

[WITH RESOLUTION OF MAY 31, 1961]*G.R. No. 11329. September 30, 1960*

Ponente: DIZON, J.

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On October 5, 1943, appellant, Cipriano B. Motos, executed a written promise to sell to appellee, Roberto Soler, two adjoining parcels of land situated in barrio Palestina, Pili, Camarines Sur, for P2,350.00, of which he received from the latter on that date the sum of P300.00. Their understanding was that with said amount he would pay a certain bank and all taxes due on the property and would secure the cancellation of any other encumbrance thereon so as to be in a position to execute the corresponding deed of sale.

It appears that in spite of the fact that Soler was ready, willing and able to pay the unpaid balance due on the purchase price, appellant kept on putting off the execution of the deed of sale until, finally, he offered to return the partial payment of P300.00—which Soler refused to accept—and later formally notified the latter that he had decided not to sell the lands aforementioned. Thereafter Soler made repeated offers to pay the unpaid balance of the purchase price, making on each occasion the proper demand for the execution of the corresponding deed of sale, but the same were ignored by Motos. As a result, on April 19, 1944, Soler commenced against him Civil Case No. 225, R-38, for specific performance and to obtain a declaration of ownership over the aforementioned parcels of land. Simultaneously with the commencement of the action, he consigned the sum of P2,050.00 with the court. On September 4, 1944, judgment was rendered declaring the contract of promise to sell of October 5, 1943, inoperative as to one of the two parcels of land covered thereby but, as to the other, Motos was ordered to execute a deed of absolute sale in favor of Soler, the latter to pay its value in proportion to the total price agreed upon, less the sum of P300.00 paid in advance. The decision, however, gave Soler an option to rescind the contract or demand its fulfillment the same to be exercised within thirty days from notice of said decision. No appeal was ever taken from the same.

Upon application of Soler, the records of the case, destroyed during the war, were reconstituted in 1947, but it was only on December 20, 1950 that, upon his motion—the date of filing thereof not appearing in the record—a writ of execution was issued "for the enforcement of the first option, namely: the purchase of the first parcel of land." (Record on Appeal p. 45). Motos, however, refused and otherwise failed to execute the order to issue another order dated May 2, 1952, for the same purpose. He filed two different motions for reconsideration of said order, but they were denied on March 19, 1955, this last order further providing that should Motos not execute the deed of sale on or before April 15 of said year, the court would direct the provincial sheriff to do it in his name and behalf.

On April 14, 1955, Motos finally executed a deed of sale of the land in question in favor of Soler, with a provision to the effect that the land may be repurchased by the vendor within five years from the execution of the deed of sale. Upon objection of Soler, the court disapproved the deed of sale on July 9 of the same year and once more required Motos to execute a deed of absolute sale within 10 days from notice. The latter then filed a petition for certiorari with the Court of Appeals (G. R. No. 15495) to secure annulment of this last order, but the same was dismissed principally upon the ground that appeal and not certiorari was the proper remedy.

Finally, because of Motos' refusal to execute a deed of absolute sale in conformity with the decision rendered in Civil Case No. 225, R-38, upon authority of the court, the provincial sheriff executed the corresponding deed of absolute sale in favor of Soler on August 11, 1955. Subsequently, the latter was placed in possession of the land subject-matter of the sale and the corresponding transfer certificate of title was issued in his name. Some time thereafter, he conveyed the property to his son Jaime Soler, in whose name, in turn transfer certificate No. 1524 was issued.

On October 30, 1955, that is, 4 years, 11 months and 17 days after the issuance of the writ of execution mentioned heretofore, but scarcely two months and two days after the execution of the deed of sale by the provincial sheriff, Motos commenced this action to compel Soler and his son to allow him to repurchase the land pursuant to the provisions of section 119 of the Public Land Act.

In their answer to the complaint, after specifically admitting some material averments thereof and denying others, the Solers alleged, by way of affirmative defenses, "that (1) Motos had no cause of action against them; (2) that the provisions of the Public Land Act did not apply to the land in question; and (3) that whatever right of repurchase Motos had, the same had already prescribed. By way of counterclaim, they sought to recover moral and actual damages in an amount not less than P10,000.00.

After due trial, the lower court rendered the appealed judgment ruling that Motos' right to repurchase the land in question was already barred by the decision rendered in Civil Case No. 225, R-38, and that, at any rate, the period of five years within which he could exercise said right had already elapsed. These are the principal rulings assailed by Motos in this appeal and, as a consequence, he also contends that the trial court erred in not ordering the Solers to reconvey the land in question to him for and in consideration of the sum of P119.92 in Philippine currency.

Upon the facts of record we are of the opinion that the lower court erred in holding that, by reason of the rule of conclusiveness of judgment, Motos is barred from raising the question of his right to repurchase the land in question. It must be remembered that Roberto Soler instituted Civil Case No. 225, R-38, to compel Motos to comply with the contract of promise to sell referred to heretofore and that, after due trial, the court rendered judgment requiring Motos to execute a deed of absolute sale in favor of Soler, giving the latter, however, an option, to be exercised within thirty days from notice, to demand either specific performance or to rescind the contract. The case did not involve Motos' right to repurchase neither directly nor indirectly. When Soler exercised said option by asking for the issuance of a writ of execution commanding Motos to execute a deed of sale; when the court issued said writ and later disapproved the deed of sale submitted by Motos, the only matter before the court and the only one it could resolve was whether, in accordance with the decision aforesaid, Motos should execute a deed of absolute sale. For the resolution of said question it was not necessary for the court to resolve the other question of whether or not¹ Motos was still entitled to exercise the right to repurchase the property. In fact, the aforesaid decision unequivocally stated that the consideration of said question was premature because it was improper to talk about the right to repurchase before the execution of the deed of sale. (Record on Appeal p. 43.) Inasmuch as that alone is deemed adjudged by a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto (Section 45, Rule 39, Rules of Court), it seems obvious that, as the lower court held in deciding said case, Motos could raise the question of his right to repurchase only after the execution of the deed of sale.

Neither can it be said that the question was resolved by the Court of Appeals when it denied or dismissed the petition for certiorari filed by Motos for the annulment of the order of the lower court disapproving the deed of sale submitted by him, firstly, because a special civil action for certiorari involves exclusively questions of jurisdiction, and secondly, because the Court of Appeals dismissed the aforesaid petition principally upon the

ground that an appeal and not a petition for certiorari was the proper remedy.

It is not disputed that appellant acquired the land in question as a homestead on September 4, 1935 and that original certificate of title No. 1327 (Homestead Patent) was issued in his name (Stipulation of Facts, Record on Appeal p. 38). It can not be denied, therefore, that the provisions of the Public Land Act regarding the vendor's right to repurchase are applicable to the present case.

The next question to be determined is from what date shall the period of five years within which Motos could exercise the right to repurchase in accordance with Section 119 of the Public Land Act be counted? The provision referred to provides that the right to repurchase shall be exercised "within a period of five years from the date of the conveyance." Said date. could not be October 5, 1943 because the contract entered into between the parties on that date was merely a contract of promise to sell and not a deed of conveyance. Neither can we agree with the trial court that the period must be deemed to have started somewhere between October 5, 1943 and the date when Motos was finally in a position to execute the deed of conveyance, for the simple reason that there is no conclusive evidence showing exactly when Motos finally found himself in a position to execute the deed of sale because he had paid the taxes due and secured cancellation of all liens existing on the property.

The lower court held the view that if the period of repurchase could not have legally begun from anyone of the dates aforesaid because the decision rendered in the case gave Roberto Soler the right to choose between rescission and specific performance, then the period must be counted from the date when Soler filed a motion for the issuance of, or when the court issued the writ of execution ordering Motos to execute the required deed of sale. There is no conclusive proof as to the date when said motion was filed, but it is not disputed that the writ was issued on December 20, 1950.

While a strict construction of the legal provision under consideration leads to the conclusion that the period of five years therein provided started only upon the execution of the deed of conveyance by the provincial sheriff on August 11, 1955, rather than on the date when the writ of execution referred to was issued, it is manifest that, in either case the present action, commenced on October 13, 1955, was filed within the aforesaid period.

The only question now remaining to be resolved is: what should be the amount to be paid by appellant for the repurchase of the land in question.

According to the deed of sale executed by the provincial sheriff in favor of Roberto Soler, the consideration paid by the latter for the land in question was P1,079.31 in Japanese military notes (Stipulation of Facts, Annex J, Record on Appeal, p. 71), deposited by Soler with the clerk of court on April 19, 1944 when he filed the action for specific performance. Pursuant to the decision rendered in Garrido vs. North Camarines Lumber Co., 44 Off. Gaz. No. 11, p. 4401, the consideration for the repurchase must be paid in the present currency on the basis of the Ballantyne schedule or ratio which shows that on April 1944, P9.00 in Japanese war notes were equivalent to P1.00, Philippine currency. Consequently, the repurchase must be made for a consideration of P119.92.

In view of all the foregoing, the appealed judgment is hereby reversed and another is rendered declaring that appellant Motos has the right to repurchase the land in question from appellee Jaime F. Soler, the latter to execute the corresponding deed of resale upon payment of the sum of P119.92. Costs against appellees.

Paras, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, and Paredes JJ., concur.

RESOLUTION

May 31, 1961

DIZON, J.:

Before us 'is appellees' second motion for the reconsideration of our resolution dated November 25, 1960 and February 10, 1961.

The resolution of November 25, 1960 denied appellees' motion for the modification of the dispositive part of the decision rendered in this case, on the ground that the same was filed out of time. We agree with appellees that said resolution should be, as it is hereby, reconsidered, because the record shows that their aforesaid motion was timely filed. It appears in this connection that appellees received notice of the decision on October 13, 1960. On the 26th of the same month they filed a motion for extension of the time to file a motion for reconsideration, and two days thereafter this Court granted them an extension of 20 days from October 28 for the aforesaid purpose, which extension expired on November 17, 1960. On November 16 they mailed, by registered special delivery, their motion to secure a modification of the dispositive part of the decision—which was actually received by the Clerk of Court on the 18th of the same month. But as, according to the Rules, the date of mailing in this case should be considered as the date of filing, the said motion must be deemed to have"been filed on time.

In connection with the resolution of February 10, 1961, it appears that a copy of the former resolution dated November 25, 1960 was received by Rogelio Tobias, a clerk in the law office of Atty. Orino on December 3, 1960; Tobias placed it in a folder kept in a locked drawer of his desk, intending to bring it to the attention of Atty. Orino—who was then already out of the office—the following Monday, December 5; it happened, however, that Tobias was taken ill and was hospitalized from December 4 to December 23 and reported back to the law-office of Atty. Orino only on December 27, and it was only then that he was able to deliver the notice referred to Atty. Orino, who, in turn, delivered it to Atty. Pardalis. Two days thereafter the latter filed the motion for reconsideration dated December 28, 1960, which was denied by our resolution of February 10, 1961, notice of this denial having been received by appellees' counsel on February 23, of the same year.

In view of the setting aside of our Resolution of November 25, 1960, and the fact that appellees' motion for reconsideration dated December 28, 1960 was verified and. duly accompanied by affidavits of merit, our Resolution of February 10, 1961 is also set aside.

The main question now before us, therefore, is whether the dispositive part of our decision should be modified as prayed for by appellees in their motion of November 11, 1960. It is alleged therein that while the decision rendered in this case granted appellant the right to re-purchase the property in question for the sum of P119.92, it did not provide—and so they asked—for the remanding of the case to the lower court for further proceedings to enable appellees to present evidence bearing upon the value of the improvements that they had made on the aforesaid property since acquiring the same from appellant in August, 1955—a right they claim to be entitled to as possessors in good faith.

The motion is without merit. The present action was instituted by Cipriano B. Motos to compel appellees to allow him to repurchase the property described in his complaint. In the latter's answer they denied Motos' right to repurchase under the Public Land Act and further alleged that, if he ever had such right, the same had already prescribed.

In view of the issue involved, we believe that the value of whatever improvements may have been introduced in the property by appellees during the time they were in possession should have been litigated below by setting up the corresponding counterclaim. Appellees' failure to do so now bars their claim (*Berses vs. Villanueva*, 25 Phil.,

473; Beltran vs. Valbuena, 53 Phil., 697; Pascual vs. Lesaca, L-4536, May 30, 1952).

Wherefore, appellees' motion for the modification of the dispositive part of the decision of this Court is hereby denied.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Paredes, JJ., concur.

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