

SPOUSES GREGORIO DE GUZMAN, JR. AND CORAZON QUINTO, PETITIONERS, VS. HON. COURT OF APPEALS AND RAYMUNDA RINGOR QUIRIMIT, RESPONDENTS.*G.R. No. L-46935. December 21, 1987*

Ponente: FERNAN, J.

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This is a petition for review of the decision* of the Court of Appeals dated March 3, 1977 in CA-G.R. No. 52746-R entitled "Spouses Gregorio de Guzman, Jr. and Corazon Quinto, Plaintiffs-Appellees, versus Raymunda Ringor Quirimit, Defendant-Appellant", declaring herein private respondent Raymunda Ringor Quirimit owner of the land subject of litigation.

Deogracias Queriza was the original owner of a parcel of unregistered residential land containing an area of 745 square meters, more or less, situated at San Fabian, Pangasinan. On July 20, 1957, he executed a Deed of Pacto de Retro sale over said land in favor of his niece, private respondent Quirimit for the sum of P500.00, with the express stipulation that the "vendor a retro may exercise the right of repurchase within 5 years from the execution of these presents and upon failure to take advantage of the right herein granted him, then this contract shall acquire the character of absolute, irrevocable and consummated sale." [1] Private respondent did not register the Deed of Pacto de retro Sale, but took possession of the land by building her house on a portion thereof.

It appears that subsequently, Deogracias Queriza mortgaged the same parcel of land to the Manaoag Rural Bank, from which it was allegedly redeemed on his behalf by his nephew Miguel Queriza on November 4, 1963. Supposedly for this reason, on April 26, 1967, Deogracias Queriza, without having exercised his right to repurchase under the Pacto de Retro Sale, executed over said parcel of land and two others, a Deed of "Rimunitary [sic] Inter-vivos Donation" [2] in favor of Miguel Queriza, who thereafter declared the land in his name for taxation purposes and registered the Deed of Donation on August 8, 1967 in the Register of Deeds of Pangasinan.

On December 8, 1970, Miguel Queriza sold the land to petitioners spouses Gregorio de Guzman, Jr. and Corazon Quinto. The Deed of Sale was registered on December 9, 1970 and the tax declaration placed under their names.

In January, 1971, petitioners sent private respondent written notice to vacate the land in question, and upon refusal by the latter to do so, instituted on February 7, 1971, Civil Case No. D-2662 for Quieting of Title and Recovery of Possession before the then Court of First Instance of Pangasinan, Fourth Branch.

After trial, the court rendered judgment on January 19, 1973, declaring petitioners owners of the land in question and ordering private respondent to vacate the premises, to pay petitioners the total sum of P1,000.00 for damages and attorney's fees and to pay the cost of suit. It ruled that the Pacto de Retro Sale was only a mortgage and that the Deed of Donation in favor of Miguel Queriza was valid.

On appeal by private respondent, the Court of Appeals reversed the decision of the trial court. Applying Article

1544 of the New Civil Code, the appellate court held that private respondent had a preferential right to the land as against petitioners who were purchasers in bad faith. It also found the transaction between Deogracias Queriza and private respondent to be what it purported to be - a pacto de retro sale and not an equitable mortgage.

Petitioners moved for a reconsideration of the appellate court's decision and upon denial thereof, took the present recourse.

Petitioners contend that the appellate court erred in: [a] resolving the case under Article 1544 of the New Civil Code when such provision was never cited nor invoked by private respondent in the court a quo; [b] not holding that the pacto de retro sale was an equitable mortgage in accordance with Article 1602 of the said Code; [c] not applying the rule that as between two innocent parties, he who was negligent should bear the loss; and, [d] in denying their motion for reconsideration.

Petitioners theorize that since the trial court did not cite Article 1544 of the New Civil Code in its decision, the appellate court is precluded from applying the same, for in so doing it, in effect, entertained an issue not raised in the lower court and allowed private respondent to change her theory on appeal.

This theory is both right and wrong. Right because the appellate court erred in applying Article 1544 of the New Civil Code relating to double sales to this case which involves an earlier pacto de retro sale of an unregistered land and the subsequent donation thereof by the vendor a retro. And wrong because although the appellate court applied the wrong provision of law, it did not in so doing entertain an issue not raised in the lower court nor allow private respondent to change her theory on appeal. Precisely, the issue involved in an action for quieting of title and recovery of possession is who, between the parties, has a better right to the property in dispute, and this is the very issue resolved by the appellate court in the decision under consideration. Thus, it is incorrect to say that this issue was never raised in the trial court.

As to the alleged change of theory on appeal by private respondent, an examination of the answer filed by private respondent in the trial court reveals that she interposed two defenses: [a] the supposed invalidity of the Deed of Donation in favor of Miguel Queriza by reason of fraud, undue influence or mental incapacity of the donor at the time of the donation; and, [b] knowledge of petitioners of the pacto de retro sale in her favor prior to their purchase of the land in question from Miguel Queriza.[3] This being the case, it is equally inaccurate to say that she shifted her theory from "senility of donor Deogracias Queriza to the bad faith of the vendees spouses Gregorio de Guzman, Jr. and Corazon Quinto x x x to avail of Article 1544 of the New Civil Code".[4]

Petitioners further attribute error to the appellate court in not sustaining the lower court's finding that the pacto de retro sale was an equitable mortgage. After a thorough review of the records, We are as equally convinced as the appellate court that the transaction between Deogracias Queriza and private respondent was a pacto de retro sale. The consideration of P500.00 paid by private respondent in 1957 was not unusually inadequate, considering that the land had an assessed value of only P380.00 at the time of Miguel Queriza's sale thereof to petitioners in 1971.[5] Also, the finding of the trial court, allegedly on the admission of private respondent herself that it was the vendor a retro who appropriated the fruits of the land after the sale is contrary to the evidence on record because in her testimony, private respondent declared that it was she who enjoyed the products of said land.[6] Moreover, private respondent explained why she did not consolidate her ownership over the land in question, thus:

"RE-DIRECT BY ATTY. BELEN:

Q Mrs. Quirimit, will you please tell the Court why you did not consolidate your ownership on the land in question after Deogracias failed to redeem the property?

A Because Deogracias told me not to worry because he has no child to question me.

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RE-CROSS EXAMINATION BY ATTY. ANCHETA:

Q You testified you did not consolidate your ownership over the land in question because your uncle told you there is nothing to worry about because he has no children to challenge, is that correct?

A Yes, sir.

Q What year did he tell you that?

A All the time he told me that.

Q That was after the lapse of 5 years from the date of the execution of the pacto de retro, is that correct?

A All the time he told me and he said, 'Never mind, nobody will trouble you'. 'I have no heirs to inherit.'

Q He use to say that even after 1965, is that correct?

A yes, sir.

That is all.[7]

Ordinarily, such explanation would sound lame and flimsy. Considering however the close blood relationship between Deogracias Queriza and private respondent as well as the degree of trust and confidence traditionally accorded by Filipinos to their relatives, particularly in this case where private respondent had reason to rely on the words of Deogracias Queriza, the latter being a Notary Public, We find such explanation satisfactory.

Ironically, the rule relied upon by petitioners that as between two innocent parties, he who was negligent should bear the loss, cannot apply to this case for the simple reason that it is petitioners themselves who cannot be considered innocent purchasers. As found by the appellate court:

"In the instant case, it can hardly be said that plaintiffs-appellees [herein petitioners] were acting in good faith when they caused their Deed of Sale to be registered with the Registry of Deeds. In the first place, when the sale was consummated in favor of appellee, appellant was actually residing in a house standing right on the land in question, and appellees were living not far from appellant. In the second place, even before appellees bought the land, appellant had already confronted them and informed them that the land had already been sold to her. [t.s.n., p. 8, July 7, 1972] Appellees were thus forewarned; the least they could do was to inquire from their vendor Miguel Queriza and from the other relatives of the original owner, Deogracias Queriza, by what right or title appellant had her house on the lot she was occupying. But it seems that appellees did not bother to do this and merely relied upon the Deed of Donation made in favor of Miguel Queriza. Had appellees exercised due diligence in inquiring into the right or title of the appellant who was residing in the property they would doubtless have found out that appellant was occupying it by virtue of the Pacto de Retro Sale of July 20, 1957, which apparently had become an absolute sale on July 20, 1962 by express provision thereof and the apparent failure of Deogracias Queriza to redeem the property.

"Although it may be true, as testified by appellee Gregorio de Guzman that he noticed that there was a house standing on the property, and that when he went there nobody was in the house, and that he decided to buy the property because of the advice of the Notary Public that its title was clean, We are of the considered opinion that this was not sufficient to make appellees purchasers in good faith. If de Guzman went once to the house and found nobody there, he could have gone back at least once more, and if still there was no one he could have inquired from the neighbors if any one resided therein. Besides, it is not disputed that appellees live near the property in question and surely they could not fail to notice whether the house was tenanted or not. The

information of the Notary Public could hardly be relied upon, considering that the property is unregistered and therefore, there was really no certificate of title to speak of which the notary is alleged to have attested to the 'cleanness' of.

"The failure of appellees to take the ordinary precautions which a prudent man would have taken under the circumstances, specially in buying a piece of land in the actual, visible and public possession of another person, other than the vendor, constitutes gross negligence amounting to bad faith.

'In this connection, it has been held that where, as in this case, the land sold is in the possession of a person other than the vendor, the purchaser is required to go beyond the certificate of title and make [sic] inquiries concerning the rights of the actual possessor. Failure to do so would make him a purchaser in bad faith. [Incala vs. Mendoza, CA-G.R. No. 13677-R November 9, 1965; De Jesus vs. Revilla, CA-G.R. No. 13562-R October 5, 1965; Martelino vs. Manikan, CA-G.R. No. 32792-R June 22, 1956].

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'One who purchases real property which is in the actual possession of another should, at least make some inquiry concerning the right of those in possession. The actual possession by other than the vendor should, at least put the purchaser upon inquiry. He can scarcely, in the absence of such inquiry, be regarded as a bona fide purchaser as against such possessors. [Conspecto vs. Fruto, 31 Phil. 144]'

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"Appellant has been and continues to be in actual possession of the property, and her deed of pacto de retro sale dates back to 1957 while the deed of sale in favor of appellees was executed in 1970; and there is no showing that appellant's possession and her pacto de retro sale were done in bad faith".[8]

While the appellate court misapplied Article 1544 of the Civil Code in this case, its ultimate conclusion that private respondent should be declared owner of the land in question is correct. As stated earlier, the transaction between Deogracias Queriza and private respondent was a true pacto de retro sale. The essence of a pacto de retro sale is that title and ownership of the property sold are immediately vested in the vendee a retro, subject to the resolutive condition of repurchase by the vendor a retro within the stipulated period. Failure thus of the vendor a retro to perform said resolutive condition vests upon the vendee by operation of law absolute title and ownership over the property sold[9] and failure of the vendee a retro to consolidate his title under Article 1607 of the Civil Code does not impair such title or ownership for the method prescribed thereunder is merely for the purpose of registering the consolidated title.[10] In the case at bar, absolute ownership of the land in question was vested on private respondent in 1962 upon failure of Deogracias Queriza to repurchase said land. Thus, in 1967 when he allegedly donated the same to Miguel Queriza, he was no longer the owner thereof. Settled is the rule that a donor cannot lawfully convey what is not his property.[11] There being no title to the property which Deogracias Queriza could convey to Miguel Queriza, it necessarily follows that no title to the property could be conveyed by the latter to petitioners. The registration of the deeds under which they claimed to have acquired ownership of the land in dispute was a useless ceremony. Registration does not vest title. It is not a mode of acquiring ownership but is merely evidence of such title over a particular property. It does not give the holder any better title than what he actually has. Besides, petitioners' registration of their deed of sale was done in bad faith. The effect is that it is as if no registration was made at all in so far as private respondent is concerned. Conversely, actual knowledge of petitioners of the sale to private respondent amounted to registration thereof.[12]

WHEREFORE, the instant petition is hereby DENIED. The decision of the Court of Appeals under review declaring private respondent Raymunda Ringor Quirimit owner of the land in dispute is affirmed, with costs against petitioners.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

* Penned by Justice Lourdes P. San Diego and concurred in by Justices Mama D. Busran and Corazon Juliano Agrava.

[1] Exhibit 1

[2] Exhibit A

[3] Pars. 8, 9, 10 & 11, Answer, pp. 11-12, Record on Appeal, p. 57, Rollo

[4] Rollo, p. 14

[5] Exhibit B

[6] TSN, July 7, 1972, p. 4

[7] TSN, pp. 15-16, *ibid*

[8] Rollo, pp. 28-31

[9] *Oviedo v. Garcia*, 40 SCRA 17; *Rosario, et al v. Rosario*, 110 Phil. 394; See also *Tan Queto v. Candongo*, 106 SCRA 197

[10] *Defensor v. Blanco*, 11 SCRA 1; *Rosario, et al. v. Rosario*, *supra*; *Paras*, Civil Code of the Philippines Annotated, Volume V, 1972 Edition, pp. 206-207

[11] *Esquejo v. Fortaleza*, 13 SCRA 187

[12] *Cruz vs. Cabana*, 129 SCRA 656

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