

MARCIANA ESCOTO, PLAINTIFF AND APPELLANT, VS. BENITO M. ARCILLA ET AL, DEFENDANTS AND APPELLEES.*G. R. No. L-2819. May 30, 1951*

Ponente: TUASON, J.

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This was an action for specific performance brought in the Court of First Instance of Pampanga. The judgment was for the defendants and the plaintiff appealed. It is well to set out the history of the case in detail for a clear understanding of the issues.

On May 2, 1932, in a document (Exhibit 5) termed "Escritura de Venta con Pacto de Retro", Manuel Tancungco, since deceased, purported to convey two parcels of land situated in Angeles, Pampanga, to Jacinto Hilario in consideration of P3,500. The contract provided that the vendor would remain in possession of the parcels and could repurchase them in two years, and that in the meanwhile he was to pay rent as lessee in the sum of P420 a year. On the 5th, Tancungco conveyed to Amada Hilario, Jacinto's daughter, 4/5 of another parcel, residential, under the same terms as the first except that the purchase price was P2,000 and the rent was P240 yearly.

Jacinto Hilario having died, his heirs made a partition of his estate, in virtue of which his rights and interests in the two lots that were the subject matter of the first deed were assigned to Amada Hilario. Both contracts were thus consolidated in Amada's favor.

Having failed to repurchase the lands, Tancungco nevertheless continued in the possession thereof paying the agreed amounts for their use and occupation. Amada Hilario died on October 18, 1939, leaving as heirs her husband and children who are now the defendants and appellees.

For failure to pay the stipulated "rents", Benito M. Arcilla, Amada Hilario's surviving spouse, and his children brought a possessory action in the justice of the peace court of Angeles on July 8, 1940 for unlawful detainer. In the complaint, Arcilla asked to be appointed, and he was appointed, guardian ad litem of his children, all minors. But on July 19, the parties submitted a compromise agreement whereby the plaintiffs allowed the defendant the right to repurchase the lands in question for the sum of P7,000 within two years from the date of the said agreement, on condition that Tancungco would pay them P500 within six months "para que se puedan tramitar oportunamente en el Juzgado de Primera Instancia de Pampanga el intestado de la finada Da. Amada Hilario de Arcilla y la tutela de los menores Maria Floserfina Arcilla y sus hermanos, entendiendose que si despue*a de entregada dicha cantidad de quinientos pesos (P500), deja el demandado de hacer valer su derecho de option, no tendrfa derecho a recobrar tal cantidad."

Tancungco did not pay either the sum of P7,000 or P500 within the period stipulated. However, on February 10, 1941, the parties renewed their agreement. The new agreement (known as Exhibit A and which is the basis of the present action) recited the provisions of the previous one and stipulated that, in consideration of the sum of P500 which there and then was paid to Benito Arcilla, the latter bound himself to institute in the Court of First Instance within a reasonable time an intestate proceeding over the property of Amada Hilario and, once appointed

administrator, to obtain authorization from the court to sell the lands in litigation to Manuel Tancungco upon these conditions: (a) Tancungco would pay P6,750, in addition to the P500 which he had just paid and which was to be used to defray all the expenses in the execution of the deed, etc; (b) the purchase price (P6,750) would be paid within ten days from the date Tancungco was notified of the judicial authority for the sale in his favor; (c) Tancungco would have no right to recover the sum of P500 if, after having knowledge or notice of said judicial authorization, he failed to exercise his option of purchase within the period above stated. It was also stipulated that should the court refuse to authorize the sale for any reason whatever, notwithstanding Arcilla's efforts, then Tancungco would make delivery of the lots to Arcilla on demand.

Accordingly, Arcilla sought appointment as administrator of his wife's estate, and on March 24, 1941, he was appointed. Subsequently, in the same proceeding, Artemio Hilario was named guardian ad litem for the minors, and qualified as such on April 2, 1941.

On August 2, 1941, Arcilla filed a motion in the intestate proceeding, through his attorney and in his capacity as administrator, setting forth all the antecedents hereinbefore mentioned and praying for an authority to sell the lands to Tancungco. The motion also stated that the minors, Arcilla's children, were being represented by their guardian ad-litem, and that the guardian and children were agreeable to the projected sale to Tancungco upon the terms above stated.

But in an order dated August 11, 1941, Judge Pedro Magsalin, after reciting the grounds of the petition and the fact that the guardian ad-litem of the children had expressed their conformity thereto, and although convinced that the proposed sale would redound to the benefit of Amada Hilario's estate, said that he could not sanction the sale because Tancungco was a Chinese citizen, and so denied the request.

On August 18, 1941, Arcilla notified Tancungco of Judge Magsalin's order and, in view thereof, demanded, on September 9, 1941, that Tancungco vacate the properties with a warning that if he did not he would be charged beginning October a monthly rent of P150 instead of P55.

Tancungco instead of seeking reconsideration of Judge Magsalin's order filed a manifestation on November 17 wherein he stated that, since he was a Chinese citizen and the court would not authorize the sale in his favor, he, Tancungco, for valuable consideration had conveyed his right to acquire the three lots to one Dr. Magdaleno Bundalian, a Filipino citizen, who was ready and willing to buy said lands for the price of P6,750 under the conditions specified in Arcilla's application for authority to sell.

Manuel Tancungco died on May 12, 1943, and his widow was appointed administratrix of his estate. After qualifying as administratrix she applied for an order to Arcilla "to comply with the agreement as to the sale of the property in question in favor of the heirs of Tancungco." The court, this time presided over by Judge Pablo Angeles David, in an order of December 6, 1948, authorized Arcilla as administrator of his wife's estate to sell the lands under consideration to Tancungco's widow within the period of ten days for the sum of P6,750. As Arcilla paid no heed to Judge Angeles David's order, on February 29, 1944, His Honor made a peremptory direction to Arcilla to execute a deed of conveyance in favor of Tancungco's estate. Not satisfied with Judge Angeles David's orders, Arcilla instituted certiorari proceedings before the Supreme Court attacking their validity on the grounds that the heirs of Amada Hilario had not been notified of the proposed sale as required by the Rules of Court, and this court granted the writ.

On April 16, 1947, Tancungco's widow, as administratrix of her husband's estate, commenced this action against Benito M. Arcilla alone, to compel Arcilla to get from the court authority to sell the lands to Tancungco's heirs for the sum of P6,750. By order of the court, the complaint was amended on July 18, 1948, by including Amada Hilario's children as Arcilla's co-defendants.

The court dismissed the action and as a corollary ordered the plaintiff to deliver the possession of the disputed lots to Arcilla, with costs. Several grounds, which will be discussed separately, were adduced in support of the decision.

Chief ground for the dismissal was that Tancungco was a Chinese citizen and therefore disqualified by the Constitution from acquiring real estate. The argument assumes that the lots which Arcilla agreed to convey were his wife's, or belonged to his wife's estate, in fee simple.

Our considered opinion is that the trial court took a strict too legalistic view of Exhibit "A", entirely overlooking its antecedents. The view that, in our judgment, best accords with good conscience and with the intention of the parties is that this compromise was a part of the original contract of pacto de retro sale. It directly stemmed from the original sale and was executed in consideration of Tancungco's recognized equities in the lands. Exhibit "A" and the compromise agreement in the justice of the peace court were in point of fact and in spirit an extension and continuation of the period of repurchase provided in the initial contract. The fact that that period had expired was no legal obstacle to the granting to the seller, if the purchaser so wished, of a renewed opportunity to redeem or repurchase the subject matter of the sale, so long as the combined period did not exceed ten years.

From this standpoint, Exhibit A does not infringe the Constitution. Tancungco was exercising a property right Which antedated the Constitution and which the fundamental law expressly respects and ratifies. Tancungco was not an ordinary purchaser acquiring new property, nor was Arcilla attempting to part with one in which his deceased wife's estate had absolute, unfettered title in fee.

As a matter of fact, the so-called pacto de retro sale possessed many characteristics of loans with security. The so-called rents of the lands were the exact equivalent of a 12 per cent interest per annum on the amounts paid and received. By agreement, Tancungco was to remain, and did remain, in possession of the lands and had exclusive use thereof. By agreement, Tancungco paid the taxes on the properties and, although the stipulated period of two years had long ago lapsed, he kept the lands and continued paying the interest or rents thereon. And the supposed buyers a retro and their successors in interest showed more concern in getting their money back than in having the lands. They told the court that the former arrangement was more advantageous to their interest. It was not till they saw the value of the property going up that they made up their minds to stick to the letter of the various agreements, taking advantage of Judge Magsalin's refusal.

It is beyond the power of this court to give judgment for the plaintiff under the pleadings on the theory of equitable mortgage. As the defendants and appellees correctly say, this theory was not advanced in the Court of First Instance, and the plaintiffs may not be allowed to change their ground or cause of action on appeal.

Nevertheless, as reflecting the contractual relation between the parties, the circumstances before noted have an important bearing on the applicability of the constitutional provision invoked to defeat the action. Those circumstances serve to give impetus to the proposition that the contract is outside the constitutional prohibition which bothered some of the judges who handled the case in the lower court and stopped Judge Magsalin from sanctioning the contemplated sale, although in his opinion it would be beneficial to all parties concerned. The fact that Tancungco's widow has recovered her Philippine citizenship and her surviving children are likewise Filipino citizens now, following the reacquired nationality of their mother, has completely removed all objections to the conveyance on constitutional considerations and is one more reason for relaxing the rigid rules of law which the court below thought were in the way of plaintiff's prayer for relief. If the widow became a Filipino citizen again only after she had begun the suit and the court believed that by reason of the delay her reversion to Philippine citizenship did not operate to change the rights and obligations of the parties—granting the reasoning to be correct, the fault could have been cured by amendment of the pleadings.

Anent the contention that "Benito M. Arcilla had duly complied with his obligation as provided for in the agreement," having "instituted an intestate proceeding of the land of Amada Hilario within a reasonable time" and "filed the necessary motion in court requesting authority to dispose of the properties in question in favor of Manuel Tancungco," the decision fell into the same error of looking to the form and ignoring the substance of the commitment. There is no gainsaying that the steps which Arcilla has taken were embodied in the contract simply as a means to an end. The end, the overall purpose of the parties, was to give back to Tancungco the properties free from all liens and encumbrances upon payment by him of the price of repurchase and other amounts due for rents or interest and expenses. The defendants' obligation was not extinguished until that end was achieved or all hope of achieving it was lost. Judge Magsalin's refusal to sanction the contract did not write finis to the contract or exhaust the remedy.

As a matter of fact, another Judge, Judge Magsalin's successor, following a more realistic and equitable approach to the case, not only authorized but decreed compliance with the agreement. It was due to the present defendants' attitude that Judge Angeles David's orders came to naught. They themselves demurred to those orders and carried their opposition to this court where they succeeded on pure technicalities of procedure. In the light of their action, the defendants can not well plead that they did all they could, and shift the blame to the court or the constitution for the non-fulfillment of their solemn promise. It is idle for them to deny that not the court but they blocked the consummation of the agreement on a formal defect of practice which they could have waived by mere silence. The defect did not alter the terms of the contract, or harm the interest of the estate, or violate good morals.

It is said that the minors were not parties to Exhibit "A." However, it has been seen that through their duly appointed guardian ad litem they ratified that compromise in open court, when not only the guardian but the oldest two of the children as well personally appeared and expressed their conformity to the proposed sale. This ratification validated the agreement as effectively as if the minors or their guardian ad litem had signed it.

Lastly, it is said that Tancungco sold his rights to the lands in litigation to Dr. Bundalian and that he or his heirs no longer have any share or interest in these properties.

Beyond Tancungco's written manifestation referred to in the statement of facts, there is nothing in the record showing that this alleged sale was carried out. The filing of the present suit is a good indication that the transaction has been, abandoned or unmade. But assuming the opposite to be the case, yet it is the duty of Tancungco's personal representative to give the purchaser a clean title, and it is legitimate on her part to institute this action and to push it through to its final conclusion to accomplish that objective. So if the sale to Bundalian still stands, and it is not a sham, the plaintiff retains sufficient interest in the subject of the litigation to demand performance of Exhibit "A" by the defendants.

Wherefore, the judgment of the Court of First Instance of Pampanga is reversed and the defendants are ordered to execute a deed of conveyance covering the lots described in the complaint in favor of the plaintiff upon payment by her of P6,750 which she shall make within thirty days from the date this decision becomes final, and to pay the costs.

Paras, C. J., Feria, Bengzon, Montemayor and Jugo, JJ., concur.

PARAS, C. J.:

Mr. Justice Bautista Angelo voted with the majority.

DISIDENTE

PABLO, M.,

En 2 de mayo de 1932, Manuel Tancungco vendio, con pacto de retro dentro de dos anos, dos parcelas de terreno a Jacinto Hilario por la suma de P3,500. El dia 5 del mismo mes Tancungco vendio a Amada Hilario, hija de Jacinto, 4/5 partes de una parcela residencial bajo los mismos terminos de la primera escritura al precio de P2,000.

Al fallecer Jacinto Hilario, sus herederos se repartieron los bienes relictos, y los tres lotes que habia comprado con pacto de retro, fueron heredados por Amada Hilario. Tancungco no ejercito el derecho de retracto.

Amada Hilario fallecio en 18 de octubre de 1939, dejando como herederos a su esposo Benito M. Arcilla e hijos que son los hoy demandados.

En 19 de julio de 1940, a raiz de un asunto de desahucio presentado en el Juzgado de Paz en Angeles, Pampanga, para recobrar de Tancungco los tres lotes comprados con pacto de retro, las partes tuvieron un arreglo en virtud del cual los demandantes dieron opcion al demandado para recomprar los terrenos por la suma de P7.000 dentro de dos afios a contar de la fecha del contrato, con la condicion de que Tancungco les pagaria P500 dentro de seis meses.

Tancungco no pago ni los P7,000 ni los P500 dentro del periodo convenido.

En 10 de febrero de 1941, Benito M. Arcilla otorgo el Exhibito A que dispone que en consideracion a la suma de P500 que ha recibido, Arcilla se obliga a instituir en el Juzgado de Primera Instancia, dentro de un plazo razonable, el intestado de Amada Hilario y, despues de nombrado administrador, pediria autorizacion del Juzgado para vender los tres lotes a Manuel Tancungco bajo las siguientes condiciones: (a) Tancungco pagaria P6,750 en adicion a los P500 que ya habia pagado; (b) que la cantidad de P6,750 serla pagada dentro de 10 dlas desde la fecha en que Tancungco fuese notificado de la autorizacion judicial para la venta a su favor; y (c) Tancungco no tendria derecho a recobrar la suma de P500 si, despues de tener conocimiento y aviso de la autorizacion judicial, dejare de ejercitar su derecho de opcion para comprar dentro del periodo convenido. Se estipulo, ademas, que si el juzgado rehusase conceder la autorizacion de la venta por cualquier razon, a pesar de los esfuerzos de Arcilla, Tancungco entregaria la posesion de los tres lotes a Arcilla al requerimiento de este. Arcilla fue nombrado administrador de los bienes de su esposa en 24 de marzo de 1941; despues, Artemio Hilario fue nombrado curador ad litem de los hermanos Arcilla, todos menores y se cualifico como tal en 2 de abril del mismo ano.

En 2 de agosto de 1941, Benito M. Arcilla presento la mocion ya convenida, pero en 11 de agosto del mismo afio, el Hon. Juez Magsalin dijo que, aunque estaba convencido de que la venta pedida redundaria en beneficio del inteatado de Amada Hilario, no la podia sancionar porque Tancungco es un ciudadano chino.

En 18 de agosto, Arcilla notified a Tancungco de la orden denegatorla y le requirio en 9 de septiembre que, de acuerdo con el Exhibito A, desalojara los tres lotes y que, si no lo hiciere, pagaria un alquiler mensual de F150 en vez de P55, desde el mes de octubre.

El 17 de noviembre, Tancungco presento en el juzgado una manifestation "que porque el juzgado no autorizaba la venta a su favor porque era chino, el, por consideration debidamente recibida, traspaso los derechos que tiene sobre los tres lotes al Dr. Magdaleno Bundalian, un ciudadano nlipino, quien esta dispuesto a pagar por los mismos terrenos el precio de P6,750 bajo las condiciones especificadas en la mocion de Arcilla que pedia automation para vender.

En 12 de mayo de 1943, Manuel Tancungco fallecio y su esposa fue nombrada administradora de su intestado.

Despues de cualificarse como tal, Marciana Escoto presento una mocion pidiendo que Benito M. Arcilla sea ordenado por el juzgado a cumplir con el acuerdo de que el venderia los lotes en cuestion a los herederos de Tancungco. El Hon. Juez Angeles David dicto una orden en 6 de diciembre de 1943 autorizando a Arcilla, como administrador de los bienes de su difunta esposa, a vender los lotes a la viuda de Tancungco por la cantidad de P6,750 dentro del periodo de 10 dias. Arcilla no cumplio la orden y el Juez Angeles David en 29 de febrero de 1944, dicto una orden perentoria obligando a Arcilla que otorgue la escritura de traspaso a favor del abintestato de Tancungco.

Porque no estaba conforme con estas ordenes, Arcilla acudio ante este Tribunal en un recurso de certiorari, alegando que los herederos de Amada Hilario no habian sido notificados de la propuesta venta como requiere el Reglamento, y este Tribunal concedio el recurso, anulando las dos ordenes de 6 de diciembre de 1943 y 29 de febrero de 1944, porque Benito M. Arcilla no habia notificado al curador ad litem de los menores, Artemio Hilario, de sus mociones. (44 G. O. 71)

En 16 de abril de 1947, la administradora del intestado de Tancungco presento la demanda en la presente causa contra Benito M. Arcilla solamente, pidiendo que se le ordenase a que obtenga del Juzgado autorizacion para revender los terrenos a los herederos de Tancungco por la suma de P6,750. Por orden del Juzgado, la demanda se enmendo en 18 de julio de 1948, incluyendo como codemandados a los hijos de Amada Hilario. Los hijos de Amada Hilario, en esta contestation, impugnan la legalidad del Exhibito A. Despues de la vista correspondiente, el Juzgado sobreseyo la demanda y ordeno a la demandante que haga entrega de los lotes a los demandados, con costas.

El derecho de retracto convenido en la escritura del 2 de mayo de 1932, expiro en 3 de mayo de 1934. Desde tal fecha la venta con pacto de retro se convirtio en definitiva y absoluta.

Si, posteriormente, en 19 de julio de 1940, a raiz de la causa No. 731 de desahucio en el Juzgado de Paz, los demandantes concedieron al demandado Manuel Tancungco opcion para recomprar las fincas que eran objeto de litigio por la suma de P7,000, dentro del periodo de dos afios a partir desde dicha fecha 19 de julio de 1940, con la condicion adicional de que Tancungco pagase a los demandantes la cantidad de P500 dentro del plazo de seis meses, ello no significa extension del plazo de retracto convenido en mayo de 1932, porque dicho plazo ya habia vencido. La opcion para comprar dada a Manuel Tancungco en 19 de julio de 1940, es un nuevo contrato, cuyas condiciones tampoco cumplio.

Y si en 10 de febrero de 1941, Benito M. Arcilla concedio otro plazo a Manuel Tancungco para comprar las tres parcelas bajo las condiciones estipuladas, dicho tercer plazo no debe considerarse como extension del derecho de retracto establecido en la escritura del 2 de mayo de 1932, porque ya habfa expirado, sino un tercer contrato nuevo.

Por otra parte, Benito M. Arcilla, cuando otorgo la escritura Exhibito A en 10 de febrero de 1941, no era curador ad litem de los menores Floserfina, Rosalina, Fredesvinda, Efren, Zenaida y Teresita. Como padre, era solamente tutor natural de la persona de los menores, no podia disponer de los bienes de estos. No estaba legal ni judicialmente autorizado para otorgar la escritura de 10 de febrero de 1941. No podia ser nombrado curador ad litem en la fecha del otorgamiento del Exhibito A porque el intestado de Amada Hilario se inicio mas tarde y fue nombrado administrador el 4 de marzo de 1941 y Artemio Hilario fue nombrado curador ad litem de dichos menores. Artemio Hilario no tomo parte en el otorgamiento de la escritura de 10 de febrero de 1941 (Exhibito A) ni fue notificado de las mociones de Benito M. Arcilla cuando pedia autorizacion para vender los tres lotes a la viuda de Tancungco y por tales motivos se revocaron por este Tribunal las ordenas del Hon. Juez Angeles David que ordenaban la venta. El convenio otorgado por Benito M. Arcilla no puede obligar a sus hijos menores, que

son los dueños, por ministerio de la ley de sucesión, de los tres lotes, por haberlos heredado de su madre Amada Hilario. Benito M. Arcilla no tiene ninguna participación en estas tres parcelas de terreno fuera del derecho de usufructo dispuesto por la ley. Y eso es lo único que podía disponer o vender. El intestado, por tanto, de Tancungco solo tiene derecho al usufructo viual sobre los tres lotes y no tiene derecho la demandante a pedir que Benito M. Arcilla, en perjuicio de los verdaderos dueños, pida autorización judicial para venderlos.

Debe dictarse, por tanto, una decisión ordenando a Benito M. Arcilla a otorgar una escritura cediendo al intestado de Manuel Tancungco el usufructo viual que tiene sobre los lotes en litigio.

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