

JUAN CLARIDAD, SUBSTITUTED BY TRINIDAD BELONIO, PLAINTIFF AND APPELLANT, VS. ISABEL NOVELLA, DEFENDANT AND APPELLEE.

G.R. No. L-12666. May 22, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On April 25, 1932, spouses Lorenzo Claridad and Isabel Togle executed a deed of sale with right to repurchase of a parcel of land situated in Bago, Negros Occidental, in favor of Paterno Aposagas on condition that the vendors may repurchase the same within a period of 10 years from said date. It was also agreed that during the period of 10 years the vendee may enjoy the land as usufructuary.

On March 10, 1936, Aposagas transferred all his rights and interests in the sale to Isabel Novella subject to the same conditions stipulated in the contract executed on April 25, 1932. On May 20, 1942, twenty-four days after the expiration of the 10-year period agreed upon for redemption, Isabel Novella consolidated her ownership over the land for failure of the vendors to exercise their right of redemption. On March 27, 1944, the vendors a retro deposited the sum of P800.00 in Japanese notes with the clerk of court of Negros Occidental by way of consignment in an attempt to redeem the land from the vendee Isabel Novella.

In the meantime, spouses Lorenzo Claridad and Isabel Togle, original vendors a retro, died and because of the refusal of Isabel Novella to allow the redemption of the property notwithstanding the tender of payment they had made, the heirs of said spouses filed on March 13, 1944 an action before the Court of First Instance of Negros Occidental against Isabel Novella praying that the latter be ordered to reconvey the land to them after acceptance of the deposit of P800.00 they had made and that she be ordered to pay damages and costs. On May 5, 1944, after due trial, the court, Judge Francisco Arellano presiding, rendered a decision dismissing the complaint and ordering that the deposit of P800.00 made by the plaintiffs be returned to them, with costs. In due time, plaintiffs took the case on appeal to the Court of Appeals, but no action thereon was taken until the records of the case were destroyed as a result of the battle for liberation.

Plaintiffs, instead of reconstituting the records that were destroyed, filed on June 3, 1950 a new case before the same court covering the same subject matter as in the original case. Defendant filed a motion to dismiss on the ground that the action was barred by a prior judgment, referring to the decision rendered by Judge Francisco Arellano. This motion was sustained by Judge Jose Teodoro, Sr. in an order entered on August 11, 1950. Plaintiffs appealed this order to the Supreme Court (G. R. No. L-4207), and on October 24, 1952, the latter rendered decision reversing the order of Judge Teodoro, Sr. and ordering that the case be remanded to the court below for further proceedings.

While the case was pending trial on the merits as ordered by the Supreme Court, it was discovered that the records of the original case which involved the same parties and subject matter were not destroyed and so, in line with the ruling of this Court in the case of *Nacua vs. Alo*, 93 Phil., 595; 49 Off. Gaz., 3353, both parties filed a joint

motion praying for the dismissal of the case and for the revival of the original Case No. 54, giving to plaintiffs-appellants a period of 30 days within which to present a new record on appeal, notice of appeal and appeal bond for elevation to the Court of Appeals. This was done and so the original case then pending appeal in the Court of Appeals was deemed duly reconstituted and submitted for decision with the only hitch that, upon examination of the records as reconstituted, it was found that while the stenographic notes taken during the trial were intact, they have not however been transcribed. And on May 23, 1957, considering that the only issue involved in the appeal is one of law, the Court of Appeals certified the case to us for adjudication under the Judiciary Act of 1948, as amended.

Appellants contend that the trial court erred in not entertaining their claim that they had offered to repurchase the land from appellee sometime in March, 1942 or before the expiration of the 10-year period of redemption which the latter unreasonably refused to accept for which reason they deposited the sum of P800.00 with the clerk of court by way of consignment as required by law. The trial court, after analyzing the evidence submitted by both parties, made on this point the following findings:

"Cuando se considera que Juan Claridad en Marzo 27, 1944, casi dos años después de expirar el plazo para el retracto, al ofrecer la recompra del lote en cuestión, hubo de hacerse acompañar por Antonio Canellada que le corroboró, para presenciar y atestiguar este el acto, en cambio, ni en Marzo de 1942 ni en igual mes de 1943, en que pretende haber hecho igual oferta, no solo dejó de tomar igual o similar precaución, sino que no tuvo absolutamente ninguna, a falta de satisfactoria explicación, el Juzgado abraza serias dudas sobre la veracidad de su pretensión y declaración. Y si a este se añade que no hizo consignación de pago, cuando, como pretende, le fue rechazada la oferta en 1942 o en 1943, cosa que lo hizo en 1944 con extra-ordinaria prontitud, estando como estaba el Juzgado funcionando normalmente en Marzo y Abril hasta el 20 de Mayo de 1942 y en todo el año 1943, el Juzgado llega a la conclusión de que los demandantes no hicieron tal oferta de recompra en 1942, y al no hacerlo, la venta a retro a favor de la demandada queda convertida después del 25 de Abril de 1942, en una venta absoluta y definitiva. La conducta de Juan Claridad durante su testimonio ha sido altamente sospechosa para el Juzgado; sus contestaciones no eran espontáneas tenían la apariencia de una atestación estudiada y forzada. Por el contrario, la conducta de la demandada en el banquillo testifical es natural, y sus declaraciones son, en opinión del Juzgado, espontáneas y sinceras y llevan el sello de la verdad. Habiendo llegado el Juzgado a esta conclusión, la consignación (Exh. 'A') hecha por los demandantes del precio de la recompra un año y once meses después de haber expirado el plazo para el retracto, es una consignación hecha fuera de tiempo, y por tanto es improcedente."

Since the issue involved in this agreement of error is one of fact, or one which involves an evaluation of the evidence, the same cannot now be looked into since this case was certified to us on purely questions of law.

It is however contended that even if it be considered that appellants, or their predecessors in interest, have failed to redeem the land within the period stipulated, such failure is of no consequence for the reason that the real contract entered into between appellants' predecessors in interest and appellee is not one of sale with right to repurchase but only an equitable mortgage and so appellants should still be allowed to reacquire the property by paying the obligation that may be due the appellee. And in support of this contention, they advance the following arguments: (1) inadequacy of price, that is, the price of the sale is P800.00 when the land sold has an assessed value of P1,710.00; (2) the vendee a retro was given, under the contract, the usufruct of the land during the entire period of redemption; and (3) the contract employs the Spanish term "devolviesemos" when referring to the right of the vendor a retro to repurchase the property.

To begin with, the contention that the contract in question involves merely an equitable mortgage is a belated one, for right along appellants have always claimed that the transaction concluded by their predecessors in interest is one of sale with right to repurchase. This is borne out not only by the original complaint filed by appellants'

predecessors in interest on March 13, 1944 but also by the complaint filed by them on June 3, 1950 wherein the same averments of sale with right to repurchase appear. In fact, this is the issue submitted by them to the trial court when this case was originally tried and said court held that the alleged contract is one of sale with option to repurchase.

In the second place, the claim regarding inadequacy of price is- insubstantial considering that the transaction in question is a sale with pacto de retro and not an absolute sale. In transactions of this nature, the practice is to fix a relatively reduced price to afford the vendor a retro every facility to redeem the land unlike in an absolute sale where the actual market value of the property is considered. At any rate, such a reduced price cannot be considered a ground for annulling the contract, as was held by this Court in a number of cases. Thus, in *Feliciano vs. Limjoco*, 41 Phil., 147, this Court laid down the following doctrine:

"Without deciding that the assessed value of a parcel of land is its true value on sale, the difference between the price of P500 agreed upon by the parties and the assessed value of P1.010 does not, in the absence of sufficient evidence of the true value, of itself justify the annulment of a sale with the right to repurchase. The testimony of persons interested in the case is no sufficient proof of the value of the land. The price fixed in a sale with, the right to repurchase is not necessarily the true value of the land sold. (*De Ocampo y Custodio vs. Lim*, 38 Phil., 579.) And this must be true, because in this kind of sale as distinguished from absolute sales in which the vendor, in permanently giving away his property, tries to get, as compensation, its real value, the hope of redeeming the land sold and the facility of returning the price received are important factors and in order that this hope may be realized easily the vendor generally fixes a price less than the real value."

Finally, the fact that the vendee a retro was given the right to enjoy the usufruct of the land during the period of redemption, far from being a factor favoring an equitable mortgage, is an argument in favor of appellee's theory for usufruct is an element of ownership which is involved in a contract of sale. And as regards the Spanish term "devolviesemos" employed in the contract, appellants' claim cannot be of any help, for that term in English terminology also conveys the idea of repayment which is in line with a right of repurchase.

Wherefore, the decision appealed from is affirmed, with costs against appellants.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador and Endencia, JJ., concur.
Concepcion, J., concurs in the result.

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