

LEON ALDERETE, PLAINTIFF AND APPELLANT, VS. GREGORIO AMANDORON AND JULIANA ANGOSTO, DEFENDANTS AND APPELLEES.

G.R. No. L-22588. November 13, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal by the plaintiff from a judgment of the Court of First Instance of Iloilo in an action of forcible entry and detainer.

It appears from the evidence that on December 10, 1918, the defendants sold two parcels of land to the plaintiff under pacto de retro. The defendants remained in occupation of the land as tenants of the plaintiff and the latter was never personally in actual occupation. The defendants paid rent in the form of a one-third share of the crop for the year 1920, but failed to pay rent for the year 1921, whereupon this action was brought in the court of the justice of the peace of the municipality of Alimodian, Province of Iloilo, for the possession of the land on the ground that the defendants by failing to pay rent had breached their contract of lease and lost their right of possession under said lease. Upon appeal to the Court of First Instance the court rendered judgment in favor of the defendants absolving them from the complaint.

The learned Judge of the Court of First Instance based his decision principally on the ground that the plaintiff in his testimony before the court admitted that he was not the owner of the land and that the sale with pacto de retro was made to secure a debt. His Honor possibly overlooked the fact that the plaintiff explained his admission by stating that he did not consider himself the exclusive owner of the land while the right of redemption remained in the defendants.

Counsel for the appellees concedes that the transaction of December 10, 1918, was a sale with pacto de retro but citing *Falcon and Falcon vs. Barretto* (26 Phil., 72), maintains that an action for the possession of land based on such a sale is beyond the jurisdiction of the justice of the peace and must be originally brought in the Court of First Instance.

The *Falcon and Falcon vs. Barretto* case, *supra*, was an action of forcible entry and detainer originally brought in a justice of the peace court by a vendee against a vendor under a sale with pacto de retro. On appeal this court held that the case involved questions of ownership of the land, that therefore the justice of the peace had no jurisdiction over the case and that it should have been brought in the Court of First Instance. In its decision the court stated the issues in the case as follows:

"This is a typical case of a sale with right to repurchase as they come to this court, and the typical questions presented in such case are raised herein. It is claimed by the vendor that the instrument is a mortgage and not a sale with the right to repurchase; that she has paid the amount of the indebtedness within the time required by the terms of the document, and that she is therefore the owner of the premises and entitled, by virtue of such ownership, to retain possession thereof. The vendees, on the other hand, assert that the instrument is not a

mortgage but a sale with a right to repurchase; that the time stipulated in the instrument within which payment must be made has expired and that no such payment has been made or tendered; that by virtue of that fact they have become absolute and sole owners of the premises, and, by virtue of such ownership, are entitled to the immediate possession thereof. It is, therefore, clear that the question to be determined in this case is primarily the question of ownership, for upon ownership, pure and simple, depends the right of possession. It is equally clear that the justice's court, therefore, had no jurisdiction of the subject-matter of the action and that, as a necessary consequence, the Court of First Instance on appeal had no jurisdiction further than to set aside and annul the judgment entered in the justice's court."

Upon the facts so stated there can be no question that the conclusions of the court were entirely correct; the case clearly involved questions of ownership over which the justice of the peace had no jurisdiction. But unfortunately, the decision contains certain dicta from which the inference has been drawn that under no circumstances can a vendee under a pacto de retro sale, maintain an action of forcible entry and detainer against the vendor for the possession of the land sold.

This view is clearly erroneous. A sale with pacto de retro transfers the legal title to the vendee and this, in the absence of an agreement to the contrary, carries with it the right of possession. In the case of Santos vs. Heirs of Crisostomo and Tiongson (41 Phil., 342), this court, in discussing the nature of sale with pacto de retro, said: "* * * It is our opinion, however, that the insertion of a stipulation for repurchase by the vendor in a contract of sale does not necessarily create any right inconsistent with the right of ownership in the purchaser. Such a stipulation is in the nature of an option, and the possible exercise of it rests upon contingency. It creates no subsisting right whatever in the property, and so far from being inconsistent with the idea of full ownership in the purchaser, it really rests upon the assumption of ownership in him. * * *"

There are, of course, many cases involving alleged sales with pacto de retro in which questions of ownership arise and of which the Courts of First Instance have original jurisdiction. Of this class Falcon and Falcon vs. Barretto, supra, offers a good example. But there are also cases where the fact that the transaction is a true sale with pacto de retro is not disputed, and in such cases there can be no reason why actions of forcible entry and detainer may not be taken cognizance of by the justice of the peace if brought within the time limit prescribed by law. The matter depends entirely upon the circumstances of each particular case. It being conceded in the present case that the transaction was an ordinary sale with pacto de retro, it follows that the action was properly brought in the justice of the peace court.

There is also another and equally strong reason for holding that the action was properly brought. Through the sale with pacto de retro the plaintiff, as we have seen, became the legal owner of the land and entitled to its possession. The defendants by attorning to him and becoming his tenants are estopped from disputing his title and his right to such possession upon the termination of the lease. The defendants' failure to pay the rent, gave the plaintiff the right to terminate the lease and oust them from their possession, and before the defendants can dispute his title and right to possession, they must first surrender to him the possession of the land. They failed to surrender the possession and thereby gave the plaintiff a good cause of action under section 80 of the Code of Civil Procedure.

The judgment appealed from is reversed and it is ordered that the defendants deliver the possession of the land described in the complaint to the plaintiff, with the costs of the court of the justice of the peace and of the Court of First Instance against said defendants. No costs will be allowed in this instance. So ordered.

Avancena, Villamor, and Romualdez, JJ., concur.

Street, J., did not sign.

Malcolm, J., concurs in the result.

CONCURRING OPINION

JOHNSON, J.:

If I understand the opinion of Mr. Justice Ostrand, it is simply that the purchaser of a parcel of land under a pacto de retro, when the vendor becomes his tenant, may maintain an action of forcible entry and detainer for non-payment of rents agreed upon by the latter. The vendor cannot raise the question of ownership of the property, unless and until he has complied with the contract of pacto de retro in repurchasing the property.

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