

JUAN GALANZA, PLAINTIFF AND APPELLEE, VS. SOTERO N. NUESA, DEFENDANT AND APPELLANT.*G.R. No. L-6628. August 31, 1954*

Ponente: PARAS, C. J.

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The plaintiff Juan Galanza owned a parcel of land covered by original certificate of title No. I-2247 issued on July 23, 1934, and acquired as a homestead. On September 7, 1940, he sold said land to the defendant Sotero N. Nuesa with a right of repurchase within 5 years from the date of execution of the deed of sale. The original certificate of title No. I-2247 was not cancelled until July 17, 1947, when a transfer certificate of title No. T-172 was issued in the name of the defendant. On May 19, 1951, the plaintiff instituted in the Court of First Instance of Isabela a complaint against the defendant, praying that the latter be ordered to reconvey the land to the plaintiff in accordance with section 119 of Commonwealth Act 141. In his answer, defendant set up the special defense that the plaintiff had failed to exercise his right of redemption within the period stipulated in the deed of sale executed on September 7, 1940, and that therefore the title to the property had already consolidated in the defendant. The parties entered into an agreement of facts, and the Court of First Instance of Isabela, on June 23, 1952, rendered a decision ordering the defendant to convey to the plaintiff the land in question, upon payment by the plaintiff to the defendant of the sum of P1,328 as the repurchase price, and ordering the Register of Deeds of Isabela to cancel transfer certificate of title No. T-172 and issue another in the name of the plaintiff, after the proper deed of conveyance shall have been presented for registration, without pronouncement as to damages and costs. From this decision the defendant has appealed.

The question that arises, as expressly framed in the stipulation of facts is "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 of the herein defendant." The trial court held that the 5-year period of repurchase should be computed from the day the deed of sale with pacto de retro was registered on January 17, 1947, applying section 50 of the Land Registration Law which provides that "the act of registration shall be the operative act to convey and affect the land." In his brief, counsel for the plaintiff-appellee admits that the latter's right of repurchase under the deed of sale executed on September 7, 1940, had already expired, but it is contended that the present action is based on the right of repurchase granted by section 119 of Commonwealth Act 141 which provides that "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 5 years"; and that the term "conveyance" imports the transfer of legal title, which in the present case took place only after the issuance of the transfer certificate of title in the name of the defendant-appellant.

In our opinion, appellant's title had already become absolute, because of appellee's failure to redeem the land within five years from September 7, 1940. 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. Indeed section 50 of the Land Registration Law provides that, even without the act of registration, a deed purporting to convey or affect registered land shall operate as a contract between the parties. The registration is intended to protect the buyer against claims of third parties arising from subsequent alienations by the vendor, and is certainly not necessary to give effect, as between the parties, to their deed of sale. In the case of *Carillo vs. Salak*, 91 Phil., 265, we made the following applicable pronouncement: "While we admit that the sale has not been registered in the office of the register of deeds, nor annotated on the torrens title covering it, such technical deficiency does not render the transaction ineffective nor does it convert it into a mere monetary obligation, but simply renders it ineffective against third persons. Said transaction is, however, valid and binding against the parties.

In the stipulation of facts, it is provided that in case judgment be in favor of the defendant, "the plaintiff will pay the amount of P500 to the defendant in concept of damages suffered." Even so, we are inclined to disallow appellant's claim for damages, in the same manner that, in the appealed decision, no damages were awarded in favor of the plaintiff in the absence of evidence to show how said damages accrued.

Wherefore, the appealed decision is hereby reversed and the complaint dismissed, without pronouncement as to costs.

Pablo, Padilla, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion and Reyes, J. B. L., JJ., concur.

CONCURRING:

BENGZON, J.:

The idea occurs to me that the five-year period under section 119, Commonwealth Act No. 141 did not begin to run until after expiration of the conventional 5-year period of redemption. I should like to mull it over. Nevertheless I concur in this opinion now, because anyway the plaintiff allowed more than ten years to elapse before exercising his rights (Sept. 1940 to May 1951).

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