

SOTERA SALVADOR Y GREGORIA SALVADOR, DEMANDANTES Y APELANTES, CONTRA VICTORIO REYES Y ENCARNACION PASCUAL, DEMANDADOS Y APELADOS.

G.R. No. L-4297. January 31, 1952

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PABLO, M.:

PRACTICA FORENSE; MOCION DE SOBRESEIMIENTO FUNDADA EN LA PRESCRIPCION DE LA ACCION.—El demandante impugna por falsa la escritura de compra-venta con pacto de retro que va adjunta con la demanda. El demandado presenta mocion de sobreseimiento por el fundamento de que segun dicha escritura la accion ya ha prescrito. Se declara: Que la mocion de sobreseimiento presentada por el demandado puede considerarse como un "demurrer." Al considerar el "demurrer" bajo elCodigo de Procedimiento Civil se daba por ciertas las alegaciones de la demanda; suponiendolas ciertas, se decidia si, bajo la ley, el demandante tenia o no derecho al remedio que pedia. Declarar, sin pruebas que lo apoyen, que dicha escritura es de compra-venta con pacto de retro, es decidir prematuramente la causa en el fondo. Debe denegarse la mocion de sobreseimiento.

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

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