

VICENTE BAUTISTA, PLAINTIFF AND APPELLANT, VS. LAM PING AND JOSE O. VERA, DEFENDANTS AND APPELEES.*G. R. No. L-3889. November 26, 1951*

Ponente: JUGO, J.

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This is an appeal from a judgment of the Court of First Instance of Baguio, dismissing the complaint filed for the annulment of a deed of resale on the grounds that it was obtained by means of intimidation and that it was against the Constitution, The plaintiff appealed.

In the year 1933, the defendant Lam Ping obtained from Silvestre T. Bautista, father of the plaintiff Vicente Bautista (who brought this action as assignee of his father), the sum of P30,000.00 for which Lam Ping executed a deed of sale of the real property herein involved with the right of repurchase, in favor of Silvestre. This sum was fully paid by Lam Ping. In 1941, Lam Ping borrowed from the Philippine National Bank, with the guaranty of said property, the sum of P35,000 with which he began the construction of the second building, on the lot in question. On March 30, 1941, Lam Ping, finding that said amount was insufficient to finish the building, approached Silvestre for a loan of P55,000.00 which Bautista granted to him. With part of this money he paid his indebtedness to the Philippine National Bank and with the balance he finished the construction of the building. for the said sum of P55,000, Lam Ping executed a deed of sale of the same property with option to repurchase (Exh. A of the plaintiff and Bin. 8 of the defendant). As Lam Ping know very little English or Spanish, the languages in which the deed was drafted, he asked his nephew Teodoro Lam to interpret and explain to him the contents of said deed. Aware of the contents, Lam Ping asked Silvestre why was the document drafted in the form of a deed of sale with option to repurchase and not in that of a mortgage. Silvestre answered that as he was not a money lender it was not his practice to accept mortgages and that when Lam Ping borrowed in the year 1933 the sum of P30,000 he also executed a deed of sale with right to repurchase and no trouble had arisen as he had got back his property. Lam Ping then asked Teodoro Lam to compare the two documents and they were found to be in the same form with the exception, of course, of the amounts, dates, etc. Silvestre further explained that Lam Ping could get his property back at any time before the expiration of the period of eight years specified in the deed, by paying back to Silvestre the amount mentioned therein. Ma Lam Ping badly needed the money to pay his indebtedness to the Philippine National Bank and to continue the construction of the building, he acquiesced in signing the deed. Silvestre registered the document in the office of the Register of Deeds of Baguio, and procured the cancellation of the transfer certificate of title in the name of Lam Ping and the Issuance of another certificate in Silvestre's name.

Subsequently, the assessment division of the City Treasurer of Baguio sent a notice to Lam Ping to the effect that the lot and the buildings thereon had been sold to Silvestre. After the notice was interpreted to Lam Ping by his nephew Teodoro Lam, Lam Ping was alarmed, believing that Silvestre had some sinister purpose with regard to his property. It should be noted that the former deed of sale with regard to the loan of P30,000.00 had never been registered and no new certificate of title had been issued to Silvestre.

Silvestre explained to Lam Ping that the issuance of the new certificate of title in Silvestre's name did not make any difference, because during the eight-year period Lam Ping could repurchase and reacquire the property.

Lam Ping could not dismiss his fears and was greatly worried notwithstanding the explanation given to him. To allay his fears he told Silvestre that he would forthwith raise the money to redeem the property.

Lam Ping applied for a loan to the Pilipinas Compania de Seguros, but as the war broke out the matter was dropped. However, on November 2, 1943, through the help of Juan F. Zarate, Lam Ping obtained a loan of P57,000 from the defendant Jose O. Vera. Although the deed of mortgage had already been signed by Lam Ping in favor of Vera for said sum of P57,000, the latter did not want to deliver said sum until Silvestre had signed the deed of repurchase in favor of Lam Ping. After the signing by Silvestre of said deed, Lam Ping, accompanied by Jose Perez, son-in-law of Vera, brought the sum of P55,000 in buri sacks to be delivered to Silvestre, but the latter refused saying that the money was too bulky and that he would prefer a check. Lam Ping and Jose Perez deposited the amount with the Philippine National Bank and obtained a check for the amount which they delivered to Silvestre. Silvestre received the check smiling, without making any protest or comment.

Silvestre, through his son Vicente Bautista, the herein plaintiff, deposited the check in his current account in the Baguio branch of the Philippine National Bank, which cashed the check and credited the amount to the depositor Silvestre. Silvestre had at that time a balance in his favor of P40,000.00. He afterwards made withdrawals, the total amount of which did not reach the sum of P40,000.00.

We agree with the conclusion of the trial court that, although the transaction between Silvestre and Lam Ping was in the form of a sale with the right to repurchase, yet from the circumstances of the case there is no doubt that it was an equitable mortgage. To mention a few of these circumstances: Lam Ping did not in any way intend to sell his lot and building; he was even greatly alarmed when Silvestre registered the deed and had a new title issued in his name, of which Lam Ping became aware when he was notified by the City Assessor of Baguio that the property had been transferred to the name of Silvestre. The money that he borrowed was used partly to pay his indebtedness to the Philippine National Bank and the rest to finish the construction of the second building. It would have been utterly unreasonable for Lam Ping to finish the construction of the building if he had already sold the property in question; he would have used the balance for other purposes, which would have benefited him and not the purchaser. He made a strong remonstrance to Silvestre when the document was explained to him by his interpreter, but Silvestre assuaged him with the assurance that it made no difference as he could get back his property within the eight-year period if he had the money. The result from this transaction is that when Lam Ping, a Chinese national, redeemed his property, he did not violate the provision of the Constitution which prohibits the sale of real estate to a foreigner.

But even supposing that the transaction was that of a sale with the right to repurchase, the redemption made by Lam Ping of the real estate did not constitute a sale, transfer, or assignment, within the meaning of the constitutional prohibition.

With regard to the contention that Silvestre accepted the payment through intimidation, it has no foundation in fact. The appellant testified that the broker Zarate accused Silvestre before the Japanese authorities of refusing to accept in payment Japanese Military Notes. This complaint referred not to the transaction between Silvestre and Lam Ping, but to the sale of another piece of land which Silvestre had promised to sell to Zarate, Silvestre refusing to accept in payment Japanese Military Notes. With reference to this transaction, Silvestre was brave enough to stand firm in his refusal, notwithstanding the complaint, causing the negotiation to fall through. This would show that the accusation was not sufficient to intimidate him.

When Lam Ping and Jose Perez brought and tendered to Silvestre the sum of P55,000 in Japanese Military Notes,

the only objection of Silvestre was that the amount was too bulky and he asked that he be given a check for the same amount. If he had any objection he could have refused to accept any payment either in cash or in check, both of which represented Japanese Military Notes. He deposited the check in his current account and Issued checks against his total balance as increased by said check. The fact that his withdrawals did not amount to more than P40,000 which was the balance before the deposit of the check, does not mean that the P55,000 was not at his disposal) for he could have drawn checks at any time against the total balance of his current account. Furthermore, the withdrawals that he made cannot be said to have been taken from the original balance of P40,000 and not from the additional amount of P55,000, inasmuch as the original balance was not earmarked.

In view of the foregoing, the judgment appealed from is hereby affirmed, with costs against the appellant. It is so ordered.

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

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