

SIMEON PATALINGHUD, PLAINTIFF-APPELLANT, VS. FELISA BALLESTEROS, DEFENDANT-APPELLEE.

G.R. No. L-25421. March 31, 1971

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

Appeal from the decision of the Court of First Instance of Davao dismissing the complaint in its Civil Case No. 4356.

Plaintiff Simeon Patalinghud was one of the heirs of Jose Patalinghud, the original homesteader of a parcel of land situated in Dumoy, Davao City, covered by Homestead Patent No. 3887 issued on June 7, 1922.

On April 27, 1959, plaintiff executed in favor of defendant Felisa Ballesteros a public instrument entitled "Deed of Conditional Sale," which provides, among other things, the following:

"The vendor had already agreed to an extra-judicial partition of the above-described parcel of land with his co-owners thru a public instrument... whereby the vendor had a definite portion segregated in his favor with an approximate area of one and-a-half (1-1/2) hectares;

"Out of the above segregated portion of one and one-half (1-1/2) hectares, the vendor sells, transfers, cedes and conveys by way of conditional sale a portion of one half (1/2) hectare to be segregated later on, located at the northern end of the lot, or the point farthest from the national road and by these presents have sold, transferred, ceded and conveyed unto the vendee, his heirs, assigns and successors-in-interest, the above portion of a portion subject to the following terms and conditions:

"1. That the consideration for this sale is six hundred pesos (P600.00) for the entire one-half (1/2) hectare, out of which amount the vendor acknowledges to have received the sum of three hundred pesos (P300.00) and acknowledges to be indebted to an uncle of the vendee by the name of Gerardo de Guzman in the amount of ninety two pesos (P92.00), which amount shall be paid by the vendee direct to Gerardo de Guzman to be deducted from the balance of three hundred pesos (P300.00), leaving a net balance of two hundred eight pesos (P208.00);

"2. That the balance of two hundred eight pesos (P208.00) shall be paid in two equal monthly installments of P104.00 each, on the months of May and June, 1959;

"3. That the vendee assume to pay for the expenses of segregating the above-described portion of a portion of one half hectare, and which segregation shall be performed after the harvest of palay and corn in order to save from destruction a portion of the crop;

"4. That all improvements are included in this sale, including the palay and corn now planted in the same; x x x

On November 7, 1960, after the defendant had made full payment of the price stated in the above-mentioned deed of "conditional sale", and the lot thus sold had been properly surveyed and identified as lot 344-B-2 B-5 (LRC) Psd-13376, plaintiff executed another public instrument entitled "Absolute Sale of Land" whereby, in

consideration of P600.00, the receipt of which he acknowledged, he transferred and conveyed by way or absolute sale to the defendant said Lot 344-B-2-B-5 containing an area of 5,000 square meters. This latter deed was duly registered with the office of the Register of Deeds of Davao City, and Transfer Certificate of Title No. T-9409 covering said lot was issued to defendant.

On June 23, 1964, plaintiff tendered to defendant the sum of P700 for the repurchase of the lot in question, claiming that the lot being a part of a homestead the homesteader or his heir who sold the land or a portion thereof may repurchase the land sold within five years from the date of the conveyance, as provided by law. The defendant refused plaintiff's offer to repurchase.

So, on June 26, 1964, plaintiff filed a complaint in the Court of First Instance of Davao, praying, that defendant be ordered to reconvey the lot to him. In her answer defendant alleged, among other things, that the five-year period for the repurchase had already expired when the plaintiff offered to repurchase on June 23, 1964, the fact being that the actual conveyance of the lot was made upon the execution of the "Deeds of Conditional Sale" on April 27, 1959 so that the five-year period had expired on April 27, 1964. The defendant further alleged that the ownership of the lot was duly transferred to her upon the execution of the deed on April 27, 1959 and the conditions contained in the deed refer only to the terms of payment of the price and do not affect the validity and consummation of the sale. The plaintiff filed a reply to defendant's answer and an answer to defendant's counterclaim. The defendant in turn filed a rejoinder to plaintiff's reply.

During the trial the parties entered into a partial stipulation of facts, agreeing that the lot in question, which is covered by TCT No. T-9409 in the name of the defendant, once formed part of the share of the plaintiff in the homestead of Jose Patalinghud, plaintiff's father, covered by homestead patent No. 3887 which was granted on June 7, 1922.

After trial, the Court of First Instance of Davao rendered a decision, dismissing plaintiff's complaint. In his decision the trial judge ruled that the deed of "conditional sale", executed on April 27, 1959, represented a perfected contract of sale between the parties, and that the conditions embodied therein simply referred to the manner of payment of the price and the payment of expenses of survey, so that the period of five years within which to repurchase should be counted from April 27, 1959, and not from November 7, 1960 when the other document -- the deed of absolute sale -- was executed. The trial judge held that the "deed of absolute sale" was executed on November 7, 1960 only to meet the formal requirements of registration and for the issuance of the corresponding certificate of title.

The plaintiff filed a motion for reconsideration of the above-mentioned decision, but the trial court denied the same. Hence this appeal by the plaintiff.

The plaintiff-appellant makes only one assignment of error, as follows:

"The trial court erred in fixing the period of repurchase to be April 27, 1959, and in holding that the plaintiff's right to repurchase has prescribed."

The provision of law invoked by the appellant in claiming the right to repurchase the lot in question from the appellee is Section 119 of Commonwealth Act 141 (The Public Land Law), as amended, which provides as follows:

"Sec. 119 - Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of conveyance."

It is the contention of the appellant that the lower court erred in reckoning the five-year period, within which he

may repurchase, from April 27, 1959, the date when the "deed of conditional sale" (Exhibit 1) was executed. The appellant submits that the "deed of conditional sale" did not convey to appellee title over the one-half hectare of land mentioned in said instrument, because the deed did not contain a description of the land that was sold, and that at most the instrument was only an agreement to buy and sell. The appellant asserts that the five-year period should be counted from November 7, 1960 when the "deed of absolute sale" (Exhibit A) was executed and registered in the office of the Register of Deeds of Davao City.

The stand of the appellant can not be sustained.

The ruling of this Court in the case of *Monge, et al., vs. Angeles, et al.*[1] is very pertinent in the resolution of the question before Us. This Court said:

"The question to be determined is whether the period of five years which Section 119 of Commonwealth Act No. 141 allows a homesteader to repurchase a homestead sold by him should be counted from the date of the sale even if the same is with an option to repurchase or from the date the ownership of the land has become consolidated in favor of the purchaser because of the homesteader's failure to repurchase it.

"Section 119 of Commonwealth Act No. 141 provides: 'Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within the period of five years from the date of the conveyance.' The language of the law is clear. It provides that the period of five years shall be counted from the date of conveyance, regardless of its nature. The word conveyance is of American origin. It may refer not only to an absolute sale but also to mortgage or any other transaction. It has been defined as signifying 'every instrument by which any estate or interest in real estate is created, alienated, mortgaged, or assigned, (13 C. J., 900; 18 C. J. S., 92). When the law is clear, it admits of no interpretation. It follows therefore that the pretense of appellants to the effect that the 5-year period should be counted from the date the ownership of appellees over the land had become consolidated is untenable.

"The above interpretation finds support in recent decisions of this Court. In *Blanco vs. Bailon*, G. R. No. L-7342, April 28, 1956, the question raised was whether the 5-year period of redemption began from the date of the execution of the contract or from the date of its registration in the office of the register of deeds, considering that the homestead was registered under the Torrens system. This court held that it is the former because in so far as the owner of the homestead is concerned, the conveyance mentioned in Section 119 of the Public Land Law is the actual date thereof, and not the date of registration of the deed of sale. (Citing *Galasinao vs. Austria*, 97 Phil., 82, 51 Off. Gaz., 2874."

The deed of conditional sale (Exhibit 1) that was executed on April 27, 1959 is a conveyance covered by the foregoing ruling of this Court, and the five-year period within which to repurchase must be reckoned from April 27, 1959 when the instrument of conveyance was executed. The deed in question shows that there was an executed contract of sale. It provides that a specific portion of land was sold, transferred, ceded and conveyed by the appellant to the appellee. Thus, the deed recites:

"Out of the above segregated portion of one and one half (1-1/2) hectares the vendor sells a portion of one half (1/2) hectare to be segregated later on, located at the northern end of the lot, or the point furthest from the national road...."

The "deed of conditional sale" was embodied in a public instrument, and so it can be considered that there was a constructive delivery to the vendee of the land upon the execution of the instrument, there being no stipulation in it from which it may be inferred that delivery was not intended[2]. In fact the deed provides that "all improvements are included in the sale, including the palay and corn now planted in the same." The deed also provides that the segregation of the one-half hectare that was sold "shall be performed after the harvest of palay

and corn in order to save from destruction a portion of the crop." There is no mention at all in the instrument that at the time it was executed that portion of land which was sold was in the possession of a third person, and so there was no impediment to actual physical delivery of the land thus sold[3]. That contract was binding between the parties thereto, even if the subject matter was a portion of a registered land, and even if the deed was not registered as provided in Act 496. That deed of conditional sale has all the essential elements of a contract of sale; there was consent between the parties, there was price certain in money, and there was determinate thing sold.[4] The contention of appellant that that deed of conditional sale should be considered simply as a mere agreement to buy and sell, because the land that was the object of the sale was not definitely described and its boundaries are not stated, is untenable. The legal requisite that the object of the sale must be determinate is satisfied if at the time the contract is entered into the thing sold is capable of being made determinate without the necessity of a new or further agreement between the parties.[5] The deed of sale contains a sufficient basis, at the time it was entered into, for determining the one-half hectare that was sold. The deed provides that the vendor had a definite portion consisting of one-and-one half hectare out of the homestead of his late father which was segregated from the portions that corresponded to his co-heirs; and out of the said segregated portion of one-and-one-half hectare the vendor sold a portion of one-half hectare to be segregated later on, located at the northern end of the lot, or at the point furthest from the national road. So, the property sold was determinable because it was part of what was already a segregated portion of a definite parcel of land, at its northern side and farthest from the national road.

We, therefore, agree with the view of the lower court that the deed of conditional sale (Exhibit 1) shows that it is only the manner of payment of the price and the payment of expenses of survey that were subject to a condition, but the passing of title or ownership could be gleaned from the contract, and that the intention of the parties was manifest at the time of the execution of the said deed of conditional sale, and so on April 27, 1959 when that deed of conditional sale was executed there was already a perfected contract of sale between the parties. The conditions embodied in the deed referred simply to the manner of paying the balance of the price. It was agreed that the balance of P300.00 should be paid in this manner: P92.00 to be delivered to Mr. Gerardo de Guzman, the creditor of the vendor, and the remaining P208.00 to be paid into two equal monthly installment of P104.00 each in the months of May and June, 1959. The conditions regarding the payment of the balance of the price and expenses for the survey in the segregation of the lot sold were all accomplished, because in the deed of absolute sale executed on November 7, 1960 the vendor acknowledged that the sum of P600.00 was "paid in full to me"; and the land sold was already identified as lot 344-B-2-B-5 (LRC) Psd-13372 and technically described therein. Even if We consider those conditions regarding the payment of the balance of the price as well as the payment for expenses in the survey as suspensive conditions, the fulfillment of the conditions retroacted to April 27, 1959 when the deed of conditional sale was executed[6]. We also agree with the conclusion of the trial court that the deed of absolute sale (Exhibit B) was executed on November 7, 1960 only to meet the formal requirements of registration and for the issuance of the corresponding certificate of title in favor of the vendee, the appellee herein.

The fact that the deed of conditional sale, executed on April 27, 1959, was not registered did not have a prejudicial effect upon the rights of the appellee here-in because that transaction was perfectly binding between the appellant and the appellee who were the parties therein, and no right of third person had been affected.

In the case of *Monge, et al., vs. Angeles, et al.*, supra, this Court said:

"In *Galanza vs. Nuesa*, 95 Phil., 713, 50 Off. Gaz., 4213, the question that arose was 'whether the period to repurchase the land in question shall be counted from the execution of the deed of sale with right to repurchase or from the issuance of transfer certificate of title to the herein defendant' and the Court held that appellant's title had already become absolute because of appellee's failure to redeem the land within five years from the date of sale. The Court added: 'Both under Section 50 of the Land Registration Law and under Section 119 of

Commonwealth Act 141, the owner of a piece of land is neither prohibited nor precluded from binding himself to an agreement whereby his right of repurchase is for a certain period starting from the date of the deed of sale.' In other words, the date of the sale is of paramount consideration.”

We, therefore, hold that the lower court did not err in declaring that the five-year period within which the appellant could have repurchased the land in question from the appellee begun on April 27, 1959 and ended on April 27, 1964, and that when appellant offered to repurchase the land on June 23, 1964 his right, to repurchase had already prescribed.

WHEREFORE, the decision appealed from is affirmed, with costs against the plaintiff-appellant, Simeon Patalinghud.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] 101 Phil. 563, 564.

[2] Article 1498, Civil Code.

[3] Addison vs. Felix, 38 Phil. 404.

[4] Article 1458, Civil Code.

[5] Art. 1460 of the Civil Code; Melliza vs. City of Iloilo, et al., L-24732, April 30, 1968, 30 SCRA 477, 482).

[6] Article 1157, Civil Code.

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