

FRANCISCO CRISOLOGO AND CONSOLACION FLORENTINO CRISOLOGO, PETITIONERS-APPELLANTS, VS. ISAAC CENTENO AND ASUNCION AQUINO CENTENO, OPPOSITORS-APPELLEES.

G.R. No. L-20014. November 27, 1968

Ponente: CAPISTRANO, J.

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CAPISTRANO, J.:

On January 18, 1955, the spouses Francisco Crisologo and Consolation Fiorentino filed in the Court of First Instance of Ilocos Sur an ex parte petition for consolidation of ownership in them as vendees a retro of two parcels of land situated at Barrio Laping, Lapog, Ilocos Sur, on the ground that the vendors, the spouses Isaac Centeno and Asuncion Aquino, have failed to exercise their right of repurchase within the periods stipulated in the two contracts of sale with pacto de retro. On January 28, 1955, after hearing at which the petitioners presented evidence in support of the petition, the court a quo, through Judge Francisco Geronimo, granted the petition. On July 19, 1956, the vendors filed a motion to set aside the Order of January 28, 1955, and on July 27, 1956, the court a quo, through Judge Felix Q. Antonio, granted the motion on the ground that the movants had not been duly notified of the hearing. On motion by the petitioners to set aside the Order of July 27, 1956, on the ground that the vendors had been notified by registered mail of the hearing, the lower court, by its Order of February 27, 1957, granted the motion and set aside the Order of July 27, 1956. The vendors appealed the Order of February 27, 1957 to the Court of Appeals. On June 27, 1958, the Court of Appeals rendered judgment in the appeal setting aside the lower court's Order of February 27, 1957, after holding that the vendors had not been legally notified of the petition and the hearing, and that the Order of January 28, 1955, was a patent nullity. The Court of Appeals remanded the record to the lower court for reopening and for further proceedings. Accordingly, after the vendors had been duly summoned as respondents, they filed their answer alleging that the two contracts of sale with pacto de retro were really intended as equitable mortgages as securities for usurious loans. After trial, the lower court rendered its decision on October 26, 1960, holding that respondents' allegation was substantiated by their evidence. Judgment was rendered in favor of their respondents as follows:

"WHEREFORE, in view of the foregoing, the Court hereby renders judgment declaring that Exhibits 2 and 3 are actually intended by the parties to be Deeds of Equitable Mortgage, and as such respondents are entitled to redeem the lands described therein, by paying to the petitioners whatever balance remains of the principal and interest thereon at 12%, after deducting therefrom the excess interest paid on November 11, 1952 and September 10, 1953, and the value of the produce taken from those properties by petitioners in accordance with the above findings from 1955 until the possession of these properties are returned to respondents, and upon such settlement, the petitioners are ordered to execute the corresponding release of mortgage.

"Petition for consolidation of title is therefore denied, with costs against petitioners."

The petitioners appealed to the Supreme Court on questions of law.

Appellants contend that the lower court erred in not finding that the Order of January 28, 1955, was valid, final and executory, and that all proceedings thereafter taken, including the vendors' appeal to the Court of Appeals and

its decision rendered in said appeal setting aside the Order of February 27, 1957, and remanding the case for reopening and further proceedings, as well as the proceedings thereafter taken including the decision of October 26, 1960, are null and void. The contention is untenable in view of the following considerations:

(1) Article 1607 of the Civil Code which provides that:

"In case of real property, the consolidation of ownership in the vendee by virtue of the failure of the vendor to comply with the provisions of article 1616 shall not be recorded in the Registry of Property without a judicial order, after the vendor has been duly heard."

contemplates a contentious proceeding wherein the vendor a retro must be named respondent in the caption and title of the petition for consolidation of ownership and duly summoned and heard.

In the instant case, the caption and title of the petition for consolidation of ownership named the vendees as petitioners, but did not name the vendors' as respondents and said vendors were not duly summoned and heard. In view thereof, the Order of January 28, 1955, was a patent nullity having been issued contrary to the contentious proceeding contemplated in Article 1607 of the Civil Code, and the lower court not having acquired jurisdiction over the persons of the vendors;

(2) The judgment of the Court of Appeals setting aside the Order of February 27, 1957, and in consequence thereof the Order of January 28, 1955, as a patent nullity on the ground that the lower court did not acquire jurisdiction over the persons of the vendors because they had not been duly summoned is *res judicata*, on the question of nullity of said orders; and

(3) After the remand to the court below, the proceedings further taken wherein the vendors were named as respondents and duly summoned and heard, after which on October 26, 1960, the appealed judgment was rendered in favor of the respondents, were valid, being in accordance with the contentious proceeding provided for in Article 1607 of the Civil Code.

IN VIEW OF ALL THE FOREGOING, the judgment of the lower court of October 26, 1960, is hereby affirmed in all its parts, with costs against the petitioners-appellants.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro and Fernando, JJ., concur.

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