

**CEFERINO ESTIVA Y ANISTA, PETITIONER AND APPELLANT, VS.
MARTIN ALVERO, JOSEFA ILAGAN AND ALBERTO C. RAMOS,
OBJECTORS AND APPELLEES.***G.R. No. 11887. January 28, 1918*

Ponente: AVANCEÑA, J.

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On November 5, 1913, Ceferino Estiva y Anista applied to the Court of Land Registration for the registration of several parcels of land described in the application, under the letters A, B, C, D, E, F; G, and H. On April 14, 1914, he and his wife Petra Fontanilla sold for P3,900, with right of repurchase within a term of six months, to the spouses Alberto C. Ramos and Benita Garin two of the parcels included in the application and designated by the letters C and D. On September 12, 1914, said Ramos and his wife filed an opposition to Estiva's application, in regard to the two parcels of land therein described under letters C and D, alleging that they had purchased them under right of repurchase. In view of this adverse claim Ceferino Estiva, on November 2, 1914, amended his original application by setting forth therein that said two parcels of land were encumbered in favor of Alberto C. Ramos and his wife Benita Garin, as having been purchased by this married couple, under right of repurchase. On November 19, 1914, the Court of Land Registration rendered a decision, decreeing the registration, among other parcels of land, of the one described under the letter D in the application, in the name of Ceferino Estiva, and on April 10, 1915, this decision was amended by setting forth therein that the parcels designated under the letters C and D in the application were sold to Alberto C. Ramos and his wife Benita Garin, under right of repurchase within a term of six months and for the sum of P3,900; and, finally, on the 15th of the same month of the same year, the decree of registration of this land was issued in accordance with the decision and order aforementioned.

On July 1, 1915, Martin Alvero and Josefa Ilagan filed a motion with the land court, asking for a reconsideration of the decree of registration in so far as it referred to the parcel D, and alleging that said parcel had been obtained by fraud, to the prejudice of the said Martin Alvero and Josefa Ilagan. This motion was grounded on the averment that on April 12, 1911, Martin Alvero and Josefa Ilagan purchased this parcel of land from Ceferino Estiva for P1,000, under right of repurchase. Alberto C. Ramos and Benita Garin filed an opposition to this motion. The court held that in fact this parcel was sold by the petitioner Ceferino Estiva, under right of repurchase, to Martin Alvero and his wife Josefa Ilagan, in April, 1911, and therefore, in a decision under date of December 11, 1915, declared that the decree of registration obtained by Ceferino Estiva y Anista of this parcel D, wherein it is stated it was sold under right of repurchase to Alberto C. Ramos and his wife Benita Garin, was fraudulently obtained, and set aside this decision and ordered the registration of this parcel in the name of Ceferino Estiva, with the memorandum that it was sold to Martin Alvero and Josef a Ilagan.

The petitioner, Ceferino Estiva y Anista, appealed from that decision of the land court, and in this instance assigns the following errors as having committed by the Court of Land Registration:

"First. In holding that the petitioner fraudulently obtained the decree, of registration of the parcels of land

claimed.

"Second. In holding that the instrument Exhibit A of the claimants is a contract of the purchase and sale of said land.

"Third. In not specifically holding that the petitioner has a right to redeem the said land at any time on paying the claimants the sum of P1,000."

The contract entered into between Ceferino Estiva and the spouses Martin Alvero and Josefa Ilagan, on April 12, 1911, in regard to the parcel D described in the application, contains the following clauses: that Ceferino Estiva sells, cedes, and conveys with right of repurchase to the spouses Alvero and Ilagan the parcel of land described in the contract (which is the same one that is described in the application as Parcel D); that a condition of this sale is that Ceferino Estiva could not make use of his right of redemption until the lapse of one year from the date of the execution of the contract; that, after the lapse of this period of one year, Ceferino Estiva could choose between either repurchasing the land, or allowing the spouses Alvero and Ilagan to continue the possession and enjoyment of the improvements thereon until such time as Ceferino Estiva might make use of his right to repurchase the property for the said sum of P1,000.

This contract, according to its terms, is clearly one of sale with right of repurchase. The length of the period of redemption was left at the will of the vendor; but, pursuant to paragraph 2 of article 1508 of the Civil Code, this period must not exceed ten years. By virtue of the terms of said contract, Martin Alvero and his wife Josefa Ilagan took possession of the property sold and held it in usufruct. Ceferino Estiva made no use of his right of redemption.

According to the facts aforesaid, when, on November 5, 1913, Ceferino Estiva applied for the registration in the registry of the parcel D he had already, since April 12, 1911, sold this parcel to the spouses Martin Alvero and Josefa Ilagan. Although the law (Act No. 496, section 19, as amended by Act No. 1108, section 6) authorized Ceferino Estiva to apply for the registration of his property right over the parcel D, in his own name, notwithstanding his already having sold the land under right of repurchase, it was, nevertheless necessary that he should first have obtained the written consent of the purchasers Martin Alvero and Josefa Ilagan, and, in case of their refusal to give him such consent, he should have set forth this sale in his application in order that it might have so appeared in the decree of registration. The petitioner, however, did not obtain nor try to obtain that consent, neither did he set forth in his application nor inform the land court that this parcel D, the registration of which he applied for, had been sold under right of repurchase to Martin Alvero and Josefa Ilagan. So that the land court decreed the registration of this parcel in the name of the petitioner, and did not state that Martin Alvero and Josefa Ilagan had a right in this land, by which omission they were prejudiced. The omission and concealment, knowingly, of an act or of a fact which the law requires to be performed or recorded, is fraud, when such omission or concealment secures a benefit to the prejudice of a third person, as occurs in the instant case.

The petitioner alleges in his defense that the contract entered into between himself and the spouses Martin Alvero and Josefa Ilagan was not one of purchase and sale with right of repurchase, but merely one of loan with mortgage. This contention is absolutely unfounded. The terms of the contract, herein-above cited in extract, are clear and unequivocal and unquestionably indicate that the intention of the contracting parties was to execute a contract of purchase and sale with right of repurchase. Moreover, the price of the sale, P1,000, appears to be just, considering that the property was sold for P3,900 to the spouses Ramos and Garin, together with the parcel C, which latter is more than three times as large in area as the former. In his defense the petitioner also testified, in respect to this contract, that two years after it was executed, Alvero asked him whether he wished to redeem the land, and that the petitioner replied that he had no money wherewith to do so, but would try to get it in order to

effect the redemption; that Alvero then proposed to him that he leave Alvero in possession of the land for two years more, and at the end of this period Alvero would consider the debt as paid. This statement, as being unlikely, can neither be accepted, Alvero, by reason of the contract, was entitled to the possession of the property, and in fact held it, and it was not necessary for him to offer to the petitioner to cancel the debt in exchange for continuing two years longer in the possession of the land, when, at all events, he was possessing it and was entitled to its possession by virtue of the contract. But, even supposing all this alleged by the petitioner to be true, still would it be imperative to conclude that he obtained the decree of registration of this land by fraud. If, two years after the execution of the contract, he and the spouses Martin Alvero and Josefa Ilagan covenanted that these latter should continue for two years more in possession of the land, and that, at the end of this period, the debt would be cancelled, then the debt could be considered as cancelled only after the lapse of four years from the date of the execution of the instrument, or on April 12, 1915, and during these four years what is called a mortgage on the property would continue in force. Then, in accordance with section 19 of Act No. 496, Ceferino Estiva, only on November 5, 1913, could apply for the registration of this parcel of land, previously obtaining for the purpose the written consent of the mortgage creditors or, if such consent had been denied him, he should have set forth in his application that the property was mortgaged, so that this encumbrance might likewise have been recorded in the decree to be issued subsequently. None of these requirements were complied with by the petitioner.

The aforesaid facts fully justify the conclusion of the trial court that the petitioner, through fraudulent means, obtained the decree of registration of the parcel D, pursuant to the decision of November 19, 1914, later amended by the order of April 10, 1915.

The said parcel of land D, mentioned in the application, having been sold first to Martin Alvero and his wife Josefa Ilagan, and later to Alberto C. Ramos and his wife Benita Garin, it must be determined, in accordance with article 1473 of the Civil Code, which of these two married couples is entitled to preference. As neither of the two deeds was recorded, but as Martin Alvero and Josefa Ilagan took possession of the property in good faith immediately after it was sold, its ownership belongs to them. Therefore, the judgment appealed from the lower court, decreeing the registration of the parcel D in the application, in the name of Ceferino Estiva, with the statement that the property is sold under right of repurchase to Martin Alvero and his wife Josefa Ilagan, is in accordance with the law.

The petitioner asks, besides, for a specific finding, in any case, that he is entitled to repurchase the property. We do not deem it proper to make such a finding in these proceedings instituted solely for the registration of the property in question, and not for the declaration of other rights. Even without the finding requested the petitioner is perfectly free to make use of any right he may have, derived from the contract executed by and between himself and the spouses Martin Alvero and Josefa Ilagan.

For the foregoing reasons, whereby the errors assigned by the appellant to the judgment of the court below have been refuted, we affirm the judgment appealed from in so far as it sets aside the judgment of November 19, 1914, as amended by the order of April 10, 1915, and in so far as it decrees the registration of the parcel D mentioned in the application, in the name of Ceferino Estiva, with the statement that this property is sold under right of repurchase to Martin Alvero and Josefa Ilagan. The costs of this appeal are taxed against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Araullo, Street, and Malcolm, JJ., concur.

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