

JULIA TUMANENG, PETITIONER, VS. FRANCISCO ABAD, RESPONDENT.*G.R. No. L-4592. September 17, 1952*

Ponente: LABRADOR, J.

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On January 8, 1935, petitioner Julia Tumaneng sold a parcel of land situated in Matayag, Solsona, Ilocos Norte, to the respondent. The price was P995, and the vendor and her heirs were granted the right to repurchase it from the vendee and his heirs. On March 19, 1944, the respondent received from the petitioner the sum of P1,000 in Japanese war notes for the repurchase of the property. Receipt of this amount by the respondent appears at the back of the private deed of sale. The respondent continued in possession of the property even after the year 1944, so in 1946 petitioner brought this action to recover the value of the harvests on the land from the date of the repurchase. The Court of First Instance dismissed the action but gave petitioner one year from notice of the decision within which to repurchase the land for the sum of P995. Against this decision petitioner appealed to the Court of Appeals. This court affirmed the judgment dismissing the case, but reversed it in so far as it granted petitioner the right to redeem the property, declaring respondent absolute owner of the property and its products from January 9, 1940. In arriving at this judgment, it held that the period for the repurchase of the property had expired on January 8, 1940, in accordance with the first paragraph of article 1508 of the Spanish Civil Code. Against this judgment petitioner has presented an appeal to this Court by certiorari.

The disputed portion of the deed of sale executed between the parties contains the following stipulations:

* * *. It is my agreement with Mr. Francisco Abad y Simon that after a year after which he shall have received the fruits of said lands, I shall have the right to redeem the land with the same amount of money that I received from him without any deduction. But if I will have yet no money with which to repurchase, I shall nevertheless together with my heirs have the freedom to repurchase the land and that he or his heirs will not be atle to refuse the repurchase provided, I could return the amount of one thousand pesos. It is also agreed with Sr. Francisco Abad y Simon that I will not exercise my right to repurchase at a time when the rice seedlings have already been prepared for the land but that I will wait until after the harvest.

Petitioner contends that there is an express agreement on the period of repurchase, within the meaning of paragraph 2 of article 1508 of the Civil Code. According to petitioner's contention, the right of repurchase may be exercised at any time, or for an unlimiated time. It is also argued that as the contract expressly provides that if the land is planted to rice when the right to repurchase is to be exercised, redemption can not be effected until after the harvest, every year the right to repurchase is revived upon termination of the harvest, and as no particular year when the harvest or seedling preparation is mentioned, the right must subsist from year to year. In. reply, respondent contends that no period has been fixed for redemption, arguing that the grant of freedom to repurchase is only a recognition of the right, whereas the use of the term "heirs" is to provide against the uncertainty of human life.

There is no question that the terms of the contract are not clear on the period of redemption. But the intent of the

parties thereto is the law between them, and it must be ascertained and enforced. It must be gleaned from the language of the contract, as well as from the conduct of the parties. The parties expressly agreed that if the vendor could not repurchase the property after the expiration of one year from the time that the vendee receives the fruits of the land because of lack of funds, she or her heirs shall nevertheless have the freedom to repurchase the land from the vendee or his heirs, provided the amount of P1,000 be returned. In the first place, freedom to repurchase is expressly granted, which can be exercised only after one year from the time the vendee receives the fruits of the land, without any other limitation whatsoever except as to the price and the existing rice crop on the land. In the second place, the grant is made not to the vendor alone but also to her heirs, and against the vendee and his heirs also. Our inference from these circumstances is that an indefinite or an unlimited period of redemption was intended. The presence of the terms as "nevertheless" and "heirs" can be explained only by an intent to extend the period for an indefinite time. We may not ignore such terms and refuse to give them the effect that they naturally imply, which is an indefinite period. We are expressly enjoined by law (article 1289, Civil Code) to adopt this form of interpretation of the contract, as it provides for the least transmission of rights and interests between the contracting parties. The right to redeem is, furthermore, a natural right, and a construction of the contract favoring it should be followed. (Section 6G, Eule 123, Rules of Court.)

In the case of *Rosales vs. Reyes and Ordovesa*, 25 Phil., 495, the parties agreed "that the right to repurchase could not be exercised within three years from the date of the contract." This Court held that the most logical and just construction is one which would terminate the contract in ten years from the date of the execution. As grounds for this conclusion it explained that unless limited by the contract of the parties, it was generally held that the right to repurchase was perpetual. There was no limitation of the period either under the *Partidas* or under the Roman Law. In modern times, however, it has been deemed advisable to limit the time within which the right to redemption can be exercised. This limitation is contained in Article 1508, paragraph 2, of the Civil Code. (*Ibid.*, p. 497.) In the case at bar, redemption was prohibited in the first year, but thereafter the freedom to repurchase is expressly given even in favor of and against the heirs of the contracting parties, subject to another limitation, i.e., that redemption should not be exercised at a time when the seedlings for the land have already been prepared. The express recognition of the right to repurchase subject to no limitation whatsoever except those indicated necessarily implies that the period should be indefinite, under the principle *inclusio unius est exclusio alterius*.

Our attention has been invited also to the case of *Ban-dong vs. Austria*, 31 Phil., 480, wherein this Court held that the statutory limitation of four years upon the right of redemption was not applicable. In that case the vendors stipulated "we will repurchase the land at the same price; neither of us to make any stipulation as to the interest on the money or products of the land, but in the month of March of any year, if we repurchase." This Court reasoned thus: "In the event that they could assert that right in the month of March of any year after the date of the contract, it could not be said that there was no express agreement authorizing them to do so. Similarly, if the vendor and her heirs in the case at bar have the right to repurchase the land without any limitation, except during those periods when rice seedlings have already been prepared for the land, it is evident that the parties intended that there be no limit to the time for redemption, because the planting of the land takes place every year.

Article 1508 of the Civil Code provides:

El derecho de que trata el articulo anterior durara, a falta de pacto expreso, cuatro anos contados desde la fecha del contrato.

En caso de estipulacion, el plazo no podra exceder de diez años.

We have chosen the Spanish text because the translations do not reflect the exact shade of thought conveyed by the two paragraphs of the article. Manresa explains the application of each of the paragraphs of the article thus:

Viviendo ahora al precepto contenido en el art. 1.508, diremos que en el se provee a dos supuestos distintos: primero, el de que, habiendose convenido el retro, no se haya estipulado plazo para su duracion; y segundo, el de que se haya estipulado ese plazo. En el primer caso se entendera que la accion dura cuatro anos, contados desde la fecha del contrato; en el segundo, las partes habran njado el que tengan por conveniente, aunque siempre dentro del precepto de derecho necesario que determina que ese plazo no podra exceder de diez anos. (10 Manresa 276, 4th ed.)

So that the first paragraph is applicable to a case where do period has been fixed for the redemption, "cuando no se haya estipulado plazo para su duracion"; and the second, when a period has been agreed upon.

We have examined the decisions upon which the Court of Appeals based its decision, and we find that in all of them the contracts did not mention any period of redemption. In the last case cited (*Aliño vs. Adove*, 42 Phil. 302) this Court said that there is always a period applicable, either conventional or legal. The former is fixed by the parties and can not exceed ten years; the latter is fixed by law at four years. (*Ibid.*, p. 304.)

In the case at bar we find an agreement on the period. The agreement contains the following provisions, namely, first, that redemption can not be effected within the first year counted from the time the vendee receives the fruits of the land; second, that even if redemption can not be effected at the end of the first year as specified above, the vendor and her heirs shall nevertheless have the right to redeem it from the vendee and his heirs; and third, that redemption can not be effected at a time when the seedlings for the land have already been prepared. The agreement, in our opinion, fixes an unlimited period, although this is not clear and unequivocal, due perhaps to faulty expression. When the parties stipulated that the vendor and her heirs shall nevertheless have the right to make the repurchase, they meant that they shall have the right to do so any time. We have here, therefore, not a case where no period at all has been agreed upon, but one with a period which shall start after the first year the vendee receives the fruits of the land, and which shall, nevertheless, continue without limitation. In order to be applicable, the law (paragraph 2 of article 1508) requires the existence of an agreement, not a definite or clear agreement on the period. The mere fact that the agreement is obtained by inference does not argue in favor of its non-existence. Lack of clearness in the language of the agreement should not be confused with silence; in other words, not because the language fixing the period is not clear, positive, and unequivocal, may we conclude that an express agreement is absent.

In resume we hold that the parties in the case at bar intended that the right of redemption could be exercised at any time after the first year, subject to the conditions established, but pursuant to paragraph 2 of Article 1508 of the Civil Code, the exercise of the right can be made only within ten years from the date of the contract. It follows, therefore, that the redemption, which was made in the year 1944, was effected within the period of time authorized by law (ten years), and the same is valid and effective between the parties.

With respect to the claim of petitioner for damages for the refusal of respondent to return the land, we find that petitioner should not be entitled thereto before he filed this action in May, 1946, because it does not appear that he ever had demanded the return of the property prior thereto. We also take judicial notice of the fact that the period of harvest in the Philippines is from November to January. Petitioner should be entitled to the owner's share in the products from the agricultural year 1946-1947. The respondent admitted that during that year he harvested six uyones, one half of which is valued at P150.

He should be sentenced to pay this sum, and to account for the owner's share in the harvests thencefrom until he returns the possession of the land to petitioner.

For the foregoing considerations, we hereby reverse the judgment of the Court of Appeals, and we declare petitioner owner of the land in question and sentence the respondent to deliver the possession thereof to her.

Respondent is hereby likewise ordered to pay petitioner the sum of P150 for the harvest of the year 1946-1947, and render an accounting of and deliver the owner's share in the harvests of all the years from the year 1947-1948, until he delivers the land to petitioner. Without costs.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, and Bautista Angelo, JJ., concur.

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