

HONORATO DE VERA, RECURRENTE, CONTRA JOSE C. FERNANDEZ, RECURRIDO.

G. R. No. L-2260. May 14, 1951

Ponente: PABLO, M. J.

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PABLO, M. J.:

El recurrido en la presente actuacion demanda al recurrente en el Juzgado de Primera Instancia de Pangasinan (causa civil No. 205), alegando que compro en 20 de julio de 1939, con pacto de retro dentro del termino de un ano, una parcela de terreno situada en la poblacion de Alaminos, Pangasinan, de 25,256 metros cuadrados, amillarada en P250, por la cantidad de P300; que el demandado no recompro la finca dentro del plazo adicional concedido, sino solamente la casa en construction; que en mayo de 1942, el demandado, obrando de mala fe, se posesiono de la parcela y no quiso devolverse la al demandante a pesar de varios requerimientos; por lo que el demandante pidio que se le declare dueno exclusivo del terreno y se le conceda danos y perjuicios a razon de P25.00 anuales.

En contestation, el demandado alego que no fue una venta con pacto de retro, sino hipoteca el contrato (Exhibito A) habido entre las partes; que la deuda era de P230 y que se incluyo en esta cantidad los P70 de intereses usurarios; que como el ha pagado ya el ano 1941, P100 como pago parcial de la deuda, pide que la alegada venta con pacto de retro sea declarada una simple deuda; que el esta dispuesto a pagar la cantidad de P200 con sus intereses legales.

Vista la causa, el Juzgado dicto sentencia declarando que el contrato habido entre el demandante y el demandado es una venta con pacto de retro; que la venta quedo definitiva y absoluta en cuanto al terreno, exceptuando la casa en eonstruccion, y condeno al demandado a entregar al demandante el terreno y pagarle, como dafios y perjuicios, la cantidad de P25 anuales desde el ano 1942, con costas. Contra esta decision el demandado apelo.

El Tribunal de Apelacion confirmo la sentencia apelada.

El demandado (hoy recurrente) apela en tercera instancia ante este Tribunal en recurso de certiorari, suscitando las mismas cuestiones ya discutidas y decididas por los dos tribunales inferiores.

Las conclusiones de hecho del Tribunal de Apelacion son las siguientes:

"After a careful examination of the record, we find the contentions of the appellant to be without merit and unsupported by the evidence.

"The transaction had between the parties was not a mortgage but a sale with right to repurchase as shown by the clear and unequivocal terms of the document itself (Exhibit A) which wai prepared by Notary Public N. P. Santiago chosen by appellant himself being his neighbor. That such was the true nature of the aforesaid transaction is also shown by the following circumstances: The vendee took possession of the property sold and benefited himself with the products thereof until it was wrested from him in May, 1942. It was the vendee who paid for the land taxes of the land from the year the sale was made, 1939 (Exhibits B-2 and B-3). After the lapse of the extension of the period of redemption up to May, 1941, granted by the vendee, the latter declared

the property in his name (Exhibit B-1), cancelling that of the vendor (Exhibit B), and paid the taxes thereafter (Exhibits B-4 to B-7). It was the desire of the appellant himself that the payment of P100 he had made be applied for the redemption of the house alone for which he had prospective buyers, one Miss F. Florendo and one Dr. Ungson, both of whom, according to him, desisted from buying said house because it was included in the pacto de retro sale. This is confirmed by the fact that appellant afterward sold the house to Felix Casipit in November, 1943 for the sum of P1,200 in Japanese war notes. The sale of the house belies the theory of the appellant that the same remained mortgaged to plaintiff in spite of the partial payment made. In June, 1941, appellant himself told the appellee that the land would be definitely transferred to the latter inasmuch as the former's children, including his son Attorney Andres de Vera, who were expected to help him, made no efforts to pay the balance of P200. Because of this assurance of the appellant, appellee had the tax declaration (Exhibit B) of the appellant cancelled and, in lieu thereof, had a tax declaration in his and his wife's name issued (Exhibit B-1.) That appellant decided to abandon the land is confirmed by his not offering to pay the balance of P200 to redeem the land even after he had sold the house for P1,200."

Hay una equivocada opinion de un no pequeno sector del foro de que el Tribunal Supremo puede aun revisar las conclusiones de hecho del Tribunal de Apelacion. Y es la razon por que este Tribunal se entretiene en muchas causas elevadas aqui indebidamente. La Legislatura Filipina al crear el Tribunal de Apelacion encomendo a este la determinacion final de las cuestiones de hecho de todos los asuntos apelados de los juzgados de primera instancia que no son de la jurisdiccion del Tribunal Supremo. Solamente las partes agraviadas pueden acudir a este tribunal en tercera instancia sobre cuestiones legales.

En cuanto al pago parcial de P100 de los P300 con que el recurrente vendio la finca con una casa en construccion, se puede citar lo que este Tribunal en Lichauco contra Berenguer, 20 Jur. Fil., 13, declaro:

"El comprador que ha sido reembolsado por el vendedor de parte del precio de la retroventa esta sujeto al cumplimiento de la obligacion de retrovender, que ha nacido ya, como efecto del pacto de retro, a mostrar razon por qu6 puede quedarse con esta parte del precio y no obstante ello considerarse libre de llevar a efecto la retroventa."

En el caso presente, el vendedor recompró la casa en construccion por P100 y se conformo en que se convirtiese en definitiva la venta en cuanto al terreno. Con este acuerdo, hubo novacion de contrato; recompraba el vendedor la casa en construccion, pero dejaba de recomprar el terreno. La casa y el terreno son dos cosas que pueden separarse. No son indivisibles. Que hubo acuerdo en este sentido lo revela la actuacion posterior del recurrente fil vendio la casa en noviembre de 1943 a Felix Casipit por la suma de P1,200 en papel moneda japonesa. Si estaba hipotecada con el terreno no la hubiera podido vender el recurrente sin la protesta del presunto acreedor. Es que no era acreedor, sino comprador a retro y consintio la recompra de la casa. Por eso, el vendedor a retro (hoy recurrente) ha podido venderla libremente porque la habia recomprado.

Si el vendedor no se hubiera allanado a la venta definitiva del terreno—corao dice la conclusion de hecho del Tribunal de Apelacion—con los P1,200 o parte de ellos, hubiera podido recomprarlo.

Se deniega la solicitud con costas contra el recurrente.

Paras, Pres., Bengzon, Padilla, Tuason, Montemayor, Jugo y Bautista Angelo, MM., estan conformes.

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