

DOMINGA CONDE, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, MANILA, PACIENTE CORDERO, TOGETHER WITH HIS WIFE, NICETAS ALTERA, RAMON CONDE, TOGETHER WITH HIS WIFE, CATALINA T....*G.R. No. L-40242. December 15, 1982*

Ponente: MELENCIO-HERRERA, J.

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An appeal by Certiorari from the Decision of respondent Court of Appeals[1] (CA-G.R. No. 48133-R) affirming the judgment of the Court of First Instance of Leyte, Branch IX, Tacloban City (Civil Case No. B-110), which dismissed petitioner's Complaint for Quieting of Title and ordered her to vacate the property in dispute and deliver its possession to private respondents Ramon Conde and Catalina Conde.

The established facts, as found by the Court of Appeals, show that on 7 April 1938, Margarita Conde, Bernardo Conde and the petitioner Dominga Conde, as heirs of Santiago Conde, sold with right of repurchase, within ten (10) years from said date, a parcel of agricultural land located in Maghubas, Burauen, Leyte, (Lot 840), with an approximate area of one (1) hectare, to Casimira Pasagui, married to Pio Altera (hereinafter referred to as the Alteras), for P165.00. The "Pacto de Retro Sale" further provided:

"x x x (4) if at the end of 10 years the said land is not repurchased, a new agreement shall be made between the parties and in no case title and ownership shall be vested in the hand of the party of the SECOND PART" (the Alteras).

xxx xxx" (Exhibit 'B')

On 17 April 1941, the Cadastral Court of Leyte adjudicated Lot No. 840 to the Alteras "subject to the right of redemption by Dominga Conde, Bernardo Conde and Margarita Conde, within ten (10) years counting from April 7, 1938, after returning the amount of P165.00 and the amounts paid by the spouses in concept of land tax x x x " (Exhibit "1"). Original Certificate of Title No. N-534 in the name of the spouses Pio Altera and Casimira Pasagui, subject to said right of repurchase, was transcribed in the "Registration Book" of the Registry of Deeds of Leyte on 14 November 1956 (Exhibit "2").

On 28 November 1945, private respondent Paciente Cordero, son-in-law of the Alteras, signed a document in the Visayan dialect, the English translation of which reads:

"MEMORANDUM OF REPURCHASE OVER A PARCEL OF LAND SOLD WITH REPURCHASE WHICH DOCUMENT GOT LOST

We, PIO ALTERA and PACIENTE CORDERO, both of legal age, and residents of Burauen, Leyte, Philippines, after having been duly sworn to in accordance with law free from threats and intimidation, do hereby depose and say:

1. That I, PIO ALTERA bought with the right of repurchase two parcels of land from DOMINGA CONDE, BERNARDO CONDE AND MARGARITA CONDE, all brother and sisters.
2. That these two parcels of land were all inherited by the three.
3. That the document of SALE WITH THE RIGHT OF REPURCHASE got lost in spite of the diligent efforts to locate the same which was lost during the war.
4. That these two parcels of land which was the subject matter of a Deed of Sale with the Right of Repurchase consists only of one document which was lost.
5. Because it is about time to repurchase the land, I have allowed the representative of Dominga Conde, Bernardo Conde and Margarita Conde in the name of EUSEBIO AMARILLE to repurchase the same.
6. Now, this very day November 28, 1945, I or We have received together with Paciente Cordero who is my son-in-law the amount of ONE HUNDRED SIXTY-FIVE PESOS (P165.00) Philippine Currency of legal tender which was the consideration in that sale with the right of repurchase with respect to the two parcels of land.

That we further covenant together with Paciente Cordero who is my son-in-law that from this day the said Dominga Conde, Bernardo Conde and Margarita Conde will again take possession of the aforementioned parcel of land because they repurchased the same from me. If and when their possession over the said parcel of land be disturbed by other persons, I and Paciente Cordero who is my son-in-law will defend in behalf of the herein brother and sisters mentioned above, because the same was already repurchased by them.

IN WITNESS WHEREOF, I or We have hereunto affixed our thumbmark or signature to our respective names below this document or memorandum this 28th day of November 1945 at Burauen Leyte, Philippines, in the presence of two witnesses.

PIO ALTERA (Sgd.) PACIENTE CORDERO

WITNESSES:

1. (SGD.) TEODORO C. AGUILLON"

To be noted is the fact that neither of the vendees-a-retro, Pio Altera nor Casimira Pasagui, was a signatory to the deed. Petitioner maintains that because Pio Altera was very ill at the time, Paciente Cordero executed the deed of resale for and on behalf of his father-in-law. Petitioner further states that she redeemed the property with her own money as her co-heirs were bereft of funds for the purpose.

The pacto de retro document was eventually found.

On 30 June 1965 Pio Altera sold the disputed lot to the spouses Ramon Conde and Catalina T. Conde, who are also private respondents herein. Their relationship to petitioner does not appear from the records. Nor has the document of sale been exhibited.

Contending that she had validly repurchased the lot in question in 1945, petitioner filed, on 16 January 1969, in the Court of First Instance of Leyte, Branch IX, Tacloban City, a Complaint (Civil Case No. B-110), against Paciente Cordero and his wife Nicetas Altera, Ramon Conde and his wife Catalina T. Conde, and Casimira Pasagui (Pio Altera having died in 1966), for quieting of title to real property and declaration of ownership.

Petitioner's evidence is that Paciente Cordero signed the Memorandum of Repurchase in representation of his father-in-law Pio Altera, who was seriously sick on that occasion, and of his mother-in-law who was in Manila at the time, and that Cordero received the repurchase price of P165.00.

Private respondents, for their part, adduced evidence that Paciente Cordero signed the document of repurchase merely to show that he had no objection to the repurchase; and that he did not receive the amount of P165.00 from petitioner inasmuch as he had no authority from his parents-in-law who were the vendees-a-retro.

After trial, the lower Court rendered its Decision dismissing the Complaint and the counterclaim and ordering petitioner "to vacate the property in dispute and deliver its peaceful possession to the defendants Ramon Conde and Catalina T. Conde".

On appeal, the Court of Appeals upheld the findings of the Court a quo that petitioner had failed to validly exercise her right of repurchase in view of the fact that the Memorandum of Repurchase was signed by Paciente Cordero and not by Pio Altera, the vendee-a-retro, and that there is nothing in said document to show that Cordero was specifically authorized to act for and on behalf of the vendee a retro, Pio Altera.

Reconsideration having been denied by the Appellate Court, the case is before us on review.

There is no question that neither of the vendees-a-retro signed the "Memorandum of Repurchase", and that there was no formal authorization from the vendees for Paciente Cordero to act for and on their behalf.

Of significance, however, is the fact that from the execution of the repurchase document in 1945, possession, which heretofore had been with the Alteras, has been in the hands of petitioner as stipulated therein. Land taxes have also been paid for by petitioner yearly from 1947 to 1969 inclusive (Exhibits "D" to "D-15"; and "E"). If, as opined by both the Court a quo and the Appellate Court, petitioner had done nothing to formalize her repurchase, by the same token, neither have the vendees-a-retro done anything to clear their title of the encumbrance therein regarding petitioner's right to repurchase. No new agreement was entered into by the parties as stipulated in the deed of pacto de retro, if the vendors a retro failed to exercise their right of redemption after ten years. If, as alleged, petitioner exerted no effort to procure the signature of Pio Altera after he had recovered from his illness, neither did the Alteras repudiate the deed that their son-in-law had signed. Thus, an implied agency must be held to have been created from their silence or lack of action, or their failure to repudiate the agency.[2]

Possession of the lot in dispute having been adversely and uninterruptedly with petitioner from 1945 when the document of repurchase was executed, to 1969, when she instituted this action, or for 24 years, the Alteras must be deemed to have incurred in laches.[3] That petitioner merely took advantage of the abandonment of the land by the Alteras due to the separation of said spouses, and that petitioner's possession was in the concept of a tenant, remain bare assertions without proof.

Private respondents Ramon Conde and Catalina Conde, to whom Pio Altera sold the disputed property in 1965, assuming that there was, indeed, such a sale, cannot be said to be purchasers in good faith. OCT No. 534 in the name of the Alteras specifically contained the condition that it was subject to the right of repurchase within 10 years from 1938. Although the ten-year period had lapsed in 1965 and there was no annotation of any repurchase by petitioner, neither had the title been cleared of that encumbrance. The purchasers were put on notice that some other person could have a right to or interest in the property. It behooved Ramon Conde and Catalina Conde to have looked into the right of redemption inscribed on the title, and particularly the matter of possession, which, as also admitted by them at the pre-trial, had been with petitioner since 1945.

Private respondent must be held bound by the clear terms of the Memorandum of Repurchase that he had signed wherein he acknowledged the receipt of P165.00 and assumed the obligation to maintain the re-purchasers in peaceful possession should they be "disturbed by other persons". It was executed in the Visayan dialect which he understood. He cannot now be allowed to dispute the same. "x x x If the contract is plain and unequivocal in its terms he is ordinarily bound thereby. It is the duty of every contracting party to learn and know its contents before

he signs and delivers it".[4]

There is nothing in the document of repurchase to show that Paciente Cordero had signed the same merely to indicate that he had no objection to petitioner's right of repurchase. Besides, he would have had no personality to object. To uphold his oral testimony on that point, would be a departure from the parol evidence rule[5] and would defeat the purpose for which the doctrine is intended.

"x x x The purpose of the rule is to give stability to written agreements, and to remove the temptation and possibility of perjury, which would be afforded if parol evidence was admissible."[6]

In sum, although the contending parties were legally wanting in their respective actuations, the repurchase by petitioner is supported by the admissions at the pre-trial that petitioner has been in possession since the year 1945, the date of the deed of repurchase, and has been paying land taxes thereon since then. The imperatives of substantial justice, and the equitable principle of laches brought about by private respondents' inaction and neglect for 24 years, loom in petitioner's favor.

WHEREFORE, the judgment of respondent Court of Appeals is hereby REVERSED and SET ASIDE, and petitioner is hereby declared the owner of the disputed property. If the original of OCT No. N-534 of the Province of Leyte is still extant at the office of the Register of Deeds, then said official is hereby ordered to cancel the same and, in lieu thereof, issue a new Transfer Certificate of Title in the name of petitioner, Dominga Conde.

No costs.

SO ORDERED.

Teehankee, (Chairman), Plana, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

[1] Tenth Division composed of J. Ramon C. Fernandez, ponente; concurred in by JJ. Ricardo C. Puno and B.S. de la Fuente.

[2] Art. 1869, Civil Code.

[3] Arcuino vs. Aparis, 22 SCRA 407 (1968); Mejia de Lucas vs. Gamponia, 100 Phil. 278 (1956).

[4] Tan Tua Sia vs. Yu Biao Sontua, 56 Phil. 711 (1932).

[5] Sec. 7. Evidence of written agreements. – When the terms of an agreement have been reduced to writing, and, therefore, there can be, between the parties and their successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

(a) Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, or the validity of the agreement is put in issue by the pleadings;

(b) When there is an intrinsic ambiguity in the writing.

The term "agreement" includes wills. (Lim Yhi Luya vs. Court of Appeals, 99 SCRA 692 (1980).

[6] Tan Tua Sia vs. Yu Biao Sontua, supra.

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