

**JULIO GATLABAYAN, ET AL., PLAINTIFFS-APELLEES, VS. EMILIANO C. RAMIREZ, DEFENDANT-APPELLANT.***G.R. Nos. L-23312-14. September 28, 1968*

Ponente: CONCEPCION, C.J.

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These are three (3) separate cases involving the same de-fendant and identical legal issues. The plaintiff in each case is different from the plaintiff in the other cases, although they seem to be members of the same family. The cases were heard by the same Judge, who rendered three (3) separate, but, practically identical decisions against the defendant, who appealed directly to the Supreme Court.

There is no dispute as to the facts. On January 17, 1958, three (3) deeds of absolute sale were executed in favor of defen-dant Emiliano C. Ramirez. One was by Julio Gatlabayan and his wife, involving a lot of 18,2725 hectares, situated in Barrio San Isidro, Municipality of Antipolo, Province of Rizal, for the sum of P14,618; the second was by Bonifacio Gatlabayan, involving a lot of 22.5649 hectares, situated in Barrio Kay Dalag, of the same municipality, for the sum of P18,051.92; and the third was by Maximo Gatlabayan and his wife, involving a lot of 23.9860 hectares, located in the same barrio and municipality, for the sum of P19,200. These lots had been acquired through Homestead Patents V-14193, V-14195 and V-14194, which, upon registration in the Office of the Register of Deeds of Rizal, were substituted by OCT Nos. 112, 140 and 115, respectively, of said Office, in the respective name of the aforementioned sellers, which certificates of title make reference to the Homestead Patents upon which they are respectively based. In lieu of said original certificates of title, which were cancelled, upon registration of the deeds of sale in favor of Ramirez, TCT Nos. 56809, 56806 and 56810 were issued in his name.

On December 14, 1962, Julio Gatlabayan and his wife com-menced Civil Case No. 7489 of the Court of First Instance of Rizal, against Ramirez, for the redemption of the first lot, under the pro-visions of Section 119 of Commonwealth Act No. 141. On January 2, 1963, Bonifacio Gatlabayan instituted Civil Case No. 7504 of the same Court, against Ramirez, for the redemption of the second lot, under the same legal provision. On January 9, 1963, Maximo Gatlabayan filed a complaint, docketed as Civil Case No. 7516 of said Court, for the redemption of the third lot, relying upon said Section 119.

Ramirez filed substantially identical answers in the three (3) cases, alleging that the period of redemption had already expired; that plaintiffs had never expressed to him their intention to redeem; that plaintiffs had not tendered or judicially consigned the redemp-tion price; and that he had introduced improvements and performed "necessary acts for the preservation of the land" in question. He, likewise, set up a counterclaim of P2,000 for attorney's fees.

After appropriate proceedings, the lower court rendered its decision, in each one of said cases, overruling the defenses set up by Ramirez and: (1) ordering him: (a) to execute the corresponding deed of conveyance in favor of the respective plaintiff, upon payment of the sum stated in the deed of sale executed by him; (b) to deliver to

the plaintiff the possession of the lot involved in the case; and (c) to pay the costs; (2) directing the Register of Deeds of Rizal to cancel TCT Nos. 56809, 56806 and 56810, as well as to issue, in lieu thereof, other certificates of title in the name of the respective plaintiffs, upon execution of the corresponding deed of reconveyance; and (3) dismissing defendant's counterclaim, for lack of evidence in support thereof.

A reconsideration of said decisions having been denied, Ramirez interposed the present appeal, directly to the Supreme Court, through a single record on appeal. He alleges that the lower court erred: (1) "in considering the contract of sale to be January 17, 1958, instead of April 9, 1957, when the agreement was entered into between the parties"; (2) "in refusing to recognize the disparity of the value of the peso at the date of sale in 1957 and the value of the peso now which will be the date of repurchase"; and (3) "in refusing to fix the date when each of the plaintiffs may repurchase their respective homestead lots to conform to the time limit fixed in Section 119 of Commonwealth Act 141, as amended" - although this last issue was the first in defendant's brief and the first question adverted to above is the subject-matter of the last assignment of error in said brief.

With respect to the date from which the statutory period of redemption should be computed, 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 a period of five years from the date of the conveyance."

Defendant maintains that, in the cases under consideration, said period of five (5) years should be reckoned, not from January 17, 1958 - the date of deeds of sale in his favor - as the lower court did, but from April 9, 1957, when plaintiffs herein signed agreements "to sell" to him the lots in question, because said deeds of sale were executed in compliance with these previous agreements "to sell." This pretense is devoid of merit. As stated in the decisions appealed from:

" x x x From the provisions of this deed[1] as well as the subsequent Deed of Absolute Sale, Exhibit B, however, it is clear that the conveyance of the land in question was actually made on January 17, 1958, not before said date. In the first place, Exhibit 1, is by its own terms a mere promise to sell, not a sale or conveyance by itself. Indeed, the parties expressly stated therein that they could not execute any deed of absolute sale or conveyance 'in view of the legal prohibition' against the sale of the land before the expiration of five years from the issuance of the homestead patent, or before December 29, 1957. In the second place, it is also clear from the terms of Exhibit 1 that the parties including the defendant, did not intend said deed to operate as a conveyance of the land. Thus, it was stipulated therein the purchase (price) was not to be paid in full until the execution of the absolute deed of sale after December 29, 1957; that the defendant would be entitled to the peaceful, absolute and immediate possession of the property only upon the execution of the deed of Absolute sale in his favor; that the plaintiff notwithstanding the execution of Exhibit 1 would still be responsible for the real estate taxes and other charges on the property until the deed of absolute sale is executed after December 29, 1957; and that the plaintiff would continue paying of the mortgage on the land until said time. Furthermore, the sale was registered under Act No. 496 only on February 13, 1958. In short, even defendant did not consider himself owner of the land before the execution of the deed of absolute sale on January 17, 1958."<sup>2</sup>

We are fully in accord with this view, which we adopt as ours.

The second assignment of error is based upon Article 1250 of the Civil Code, which, Ramirez claims, should have been applied by the lower court. Said article reads:

"x x x In case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an

agreement to the contrary.”

This assignment of error is untenable for: (1) the issue posed therein was not raised in defendant's answer; (2) there is no evidence whatsoever as to the difference between our currency's purchasing power in 1958 and that of early in 1963, when these cases were filed; (3) plaintiffs cannot be made to suffer for the difference between the purchasing power of our currency in 1958 and its present purchasing power, the delay having been due to defendant's unlawful refusal to allow the redemption in 1962 or 1963; (4) both parties were identically subject to the risks concomitant with the fluctuations affecting currency; and (5) said article 1250 applies when the contract provides that payment be made in the "currency stipulated" whereas the contracts in the case at bar contain no provision to this effect.

Defendant calls attention to the fact that, when plaintiffs filed the complaints herein, on December 14, 1962, and January 2, and 9, 1963, they had no more than up to January 17, 1963, or 34, 15 and 8 days, respectively, to complete the period prescribed in said Section 119, and that, by not fixing in the decisions appealed from the time within which they should exercise their right of redemption, the statutory period has, in effect, been extended indefinitely.

This point is well taken. Said decisions would, at least, leave the door open to the question whether plaintiffs' right thereunder could be enforced at any time within ten (10) years, which is the period of prescription of court decisions. To forestall such question, and in the interest of justice and fair play, a reasonable period should be fixed for the exercise of plaintiffs' right to redeem the lots in question under the decision in these cases.

WHEREFORE, modified in the sense that plaintiffs herein may exercise their right of redemption within 60 days from notice of entry of this decision, that of the Court of First Instance is hereby affirmed, in all other respects, without pronouncement as to the costs in this instance.

**IT IS SO ORDERED.**

Reyes, J.B.L., Makalintal, Sanchez, Castro, Angeles, Fernando, and Capistrano, JJ., concur.  
Dizon, Zaldivar, J., did not take part.

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[1] Agreement to sell, Exhibit 1.

2 Underscoring ours.

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