

IN RE: PETITION FOR CONSOLIDATION OF TITLE IN THE VENDEES OF A HOUSE AND THE RIGHTS TO A LOT. MARIA BAUTISTA VDA. DE REYES, ET AL., VENDEES-PETITIONERS-APPELLEES, RODOLFO LANUZ...

G.R. No. L-22331. June 06, 1967

Ponente: REGALA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d33ee0a2ed7f/>

REGALA, J.:

Rodolfo Lanuza and his wife Belen were the owners of a two-story house built on a lot of the Maria Guizon Subdivision in Tondo, Manila, which the spouses leased from the Consolidated Asiatic Co. On January 12, 1961, Lanuza executed a document entitled "Deed of Sale with Right to Repurchase" whereby he conveyed to Maria Bau-tista Vda. de Reyes and Aurelia R. Navarro the house, together with the leasehold rights to the lot, a tele-vision set and a refrigerator in consideration of the sum of P3,000. The deed reads:

"DEED OF SALE WITH RIGHT TO REPURCHASE "KNOW ALL MEN BY THESE PRESENTS:

"That I, RODOLFO LANUZA, Filipino, of legal age, married to Belen Geronimo, and residing at 783-D Interior 14 Maria Guizon, Gagalangin Tondo, Manila, hereby declare that I am the true and absolute owner of a new two storey house of strong materials, constructed on a rented lot - Lot No. 12 of the Maria Guizon Subdivision, owned by the Consolidated Asia-tic Co. - as evidenced by the attached Receipt No. 292, and the plan of the sub-division, owned by said company.

"That for and in consideration of the sum of THREE THOUSAND PESOS (P3,000.00) which I have received this day from Mrs. Maria Bautista Vda. de Reyes, Filipino, of legal age, widow; and Aurelia Reyes, married to Jose S. Navarro, Filipinos, of legal ages, and residing at 1112 Antipolo St., Tondo, Manila, I hereby SELL, CEDE, TRANSFER, AND CONVEY unto said Maria Bau-tista Vda. de Reyes, her heirs, successors, administrators and assigns said house, includ-ing my right to the lot on which it was constructed, and also my television, and frigid-aire "Kelvinator" of nine cubic feet in size, under the following conditions:

"I hereby reserve for myself, my heirs, successors, administrators, and assigns the right to repurchase the above mentioned pro-perties for the same amount of P3,000.00, with-out interest, within the stipulated period of three (3) months from the date hereof. If I fail to pay said amount of P3,000.00, within the stipulated period of three months, my right to repurchase the said properties shall be forfeited and the ownership thereto shall auto-matically pass to Mrs. Maria Bautista Vda. de Reyes, her heirs, successors, administrators, and assigns, without any Court intervention, and they can take possession of the same.

"IN WITNESS WHEREOF, we have signed this contract in the City of Manila, this 12th day of January, 1961.

"s/t RODOLFO LANUZA s/t MARIA BAUTISTA VDA. DE REYES

Vendor Vendee

"s/t AURELIA REYES WITH MY MARITAL CONSENT:

Vendee

"s/t JOSE S. NAVARRO

When the original period of redemption expired, the parties extended it to July 12, 1961 by an annotation to this effect on the left margin of the instrument. Lanuza's wife, who did not sign the deed, this time signed her name below the annotation.

It appears that after the execution of this instrument, Lanuza and his wife mortgaged the same house in favor of Martin de Leon to secure the payment of P2,720 within one year. This mortgage was executed on October 4, 1961 and recorded in the Office of the Register of Deeds of Manila on November 8, 1961 under the provisions of Act No. 3344.

As the Lanuzas failed to pay their obligation, De Leon filed in the sheriff's office on October 5, 1962 a petition for the extra-judicial foreclosure of the mortgage. On the other hand, Reyes and Navarro followed suit by filing in the Court of First Instance of Manila a petition for the consolidation of ownership of the house on the ground that the period of redemption expired on July 12, 1961 without the vendees exercising their right of repurchase. The petition for consolidation of ownership was filed on October 19. On October 23, the house was sold to De Leon as the only bidder at the sheriff's sale. De Leon immediately took possession of the house, secured a discharge of the mortgage on the house in favor of a rural bank by paying P2,000 and, on October 29, intervened in court and asked for the dismissal of the petition filed by Reyes and Navarro on the ground that the unrecorded pacto de retro sale could not affect his rights as a third party.

The parties^[1] thereafter entered into a stipulation of facts on which this opinion is mainly based and submitted the case for decision. In confirming the ownership of Reyes and Navarro in the house and the leasehold right to the lot, the court said:

"It is true that the original deed of sale with pacto de retro, dated January 12, 1961, was not signed by Belen Geronimo-Lanuza, wife of the vendor a retro, Rodolfo Lanuza, at the time of its execution. It appears, however, that on the occasion of the extension of the period for re-purchase to July 12, 1961, Belen Geronimo-Lanuza signed giving her approval and conformity. This in act, in effect, constitutes ratification or confirmation of the contract (Annex 'A' Stipulation) by Belen Geronimo-Lanuza, which ratification validated the act of Rodolfo Lanuza from the moment of the execution of the said contract. In short, such ratification had the effect of purging the contract (Annex 'A' Stipulation) of any defect which it might have had from the moment of its execution. (Article 1396, New Civil Code of the Philippines; Tang Ah Chan and Kwong Koon vs. Gonzales, 52 Phil. 180)

"Again, it is to be noted that while it is true that the original contract of sale with right to repurchase in favor of the petitioners (Annex 'A' Stipulation) was not signed by Belen Geronimo-Lanuza, such failure to sign, to the mind of the Court, made the contract merely voidable, if at all, and, therefore, susceptible of ratification. Hence, the sub-sequent ratification of the said contract by Belen Geronimo-Lanuza validated the said contract even before the property in question was mortgaged in favor of the intervenor.

"It is also contended by the intervenor that the contract of sale with right to repurchase should be interpreted as a mere equitable mortgage. Consequently, it is argued that the same cannot form the basis for a judicial petition for consolidation of title over the property in litigation. This argument is based on the fact that the vendors a retro continued in possession of the property after the execution of the deed of sale with pacto de retro. The mere fact, however, that the vendors a retro continued in the possession of the property in question cannot justify an outright declaration that the sale should be construed as an equitable mortgage and not a sale with right to repurchase. The terms of the deed of sale with right to repurchase (Annex 'A' Stipulation) relied upon by the petitioners must be considered as merely an equitable mortgage for the reason

that after the expiration of the period or repurchase of three months from January 12, 1961.

"Article 1602 of the New Civil Code provides:

‘ART. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases;

x x x x

‘(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed.

x x x x

"In the present case, it appears, however, that no other instrument was executed between the parties extending the period of redemption. What was done was simply to annotate on the deed of sale with right to repurchase (Annex A1 Stipulation) that the period to repurchase, extended as requested until July 12, 1961'. Needless to say, the purchasers a retro, in the exercise of their freedom to make contracts, have the power to extend the period of repurchase. Such extension is valid and effective as it is not contrary to any provision of law. (Umale vs. Fernandez, 28 Phil. 89, 93)

"The deed of sale with right to repurchase (Annex 'A' Stipulation) is embodied in a public document. Consequently, the same is sufficient for the purpose of transferring the rights of the vendors a retro over the property in question in favor of the petitioners. It is to be noted that the deed of sale with right to repurchase (Annex 'A' Stipulation) was executed on January 12, 1961, which was very much ahead in point of time to the execution of the real estate mortgage on October 4, 1961, in favor of intervenor (Annex 'B' Stipulation). It is obvious, therefore, that when the mortgagors, Rodolfo Lanuza and Belen Geronimo-Lanuza, executed the real estate mortgage in favor of the intervenor, they were no longer the absolute owners of the property since the same had already been sold a retro to the petitioners. The spouses Lanuza, therefore, could no longer constitute a valid mortgage over the property inasmuch as they did not have any free disposition of the property mortgaged. (Article 2085, New Civil Code.) For a valid mortgage to exist, ownership of the property mortgaged is an essential requisite. A mortgage executed by one who is not the owner of the property mortgaged is without legal existence and its registration cannot validate it. (Philippine National Bank vs. Rocha, 55 Phil. 497)

"The intervenor invokes the provisions of article 1544 of the New Civil Code for the reason that while the real estate mortgage in his favor (Annex 'B' Stipulation) has been re-registered with the Register of Deeds of Manila under the provisions of Act No. 3344 on November 3, 1961, the deed of sale with right to repurchase (Annex 'A' Stipulation) however, has not been duly registered. Article 1544 of the New Civil Code, however, refers to the sale of the same property to two or more vendees. This provision of law, therefore, is not applicable to the present case which does not involve sale of the same property to two or more vendees. Furthermore, the mere registration of the property mortgaged in favor of the intervenor under Act No. 3344 does not prejudice the interests of the petitioners who have a better right over the property in question under the old principle of first in time, better in right. (Gallardo vs. Gallardo, C.B., 46 O.G. 5568)"

De Leon appealed directly to this Court, contending (1) that the sale in question is not only voidable but void ab initio for having been made by Lanuza without the consent of his wife; (2) that the pacto de retro sale is in reality an equitable mortgage and therefore can not be the basis of a petition for consolidation of ownership; and (3) that at any rate the sale, being unrecorded, can not affect third parties.

We are in accord with the trial court's ruling that a conveyance of real property of the conjugal partnership made by the husband without the consent of his wife is merely voidable. This is clear from article 173 of the Civil Code which gives the wife ten years within which to bring an action for annulment. As such it can be ratified as Lanuza's wife in effect did in this case when she gave her conformity to the extension of the period of redemption

by signing the annotation on the margin of the deed. We may add that actions for the annulment of voidable contracts can be brought only by those who are bound under it, either principally or subsidiarily (art. 1397), so that if there was anyone who could have questioned the sale on this ground it was Lanuza's wife alone.

We also agree with the lower court that between an unrecorded sale of a prior date and a recorded mortgage of a later date the former is preferred to the latter for the reason that if the original owner had parted with his ownership of the thing sold then he no longer had the ownership and free disposal of that thing so as to be able to mortgage it again. Registration of the mortgage under Act No. 3344 would, in such case, be of no moment since it is understood to be without prejudice to the better right of third parties.[2] Nor would it avail the mortgagee any to assert that he is in actual possession of the property for the execution of the conveyance in a public instrument earlier was equivalent to the delivery of the thing sold to the vendee.[3]

But there is one aspect of this case which leads us to a different conclusion. It is a point which neither the parties nor the trial court appear to have sufficiently considered. We refer to the nature of the so-called "Deed of Sale with Right to Repurchase" and the claim that it is in reality an equitable mortgage. While De Leon raised the question below and again in this Court in his second assignment of error, he has not demonstrated his point; neither has he pursued the logical implication of his argument beyond stating that a petition for consolidation of ownership is an inappropriate remedy to enforce a mortgage.

De Leon based his claim that the pacto de retro sale is actually an equitable mortgage on the fact that, first, the supposed vendors (the Lanuzas) remained in possession of the thing sold and, second, when the three-month period of redemption expired the parties extended it. These are circumstances which indeed indicate an equitable mortgage.[4] But their relevance emerges only when they are seen in the perspective of other circumstances which indubitably show that what was intended was a mortgage and not a sale. These circumstances are:

1. The gross inadequacy of the price. In the discussion in the briefs of the parties as well as in the decision of the trial court, the fact has not been mentioned that for the price of P3,000, the supposed vendors "sold" not only their house, which they described as new and as being made of strong materials and which alone had an assessed value of P4,000, but also their leasehold right, television set and refrigerator, "Kelvinator" of nine cubic feet in size." Indeed, the petition for consolidation of ownership is limited to the house and the leasehold right, while the stipulation of facts of the parties merely referred to the object of the sale as "the property in question." The failure to highlight this point, that, is, the gross inadequacy of the price paid, accounts for the error in determining the true agreement of the parties to the deed.

2. The non-transmission of ownership to the vendees. The Lanuzas, the supposed vendors, did not really transfer their ownership of the properties in question to Reyes and Navarro. What was agreed was that ownership of the things supposedly sold would vest in the vendees only if the vendors failed to pay P3,000. In fact the emphasis is on the vendors' payment of the amount rather than on the redemption of the things supposedly sold. Thus, the deed recites that -

"If I (Lanuza) fail to pay said amount of P3,000.00 within the stipulated period of three months, my right to repurchase the said properties shall be forfeited and the ownership thereto automatically pass to Mrs. Maria Bautista Vda. de Reyes x x x without any Court intervention and they can take possession of the same."

This stipulation is contrary to the nature of a true pacto de retro sale under which a vendee acquires ownership of the thing sold immediately upon execution of the sale, subject only to the vendor's right of redemption.[5] Indeed, what the parties established by this stipulation is an odious pactum commissorium which enables the mortgagees to acquire ownership of the mortgaged properties without need of foreclosure proceedings. Needless to say, such a stipulation is a nullity, being contrary to the provisions of article 2088 of the Civil Code.[6] Its insertion in the

contract of the parties is an avowal of an intention to mortgage rather than to sell.[7]

3. The delay in the filing of the petition consolidation. Still another point obviously overlooked in the consideration of this case is the fact that the period of redemption expired on July 12, 1961 and yet this action was not brought until October 19, 1962 and only after De Leon had asked on October 5, 1962 for the extra-judicial foreclosure of his mortgage. All the while, the Lanuzas remained in possession of the properties they were supposed to have sold and they remained in possession even long after they had lost their right of redemption.

Under these circumstances we cannot but conclude that the deed in question is in reality a mortgage. This conclusion is of far-reaching consequences because it means not only that this action for consolidation of ownership is improper, as De Leon claims, but, what is more, that between the unrecorded deed of Reyes and Navarro which we hold to be an equitable mortgage, and the registered mortgage of De Leon, the latter must be preferred. Preference of mortgage credits is determined by the priority of registration of the mortgages,[8] following the maxim "Prior tem-pore potior jure" ("He who is first in time is preferred in right.") [9] Under article 2125 of the Civil Code, the equitable mortgage, while valid between Reyes and Navarro, on the one hand, and the Lanuzas, on the other, as the immediate parties thereto, cannot prevail over the registered mortgage of De Leon.

WHEREFORE, the decision appealed from is reversed, hence, the petition for consolidation is dismissed. Costs against Reyes and Navarro.

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

[1] In all the proceedings the Lanuzas do not appear to have intervened.

[2] *Rivera v. Moran*, 48 Phil. 836 (1926).

[3] Civ. Code art. 1948. See also *Lichauco v. Berenguer*, 39 Phil. 643 (1919); *Bautista v. Sioson*, 39 Phil. 615 (1919).

[4] Art. 1602 (2)(3)

[5] See, e.g., *Guerrero v. Yñigo*, 96 Phil. 37 (1954); *Floro v. Granada*, 83 Phil. 487 (1949).

[6] *Reyes v. Nebrija*, 98 Phil. 639 (1956); *Tan Chun Tic v. West Coast Life Ins. Co.*, 54 Phil. 361 (1930).

[7] *Alcantara v. Alinea*, 8 Phil. 111 (1907).

[8] Civ. Code art. 2242 (5)

[9] See *Gomez v. Jugo*, 48 Phil. 118 (1925).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.