

PRIMITIVO RIVERO, PLAINTIFF AND APPELLANT, VS. VICTORIANO RIVERO AND ALFREDO PADUA, DEFENDANT AND APPELLEES.*G.R. No. L-578. April 30, 1948*

Ponente: FERIA, J.

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There is no controversy as to the facts in this case. One Dionisio Moreno, the owner of the land in question, sold on April 16, 1941, one half thereof to Godofredo Padua for P65 and the other half to Antonia Texon for P85. The latter, on October 30 of the same year, sold the half she purchased from Dionisio Moreno to said Godofredo Padua for P95. In both documents of sale executed by Dionisio Moreno in favor of Godofredo Padua and Antonia Texon, it was stipulated that the vendor has the right to repurchase the property sold within two (2) years from the date of the sale, that is, until April 16, 1943. And on January 14, 1944, Dionisio Moreno sold his interests in the whole land to the plaintiff, Primitivo Rivero.

On August 24, 1945, the plaintiff filed an action against Godofredo Padua (named Alfredo Padua in the complaint) and Victoriano Rivero, against whom the case was subsequently dismissed upon petition of the plaintiff. After trial the Court of First Instance of Camarines Sur rendered judgment in favor of the defendant against the plaintiff, dismissing the latter's action with costs against him. From this judgment the plaintiff appealed to this Court.

The contention of the appellant in this appeal is that the recent war in the Philippines suspended the running of the period for redemption, because the "conditions then prevailing were so chaotic, unsettled and dangerous that it was, with certain exceptions, inherently impossible to comply with one's obligations."

According to the lower court, "it is of judicial notice that in the Philippines and specially in the province of Camarines Sur, the courts of justice were open and regularly transacting business since October, 1942, without interruption, until the last months of 1944". This finding of fact of the lower court, not assigned as erroneous by the plaintiff-appellant, refutes the latter's contention. The fundamental reason underlying statutes providing for suspension or extension of the period of limitation is the legal or physical impossibility for the interested party to enforce or exercise in time his right of action. *Ad impossibilia nemo tenetur*. Assuming as true the appellant's allegation that the "defendant-appellee was a 'guerrillero' and hence it was difficult to contact him", such fact did not prevent the plaintiff-appellant from exercising his right during the period of redemption. Because a vendor who decides to redeem or repurchase a property sold with *pacto de retro* stands as the debtor and the vendee as the creditor of the repurchase price. And the plaintiff-appellant could and should have exercised his right of redemption against the defendant-appellee, if the latter was absent, by filing a suit against him and making a consignment with the court of the amount due for the redemption, under the provisions of article 1176 of the Civil Code, which provide :

"ART. 1176. If a creditor to whom tender of payment has been made should refuse without reason to accept it, the debtor may relieve himself of liability by the consignment of the thing due.

"The same effect shall be produced by consignation alone when made in the absence of the creditor, or if the latter should be incapacitated to accept the payment when it is due, or when several persons claim to be entitled to receive it, or when the muniments of the obligation have been lost or mislaid."

Besides, the period of two years stipulated by the parties for redemption expired on April 16, 1943, and according to the finding of the lower court, not impugned by the appellant, the first and only offer of redemption made to the appellees was on May, 1944, that is, over a year after the period of redemption had elapsed.

The "dictum", in the case of *Espana vs. Lucido* (8 Phil., 419) cited by the appellant, to the effect that "the statute of limitation is suspended by war, rebellion, or insurrection when the regular course of justice is interrupted to such extent that the courts can not be kept open", even if such suspension were applicable to the period within which to redeem a thing sold under pacto de retro, has no application to the present case because, as above stated, the courts of justice in the province of Camarines Sur were open and transacting business since October, 1942.

In view of all the foregoing, the judgment appealed from is affirmed, with costs against the appellant. So ordered.

Pablo, Perfecto, Bengzon, and Tuason, JJ., concur.

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