

GAVINA PEREZ, ET AL., PLAINTIFFS AND APPELLEES, VS. JOSE C. ZULUETA, DEFENDANT AND APPELLANT.*G.R. No. L-10374. September 30, 1959*

Ponente: BENGZON, J.

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Appeal from an order requiring defendant to permit plaintiffs to repurchase their land. Omitting reference to procedural details, the facts material to the principal issue may be briefly stated as follows:

On December 27, 1959, Magtangol P. Pedro and others (hereafter named plaintiffs) executed a deed whereby for the sum of P10,000.00 they sold a parcel of land in Quezon City (Transfer Certificate of Title 8762) to Jose C. Zulueta (hereafter named defendant), subject to their right to repurchase within one year. As the vendors failed to repurchase, defendant took steps to consolidate his title to the land in January 1952. This gave rise to a suit (Q-344) in the Quezon City court of first instance wherein the vendors (plaintiffs), alleging the contract to be a mortgage disguised as pacto de retro, asked for a declaration to that effect plus other appropriate remedies. Defendant asserted the contract was a true pacto de retro sale. Such court, after hearing, gave judgment for plaintiffs, holding the contract to be mortgage. But on appeal, the Court of Appeals in its decision of May 13, 1955, reversed and held the contract to be a true pacto de retro sale, however, it added "without prejudice to plaintiffs' (vendors) right to make the repurchase in accordance with * * * paragraph 3 of Art. 1606 of the New Civil Code". The plaintiffs applied to this Court for review on certiorari, but their petition was denied by our resolution of June 24, 1955, notice of which they received on June 29, 1955. At no time did they move to reconsider.

On August 2, 1955, defendant renewed his efforts to consolidate his title by filing a petition in the Quezon court alleging that the plaintiffs had failed to exercise their reserved right to repurchase within thirty days. But on August 9, 1955, the plaintiffs opposed the claim, maintaining that the 30-day period had not yet elapsed. Thereafter by letter of August 10, 1955, they demanded from defendant the reconveyance of the property, offering to repay the price; and upon his refusal, they filed in court (in Q—344) August 13, 1955, a petition that he be required to reconvey. (Thereafter, they judicially deposited the money.) This petition was, after hearing, granted by Hon. Hermogenes Caluag, Judge, by an order, the dispositive part of which reads as follows:

"* * * Mr. Jose Zulueta is hereby ordered to execute a deed of reconveyance over the parcel of land covered by Transfer Certificate of Title No. 8762 in favor of the petitioner Gavina Perez, et al. within five days from receipt of a copy of this order and upon compliance therewith he may withdraw the amount of P10,000.00 deposited with the court. In the event that Mr. Zulueta fails or refuses to execute the said deed of conveyance within the period above stated, the Clerk of Court is ordered to hold the amount of P10,000.00 subject to the disposition of the said Mr. Zulueta, and the Register of Deeds of Quezon City is hereby ordered to cancel the annotation of encumbrance made and appearing on Transfer Certificate of Title No. 8762."

Hence this appeal by defendant Zulueta.

The New Civil Code, Art. 1606, gives the vendor a retro "the right to repurchase within thirty days from the time final judgment was rendered in a civil action, on the basis that the contract was a true sale with the right to repurchase." This is admittedly the right reserved to the plaintiffs (Pedro and others) in the decision of the Court of Appeals.

The main issue concerns the counting of such 30-day period. Defendant says it should start from June 24, 1955, when this Supreme Court upheld by resolution, the appellate court's decision; whereas plaintiffs contend, "the period commenced to run only on July 15, 1955, after the day the resolution of June 24 became final.

Defendant counters that the resolution of the Supreme Court was a "final judgment", rendered on June 24, 1953. And he quotes several provisions of the Rules of Court about "final judgment" being one that disposes of the issues completely as distinguished from interlocutory judgment. He also quotes decisions saying that a judgment is deemed final when it finally disposes of the pending action so that nothing more can be done with it in the trial court.[1] On the contrary, the plaintiffs maintain, final judgment means a judgment which has become final or executory, one which is conclusive and binding and in that light, the judgment (Supreme Court) become final only on July 14, because up to that time a motion to reconsider could be entertained.

The authorities say that in determining whether a judgment is "final", no hard and fast definition or test can be given since finality depends somewhat on the purposes for which the judgment is being considered (Corpus Juris Secundum, Vol. 49, p. 35). "Final" may mean one on an issue of appealability, but it may mean another thing on the issue of conclusiveness or binding effect. For the purposes of appeal, final judgment is what herein defendant understands and maintains. On the other hand, a judgment will be deemed final or executory "only after expiration of the time allowed by law for appeal therefrom, or, when appeal is perfected, after the judgment is upheld in the appellate court." (Corpus Juris Secundum, Vol. 49, p. 39.)

In the latter sense, we declared in *De los Reyes vs. de Villa*, 48 Phil., 227, that final decision means a decision which has become final and non-appealable.

Now then, in what sense did the New Civil Code use "final judgment" in Art. 1606? Articles 1548 and 1557 of the same Code provide that eviction takes place whenever by "a final judgment" * * * the vendee is deprived of the whole or of a part of the thing purchased; and the warranty of eviction can not be enforced until "a final judgment" has been rendered whereby the vendee loses the thing acquired or a part thereof.

Manresa believes and holds that final judgment in these articles imply a judgment that has become final and executory.[2] And "sentencia firme" in Spanish (that is the word in Arts. 1475 and 1480 of the Civil Code[3] refer to binding, conclusive judgment.[4] Needless to add, if in previous articles "final judgment" signify a judgment that has become final, it should have the same meaning in subsequent articles in the same Code.

But let us test defendant's theory a little further. From his standpoint, if the Quezon court of first instance had declared the contract to be a pacto de retro, the 30-day period would begin from the promulgation of the judgment there, because such judgment was "final" (appealable) not interlocutory. If such were the correct view, Art. 1606 would place the vendors in the difficult position of having to decide either to appeal within 30 days or to repurchase. The framers of the Code could not have had such intention. They could not have meant to give the vendor the privilege to repurchase in exchange for his right to bring the matter before a higher court. The litigant who alleged he was a mere mortgagor might not agree to the court's finding that he was a vendor, and might insist that he was a mere mortgagor before a higher court. Until that tribunal decides against him, he is not duty bound to consider himself a vendor.[5]

Again, in consonance with his position on the meaning of final judgment, herein defendant could as well claim

that the Court of Appeals' decision was a final judgment (a determination of all the issues in the action—not interlocutory) and that the 30-day period began on May 14, 1955. He does not now advance such claim. Why? Because he knows such decision of the Court of Appeals was not final, definitive, and obligatory. And he could not very well argue that the vendors were "obliged" to repurchase in accordance with such decision, when precisely they were contesting it before the Supreme Court, insisting they were mere mortgagors—not vendors.

Presuming then that the lawmaking body intended right and justice to prevail[6] we hold that Art. 1606 means: after the courts have decided by a final or executory judgment that the contract was a pacto de retro and not a mortgage, the vendor (whose claim as mortgagor had definitely been rejected) may still have the privilege of repurchasing within 30-days.[7]

As a matter of fact, American courts have held that although "final" is often used with "judgment" to distinguish it from interlocutory judgment, "final judgment" is also used to describe a determination effective to exclude further proceedings in the same cause by appeal or otherwise, particularly where time within which to act is limited to run "from judgment." [8]

It is, therefore, our opinion on this phase of the litigation, that the 30-day period within which the vendors (plaintiffs) could exercise their right to repurchase started to run on July 15, 1955, when the resolution of this Court upholding the decision of the Court of Appeals became final.

A secondary issue is raised as to the vendor's efforts to repurchase. Defendant says the letter of August 10, 1955, offering the money was not sufficient since it was not sincere, inasmuch as the money was only deposited in court in November 11, 1955, a long time after the 30-day period. Little need be said on this point except to declare that in the circumstances, the right was exercised in due time, deposit of money being unnecessary, according to *Rosales vs. Reyes*, 25 Phil., 495, and *Cruz vs. Resurrecion*, 53 Off. Gaz., 5198, particularly because defendant had declared the time to repurchase had passed, thereby impliedly declining to accept any redemption money.[9]

Wherefore, the appealed order is affirmed in toto with costs against appellant. This is subject, however, to our resolution of April 7, 1958, ordering the substitution of plaintiffs-appellees by *Corazon L. Villanueva*.

Padilla, Montemayor, Labrador, Concepcion, Endencia, Barrera, and Gutierrez, David, JJ., concur.

[1] See *Insular Gov't vs. Roman Catholic Bishop*, 17 Phil., 487, *Mejia vs. Alimorong*, 4 Phil., 572, *Monteverde vs. Jaranilla*, 60 Phil., 297, etc.

[2] Cuando la sentencia quede firme, esto es, cuando * * * no quepa contra ella recurso alguno ordinario ni extraordinario, (*Manresa, Comments on Art. 1475, Civil Code, Vol. 10, 166-4th Ed.*)

[3] The sources of Arts. 1548 and 1557, New Civil Code,

[4] Sentencia Firme.—La sentencia que adquiere la fuerza de las definitivas por no haberse utilizado por las partes litigantes recurso alguno contra ella dentro de los terminos y plazos legales concedidos al afecto. (*Enciclopedia Juridica Española*)

[5] Cf. *Fernandez vs. Suplido* 96 Phil., 541.

[6] Art. 10, New Civil Code.

[7] Cf. *Ayson vs. Court of Appeals*, G. R. L-6501, May 31, 1955.

[8] Northwestern Wisconsin Electric Co. vs. Public Service Commission, 248 Wis. 479; 2 N. W. 2nd. 472, Dignowity vs. Court of Civil Appeals, 110 Tex. 613; 210 S. W. 505; 223 S. W. 163; Wolfer vs. Hurst, 47 Or. 156; 80 Pac. 419; 82 Pac. 20, and cases cited therein.

[9] Gonzaga vs. Go, 69 Phil., 678.

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