

BONIFACIO MERCADO, PLAINTIFF AND APPELLANT, VS. PAULO M. MERCADO, DEFENDANT AND APPELLEE.*G.R. No. L-14461. August 29, 1960*

Ponente: CONCEPCION, J.

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On August 29, 1944, plaintiff, Bonifacio Mercado, executed, a "Deed of sale of Real Property with right to Repurchase", whereby, in consideration of the sum of P5,000.00, in Japanese war notes then paid to him, he ceded, transferred and conveyed to defendant Paulo M. Mercado a parcel of land, situated in the barrio of Macarang, municipality of Palawig, province of Zambales, and more particularly described in said instrument, subject to redemption at "any time within the period of ten years from this date for the same amount of P5,000.00 * * *." Sometime before July 10, 1954, plaintiff offered to redeem said property by tendering payment of the sum of P300.00, in Philippine currency, which he believed to be much more than the equivalent of said sum of P5,000.00, in Japanese war notes, under the Ballantyne scale of values, but defendant rejected the offer and was unwilling to reconvey the property except for the sum of P5,000.00 in Philippine currency. Hence, on July 10, 1954, plaintiff deposited said sum of P300.00 with the Court of First Instance of Zambales and filed the complaint herein, alleging the facts set forth, above, and praying that judgment be rendered against the defendant: "(1) ordering defendant to recede, resell and reconvey the land in question to plaintiff for such amount as the Court may find, under the Ballantyne scale of values, as the equivalent in Philippine currency of the sum of P5,000.00 in Japanese war notes, which represents the consideration set forth in Annex "A" of the complaint, and which equivalent sum be taken from plaintiff's deposit with the Clerk of this Court in the amount of P300.00"; and (2) ordering defendant to pay the costs of this suit."

After the filing of defendant's answer, both parties filed a stipulation of facts admitting substantially the allegations of the complaint and submitting, as the only issue for determination, the question whether the redemption should be made, peso for peso, in Philippine currency, as claimed by the defendant, or upon payment of the equivalent, in Philippine pesos, of P5,000.00 in Japanese war notes, under the Ballantyne scale of values, as contended by the plaintiff.

Relying upon *Gomez vs. Tabia* (84 Phil., 269; 47 Off. Gaz. 641), the Court of First Instance of Zambales rendered a decision the dispositive part of which reads as follows:

"Wherefore, judgment is hereby rendered declaring that the redemption in this case should be made at P5,000.00 actual Philippine currency, and giving the herein plaintiff 90 days after this decision has become final within which to exercise his right to repurchase the property in question in the amount of P5,000.00 Philippine currency with the understanding that if within said period, he fails to exercise his right, of redemption, title to the land is hereby consolidated in favor of the defendant. No pronouncement as to costs."

Hence, this appeal by the plaintiff, which is well taken. Although the aforementioned *Gomez* case involved a sale subject to redemption "sa ganito ding halaga" (at the same price), which the lower court, in the case at bar, found to be identical to the stipulation, between the parties herein to the effect that plaintiff may repurchase his property

"for the same amount of P5,000.00" received by him from the defendant, there is a fundamental difference between the two (2) cases. In the Gomez case, the property in question was not redeemable during the occupation, the parties therein having stipulated, in the contract, executed on June 24, 1944, that the seller may repurchase his property "within thirty days after the expiration of one year from June 24, 1944". In other words, the redemption was feasible only from June 24, to July 24, 1965, when Japanese war notes were no longer legal tender. This was precisely one of the main reasons why this Court held that the parties in the Gomez case must have intended that payment be made in Philippine currency, on the peso to peso basis. In the case at bar, however, plaintiff was entitled to redeem his property "at any time within the period of ten years" from August 29, 1944. He could have exercised, therefore, this right as early as August 30, 1944," by paying P5,000.00 in Japanese war notes. Consequently, plaintiff may redeem his property upon payment of the equivalent, in Philippine currency, on August 29, 1944, of said sum of P5,000.00, in Japanese war notes, pursuant to the Ballantyne schedule (*De Asis vs. Agdamag*, 90 Phil., 249; *Hilado vs. De la Costa*, 83 Phil., 471; 46 Off. Gaz., 5472.; *Soriano vs. Abalos*, 84 Phil., 206; 47 Off. Gaz. 168).

Considering that each genuine Philippine peso was then worth P25.00 in Japanese war notes, according to said schedule, the decision appealed from is hereby modified, therefore, in the sense that plaintiff had made a valid tender of payment to the defendant; that of the amount judicially consigned by the former, the sum of P200.00 in Philippine currency, which is the equivalent of P5,000.00, in Japanese war notes, should be turned over to the defendant after deducting the amount of the costs, which he is hereby sentenced to pay upon the execution and delivery by him, within thirty (30) days from and after this decision shall have become final, of the corresponding deed of reconveyance in favor of the plaintiff; and that, thereafter, the balance of said deposit shall be refunded to him. It is so ordered.

Paras, C. J., Bengzon, Padilla, Labrador, Reyes, J. B. L., and Barrera, JJ., concur.
Gutierrez David, J., did not take part.

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