

VITA UY LEE AND HENRY LEE, PETITIONERS, VS. THE COURT OF APPEALS AND ALBERTA VICENCIO VDA. DE SIMEON, IN HER OWN BEHALF, AS SUBSTITUTING HEIR OF FORMER DECEASED CO-PLAINTIFF EMI...

G.R. No. L-28126. November 28, 1975

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

On June 25, 1965, Emiliano Simeon and Alberta Vicencio, husband and wife, brought an action in the Court of First Instance of Rizal to compel spouses Vita Uy Lee and Henry Lee to resell to them a parcel of land situated in Sitio Parugan-Iba, Barrio San Jose, Antipolo, Rizal. The land, a homestead with an area of about 2.7342 hectares, is presently covered by Transfer Certificate of Title No. 57279 issued by the Register of Deeds of Rizal in the names of defendants (now petitioners) Vita Uy Lee and Henry Lee (p. 3, Rollo). Defendants (now petitioners) filed in due time their answer with affirmative defenses. After trial, the Court of First Instance rendered a decision on January 6, 1964, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered:

"(1) Ordering the defendants to execute the proper deed of reconveyance of the homestead land in question, free of all liens and encumbrances, in favor of the plaintiffs, upon the payment by the latter to them of the repurchase price of P16,000.00;

"(2) Directing the defendants to deliver to the plaintiffs the possession of said land;

"(3) Ordering the Register of Deeds of Rizal upon presentation to him of the deed of reconveyance and payment of his legal fees, to cancel Transfer Certificate of Title No. 57279 issued to defendant Vita Uy Lee and to issue a new one in lieu thereof in the name of the plaintiff Emiliano Simeon, married to plaintiff Alberta Vicencio; and

"(4) For defendants to pay the costs of the action.

"The counterclaim of the defendants are hereby dismissed.

"SO ORDERED." (pp. 56-57, Record on Appeal)

Defendants (now petitioners) filed a motion for new trial (pp. 60-96, Ibid) and later an urgent motion for reconsideration (pp. 114-116, Ibid), which were both denied by the trial court in its orders of March 23, 1964 (pp. 113-114, Ibid) and June 25, 1964 (pp. 119-124, Ibid).

On appeal to the Court of Appeals, the decision of the Court of First Instance of Rizal was affirmed in toto. (Annex A to Petition, pp. 27-45, Rollo) A timely motion for reconsideration (Annex B to Petition, pp. 66-85, Ibid) was filed by defendants-appellants (now petitioners) to no avail. (Annex C to Petition, p. 87, Ibid)

The case is now before Us on a petition for certiorari filed by spouses Vita Uy Lee and Henry Lee.

The land in question, together with another parcel denominated as Lot No. 1 was originally covered by Original Certificate of Title No. 732 in the name of Ignacio Simeon, deceased father of Emiliano Simeon, issued by the Register of Deeds of Rizal by virtue of Free Patent No. 187771 which Ignacio had obtained from the government way back in 1935. (p. 28, Ibid)

After the death of Ignacio Simeon and his wife, plaintiff (now substituted by his spouse, Alberta Vicencio Vda. de Simeon as private respondent) Emiliano Simeon and his brother Deogracias Simeon, as the only surviving heirs, executed on March 27, 1947 a deed of extrajudicial partition of the properties left by their parents (Exh. 2) whereby Lot No. 1 was adjudicated to Deogracias and Lot No. 2 to Emiliano. Because the certificate of title covering the said lots could not be found, they were simply described as "Homestead No. 82945." (Ibid)

On January 30, 1957, following some negotiation, plaintiffs (now private respondents) agreed to sell the land in question to Vita Uy Lee (Exh. 1). Upon request of Henry Lee, Vita's husband, plaintiffs (now private respondents) furnished him with a copy of the deed of extrajudicial partition (Exh. 2) and a certification (Exh. 1) issued by the Register of Deeds of Rizal that "there is no certificate of title issued for Lots Nos. 1 and 2 located at Antipolo covered by Plan F-54569". Defendants (now petitioners) likewise verified the status of the property from the Land Registration Commission and the Bureau of Lands (pp. 48-49, Ibid).

On February 14, 1957, plaintiffs (now private respondents) executed a deed of sale of Lot No. 2 in favor of defendants (now petitioners) Vita Uy Lee and Henry Lee. The document prepared by defendants' (now petitioners) lawyer, Atty. Leonardo M. Guzman, described the property as "Lot 2 of Plan F-954569," instead of a homestead as stated in the deed of extrajudicial partition (Exh. 2). (p. 29, Ibid)

The day following the sale, defendant (now petitioner) Vita Uy Lee filed her own application for free patent over Lot No. 2 with the Bureau of Lands (Exh. G), in which application she expressly acknowledged that said property is a public land previously occupied by Ignacio Simeon and his heirs. The application was denied (p. 50, Ibid).

Defendants (now petitioners) then sought registration of the lot in question in their names under the provisions of Act No. 496. The Court of First Instance of Rizal, Branch VI, acting as a land court, favorably acted upon their application in a decision dated December 7, 1957 (Exh. 5). However, before the final decree and the corresponding certificate of title could be issued, it was discovered that the land which defendants (now petitioners) sought to register in their names, "has already been patented and is covered by Original Certificate of Title No. 732 (F.P.)." Acting upon this information, the Court of First Instance of Rizal set aside on February 11, 1958, its decision of December 7, 1957 (Exh. 7). (pp. 30-31, Ibid)

Meanwhile, on February 5, 1958, Emiliano and Deogracias Simeon filed a motion praying for the issuance of a substitute owner's duplicate copy of Original Certificate of Title No. 732 (F.P.), which was "irretrievably lost during the early period of the American liberation * * *" (Exh. 8). The motion was granted. (p. 31, Ibid)

On March 4, 1958, defendants' (now petitioners) lawyer prepared a document entitled "Declaration of Heirs and Extra-judicial Partition With Partial Sale" (Exh. B), wherein the adjudication of Lots Nos. 1 and 2 to Deogracias Simeon and Emiliano Simeon, respectively, and the sale by the latter of his share to Vita Uy Lee for a consideration of P16,000.00 were affirmed. On that day, Original Certificate of Title No. 732 was cancelled and Transfer Certificate of Title No. 57272 (Exh. 11) covering Lot No. 2 issued in the name of Emiliano Simeon. Later that day, the new Transfer Certificate was cancelled and replaced by the present Transfer Certificate of Title No. 57279 (Exh. 14) in the name of Vita Uy Lee, married to Henry Lee, "subject to the provisions of . . . the Public Land Act . . ." (Exh. H). (Ibid)

What transpired next is the crux of this controversy as plaintiff (now substituted by surviving spouse Alberta Vicencio as private respondent) Emiliano Simeon tried to repurchase the property sold to the spouses Lee. The Court of Appeals narrated the facts as follows:

"On June 14, 1960, Emiliano Simeon, through plaintiffs' former counsel Atty. Valeriano Santos, sent a letter of demand (Exh. C) to Vita Uy Lee, advising her that he 'desires to repurchase the parcel of land situated at Antipolo, Rizal, covered by Transfer Certificate of Title No. 57279 in your name' and requesting that he be informed of her 'conformity on the matter within five days from receipt hereof.' Notwithstanding receipt of this letter, defendants did not bother to make any reply thereto. Hence, on November 3, 1960, Atty. Santos wrote another letter (Exhibit J) reiterating the demand of Emiliano Simeon to repurchase the land. This letter was received by defendant Vita Uy Lee on November 5, 1960 (Exh. J-1), but as in the case of the first letter, the defendants did not reply to the second letter. Consequently, for the third time, on June 24, 1961, Atty. Santos wrote another letter (Exh. D) to Vita Uy Lee repeating the same demand, with a warning that if nothing is heard from her within five days from receipt, the matter would be brought to court. Still the defendants did not answer. However, despite this failure of the defendants, Atty. Santos did not take any court action and apparently because of this indifference of their former counsel, plaintiffs were constrained to engage the services of a new lawyer, Atty. Narciso Pe?a (p. 32, Ibid).

"On March 2, 1962, Atty. Pe?a addressed a letter (Exh. E) to Vita Uy Lee reiterating that Emiliano Simeon 'is ready to repurchase from you the land' in question. After receipt of this letter, Vita Uy Lee broke her silence and through her counsel Atty. Guzman, she wrote Atty. Pe?a on March 12, 1962, that she cannot agree to the repurchase of the lot in question, because 'even assuming that your client had the right to repurchase the land, the period of five (5) years within which to do so, had already expired'. (Exh. 12) In view of this flat refusal of the defendants to resell the lot in controversy to the plaintiffs, the latter filed this action in the court below." (p. 33, Ibid)

Plaintiffs (now private respondents) sought the redemption of Lot No. 2 from defendants (now petitioners) pursuant to Section 119 of Commonwealth Act 141 which provides as follows:

"Section 119. Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs within a period of five years from the date of conveyance."

There is no dispute that the land under litigation was acquired under a free patent (p. 36, Ibid), and that its sale is subject to redemption within five (5) years from the execution of the deed of sale (Galasiano, et al. vs. Austria and Cardenas, 97 Phil. 82; Abogado vs. Aquino, et al., 53 O.G. 5187; Bayaua vs. Suguitan, et al., 53 O.G. 8832; Reyes vs. Manas, L-27755, Oct. 4, 1969, 29 SCRA 736; Lazo vs. Republic Surety and Insurance Co., Inc. L-27365, Jan. 30, 1970, 31 SCRA 329) on February 14, 1957. (p. 29, Ibid) Likewise, there is no question that private respondents instituted the action to compel petitioners to resell the land to them only on June 25, 1965 when the redemption period had already elapsed. (p. 27, Ibid) The main issue to be resolved is whether the three letters sent by respondent (now substituted by surviving spouse) Emiliano Simeon to petitioner Vita Uy Lee before the lapse of the five-year period, and which were left unanswered, have preserved the right of private respondents to repurchase the property.

Before passing, however, upon said issue, We find it logical, considering their nature, to first examine the other questions raised herein.

Petitioners maintain that the Court of Appeals erred in not making "sufficient and complete findings of fact on all issues properly raised as to fully conserve petitioners right to appeal to this Supreme Court on questions of law." (p. 32, Brief for Petitioners) Petitioners based this assignment of error on the requirement embodied in Section 4,

Rule 51 of the Revised Rules of Court which states:

"Sec. 4. Findings of the court. — Every decision of the Court of Appeals shall contain complete findings of fact on all issues properly raised before it."

More specifically, petitioners assail the failure of the Court of Appeals to include in its decision the complete text of the three letters sent by respondent (now substituted by surviving spouse) Emiliano Simeon to petitioner Vita Uy Lee before the expiration of the period within which redemption could be made (p. 35, Brief for Petitioners), petitioners intimating that such omission has impaired their position on appeal as another question is raised by them on the basis of the "terminology of those three letters". (Ibid)

We find no merit in this contention.

At the outset, it should be stressed that provisions of the Rules of Court like the one invoked by petitioners are to be given liberal construction. (Rule 1, Sec. 2, Rules of Court) As this Court had the occasion to rule, the findings of facts which the Court of Appeals is required to make are only the ultimate facts as found by the court and essential to support the decision and judgment rendered thereon. (Air France vs. Carrascoso, et al., L-21438, Sept. 28, 1966, 18 SCRA 155, 157, citing Braga vs. Millora, 3 Phil. 458, 465) It is not necessary that the appellate court reproduce in their entirety the exhibits presented by the parties during trial. To require the Court to do so would be to clutter the pages of the decision with wordy texts of documents when reference to the gist thereof would just as adequately, if not better, serve the purpose of the rule. The respondent Court did not disregard the three letters in question. Neither did it dismiss their evidentiary value. Each letter was properly referred to in the decision and its message clearly reflected thereon. Indeed, it is not alleged that respondent Court misunderstood the communication.

Another point raised concerns questions of fact, relating particularly to the testimonies of Henry Lee, his witness Valeriano Santos and respondent Alberta Simeon (pp. 39-45, Brief for Petitioners). Suffice it to state here that these matters cannot be inquired into in a review on certiorari. (Sec. 2, Rule 45, Rules of Court; de Vera vs. Fernandez, 88. Phil. 668; Velasco vs. Court of Appeals, 90 Phil. 688; Tan vs. Court of Appeals, L-22793, May 16, 1967, 20 SCRA 54; Lucero vs. Loot, L-16995, October 28, 1968, 25 SCRA 687; Ramirez Telephone Corporation vs. Bank of America, L-22614, August 29, 1969, 29 SCRA 191; Chan vs. Court of Appeals, L-27488, June 30, 1970, 33 SCRA 737; People vs. Perido, L-28248, March 12, 1975, 63 SCRA 97)

Going now to the main issue to be resolved, petitioners assign as error the Court of Appeals' finding that the right of private respondents to repurchase the land in question still subsists. It was respondent court's thinking that the first three letters sent by private respondent (now substituted by surviving spouse) Emiliano Simeon to petitioner Vita Uy Lee before the lapse of the five-year period, and which were left unanswered, have preserved the right of private respondents to redeem the property (pp. 58-59, rollo).

The first letter dated June 14, 1960 (Exh. C) advised petitioner Vita Uy Lee of Emiliano Simeon's "desire to repurchase" the land and requested that the latter be informed of Lee's "conformity on the matter within five days from receipt (t)hereof". (p. 32, Ibid) The second letter sent on November 3, 1960 (Exh. J) reiterated Simeon's demand to repurchase the land (Ibid). The third letter dated June 24, 1961, expressed the same demand, this time with a warning that if nothing is heard from petitioner Vita Uy Lee within five days from receipt, respondent Simeon would seek judicial intervention (Ibid). In no instance was it shown that private respondent offered or tendered the repurchase price.

Petitioners maintain that the sending of letters advising of private respondents' desire to repurchase the property and demanding its resale did not constitute a proper exercise of the right of legal redemption, absent an actual and simultaneous tender of payment (p. 17, Brief for Petitioners). Petitioners argue that it is not sufficient for the

vendor to inform the vendee that the former intends to redeem the property sold, but he must at the same time offer to repay the price (p. 21, *Ibid*).

This view deserves consideration.

The rule that tender of payment of the repurchase price is necessary to exercise the right of redemption finds support in civil law. Article 1616 of the Civil Code of the Philippines, in the absence of an applicable provision in Commonwealth Act No. 141, furnishes the guide, to wit: "The vendor cannot avail himself of the right of repurchase without returning to the vendee the price of the sale . . .".

Thus, in the case of *Angao vs. Clavano*, 17 Phil. 152, it was held that "it is not sufficient for the vendor to intimate or to state to the vendee that the former desires to redeem the thing sold, but he must immediately thereupon offer to repay the price . . .". Likewise, in several other cases decided by the Supreme Court (*Fructo vs. Fuentes*, 15 Phil. 362; *Retes vs. Suelto*, 20 Phil. 394; *Rosales vs. Reyes, et al.*, 25 Phil. 495; *Canuto vs. Mariano*, 37 Phil. 840; *Dela Cruz, et al. vs. Resurreccion, et al.*, 98 Phil. 975; and other cases) where the right to repurchase was held to have been properly exercised, there was a definite finding of tender of payment having been made by the vendor.

Private respondent points out, however, that the statement in *Angao* cited above is an obiter dictum because in that case, the period of redemption had prescribed thereby rendering immaterial the question of whether or not a tender of payment was made. This might be so; nevertheless, a dictum which generally is not binding as authority or precedent within the stare decisis rule (21 C.J.S. 309) may be followed if sufficiently persuasive (*Ibid*, citing *Karameros vs. Luther*, 2 N.Y.S. 2d 508).

Accordingly, the *Angao* ruling was cited with approval in the case of *Laserna vs. Javier and Cruz*, 110 Phil. 172, where the appellant failed to tender payment of the repurchase price within 30 days after the court below had decided by final judgment that the contract sued upon was a pacto de retro and not a mortgage. (Article 1606 of the Civil Code of the Philippines gives a vendor a retro "the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase". It was invoked in the subsequent case of *Torrijos vs. Crisologo*, L-11734, Sept. 29, 1962, 6 SCRA 184. In that case, Crisologo offered the return to Torrijos of P2,000.00, representing a part of the repurchase price of P19,313.95. Holding that the vendor who desires to redeem the property should offer to repay the price, the Court went further and declared that the full amount of the repurchase price should be tendered.

It is clear that the mere sending of letters by vendor Simeon expressing his desire to repurchase the property without an accompanying tender of the redemption price fell short of the requirements of law. Having failed to properly exercise his right of redemption within the statutory five-year period, the right is lost and the same can no longer be revived by the filing of an action to compel redemption after the lapse of the period.

Private respondents also argue, on the assumption that tender of payment was ordinarily required, that the same was not necessary in the instant case because petitioner Vita Uy Lee refused their demands for reconveyance.

It may indeed be recalled that before the period for redemption expired, respondent (now substituted by surviving spouse) Emiliano Simeon sent petitioner Vita Uy Lee three letters — one in June 1960, the other in November of the same year, and the third in June 1961 — demanding the resale to him of the homestead. (p. 52, *Rollo*) Despite Lee's receipt of the letters, she did not send any reply. It was only when Simeon wrote her a fourth letter, this time after the redemption period had elapsed, that petitioner Lee expressly signified her refusal to resell the land in question on the ground that the 5-year period had already expired (pp. 52-53, *Ibid*).

The appellate court considered appellants' (now petitioners) failure to reply to Simeon's first letters as refusal on petitioners' part to resell the property in question and held that such refusal rendered tender of payment

unnecessary (pp. 61-63, Ibid).

This position is untenable.

Petitioner Vita Uy Lee was justified in ignoring the letters sent her by respondent Emiliano Simeon because the mere mention therein of respondent's intention to redeem the property, without making tender of payment, did not constitute a bona fide offer of repurchase. The rule that tender of the repurchase price is dispensed with where the vendee has refused to permit the repurchase, as enunciated in at least two cases (*Gonzaga vs. Go*, 69 Phil. 678 and *Laserna vs. Javier*, 110 Phil. 172), is premised on the ground that under such circumstance the vendee will also refuse the tender of payment. From petitioner Lee's silence which we have shown above to be justified, no such deduction can be made. Unlike a flat refusal, her silence did not close the door to respondent Simeon's subsequent tender of payment, had he wished to do so, provided that the same was made within the five-year period. Yet he neglected to tender payment and, instead, merely filed an action to compel reconveyance after the expiration of the period.

WHEREFORE, finding private respondents' right of redemption to have lapsed, the judgment appealed from is hereby reversed and another one entered dismissing the complaint.

No costs.

Makalintal, C.J., Makasiar, Antonio, Concepcion Jr., and Martin, JJ., concur.

Aquino, J., took no part.

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