

FELIX ONGOCO, ET AL., PETITIONERS, VS. HON. JUDGE OF THE COURT OF FIRST INSTANCE OF BATAAN, ET AL., RESPONDENTS.

G.R. No. L-20941. September 17, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Felix Ongoco and Belen Consunji, spouses, were owners of a parcel of land, 695 square meters in area, at Abucay, Bataan, covered by Transfer Certificate of Title No. T-8185 in their names.

On May 2, 1959 the aforesaid spouses sold their land to Apolonio Soriano and Cirila Mina, for P1,000.00, with right to repurchase within three years from said date.

No repurchase was made within the agreed period. On August 29, 1962 Apolonio Soriano and Cirila Mina filed in the Court of First Instance of Bataan a "petition" for an order declaring them the absolute owners of the land and transferring the certificate of title to their names.

Although the petition was docketed as "Special Civil Case No. 2827" the respondents-vendors were not served with summons but only sent a copy of the petition by registered mail.

The petitioners asked that the case be set for hearing on September 11, 1962 at 8:00 A.M. On September 4, 1962, however, respondents-vendors moved for postponement of the hearing.

On September 11, 1962, the date set for hearing, respondents-vendors were not present in court when the case was called. The Court of First Instance denied their motion for postponement and thereupon rendered judgment declaring the petitioners-vendees absolute owners of the land and ordering registration thereof in their names.

Respondents-vendors moved, on October 4, 1962, to set aside the judgment but on October 25, 1962 the motion was denied. Subsequently, on February 26, 1963, the respondents-vendors in said case filed the present suit herein for certiorari.

Petitioners contend that respondent Judge gravely abused his discretion and/or acted without or in excess of jurisdiction in rendering the judgment aforementioned.

Article 1607 of the New Civil Code provides:

"ART. 1607. 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."

Speaking through Mr. Justice J. B. L. Reyes, this Court has already ruled that the foregoing article requires the filing of an ordinary civil action and, consequently, service of summons on parties defendants as well as opportunity to answer or move to dismiss within 15 days therefrom. We quote from *Tacodoro vs. Arcenas*, L-15312, November 29, 1960:

"The code did not provide for any specific procedure to be observed in securing the judicial order above-mentioned. Accordingly, we should fall back on the ordinary rules of procedure applicable. As correctly pointed out by the appellant, the petition to consolidate ownership under the article aforequoted does not partake of the nature of a motion, it not being merely an incident to an action or a special proceeding (see Sec. 1, Rule 26, Rules of Court; 60 C.J.S. 7), but is an ordinary civil action cognizable by the Court of First Instance. As such ordinary action, it should be governed by the rules established for summons found in Rule 7 of the Rules of Court, stating, among other things, that upon the 'filing of the complaint, the clerk of court shall forthwith issue the correspondent summons to the defendant' (Sec. 1). The defendant would then be entitled to a period of fifteen (15) days from service of such summons within which to file either a motion to dismiss the petition (Sec. 1, Rule 8) or an answer (Sec. 1, Rule 9). The failure of the court to properly observe these rules is sufficient cause for validly attacking its consequent judgments and/or orders even on jurisdictional grounds (See *Salmon & Pacific Commercial Co. vs. Tan Cueco, et al.*, 36 Phil. 556).

"That the vendor a retro should be made a party-defendant to the proceedings and, therefore, be entitled to notice of the same, is clearly inferable from the codal provision that the judicial order consolidating Ownership in the vendee a retro shall not issue unless 'after the vendor has been duly heard' (Art. 1607, Civil Code, supra); which statement would also imply that the proceedings therein to be taken are in no way to be construed as merely summary in nature. This conclusion is further fortified by other provisions of the new Civil Code such as articles 1602, 1603, 1604, 1605 and 1606, which are all indicative of the legislative intent to accord the vendor a retro the maximum safeguards for the protection of his legal rights under the true agreement of the parties. Experience has demonstrated too often that many sales with right of repurchase have been devised only to circumvent or ignore our usury laws and for this reason, the law looks upon them with disfavor (Report of the Code Commission, pp. 63-64). When, therefore, Article 1607 speaks of a judicial order after the vendor shall have been duly heard, it contemplates none other than a regular court proceeding under the governing Rules of Court, wherein the parties are given full opportunity to lay bare before the court their real covenant. Furthermore, the obvious intent of our Civil Code, in requiring a judicial confirmation of the consolidation in the vendee a retro of the ownership over the property sold, as not only to have all doubts over the true nature of the transaction speedily ascertained and decided, but also to prevent the interposition of buyers in good faith while such determination is being made. Under the former method of consolidation by a mere extra-judicial affidavit of the buyer a retro, the latter could easily cut off any claims of the seller by disposing of the property, after such consolidation to strangers in good faith and without notice. The chances of the seller a retro to recover his property would thus be nullified, even if the transaction were really proved to be a mortgage and not a sale."

From the facts of this case it is clear that the requisite of an ordinary civil action has not been followed. For, as stated, no summons was served on the respondents-vendors. Assuming that respondents-vendors' motion to postpone may be taken as voluntary submission to the lower court's jurisdiction producing the effect of service of summons - still, they should have been given 15 days therefrom to file an answer. The Court of First Instance instead forthwith rendered judgment, so that respondents-vendors were deprived of their right to be heard, in violation of Article 1607 of the New Civil Code.

Wherefore, the writ of certiorari is granted, the judgment in question is set aside, and respondent Judge is ordered to allow herein petitioners to file, within 15 days from notice, their answer in Special Civil Case No. 2827. No costs. So ordered.

Bengzon, C. J., Bautista Angelo, Concepcion, Dizon, Makalintal, and Zaldivar, JJ., concur.

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