

**YSIDRA COJUANGCO, JUAN COJUANGCO, JOSE COJUANGCO,
EDUARDO COJUANGCO AND RAMON COJUANGCO, IN HIS CAPACITY
AS ADMINISTRATOR OF THE ESTATE OF ANTONIO COJUANGCO,
PLAINTIFFS AND APPE...**

G.R. Nos. L-4505 and L-5228. September 15, 1953

Ponente: LABRADOR, J.

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LABRADOR, J.:

In G.R. No. L-4505 plaintiffs-appellees seek to recover from the defendant-appellant P24,355.30, representing the total balance of an original indebtedness of P19,400.68 as of March 31, 1949, plus interest thereon on (P24,355.30) at the rate of 10 per cent until the same is paid; while in G. R. No. L-5228 they seek to recover the rentals of a parcel of riceland situated in San Manuel, Tarlac leased to defendant-appellant from March 1, 1941 to P6,000 a year, plus interest on said rentals at 12 per cent per annum and P4,000 as attorney's fees. In the first case, the defendant admits an original indebtedness of P10,000 on June 30, 1947 plus an additional amount of P9,400.68, but denies the alleged obligation to pay interest thereon. He claims that the above amounts are part of a transaction entered into and mentioned in the other case, and expressed willingness to pay the amount actually due, but that upon deposit thereof plaintiffs should be required to return the real estate described in the complaint in the second action. In his answer in the second case, the defendant alleges that the land claimed to have been leased to him was conveyed by him to plaintiffs to secure the payment of an original loan of P20,000, which contract was made to appear as a sale with right to repurchase and a lease; that the loan was subsequently increased to P60,000; that he paid interests on the said loan from the year 1933 to 1942, but that in the years 1942 to 1945, the plaintiffs refused to accept the interests; that in 1943 and 1944 defendant offered to redeem the property, but plaintiffs refused to allow him to do so; and, by way of counterclaim, that the defendant would pay all of his indebtedness, but that plaintiffs be required to execute a deed of resale of the land in his favor. In reply to this counterclaim for the resale of the property, plaintiffs-appellees allege that defendant's right to purchase the property had expired in the year 1937 and, therefore, they prayed that the defendant's demand be denied. On these issues the parties went to trial, and thereafter the court rendered judgment, in the second case, ordering the defendant to pay plaintiffs P6,000 a year from March 1, 1941, with interest thereon at 12 per cent per annum from March 1945. In the first case, the court ordered the defendant to pay to plaintiffs the sum of P19,400.68 plus P4,954.62, plus interest on said P19,400.68 at 10 per cent from March 31, 1949, and dismissed defendant's counterclaim. The payment of the rentals from 1942 to 1945 was declared suspended by reason of the moratorium law.

The land involved in the second case originally belonged to defendant, who had a registered title thereto as early as the year 1915 (Original Certificate of Title No. 376, Register of Deeds, Tarlac, Exhibit D-2.) It was mainly riceland, but some of it were residential lots. In the year 1928, it was assessed at P102,706.84 (Exhibits D-5-a to n.) In 1918, it was mortgaged to the Philippine National Bank for P15,000. On March 3, 1924, it was sold to Jose Cojuangco, Sr., deceased father of plaintiffs, for P20,000, with the right to repurchase the same in two years. At

the time of the sale, a contract of lease was entered into between the vendor and vendee, whereby the latter leased the land to the vendor for P2,400 a year, payable in palay (Exhibit D-4). The defendant neglected to pay the annual rentals of the land, or the taxes thereon, so it was declared forfeited to the government for non-payment of real estate taxes. On June 23, 1931, the heirs of the vendee, thru their lawyer, notified defendant of these facts and gave him notice to redeem the land, otherwise they would consolidate ownership thereof (Exhibit P-9.) As the vendor was not heard from, the heirs of the vendee on July 5, 1932, consolidated their ownership (Exhibit P-14), and title to the property was issued in their favor (Exhibit P-1). They also paid the delinquent taxes on the land on August 15, 1932 (Exhibits P-16 to P-20). On August 17, 1932, a liquidation of accounts of the defendant was made. The total indebtedness of the defendant, including the principal and the interests, was found to have reached P57,200.54. An additional amount of P2,799.46 was paid to him in order to raise his total indebtedness to P60,000 (Exhibits P-11 and P-12), and on the same day a new contract of lease was entered into between them, whereby the defendant received the property from the plaintiffs by way of lease, at a rental of P4,200 until March 1, 1933. It was expressly stipulated that the land shall be returned to the lessors on March 1, 1933, but that if the lessee pay the rental agreed upon, he may be allowed to repurchase the property for P60,000 (Exhibit P-13.) The defendant did not redeem the property within the time agreed upon, and on August 23, 1933, upon defendant's request, they again entered into another contract of lease, fixing the yearly rental at P6,000. The defendant was again given the privilege to repurchase the property until March 1, 1937 for the sum of P60,000, provided he regularly paid the yearly rental (Exhibit P-2.) But again the defendant failed to redeem the property within this period, although he was allowed to continue in possession of the land. He paid his rentals, however, until the outbreak of the war in 1941.

On May 5, 1949 plaintiffs, thru their lawyers, demanded the possession of the land from the defendant (Exhibit D-8.) Upon receipt of this letter, the defendant replied that he was surprised by this demand as he believed that plaintiffs would never assume to be the owners of the property in violation of their understanding or of their word of honor. (Exhibit D-9.) The defendant, nevertheless, was allowed to continue in possession of the property, although he paid the yearly rentals or the interest on the capital of the debt. Plaintiffs brought these two actions in the year 1949.

The main question at issue is the nature of the transaction that was entered into between the parties in relation to the property. Plaintiffs claim that they are the owners thereof since the year 1932, while the defendant denies this alleged ownership, pretending that the conveyance of the land in favor of plaintiffs was merely as a security for the payment of an indebtedness. On this issue, the trial court held that while the original contract entered into between the parties was a loan with security, there has been a novation thereof, as supported by the preponderance of the evidence, especially the title, Exhibit P-1, and the deeds of lease, Exhibit P-2 and Exhibit P-13. It therefore rendered judgments in both cases in favor of plaintiffs and against the defendant, as already indicated above.

The defendant's principal contention on this appeal is that no novation of the original contract of loan with security was ever brought about by and between the parties. It is argued in support of this contention that the only contract between the parties was the original one of sale with the right to repurchase dated March 3, 1924, Exhibit D-3, as the subsequent contracts of August 17, 1932, Exhibit P-13 and of August 23, Exhibit P-2, were not offered as evidence in chief, but merely in rebuttal (t. s. n. p. 281) and, therefore, immaterial and inadmissible (Assignment of Error No. 2.) The importance of this preliminary question becomes evident, when we take into account that these two contracts, Exhibit P-13 and Exhibit P-2, are the main basis of the trial court's conclusion that there has been a novation of the original contract.

We hold that their introduction as evidence on rebuttal is proper. Plaintiffs brought the action to recover rentals merely. It was the defendant who put up the special defense that the land supposed to have been leased to him was

in fact conveyed as a security merely, and a counterclaim demanding the resale of the property to him. It was in support of this special defense and counterclaim that he presented the original contract of sale with the right to repurchase, Exhibit D-3. In their reply, the plaintiffs expressly alleged that defendant's right to repurchase had expired in the year 1937, and it was to support this allegation that Exhibit P-2 and Exhibit P-13 was offered. They were, therefore, offered in rebuttal of a new matter put up in defendant's answer, which was developed in defendant's evidence in chief, and for that purpose perfectly proper and legal. Plaintiffs could not be expected to introduce them as part of their evidence.

But the brunt of defendant's argument is made to rest on the principle that "once a mortgage, always a mortgage", claim being made that since the original contract was admittedly a mortgage or *venta con pacto de retro*, the execution of Exhibit P-13 and Exhibit P-2, as well as of Exhibit P-11, upon which the trial court mainly based its conclusion that the original contract was novated, did not have the effect of modifying the agreement.

It is to be noted that the contract of lease, Exhibit P-13, of August 17, 1932 contains the following stipulation:

"(f) Que en o antes del 1 de Marzo de 1933, pero no despues, y siempre que se cumplan puntual y fielmente las demas condiciones de este contrato particularmente el pago del convenido alquiler o canon de P4,200 en o antes de dicha fecha, el arrendatario podra comprar la finca arrendada mediante pago en efectivo de la suma de sesenta mil pesos (P60,000) moneda filipina, sin perjuicio de que si la compra se hiciera antes de llegar el 1 de Marzo de 1933, se hara un descuento proporcional en el canon convenido por el tiempo no transcurrido del periodo del arrendamiento."

And on the same date of its execution, defendant executed the Memorandum, Exhibit P-11, expressly declaring:

" * * * un total de P60,000, que es el mismo precio estipulado para que yo pueda recomprar la referida finca de dichos Señores segun el contrato otorgado a mi favor en esta misma fecha, derecho que ahora se me concede porque de hecho ya he perdido el derecho a recomprarlo bajo el contrato de venta-a-retro de fecha 3 de Marzo de 1924." (*Italics ours.*)

About a year later, more specifically on August 23, 1933, plaintiffs and the defendant again agreed in Exhibit P-2, as follows:

"(g) Que en o antes del primero de Marzo de 1937, pero no despues, y siempre que se cumplan puntual y fielmente las demas condiciones de este contrato particularmente el pago del convenido alquiler a canon anual de SEIS MIL PESOS (P6,000) en o antes del primero de Marzo de cada año de 1934 hasta 1937, el arrendatario podra comprar la finca arrendada mediante pago en efectivo de la suma de SESENTA MIL PESOS (P60,000) moneda filipina, * * *."

It is also to be noted that before the execution of the above documents, plaintiffs were already holders of the title of the property (Exhibit P-1) by virtue of the affidavit of consolidation of July 5, 1932, Exhibit P-14. Did not these documents and the above circumstances have the effect of bringing about a novation of the contract? The trial court said they did, and the defendant-appellant contends they did not.

The original sale with right to repurchase executed in 1924, Exhibit D-3, fixed the price of repurchase at P20,000, but the subsequent contracts placed it at P60,000. The right to repurchase was expressly recognized in the original deed of sale, Exhibit D-3. In the subsequent agreements, plaintiffs' title was expressly recognized and only an option to purchase was granted, this right being made subject to the condition that the yearly rentals be paid. In two respects, at least, there is incompatibility between the original contract and the subsequent ones, namely, in the price of the repurchase, and in the holder of the title. In the original contract, the price was only P20,000 and the owner was defendant; in the latter deeds the price is P60,000 and the owners—the plaintiffs. It is evident that there has been a clear case of novation within the purview of Article 1204 of the old Civil Code. "La variacion,

segun el articulo anterior (1204), tendra que consistir, o en la sustitucion del objeto, o en el cambio de la causa o de las condiciones principales." (8 Manresa 386.) While there may not be any substantial difference between the right to repurchase and the option to buy, the consideration was increased from P20,000 for the right to repurchase to P60,000 for the option to buy. The transfer of the title from the vendor a retro to the vendee and the acquiescence thereto of the vendor also had changed entirely their respective rights and obligations, for the right under the pacto de retro sale would never terminate, except by an action to execute the security, whereas under the new contracts the repurchase could be made only during the terms specified in the option. This limitation of the time is apparent from the conduct of the defendant himself in asking for the extension of the time to buy. No specific form is required of a novation. All that is required is incompatibility between the original and the subsequent contracts. (8 Manresa, p. 430; *Abel vs. De Lima and Malasarte*, 87 Phil., 352.)

Capital is made by defendant of a citation from Pomeroy's Equity Jurisprudence, quoted with approval in the case of *Macapinlac vs. Gutierrez Repide*, (43 Phil. 779) and cited in the decision of the court below. The citation is as follows:

"The doctrine has been firmly established from an early day that when the character of a mortgage has attached at the commencement of the transaction so that the instrument, whatever its form, is regarded in equity as a mortgage, that character of mortgage must and will always continue. If the instrument is in its essence a mortgage, the parties can not by any stipulations, however express and positive, render it anything but a mortgage or deprive it of the essential attributes belonging to a mortgage in equity. The debtor or mortgagor can not in the inception of the instrument as a part or collateral to its execution, in any manner deprive himself of his equitable right to come in after a default in paying the money at the stipulated time and to pay the debt and interest, and thereby to redeem the land from the lien and encumbrance of the mortgage; the equitable right of redemption, after a default is preserved, remains in full force, and will be protected and enforced by a court of equity, no matter what stipulations the parties may have made in the original transaction purporting to cut off this right. *Macapinlac vs. Gutierrez Repide*, 43, 779, quoting Pomeroy Equity Jurisprudence section 1193."

The principle stated in the quotation prohibits the parties from making stipulations that would tend to destroy the contract of its essence as a mortgage and deprive the debtor of the equitable right to redemption. The stipulations that are prohibited are those executed or made simultaneously with the original contract, not those subsequently entered into. The principle does not prohibit modification of the original contract by subsequent agreements such as the parties may see fit to adopt. In the case at bar, the array of facts and circumstances adduced to support defendant's contention may support conclusively the fact that the original contract was a mere equitable mortgage, which is not disputed. But they do not support the proposition that the contract was always a mortgage, in view of the positive acts of both parties indicative of a novation of the contract.

The intent of the plaintiffs to terminate the original contract was evident from the time they executed the affidavit of consolidation. Exhibit P-14. It was also evident from the fact that they had the land transferred to their names in the tax records, and the land taxes were no longer charged against the defendant. The defendant acquiesced in this consolidation when he made his Memorandum, Exhibit P-11, admitting that his right to repurchase had been lost. His acquiescence was expressly admitted by him in the trial, thus:

Q. And from 1933 up to the present time you also allowed the title over the land in question to remain in the name of the Cojuangcos?—A. It was not permitted by me, but it was already done so there is nothing I can do but to agree to it. (t. s. n., pp. 145-146; italics supplied.)

His acquiescence is further to be inferred from the fact that his concern in the years 1932 and 1933, after plaintiffs had consolidated their ownership, was not to insist on his original right to repurchase, but only to secure an extension of the period within which he could make repurchase, thus:

" * * * I was only interested in that part (referring to Exhibit P-13) that gives me the option to buy within the period stipulated in the contract." (t. s. n., pp. 212-213.)

Defendant's letter, Exhibit D-9, with which he answered plaintiffs' lawyer's demand that the land be returned to plaintiffs, discloses the fact that he had complacently indulged in the belief that the plaintiffs would not deny him the right to redeem or repurchase the property at any time, because of the laxity that was shown him in the grant of an extension of the period of repurchase and in demanding the rentals, so that when the return of the property was demanded he was taken by surprise. But his belief does not show that he believed plaintiffs did not intend to change the original contract; it only shows his knowledge that there was a change, and his acceptance thereof. But reliance on another's indulgence or on the latter's past laxity may not be the basis of an enforceable legal right; this must be the result of a mutual understanding or agreement. Obligations can only be created by law or by contract.

Defendant-appellant also argues that the new contracts of lease with option, Exhibit P-2 and Exhibit P-13, do not constitute a new contract because the price of P60,000 is inadequate. There is no evidence of record that P60,000 is so grossly inadequate as to be shocking to the conscience. A parcel of adjoining land of similar size purchased in June, 1933 from a relative of the defendant (Exhibit P-21) was priced also at P60,000.

Our conclusion that there was a novation of the contract in 1932 when plaintiffs secured title to the property and defendant acquiesced in such issuance of title, his right being limited to an option to repurchase the property within a fixed period, renders consideration of the errors assigned unnecessary. If plaintiffs became owners of the land in 1932 and defendant a mere lessee with option to buy, certainly the provisions of the new Civil Code may not be invoked in his favor.

Wherefore, the judgments appealed from should be, as they hereby are, affirmed, with costs against the appellant. So ordered.

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

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