

FELISA TAYAO, ET AL., PLAINTIFFS-APPELLANTS, VS. PASCUALA DULAY, ET AL., DEFENDANTS-APPELLEES.*G.R. No. L-21160. April 30, 1965*

Ponente: BAUTISTA ANGELO, J.

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This is an action to compel defendants to reconvey to plaintiffs a parcel of land situated in Pulilan, Bulacan which, according to plaintiffs, was merely mortgaged by Apolinario Tayao, their predecessor-in-interest, to Pascuala Dulay on December 8, 1926 in accordance with a public document entered into between Apolinario Tayao and Pascuala Dulay.

Defendants, in their answer, claim that the document relied upon by the plaintiffs is not a mortgage but a pacto de retro sale which, because of Tayao's failure to repurchase the property within the period agreed upon, ripened into an absolute sale thereby vesting the ownership and title of the property in Pascuala Dulay. The latter claims that she had sold the property to her co-defendants Primitivo Reyes and Anatalia Cayetano who, on their part, claim to have purchased it in good faith and for value. Defendants finally claim that since the execution of the document on December 8, 1926 the land had been in the possession respectively of Pascuala Dulay and of spouses Primitivo Reyes and Anatalia Cayetano continuously, openly, peacefully, adversely and in the concept of owner, having declared the same in their names for taxation purposes and having paid religiously the taxes due thereon. They pray that the complaint be dismissed.

After hearing, the court a quo dismissed the complaint with both parties bearing their own costs and expenses of litigation. The case is now before us on appeal taken by the plaintiffs.

Apolonio Tayao, during his lifetime, executed in favor of Pascuala Dulay a deed of sale with option to repurchase covering a parcel of land for a consideration of P138.79. It was expressly agreed upon that the land object of the sale cannot be repurchased during the first ten years following the execution of the sale although there is nothing therein which limits the period within which the repurchase may take place. In view of this failure to stipulate the time within which the repurchase may be made, plaintiffs now contend that the said clause should be considered as non-existent being contrary to law with the result that the contract has now become a mere evidence of indebtedness.

Defendants apparently do not agree with this theory if they aver that the contract entered into between original parties is one which embodies a real sale option to repurchase with the only particularity that was there agreed upon that such repurchase could not be effected until after the period of ten years from its execution. The fact that this stipulation is contrary to law does not in itself convert the contract into a mere evidence of indebtedness and much less one of mortgage for it would at most be considered as one where the repurchase is to be made within a period not exceeding ten years in accordance with Articles 1508 of the Civil Code of Spain which provides: "Should there be an agreement, the period should not exceed ten years."

The case in point is that of *Santos vs. Heirs of Crisostomo*, 41 Phil., 342, the facts of which are on all fours with

the present. In that case, one Jose Tiongson sold a parcel of land to spouses Teodorico Santos and Venancia Bautista with option to repurchase for the sum of P211.00 with the express stipulation that the seller should not repurchase the land "until after ten years of its enjoyment." In ruling that this stipulation is illicit for being contrary to the spirit of the law, this Court declared that it did not have the effect of changing the character of the transaction for the most that can be said is that the law should control the veiled intent of the parties in the sense that the period for the exercise of the right of repurchase in case there is an agreement should not exceed ten years from the date of contract, as may be gleaned from the following rationale of this Court:

"We think, however, that the document is what it purports to be; and its character is not changed by the fact that, as will presently be seen, the stipulation as to the time when repurchase may be effected contravenes the provisions of article 1508 of the Civil Code. When the stipulation in question is examined, it will be discovered that the intention of the parties was to suppress the exercise of the right of repurchase for the full period of ten years from the date of the contract and, inferentially, to allow the exercise of that right after the expiration of ten years. In the second paragraph of article 1508 of the Civil Code it is in effect provided that if there should be an agreement with respect to the time of repurchase, the period shall not exceed ten years. The stipulation under consideration offends against this provision in two particulars, namely, (1) in providing that the right to repurchase may be exercised after ten years shall have elapsed, and (2) in prohibiting the exercise of the same right during the whole period when, according to the statute, it might be lawfully exercised.

"The stipulation is, therefore, illicit; and the result is that the right of repurchase could in fact under the second paragraph of article 1508 of the Civil Code, have been exercised in this case at any time after the making of the contract and prior to the expiration of ten years. The law must here control over the revealed intention of the parties.

"In what has been said we do not mean to declare that the parties to a contract of sale with pacto de retro can not under any conditions lawfully suspend the exercise of the right of repurchase. Doubtless they may do so, provided there remains an appreciable space of time for the exercise of the right within the limitation allowed by law. For instance, if it were provided that repurchase should not be effected before five nor after ten years from the date of contract, we see no reason for supposing the stipulation to be unlawful. It is different where the parties attempt totally to suppress the right during the whole period when it might lawfully be exercised.

"It follows from what has been said that under the contract before us the right of repurchase expired and the property consolidated in the purchaser, Teodorico T. Santos and his wife, Venancia Bautista or the successors of the latter, on March 4, 1914."

It appearing that neither plaintiffs nor their predecessor-in-interest have exercised their right of redemption within the period of ten years allowed by Article 1506 of the Spanish Civil Code, it follows that their claim over the property has already been forfeited, while the title of the defendants over it has become consolidated with all the rights thereunto appertaining.

WHEREFORE, the decision appealed from is affirmed with the same allocation of the costs and expenses of litigation.

Bengzon, C.J., Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

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