

SIMEON AYSON AND MAURA LUMANLAN, PETITIONERS VS. THE COURT OF APPEALS AND PRIMO ARAMBULO, RESPONDENTS.

G.R. Nos. L-6501 and L-6599. May 31, 1955

Ponente: PADILLA, J.

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PADILLA, J.:

These are petitions for a writ of certiorari filed by Simeon Ayson and Maura Lumanlan (G. R. No. L-6501) and by Primo Arambulo (G.R. No. L-6599) to review the decision of the Court of Appeals rendered in CA-GR No. 7358-R which is of the following tenor:

This action was initiated in the Court of First Instance of Tarlac on December 29, 1942, by appellee Primo Arambulo, to compel Basilio Yalung to execute a formal and registrable deed of sale of the land covered by Certificate of Title No. 41132, replacing a private written contract executed on November 24, 1942. Subsequently, Basilio Yalung's sister, Paulina Yalung, was impleaded as party defendant for being a co-owner of the land aforesaid. Appellant spouses, Simeon Ayson and Maura Lumanlan, intervened in the proceedings claiming to be vendees a retro of the land in question for the price of P3,200.00, which amount was subsequently deposited by plaintiff with the Clerk of Court pursuant to an order of July 27, 1944. From the decision rendered on August 28, 1950, after reconstitution of the records, granting the prayer of plaintiff and declaring the repurchase effective by the judicial deposit, only the Intervenor has appealed. Defendants Basilio Yalung (substituted by his heirs) and Paulina Yalung did not appeal.

The facts upon which the litigation arose are practically undisputed, and can be summarized, as follows:

On November 24, 1942, Basilio Yalung signed in Manila a private document selling to Primo Arambulo a 10-hectare parcel of land "of the vendor's exclusive ownership" in barrio Lawi, Municipality of Capas, Province of Tarlac, with Torrens title No. 41132, for the price of P5,000, receipt whereof was duly acknowledged (Exh. A-1). Shortly afterwards, the buyer entered into peaceful possession, purchased the tenant's house, installed a water pump and other improvements, and placed tenants therein.

Because of the seller's subsequent reluctance to formalize a registrable deed of sale and to surrender the Certificate of Title which he claimed to be deposited elsewhere for safekeeping, the buyer and his attorney, Victorino Valle, were led to investigate the land records of Tarlac. To their surprise, they discovered that the Certificate of Title No. 41152 was still in the name of Basilia Tambengco, mother of Basilio Yalung, and his sister Paulina. Later on it was further ascertained that the land was originally mortgaged on December 10, 1936 by Basilia Tambengco to herein intervenors, Simeon Ayson and Maura Lumanlan, of Angeles, Pampanga for P2,000.00 (Exh. 8); and that after the mortgagor's death, her two children Basilio and Paulina Yalung executed another notarial deed (Exh. 9) on May 15, 1941, agreeing that in consideration of the original mortgage debt, and of the additional sum of P1,200.00, paid by the mortgagees, the property should be deemed sold to Ayson and Lumanlan, subject to a reserved right of repurchase of P3,200.00 within 4 years (i.e., not later than May 15, 1945). The deed was not recorded, but the duplicate Certificate of Title was in possession of the vendees a retro.

In view of these unexpected developments, Arambulo and his representatives held various conferences with the

Yalungs, and therein, as found by the Court below (and the finding is final on Paulina, who has not appealed), the sister assented to the sale by her brother if she would be paid an additional P500.00. Matters dragged on, and suit was finally filed first against Basilio and later also against Paulina, for specific performance, and a notice of lis pendens was duly entered.

During the pendency of the suit, the intervenors-appellants sought a preliminary injunction against the appellee, claiming that they, as vendees a retro, were owners and possessors; that Basilio Yalung was only allowed to plant vegetables therein, and Arambulo obtained possession without their knowledge and consent (Rec. App. p. 26). The trial Court however denied the injunction (Rec. App. p. 63).

It appears further that in July, 1943, while the case was pending, the vendees a retro managed to record the sale in their favor, and to have Certificate of Title No. 41132 cancelled and replaced by Certificate No. 19408 in their names, subject however to the lis pendens of appellees.

As the period of redemption was about to expire, plaintiff Arambulo on May 10, 1944 asked the Court to order the intervenors to allow the plaintiff to repurchase the land and to pay P500.00 to Paulina Yalung (Rec. App. p. 95); and after various pleadings the Court entered an order as follows:

"This is a motion filed by counsel for the plaintiff herein in which he prays that he be allowed to repurchase from the intervenors the land in litigation by paying to them the sum of P3,200 at which it should be resold by them, according to their contract with the defendants; and that he be likewise allowed to consign in this court the amount of P500 which is averred by defendant Basilio Yalung to be the money value of the participation therein of defendant Paulina Yalung.

"To this motion the other parties herein formally objected. But at its hearing the intervenors withdrew their opposition thereto upon condition that the two sums aforementioned would be consigned in this court. The defendants likewise withdrew their objection provided that their withdrawal thereof should not be understood as a recognition of plaintiff's right to repurchase that property from the intervenors.

After due consideration of this matter, taking into account the fact that the period within which the repurchase thereof from the intervenors continues to run notwithstanding the filing of this action; that it is necessary that the running of the said period be tolled or suspended pending the final determination of the issues raised herein, the court has come to the conclusion that, in the interest of the administration of justice, the motion aforementioned should be granted.

"WHEREFORE, plaintiff is hereby ALLOWED and AUTHORIZED to repurchase from the intervenors this land in controversy by racking a consignment in this court of the amount of P3,200, and to offer the payment of P500 to plaintiff Paulina Yalung by likewise consigning the said sum. This authorization, however, shall not be understood as a resolution on the issues raised by the parties herein but without prejudice to the plaintiff and to the defendants' continuing to litigate the controversy between them.

"SO ORDERED." (Rec. App. pp. 102-104)

In view of this order, plaintiff Arambulo remitted the amount of P3,700.00 to the Clerk of Court by a cashier's check of the Philippine National Bank and a money order for the Clerk's deposit fees of P18.50 (Exhs. V and W), with a request that the intervenors and Paulina Yalung be notified thereof.

In its decision on the merits, the Court below ultimately ordered:

"IN VIEW OF ALL THE FOREGOING, the Court renders judgment to the following effect:

"a. Dismissing plaintiff's action for specific performance against defendants, as well as his action for money claims against defendant Basilio Yalung.

"b. Dismissing intervenors' claim for indemnity and damages against plaintiff.

"c. Declaring plaintiff absolute owner of the whole of the land in Question by virtue of the constructive repurchase of the said land in question from the intervenors.

"d. Ordering the Register of Leeds of Tarlac to cancel Transfer Certificate of Title No. 19408, and issue in lieu thereof a transfer certificate of title in the names of the plaintiff Primo Arambulo and his spouse, Loreta Sevilla de Arambulo; the property here in Question having been acquired by the said spouses as conjugal property.

"The Court makes no special pronouncement as to costs."

"SO ORDERED." (Rec. App., pp. 152-153)

From this decision the intervenors, Ayson and Lumanlan, duly appealed to this Court, making four assignments of error.

Under the first assignment, it is contended that the execution of the notarial deed of sale a retro, Exhibit 9, constituted symbolic delivery of the land sold to the intervenors-appellants, who should be regarded as having acquired title and possession of land in dispute as of May 15, 1941, when said Exhibit was ratified. This argument is not tenable, because the land object of the contract was covered by a Torrens Title, and sec. 50 of Act 496 is very clear that "no deed xxx purporting to convey or affect registered land, shall take effect as a conveyance or bind the land" until actually registered, and "the act of registration shall be the operative act to convey and affect the land." "In accordance with this section," said the Supreme Court in *Tuason vs. Raymundo*, 28 Phil. 635, 637, "no act of the parties themselves can transfer the ownership of real estate under the Torrens system. That is done by the act of registration of the conveyance which the parties have made."

The deed Exhibit 9 not having been recorded until 1943, It did not transfer to the appellants any ownership or real right of possession before the land was sold to appellee. The provisions of the Civil Code regarding passing of title upon delivery by execution of public instrument (old Civ. Code., art. 1462) must be deemed modified by the provisions of Act 496 in so far as registered land is concerned.

It follows from the foregoing considerations that when the appellee purchased the land in 1942 from Basilio Yalung and physically entered the lot, introduced improvements and worked on it, he became a possessor in good faith, as held by the Court below. It is undeniable from the evidence that the appellee did not suspect at the time that the land was already sold to intervenors-appellants, whose deed was not recorded; nor did he invade any possessory right of said parties, since they were not in possession, actually or legally. The intervenors-appellants therefore are not entitled to the damages they claim under their third assignment of error, inasmuch as the appellee committed no act of dispossession concerning them.

The subsequent registration of the pacto de retro sale in 1943 did not improve the position of the appellants as against the appellee, for the reason that the registration of their right was made subject to the *lis pendens* notice recorded in behalf of the herein appellee.

The claim that the possession in good faith of the plaintiff-appellee ceased at all events when he learned of the pacto de retro sale in favor of the appellant-intervenors, must be disallowed. First, because as already pointed out, the sale to intervenors not having been recorded, the same did not confer possession in them, and therefore, the deed of sale in their favor was not a defect that invalidated the possession of the plaintiff Arambulo; and Article 433 of the old Civil Code makes good faith depend upon ignorance of a flaw that, invalidates the title to the possession. Secondly, because there being no registration of the deed in favor of the intervenors, nor of the one in favor of the plaintiff, the latter was entitled to preference as prior actual (physical) possessor (old Civil Code, Art. 1473, p. 3, first part). In the third place, the appellants-intervenors expressly admitted having allowed Basilio

Yalung to remain in possession, and this right, of possession was transferred to plaintiff. Their allegation that Yalung was only given a possession at will, terminable at their discretion, was not adequately proved.

It is urged in appellants' fourth assignment of error that appellee should be awarded only one-half of the land, because no sale in his favor was made by Paulina Yalung. The Court below, however, expressly found that Paulina ratified the sale to the plaintiff of the whole land, upon payment of P500.00 subsequently deposited in Court; and Paulina Yalung not having appealed from this finding, it is conclusive upon her and appellants can no longer question the fact, since they are not parties to the contract and transactions had between Arambulo and the Yalungs. It is elementary that the annulment of a contract can only be asked by those who are parties thereto, principally or subsidiarily (old Civ. Code, Art. 1302; new Civil Code, Art. 1397; *Wolfson vs. Martinez*, 20 Phil. 340; *Martell Ong vs. Jariol*, 17 Phil. 244).

The same consideration bars these appellants from invoking the Statute of Frauds against the conveyance by Paulina Yalung, based on the absence of a sufficient written memorandum. In the first place, it nowhere appears on the record that Paulina ever invoked the Statute as a defense, before or after trial; and in the second place, the defense of noncompliance with the Statute can not be invoked by strangers to the oral contract (49 Am. Jur. p. 896, et seq.)

There remains the question whether the consignment in Court of the redemption price of P3,200 pursuant to the order of July 27, 1944 was a valid one, and amounted to a repurchase. In their second assignment of error, appellants assail such consignment on the theory that it did not comply with the legal requisites, because (1) the deposit was by check and not in legal tender; (2) it lacked P18.50, the Clerk's fees (which was subsequently remitted by money order, Exh. W); and (3) no notice was given to the creditors.

It was proved that the P3,700.00 (including the P500.00 for Paulina Yalung who has not appealed) was remitted to the Clerk of Court in the form of a Philippine National Bank Cashier's Check No. 57862 (Exh. V) hence, the consignment must be deemed invalid, since the law requires that it should follow the rules of payment, and one of those is that payment should be made in legal tender (*Cuaycong vs. Rius*, L-333, April 21, 1950; *Villanueva vs. Santos*, Off. Gaz., March 8, 1941, p. 681). We do not believe that the letter of the Clerk of Court (Exh. V) informing the counsel for plaintiff of his receipt of the check, and of the fact that "the amount of P18.50 representing the commission of this office was deducted from the sum of P3,700.00 which was sent by you to this office through the Philippine National Bank of Tarlac," constitutes proof that the check was actually cashed by the clerk, as found, by the Court below, "for otherwise he could not have deducted the sum of P18.50 representing his commission" (Rec. App. p. 142); the Clerk there evidently meant that plaintiff could not, be credited with a deposit of P3,700.00 but only of P3,681.50. The "was deducted" could have been done in the account books of the Clerk of Court.

It follows, therefore, that the actual payment of the repurchase money can not be deemed legally made at the time the deposit was made. On the other hand, the pendency of the suit prevented a consolidation of the title for non-redemption (*Ong Chua vs. Carr*, 53 Phil. 975).

In view of the foregoing, the decision appealed from is modified and plaintiff-appellant is given thirty (30) days from the time final judgment is entered, to pay the appellants P3,200.00 in legal tender; whereupon, appellants shall execute a proper deed of reconveyance of the land in question to the appellee, without costs in this instance.

In G. R. No. L-6501 the petitioners contend that (1) the Court of appeals erred in holding that the sale of a parcel of land with a right reserved by the vendors to repurchase it executed on 15 May 1941 in favor of the vendees a retro and registered only in July 1943 was subject to a notice of lis pendens caused to be recorded on 29 December 1942 in the registry of deeds of Tarlac by Primo Arambulo on the Torrens certificate of title of the

parcel of land sold a retro to the a (petitioners), arising from an action for specific performance brought in the Court of First Instance of Tarlac by Primo ioruubulo against Basllio T. Yalung et al. (civil case No. 7); (2) the Court of appeals erred in holding that the recorded notice of lis pendens against the share in a parcel of land of a co-owner who sold it subjected also that of the other co-owner who did not sell hers; (3) the Court of Appeals erred in holding that the defense based on the statute of frauds that may be set up by a co-owner is personal and may not be availed of by them (petitioners) who claim to be the successors-in-Interest of said co-owner; (4) the Court of Appeals erred in holding that Primo Arambulo continued to be a possessor in good faith after he had found out that the vendor of the parcel of land owned only one-half thereof and that the owners of the parcel of land had sold it to them (petitioners); (5) the Court of Appeals erred in holding that the commencement of the action for specific performance referred to prevented the consolidation of the title to the parcel of land in their (petitioners') favor; and (6) the Court of Appeals erred in not awarding them (petitioners) the sum of P1,000 a year as damages until the end of the litigation as prayed for by them in their complaint in intervention.

In G. R. No. L-6599 the petitioner claims that the deposit or consignment made by him in court of the sum of money to repurchase the parcel of land from the vendees a retro, the intervenors in the court of first instance, in compliance with its order entered on 27 July. 1944, is valid and releases it from the lien of the vendees a retro.

Let us take up the question raised by the petitioner in the last mentioned case. Despite the fact that the plaintiff in the court of first instance, appellee in the Court of Appeals and petitioner herein, upon his petition, was authorized by the trial court to deposit in court the sum of P3,200 owed to the vendees a retro, the intervenors in the court of first instance, appellants in the Court of Appeals and petitioners in G. R. No. L-6501, together with the sum of P500 which Paulina Yalung was agreeable and willing to accept as the consideration or price for the conveyance of her share in the parcel of land to Primo Arambulo, to forestall the consolidation of title to the parcel of land upon expiration of the period stipulated for the repurchase of the property from the vendees a retro, intervenors in the court of first instance; that the sum deposited by the plaintiff as authorized by the trial court was made by means of a manager's check; that from all indications the clerk of court cashed or collected it from the Tarlac branch of the Philippine National Bank and deposited it in the provincial treasury to pay not only the sum of P3,200 stipulated for the repurchase of the parcel of land from the vendees a retro but also the price of the other half thereof belonging to Paulina Yalung, still the provisions of the law on consignment have not been complied with, as correctly ruled by the Court of Appeals, because no notice of such deposit made in court was served upon the vendee a retro, intervenors in the court of first instance, appellants in the Court of appeals and petitioners in G.R. No, L-6501, as required by article 1178 of the Civil Code[1] Notice of the deposit made by the obligor or debtor to the obligees or creditors was necessary to protect their interest. As soon as they were notified of the deposit they might pray the court to allow them to withdraw the amount deposited; but no such step could be taken by them without the knowledge that the deposit had been made.

Let us now take up the points raised by the petitioners in G. R. No. L-6501, The notice of lis pendens caused to be recorded by the petitioner in G. R. No. L-6599 subjected the parcel of land to the result of the litigation, As aptly stated by the Court of Appeals the registration of the deed of sale of a parcel of land registered under the Torrens System with a right reserved by the vendors to repurchase it was the operative act of conveying and affecting the parcel of land sold. By their unrecorded contract of sale with a right to repurchase the vendees a retro could bind the vendors a retro but not third parties who were not aware of such contract. The notice of lis pendens recorded on the certificate of title of the parcel of land did not deprive the vendees a retro of their right to the same. It only meant that if the plaintiff, the purchaser of the parcel of land, should secure a judgment in his favor, he would step into the shoes of the vendors who had reserved the right to repurchase the parcel of land from the vendees a retro within the stipulated period.

The second and third points raised by the petitioners are meritless, because as found by the Court of Appeals Paulina Yalung, the owner of an undivided half share in the parcel of land sold by her brother Basilio T. Yalung, was agreeable, and willing to transfer and convey her share to Primo Arambulo for and in consideration of P500. The predecessor-in-interest of the vendees a retro having waived her right to object to the conveyance of her share on the ground of lack of a written memorandum, the vendees a retro, her successors-in-interest, cannot invoke the statute of frauds waived by their predecessor-in-interest.

The claim that the vendee Primo Arambulo could not be deemed a possessor in good faith of the parcel of land after finding out that the one who had sold it to him owned only one-half thereof and that on 15 May 1941 the vendor and her sister had sold the same parcel of land to the vendees a retro, is unmeritorious. Such finding subsequent to the purchase of the parcel of land made by Primo Arambulo cannot make or convert him into a possessor in bad faith of the same, because he tried to compel the part owner who had sold him the parcel of land to legalize the sale and succeeded in having the co-owner sell her share to him for and in consideration of P500.

The contention that the title to the parcel of land was consolidated in the vendees a retro is without foundation in law, because although the deposit or consignation was invalid, yet a period of thirty days is granted to the vendors a retro or their successor-in-interest "from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with the right to repurchase," [2] within which to exercise the right to repurchase. And the application of the provisions of article 1606 of the new Civil Code is authorized by article 2253 of the same Code. The right of the vendees a retro to consolidate title to the parcel of land sold to them hinges on the invalidity of the consignation made by the successor-in-interest of the vendors a retro to repurchase the parcel of land, and such invalidity is not final until after the judgment declaring it invalid becomes final and executory.

The judgment under review is affirmed, without pronouncement as to costs.

Bengzon, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

Pablo, J., conforme con la parte dispositiva;

Paras, C.J., Montemayor, Jugo, and J.B.L., Reyes, JJ., took no part.

[1] Article 1258, new Civil Code.

[2] Article 1606, new Civil Code.

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