

ESPIRIDIONA CANUTO, PLAINTIFF AND APPELLEE, VS. JUAN MARIANO, DEFENDANT AND APPELLANT.*G.R. No. 11346. March 21, 1918*

Ponente: CARSON, J.

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This is an appeal from a judgment of the Court of First Instance of Manila, providing for the execution of a deed evidencing the repurchase by the plaintiff of a parcel of land from the defendant, upon the payment by the former of the sum of P360.

On December 4, 1913, the plaintiff executed a deed of sale of the parcel of land described in the complaint, to the defendant, for the sum of P360, reserving the right to repurchase the land for that amount within one year from the date of the deed of sale. The redemption period having elapsed, and the plaintiff having failed to exercise her right of repurchase within that period, the defendant set up a claim of absolute ownership to the land, notwithstanding the insistent demand of the plaintiff that she be permitted to exercise her reserved right of repurchase in accordance with an alleged oral agreement for the extension of the redemption period down to the end of the month of December, 1914. She claims that on the second day of December, 1914, two days before the expiration of the original redemption period, she asked the defendant for an extension of time for the repurchase of the land and that upon her promise to make the repurchase during the month of December, 1914, the defendant agreed to extend the redemption period set out in the written contract, to the end of that month; that after the expiration of the original redemption period, she sought to make the repurchase in accordance with the agreement as to the extension of the time therefor; but that the defendant failed to appear at the time and place agreed upon for the payment of the purchase price, and has refused since that time to execute a deed of resale, or to reserve the purchase price agreed upon, despite the plaintiff's repeated demands and tender of the purchase price.

The plaintiff testified that on the morning of December the second, 1914, while she was washing clothes near a well, the defendant passed by; that she seized the opportunity to beg an extension of time in which to repurchase the land, promising the defendant that she would borrow the money and make payment if he would extend the redemption period until the end of the month; that after some demur the defendant agreed to allow her the whole of the month of December in which to redeem the land; that the following Sunday she went to the house of the defendant and that he promised to meet her at the house of Mercado, an attorney, at 4 o'clock of the next day, there to receive the purchase price, and execute the necessary documents evidencing the transaction; that she took the money to the lawyer's office at the time appointed, and waited there until dark, but that the defendant failed to meet his engagement; that she then went to his house, but was told that he was not at home; and that since that time defendant has refused to carry out his oral agreement, claiming that the redemption period set out in the original deed of sale expired on the fourth day of December, 1914, and that she had no right to repurchase the land after that date. Severino Pascual, who was present when the oral agreement to extend the time for the repurchase of the land was made, corroborated her testimony in this regard, and we find nothing in the record which would justify us in disturbing the findings of the trial judge who accepted her testimony as a substantially

true account of all that occurred, and declined to believe the conflicting testimony of the defendant which he characterizes as vague and incredible.

The defendant having extended the time within which the plaintiff could repurchase the land on condition that she would find the money and make the repurchase within the extended period, it is clear that he cannot be permitted to repudiate his promise, it appearing that the plaintiff stood ready to make the payment within the extended period, and was only prevented from doing so by the conduct of the defendant himself. (Villegas vs. Capistrano, 9 Phil. Rep., 416; Fructo vs. Fuentes, 15 Phil. Rep., 362; Retes vs. Suelto, 20 Phil. Rep., 394; Rosales vs. Reyes and Ordoveza, 25 Phil. Rep., 495.)

The contention that the plaintiff should not be permitted to alter, vary, or contradict the terms of the written instrument by the introduction of oral evidence is manifestly untenable under the circumstances of the case, as will readily appear from the following citation from 17 Cyc, p. 734, and numerous cases cited in support of the doctrine:

"The rule forbidding the admission of parol or extrinsic evidence to alter, vary, or contradict a written instrument does not apply so as to prohibit the establishment by parol of an agreement between the parties to a writing, entered into subsequent to the time when the written instrument was executed, notwithstanding such agreement may have the effect of adding to, changing, modifying, or even altogether abrogating the contract of the parties as evidenced by the writing; for the parol evidence does not in any way deny that the original agreement of the parties was that which the writing purports to express, but merely goes to show that the parties have exercised their right to change or abrogate the same, or to make a new and independent contract.

"It makes no difference how soon after the execution of the written contract the parol one was made. If it was in fact subsequent and is otherwise unobjectionable it may be proved and enforced."

The contention that the plaintiff lost her right to redeem because she failed to make judicial deposit of the purchase price when the defendant declined to receive it, is not entitled to serious consideration in view of the repeated decisions of this court to the contrary collated and discussed in the case of Rosales vs. Reyes and Ordoveza (25 Phil. Rep., 495). In that case and in the cases cited therein we declared that the settled rule in this jurisdiction is that a bona fide offer or tender of the price agreed upon for the repurchase is sufficient to preserve the rights of the party making it, without the necessity of making judicial deposit, if the offer or tender is refused; and in the case of Fructo vs. Fuentes (15 Phil. Rep., 362) we said that in such cases when diligent effort is made by the vendor of the land to exercise the right to repurchase reserved by him in his deed of sale "and fails by reason of circumstances over which he has no control, we are of the opinion and so hold that he does not lose his right to repurchase the land, by reason of his failure to repurchase on the day of maturity."

We conclude that the judgment entered in the court below should be affirmed with costs of this instance against the appellant. So ordered.

Arellano, C.J., Street, Malcolm, Avanceña, and Fisher, JJ., concur.

Torres, and Araullo, JJ., concur in the result.

Johnson, J., did not sign.

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