortgage, we hold it has no basis in fact and law. All that is invoked in its support is that the land continued to be registered, and all the tax declarations thereon were made, in the name of Paulino Bollozos. That may well be, but that circumstance would not change the nature of the contract concluded in 1934. At best, it may demonstrate neglect on the part of the vendee, who had a right to transfer the registration in his name, but that would not signify that Paulino Bollozos retained or recovered ownership of the land he had already sold.

The defendant-appellant cites Article 1602 of the Civil Code and argues that none of the indications mentioned therein of an equitable mortgage are present in this case. While we are inclined to agree, it should be noted that the said article is not applicable because it was not embodied in the old Civil Code which was in force in 1934. This is an innovation in the present Code. In any event, it is worth stressing that one of the indicia mentioned in the said article is that the vendor remains in possession of the property in question, which is not the situation here. The complaint, in fact, asks for recovery of possession of the land from defendant Yu.

In sum, we hold that the trial court erred in dis-regarding the sale with right of repurchase concluded on September 1, 1934, and in considering it an equitable mortgage. The second contract executed on September 21, 1936, could not have validly conveyed the land in question to defendant Yu, who was an alien, as this was already prohibited by the Commonwealth Constitution. Nevertheless, it was effective in affirming the earlier contract of

September 1, 1934, and, more importantly, in making it absolute with the renunciation by the vendor of his right to repurchase the property. Accordingly, Yu should be recognized as the lawful owner of the land in dispute, acquired by him by virtue of a legitimate contract of sale with pacto de retro which became absolute when the vendor waived his right of repurchase.

The fact that the defendant in this case was an alien cannot be taken against him for he was not dis-qualified from acquiring the land in question when the sale was concluded in 1934. It should not deter us from ruling in his favor now.

This Court dispenses equal justice to the citizen and the alien and judges them on the merits of their cause and not the color of their skin. Having admitted him into our territory, the State is committed to the recognition of all the rights of the stranger in our midst save only where they unduly clash with the higher interests of our own nation. There is no such collision here. On the contrary, we see here an opportunity to prove, as we do now, that respect for the foreign guest is ingrained in the law of the land and in the nature of our people.

WHEREFORE, the appealed decision is REVERSED. The complaint and the counterclaim in Civil Case No. 66-C are DISMISSED, with costs against the plaintiffs-appellees. It is so ordered.

Teehankee, C.J., Narvasa, Paras, and Gancayco, JJ., concur.

[1] Record on Appeal, p. 5.

[2] Ibid., p. 10.

[3] Id., pp. 35-36.

* Presided by Judge Bernardo Teves.

[4] Id., pp. 37-41.

** Following his death, Yu Tieng Su was substituted as defendant-appellant by Lourdes Y. Tan, Jose S. Yu, Josefa Y. Tagarda, Severino S. Yu, Juanito S. Yu, Joaquin S. Yu, Juanita S. Yu, and Jorge S. Yu.

[5] Constitution of 1935, Article XIII, Sec. 1; Tejido v. Zamacoma, 138 SCRA 78.

[6] Parco v. Haw Pia, 45 SCRA 164.

[7] Alderete v. Amandoron, 46 Phil. 488.

[8] Obras Pias v. Devera Ignacio, 17 Phil. 45; Gustilo v. Maravilla, 48 Phil. 422; Quimson v. Suarez, 45 Phil. 901; Winkleman v. Veluz, 43 Phil. 609; Galasinao v. Austria, 97 Phil. 82; Philippine Suburban Development Corporation v. Auditor General, 63 SCRA 397.

[9] Bautista v. Dy Bun Chin, CA-L-6983-R, 49 O.G. 179.

[10] Ibid.

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