

JOSE S. VILLALOBOS, PLAINTIFF AND APPELLANT, VS. MANUEL CATALAN, GRACIANA HUSAIN, CLARITA CATALAN AND MANUEL GRINEN, DEFENDANTS AND APPELLEES.

G. R. No. L-17723. June 29, 1962

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

In this appeal from an order of dismissal issued by the Court of First Instance of Iloilo in its Civil Case No. 4907, the issue is whether Article 1606, paragraph 3, of the Civil Code of the Philippines applies to pacto de retro sales perfected before the effectivity of said Code, but having a redemption period that expired after the Code became operative.

The facts appear from the pleadings to be as follows:

On January 14, 1947, the appellees, spouses Manuel Catalan and Graciana Husain, sold, with right of repurchase, to appellant, Jose S. Villalobos, two parcels of land, designated as Lots Nos. 4019 and 4024 of the Cabatuan (Iloilo) Cadastre, stipulating that the sellers would have the right of repurchase within 10 years from the date of sale. During the hearing of the cadastral case, the vendors-applicants (now appellees) dissuaded the vendee Villalobos from intervening therein, upon promise that the certificates of title would be transferred to his name if no repurchase were made. Subsequently, in 1958, Villalobos discovered that the vendors had, without his knowledge, sold the properties to their daughter, appellee Clarita Catalan, married to Manuel Grinen; that a Transfer Certificate of Title (No. T-19413) had been already issued to the latter; and that the land had been mortgaged to a bank. Wherefore, Villalobos brought action in the court below, on July 14, 1958, charging appellees with fraud and bad faith, and asking for the annulment of the sale made by the Catalan spouses to their daughter, and of the latter's Transfer Certificate of Title; that appellees be required to recognize appellant's title and be made to pay damages and costs. The answer interposed the defense that the alleged sale was in fact a mortgage; that in 1957, the daughter Clarita Catalan had offered to pay the repurchase price, and that when the appellant refused to accept it, she deposited the amount with the Clerk of the Court of First Instance of Iloilo.

When the case was called for trial, defendants (now appellees) orally moved to dismiss the case, "on the ground that it had become moot because the defendants had already deposited the amount of P1, 500 with the Clerk of Court on 21 July 1959", and plaintiff had refused to take delivery thereof.

Over plaintiff's objection that such payment was made long after the expiration of the redemption period stipulated, the trial court dismissed the case, by order of February 8, 1960 (Rec. on Appeal, pp. 37-39), ruling that payment was timely under Article 1606, paragraph 3, of the new Civil Code, which provides:

"However, the vendor may still exercise 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."

Reconsideration having been refused, plaintiff Villalobos appealed directly to this Court.

The court below opined, and appellees reiterate here, that when the new Civil Code of the Philippines became operative in 1950, appellant's right to the land was still a mere expectancy, because their redemption period had not expired; that consequently, the right of appellant was subordinated to the vendor's right to redeem under Article 1606, paragraph 3. It is averred that said article conferred upon the vendors (appellees) a new right which did not exist under the previous legislation, and that such new right operated retrospectively under the later part of Article 2253 (Transitional Provisions) of the present Code:

"ART. 2253. * * * But if a right should be declared for the first time in this Code, it shall be effective at once, even though the act or event which gives rise thereto may have been done or may have occurred under the prior legislation, provided said new right does not prejudice or impair any vested or acquired right, of the same origin."

This stand of the appellees, sustained by the court below, is erroneous and untenable. The original sale a retro did not confer upon the purchaser (appellant Villalobos) a mere expectancy but an actual right of ownership of the property sold, that would continue to exist indefinitely unless the vendors exercised in due time their right of redemption. This right of ownership, already became vested in appellant in 1947 and could not be defeated by the new right created by Article 1606, since the Code itself expressly so declares (Article 2253, last sentence, *jam quot.*). Appellant's vested right of ownership, it is true, was subject to a resolutory condition, the timely redemption by the vendors a retro (*Aquino vs. Dealá*, 63 Phil., 582). Such being the case, the applicable rule is not Article 2253 of the new Code, which is general, but the specific one of Article 2255, providing that conditional rights continue to be subject to the law formerly in force.

"ART. 2255. The former laws shall regulate acts and contracts with a condition or period, which were executed or entered into before the effectivity of this Code, even though the condition or period may still be pending at the time this body of laws goes into effect."

Consistently with this view, this Court has ruled, in *Siopongco vs. Castro*, G. R. No. L-12167, promulgated 29 April 1959, as follows:

"This leads to the question whether *Siopongco* could invoke Art. 1606 of the New Civil Code and demand 'the right to repurchase within 80 days from the time final judgment is rendered in this action' on the basis of a true conventional redemption contract.

On this, point, we think he may not exercise such right, because ownership had vested in the Castros before the approval of said Code, ownership which this statute obviously did not-and could not validly-impair by permitting the former owner to reacquire the land he had previously conveyed to another."

If under the old Civil Code of 1889 (Art. 1509; *Basilio vs. Encarnacion*, 5 Phil., 360) the plaintiff's right of ownership became absolute immediately upon failure of the vendors to redeem in due time, certainly that right would be impaired, and its value diminished, to his prejudice, if the vendors were now to be given the privilege to redeem beyond" the period stipulated.

It was, therefore, error to dismiss this case without inquiry into the issues framed by the pleadings.

In view of the foregoing, the order of dismissal appealed from is set aside, and the records are ordered remanded to the court of origin for trial and decision on the merits. Costs against appellees.

Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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