

**AMANDA MADAMBA VDA. DE ADIARTE, PLAINTIFF AND APPELLEE,
VS. EMILIANA TUMANENG, DEFENDANT AND APPELLANT.***G. R. No. L-3031. March 15, 1951*

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/793673101de6/>**PADILLA, J.:**

Amanda Madamba Vda. de Adiarte was the owner of two parcels of land situated in the barrio of Tabtabagan, municipality of Banna, Ilocos Norte, the first comprising an area of 3,296 square meters and the second, of 6,592 square meters, assessed at P220 and P350, respectively, more particularly described in the second paragraph of the complaint filed in this case. On 25 February 1929, for and in consideration of P1,100, the owner sold the two parcels of land to the spouses Cirilo Agudong and Emiliana Tumaneng, reserving for her the right to repurchase them within ten years. On 29 February 1944, the vendees presented for registration under and pursuant to the provisions of Act 3344 the deed of sale with the right to repurchase in the office of the Registrar of Deeds in and for the Province of Ilocos Norte. On 6 April 1944, the vendor called on the vendees at their residence in the municipality of Sarrat, the same province, offering to repurchase the two parcels of land. At first Cirilo Agudong refused to resell, but later on, at about noon of that day, he called on the vendor, who was taking lunch in the house of Lorenzo Pasion, and told her that he had changed his mind and that he was then decided to resell the parcels of land on condition that he would have them in his possession for the following two years. And to show his good faith he wrote in Ilocano dialect a document which translated into Spanish reads, as follows:

"Yo, Cirilo Agudong, mayor de edad, casado y residente en este barrio No. 15, declaro que hoy 6 de Abril de 1944 vino Dona Amanda Cristobal, dueña del terreno sita en Sineg-guep, Cabaruan, Banna, que yo he comprado con pacto de retro y que ya ha vencido hace afios y que la escritura otorgada ya esta registrada y me signified su deseo de recomprarlo y como quiera que se expreso en terminos precisos y respetuosos reconociendo mi derecho pudo convencerme y me conformo en permitirle a recomprar su terreno pero nos hemos convenido en que yo trabajara aun por dos afios agricolas' o sean dos afios y pasados los dos afios lo recibire la cantidad con que me vendio y sera cuando se cancelara el registro que se hizo—a mi favor.

"En testimonio de lo cual, firmo la presente hoy a 6 de Abril de 1944.

"(Fdo.) CIRILO AGUDONG"

In October 1944, Cirilo Agudong died. On or after 6 April 1946, the vendor offered to repurchase the two parcels of land from one of the vendees, the widow of the late Cirilo Agudong, as promised by the latter during his lifetime in the document quoted above, but the widow of the deceased refused to receive the sum of P1,100 tendered to her by the vendor and to resell the two parcels of land. In view thereof, this action was brought to compel the widow of the late Cirilo Agudong to accept the sum of P1,100 tendered by the plaintiff and to execute in favor of the latter a deed of sale of the two parcels of land. The plaintiff prays also for damages and for costs.

In her answer the defendant denies knowledge of any agreement entered into by and between her late husband and the plaintiff, as alleged by the latter in her complaint.

At the trial, the parties submitted a stipulation of facts. Upon the evidence and the stipulation of facts, the trial court rendered judgment as prayed for, but without pronouncement as to damages and costs. A motion for reconsideration was denied. The defendant has appealed. After review of the judgment appealed from, the Court of Appeals found that only questions of law are involved in the appeal, and for that reason it certified the appeal to this Court.

The errors assigned by the appellant as committed by the trial court are: (1) the pronouncement that the promise to sell (Exhibit A) signed by the late Cirilo Agudong in his lifetime is lawful and valid, and (2) the order to the appellant to accept the sum of P1,100 tendered by the appellee without the three heirs of the deceased Cirilo Agudong having been made party defendants. These same questions were raised in her motion for reconsideration and passed upon by the trial court.

There can be no controversy that after the lapse of the ten-year period agreed upon in the deed of sale with the right to repurchase executed by the appellee, as vendor, the appellant and her husband, as vendees, became the absolute owners of the two parcels of land sold to them by the appellee. The promise to sell and convey the two parcels of land made by Cirilo Agudong, after he and his wife had become absolute owners thereof, cannot be regarded as a promise to resell the parcels of land by virtue of the right to repurchase reserved by ' (the vendor, because that right was lost to the latter after the expiration of ten years agreed upon without making (the repurchase of the two parcels of land. Hence there is no room for the application of the provisions of article 1508 of the Civil Code which prohibit an agreement or stipulation for redemption of the property sold beyond ten years from the date of the contract. The term "re-comprar" (repurchase) was used for lack of better term available or known to Cirilo Agudong, taking into consideration his degree of instruction. It is usual and ordinary to refer to a sale or conveyance of real or personal property, as a resale or repurchase, if the vendee had been the former owner thereof. It is not improper for the former owner to say that he is repurchasing what he had sold and for the purchaser to say that he is reselling to the former owner what he had bought the same reasons, the promise to sell, upon which the appellee rests her right to demand the specific performance thereof, cannot be deemed a novation. The latter cannot be brought about without an existing contract which is substituted or replaced by another either by the change of the subject matter, or by substantial alterations of the terms, of the original contract, or by substitution of another for the debtor, or by subrogation of another to the rights of the creditor. In this case, the original contract of sale with the right to repurchase reserved by the vendor no longer existed at the time the promise to sell was made by the purchaser—who had become the absolute owner after the lapse of the period of time for repurchase—to the seller—who had lost all her right to the property sold, because of her failure to repurchase it within the time agreed upon.

The promise to sell made by Cirilo Agudong not only binds him and his estate, now that he is dead, but also his wife, the appellant herein, because in the absence of proof that one-half of the purchase price was paraphernal, the presumption is that it was conjugal, and the property acquired with conjugal funds must also be conjugal, and the contract made by the husband as regards conjugal property binds the wife. The promise referred to, not being contrary to law, morals, or public order or policy, is lawful, valid and enforceable.

The second point raised by the appellant is well taken. But there seems to be no defense which may be pleaded or set up by the children and heirs of the late Cirilo Agudong, who are bound by such acts of their late father as they affect his estate, except the one set up by the appellant, the widow of the deceased and mother of the said children. Therefore, to expedite the disposition of this case without resort to technicalities, the appellee is directed to amend her complaint by impleading the children and heirs of the late Cirilo Agudong, who, if under age, will be represented by the appellant, their mother, as guardian ad litem to be appointed by the trial court. Upon the filing of the amended complaint, the appellee will serve a copy thereof upon the appellant, as guardian ad litem of the

new party defendants who are minors, or copies thereof upon the children and heirs of the late Cirilo Agudong, if already of age; and if within 15 days from service of a copy or copies of the amended complaint, no answer be filed, or if an answer be filed by said guardian ad litem or by the children and heirs of the late Cirilo Agudong, if of age, setting up no other defense than the one already set up by their mother, the appellant herein, and passed upon by the trial court and this Court, then the judgment appealed from is affirmed, with costs against the appellant. If the answer or answers filed by the new party defendants, if of age, or by their guardian ad litem, if under age, set up a new valid defense, then the judgment appealed from is set aside, without costs, and the trial court is directed to hear such evidence as the new party defendants may desire to present, and after hearing to render judgment in the case.

Paras, Ferria, Bengzon, Tuason, Reyes, Jugo and Bautista Angelo, JJ., concur.

DISIDENTE

PABLO, M.,

En 25 de febrero de 1929, la demandante vendió a los esposos Cirilo Agudong y Emiliana Tumaneng, por la suma de ₱ 100, dos parcelas de terreno situadas en Banna, provincia de Ilocos Norte, con derecho de re-comprarlas dentro del periodo de diez años. El plazo de retracto expiró en 26 de febrero de 1939.

En 29 de febrero de 1944, Cirilo Agudong registró en la oficina del registrador de títulos de la provincia de Ilocos Norte la escritura de venta con pacto de retro, en vez de pedir la consolidación de su dominio.

En 6 de abril de 1944, la demandante se presentó en el barrio No. 15, Sarrat, Ilocos Norte, donde los esposos Cirilo Agudong y Emiliana Tumaneng residían para recomprar las dos parcelas; pero Cirilo Agudong no se lo permitió porque el plazo, según él, ya había expirado. La retrayente se marchó con sus acorapallantes. Después de algún rato, ya por miedo por la inseguridad personal entonces reinante porque se mataba a diestra y siniestra por el motivo más baladí, o ya porque no estaba seguro en la legalidad de su contención de que ya había vencido el plazo de diez años, Cirilo fue a la casa donde se habían hospedado la demandante y sus compañeros, e informó a aquella que había cambiado de opinión; que estaba conforme en la recompra, y otorgó, de su puño y letra, un documento en el dialecto local, cuya traducción es la siguiente:

"Yo, Cirilo Agudong, mayor de edad, casado y residente en este barrio No. 15, declaro que hoy 6 de Abril de 1944 vino Dona Amanda Cristobal, dueña del terreno sita en Sineg-guep, Cabaruan, Banna, que yo he comprado con pacto de retro y que ya ha vencido hace años y que la escritura otorgada ya está registrada y me significó su deseo de recomprarlo y como quiera que se expreso en términos precisos y respetuosos reconociendo mi derecho pudo convencerme y me conformo en permitirle a recomprar su terreno pero nos hemos convenido en que yo trabajara aun por dos años agrícolas o sean dos años y pasados los dos años lo recibire la cantidad con que me vendió y será cuando se cancelara el registro que se hizo—a mi favor.

"En testimonio de lo cual, firmo la presente hoy a 6 de Abril de 1944.

"(Fdo.) CIRILO AGUDONG"

Cirilo Agudong falleció en octubre de 1944.

Vencido el plazo de dos años de que había el Exhibit "A," la demandante requirió a Emiliana Tumaneng, viuda de Cirilo Agudong, que le permitiera la recompra, pero Emiliana se negó a acceder a esta petición. Por eso, la demandante presentó la demanda correspondiente en el Juzgado de Primera Instancia de Hocos Norte, y después de la vista, se dictó sentencia ordenando a la demandada que revendiese los lotes. Contra esta sentencia la

demandada apelo.

La mayoría confirma la sentencia apelada por la razón de que el documento Exhibit "A" no es más que una promesa de venta.

No estoy conforme con esta conclusión.

El Exhibit "A" claramente demuestra el acuerdo de las partes: permitir la recompra por la vendedora en el ejercicio de su derecho de retracto bajo otro plazo adicional. Si el convenio era promesa de venta, así se hubiera expresado Agudong. No es una promesa de venta.

No es necesario tener ojo clínico para discernir el derecho de retracto de la opción de compra. El primero es derecho que se reserva el vendedor a recomprar la cosa vendida dentro del plazo y precio estipulados. La opción de compra es derecho concedido por otra persona que promete vender una cosa por alguna consideración. En el caso presente, no hay consideración si se reputa el Exhibit "A" como promesa de venta. El retracto es una condición de la venta. En una promesa de venta, no hay venta previa: es un nuevo contrato, no precedido por ningún otro. En el caso presente, como el mismo documento Exhibit "A" expresa, Agudong permitió la recompra de los terrenos, no por simple generosidad, sino en la creencia de que estaba obligado a ello porque los había obtenido en compra con pacto de retro. Porque ambas partes obraban bajo esa creencia, no debe permitirse el cumplimiento de lo estipulado en el documento, que está prohibido por el artículo 1508 del Código Civil. Lo que la demandante reclama es la recompra, bajo la siguiente alegación:

"7. Que después del 6 de Abril de 1946 la demandante trató varias veces de rescatar de la demandada Emiliana Tumaneng, viuda del finado Cirilo Agudong, tal como se estipuló entre la demandante y Cirilo Agudong, pero la demandada, Viuda de Cirilo Agudong, se negó y continúa negándose a recibir la suma de P1,100 y otorgar la escritura de retroventa correspondiente."

La demandante no reclama opción de compra o cumplimiento de la promesa de venta—un mero contrato—sino el rescate de los terrenos vendidos con pacto de retro de acuerdo con el nuevo plazo establecido en el Exhibit "A." Si este documento contiene promesa de venta, la demandante no hubiera "tratado varias veces de rescatar" los terrenos.

"Habiéndose celebrado un contrato de venta de un inmueble, con pacto de retro por diez años, la estipulación que después celebraron los herederos del vendedor con el comprador en el sentido de que dicho derecho de retracto no puede ejercitarse sino después de catorce años, no es una promesa de venta, como contrato independiente, sino una mera modificación del pacto de retro en cuanto a su ejercicio. En tal caso dicha estipulación infringe el artículo 1508, párrafo 2, del Código Civil, y el retracto puede y debe ejercitarse dentro de los diez años desde la celebración del contrato de venta." (Ramos contra Icasiano, 51 Jur. Fil., 362.)

"Por esto—dice Scaevola—la Resolución de 27 de Mayo de 1879 no enseña que si bien es cierto que desde el momento en que el comprador consiente en retrovender la finca objeto del primitivo contrato de venta, a pesar de haber expirado el plazo concertado, hay una verdadera novación del mismo que a nadie perjudica, y que es válida en derecho con arreglo al principio de libertad de los contratantes, por lo cual es inscribible la escritura que en este caso se encuentre, esto ha de entenderse siempre que antes de otorgarse y al vencimiento del plazo estipulado para el retracto se haya pedido y obtenido por el comprador la inscripción en el Registro de la adquisición definitiva del dominio de la finca, por no haber hecho uso el vendedor de su derecho de retraer dentro del referido plazo." (23 Scaevola, 775, ed. de 1906.)

En el caso presente, los compradores no reclamaron en la Oficina del Registrador de Título la consolidación definitiva de la venta: solamente registraron la escritura de venta con pacto de retro en 29 de febrero de 1944, más de quince años después del otorgamiento, lo que demuestra que los compradores no se consideraban aún dueños absolutos, sino simples compradores a retro.

La concesion de otro plazo de retracto hasta el 7 de abril de 1946—que en total llega a diecisiete años, un mes y doce días—es contrario a la política estatal que informa el párrafo 2 del artículo 1508 del Código Civil: que "el plazo no podrá exceder de diez años."

Ya hemos dicho en otra ocasión que el ejercicio del derecho de retracto bajo el Derecho Romano y Ley de Partidas era eterno, ilimitado. Posteriormente, sin embargo, por razones de interés público, casi todos los países que reconocen esta clase de ventas han juzgado conveniente limitar el plazo. España lo limitó a diez años. Adoptamos este principio en nuestras decisiones. Este tribunal en *Yadao contra Yadao*, (20 Jur. Fil., 269), explicando la razón de la ley, dijo:

"El pacto de retro implica en cierto sentido una suspensión del derecho de propiedad sobre el terreno 6 finca de que se trata. Somos de opinión que fue la intención del legislador limitar la continuación de este estado jurídico con el objeto de fijar definitivamente y de una manera concreta el derecho de propiedad del inmueble, por ser, en opinión del legislador contrario al orden público el permitir que una situación tan incierta con respecto al dominio de bienes inmuebles continúe por espacio de más de diez años."

Considerar promesa de venta, como nuevo contrato, el Exhibit "A," en vez de promesa de reventa en virtud del derecho de retracto de la vendedora, en una actuación en que ella reclama la recompra de los terrenos vendidos a retro, es, en mi humilde opinión, una herejía legal: es contrario al espíritu y letra del artículo 1508 del Código Civil.

Voto por la revocación de la decisión apelada.

DISSENTING

MONTEMAYOR, J.,

With Mr. Justice Pablo, I fully agree in his dissent from the learned majority opinion. The present case brings to mind some of the tragedies brought about by the Pacific war and the Japanese occupation when, under threats, and fear of punishment and incarceration, innocent vendees of real properties were induced and compelled to resell them to the vendors in the cheap and greatly depreciated Japanese military currency, even long after the expiration of the agreed period of repurchase, because refusal would be interpreted by the Japanese invaders as rejection and non-acceptance of the paper money printed and issued by them without any backing. The numerous cases of this kind that have come after liberation to the courts, including this Tribunal, aside from the fact of its being of public knowledge, authorize us to take judicial notice of that pernicious practice, indulged in by some vendors a retro who took advantage of the situation and the times.

For purposes of reference I am reproducing the document Exhibit A-1 on which plaintiff-appellee bases her claim and on which the majority opinion rests:

"TRADUCCION DEL EXHIBIT A"

"Yo, Cirilo Agudong, mayor de edad, casado y residente en este Barrio No. 15, declaro que hoy 6 de Abril de 1944 vino Dona Amanda Cristobal, dueña del terreno sita en Sineg-guep, Cabaruan, Banna, que yo he comprado con pacto de retro y que ya ha vencido hace años y que la escritura otorgada ya está registrada y me significó su deseo de recomprarlo y como quiera que se expresó en términos precisos y respetuosos reconociendo mi derecho pudo convencerme y me conformo en permitirle a recomprar su terreno pero nos hemos convenido en que yo trabajara aun por dos años agrícolas o sean dos años y pasados los dos años lo recibire la cantidad con que me vendió y será cuando se cancelara el registro que se hizo a mi favor.

"En testimonio de lo cual, firmo la presente hoy a 6 de Abril de 1944. (Italics mine)

"(Fdo.) CIRLIO AGUDONG"

It is almost unnecessary to state that the period of ten (10) years agreed upon by the parties for repurchase, in the year 1929 when the plaintiff Amanda Madamba sold the land to Cirilo Agudong and his wife Emiliana Tumaneng, had long expired in April, 1944, when said plaintiff conceived the idea and had the effrontery to demand that despite the expiration of the ten-year period, she be allowed to repurchase the land. It will be remembered that this took place about the second quarter of the year 1944 when the Japanese military notes had already depreciated in value. According to the Ballantyne schedule of which this Court has taken judicial notice and which it had applied in several cases, in April, 1944, the ratio between genuine Philippine currency and the

Japanese military notes, was one to nine (1-9), that is to say, one Philippine peso was equivalent to nine pesos, Japanese military notes. It was therefore natural for Agudong to flatly reject as he did the preposterous proposition of the plaintiff to redeem the land. Now, what made or impelled Agudong almost immediately or a few hours after making the outright rejection to change his mind, go to the house where Amanda was stopping and then, in a manner and tone by no means condescending but rather humble and contrite, take back all that he had said, and agree to resell the property in question? It could not have been remorse for morally and legally he was justified in turning down the belated and unreasonable demand for repurchase.

It is unfortunate that Agudong could not give us the reason and explanation of his sudden change of attitude, at the trial because he was then already dead, but we could well and easily guess at or imagine the reason. But such mental effort on our part is unnecessary for his widow gives the explanation in her testimony during the hearing. Asked if Amanda said anything to her husband when he repeatedly refused to resell the land, the widow said: "To my husband said that Dona Amanda Madamba, before leaving the house, said, 'if you do not like to let me redeem this land, it is up to you, I will report the matter to the Japanese.'" (P. 14, t. s. n.) I am also quoting part of the transcript which contains two questions asked from the widow Emiliana and her answers thereto:

"Q.

Do you remember if Cirilo Agudong told you of his consent to the redemption of the two parcels of land in question after two agricultural years?—A. He said that after two years they would come to redeem the land, but in fact I did not like, but only consented, because I was still fearing of the then prevailing situation.

"Q.

Why were you afraid of the prevailing situation, when Dona Amanda Madamba did not frighten you?—A. Yes, because according to my husband, Dona Amanda Madamba threatened him in the sense that if he would not consent to the redemption of the land he would bring the matter to the Japanese." (P. 15, t. s. n.)

The plaintiff Amanda did not on rebuttal, take the witness stand to deny the threat imputed to her, and to my mind there is every reason to believe that the consent of Cirilo to the repurchase of the land was the result of said threat and the fear of being reported to the Japanese for he must have realized the consequences. How else, could we explain his willingness, even readiness to resell the land after the period of redemption had long expired, for the same price and in a depreciated currency which at the time had a ratio of one to nine (1-9) with a tendency toward further depreciation? For this reason alone, namely, that the consent of Agudong was obtained through threat and intimidation, and consequently, there was no real consent, the agreement evidenced by the document Exhibit A-1 should be declared void and of no effect.

But there is another reason for declaring Exhibit A-1 null and void. It is in violation of article 1508 of the Civil Code which prohibits any agreement to re-purchase beyond ten years as the parties here did or attempted to do. Not only this, but said parties attempted to make the extension after the period of redemption had long expired. As Manresa correctly observes, if the extension is made after the expiration of the period, then it is void and of no effect because there is nothing to extend. But the majority opinion goes around this legal difficulty and formulates and goes on the theory that since the parties could not legally extend the period of redemption beyond that fixed by the law, then the parties should be held to have entered into an entirely new and independent agreement, namely, that of a promise to sell on the part of Cirilo Agudong. To bolster this theory the majority indulges in an explanation of the popular meaning attached to the words "resell" and "repurchase". I regret to say that this theory and proposition of the majority finds no support in the document Exhibit A-1. In fact, it runs counter to and does violence to it. In no part of said document can we see any word or expression of intention to sell on the part of Cirilo, or desire to buy on the part of plaintiff Amanda. On the other hand, the fact of the previous sale with pacto de retro of the land, and the intention to permit its repurchase by the former owner, permeate and control the entire instrument Exhibit A-1. Cirilo does not say in that document that he would sell the land but rather that he was permitting or he would permit Amanda to repurchase the land (me conformo en permitirla a recomprar su terreno). The language cannot be plainer. Furthermore, in the very complaint of the plaintiff, she speaks of her desire and her vain attempts to repurchase the land. In other words, she was referring to a supposed right to repurchase, born and contained in the original deed of sale executed in 1929, the period for whose exercise was said to have been extended by Exhibit A-1, and not to a new right based on a new and independent agreement Exhibit A-1, containing a supposed promise to sell or an option to buy.

Moreover, Exhibit A-1 can in no manner be construed as an option to buy or a promise to sell for such a contract must necessarily contain a description of the property to be sold or purchased, the condition or conditions of the sale, and the price, independent of any other agreement, so that it could stand alone. But such is not the case here. Exhibit A-1 to describe the land has to refer to the parcel that Cirilo had bought "comprado con pacto de retrb", and, instead of fixing and stating the price in pesos, it has to refer to the price at which it was sold to him "la cantidad con que me vendio." In other words, Exhibit A-1 without reference to the original contract of sale with right to repurchase executed in 1929, cannot stand alone and would be unintelligible.

Furthermore, my idea of a promise to sell, that is to say, an agreement wherein the owner of real estate promises to sell it to another party, is a short term contract popularly called "option to buy." For instance, A, owner of a parcel, in consideration of the sum of say P300 paid by B as earnest money, promises to sell it to B, for a period of say sixty days, for the sum of P5,000; should B exercise his option to buy within the sixty days, the earnest money of P300 is to be credited to the sales price, but if he failed to buy the land, the P300 is to be forfeited. Such a contract must necessarily be of short duration for otherwise it will unduly tie up and freeze the parcel to the prejudice of the owner who may miss other opportunities to sell. Furthermore, if the term is long, say, several years, the value of the property may greatly fluctuate in the meantime. Now, let us view Exhibit A-1 in the light of these considerations, and see if it can properly be regarded as a promise to sell or option to buy as the majority opinion holds. In the first place, as Mr. Justice Pablo in his dissent rightly states, there is no consideration for the promise to sell by Agudong. In other words, there is no earnest money. The contract contains no description of land promised to be sold, or its sales price, except by reference to another contract, that of 1929. So, Exhibit A-1 cannot stand alone, for the simple reason that it is inextricably connected with and involved in the contract of sale with pacto de retro whose term it attempted to extend. In the third place, the term or period in Exhibit A-1 is very long, nay, even endless. It is supposed to begin only after two years from the day said Exhibit A-1 was made, and to last indefinitely. Stated plainly, A, owner of a parcel of land, without receiving anything as consideration, is supposed to have promised to sell it to B for a period without limit. To me this is the kind of agreement or

undertaking which the majority has chosen to call promise to sell or option to buy and to which it has decided to hold Agudong, his wife and his children.

I am constrained to hold the ruling unfair and as against the law.

The way I interprets the document Exhibit A-I, considering the circumstances that surrounded its execution, the parties, ignorant of the pertinent provisions of the law, extended or attempted to extend the period of redemption or repurchase by at least two years, Cirilo agreeing to the extension reluctantly and because of fear of being denounced to the Japanese and being accused of non-cooperation and refusal to accept the Japanese military currency. I maintain that for the two reasons already stated, namely, lack of consent and violation of article 1508 of the Civil Code, the agreement contained in Exhibit A-I should be declared void, and that consequently, the decision appealed from should be reversed and the complaint dismissed.

Case remanded to court a quo for further proceedings.

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