

**RUFINO CEYNAS, ET AL., PLAINTIFFS AND APPELLANTS, VS.
PAMFILO ULANDAY, DEFENDANT AND APPELLEE.***G.R. No. 12700. June 29, 1959*

Ponente: BAUTISTA ANGELO, J.

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On February 22, 1944, Rufino Ceynas and his brothers and sisters executed a deed of sale with right to repurchase of their shares and participation in six parcels of land situated in San Fabian, Pangasinan for the sum of P2,200.00 in favor of spouses Pamfilo Ulanday and Simplicia Fabia. Sometime in July, 1944, the same brothers and sisters obtained from the spouses an additional amount of P800.00 on condition that it should be covered by the same deed of sale with right to repurchase.

On February 20, 1948, Rufino Ceynas instituted an action before the Court of First Instance of Pangasinan for the purpose of having said deed of sale declared as a simple mortgage and of compelling the spouses to accept payment of the equivalent value of the original amount taken by them in Japanese notes thereby declaring their obligation to have been paid in full. This action was dismissed without prejudice on the ground that it was premature.

On May 12, 1953, Rufino Ceynas again filed an action before the same court wherein he reiterated his prayer that the deed with right to repurchase which he and his brothers and sisters had executed, on February 22, 1944 be declared as simple mortgage and that he be allowed to pay the original amount taken by them in its equivalent value under the Ballantyne Schedule and, once paid, the mortgage be deemed cancelled and released. This complaint was amended on February 3, 1955 by including therein the other brothers and sisters who had taken part in the transaction. In the original, as well as in the amended complaint, only Pamfilo Ulanday was made party defendant who, in due time, answered both pleadings setting up the defense that the contract entered into between him and the plaintiffs is one of sale with right to repurchase and not an equitable mortgage and that they had failed to exercise their right of redemption within the period stipulated.

When the case was called for trial, the parties submitted a stipulation of facts to which they attached certain documents pertinent to the issues raised, and on the basis of said stipulation, the court rendered judgment declaring that only Rufino Ceynas can exercise the right to redeem his share in the property sold upon payment of his share in the obligation in the amount of P600.00, with legal interest from the filing of the complaints, and dismissing the complaint insofar as the other plaintiffs are concerned on the ground that they have already forfeited their right of redemption because of their failure to avail of it within the period stipulated. Plaintiffs appealed to the Court of Appeals, but the case was certified to us on the ground that the questions involved are purely of law.

Appellants contend that the trial court erred in dismissing the complaint insofar as they are concerned for the reason that they have failed to exercise their right of redemption within the period stipulated thereby overlooking the fact that their brother Rufino Ceynas has filed an action on February 20, 1948 in his behalf and in

representation of his brothers and sisters praying that the contract they have entered into be declared only as a mortgage and that they be allowed to redeem it by paying the equivalent value of their original obligation. They contend that this action has the effect of tolling the period of redemption.

This contention is untenable, for it clearly appears from the complaint filed on February 20, 1948 and from the stipulation of facts submitted by the parties that the action was brought by Rufino Ceynas alone, or only in his own behalf, and not in representation of his brothers and sisters. The action taken by Rufino Ceynas cannot have the effect of tolling the period of redemption insofar as his brothers and sisters are concerned, nor can it benefit his brothers and sisters even if they have sold jointly their undivided shares in the lands in question for, under the law, Rufino Ceynas can only exercise his right to repurchase insofar as his share is concerned. This can be clearly inferred from Article 1514 of the Spanish Civil Code, which provides "If several persons, collectively and in tile same contract, should sell their undivided realty, reserving the right of repurchase, none of them can exercise this right for more than his respective share" (*Italics supplied*). Unless, therefore, there is proof to the effect that Rufino Ceynas attempted to redeem the whole undivided interest in his behalf and in that of his brothers and sisters, and here there is none, we cannot now conclude that the filing of the action by Rufino on February 20, 1948 has the effect of tolling the period of redemption for all of them.

Appellants next assail the finding of the trial court that the contract entered into between them and defendant is one of sale with right to repurchase and not an equitable mortgage. This claim is without merit. Examining the document Exhibit A, we find that appellants made the following statements: In consideration of the sum of P2,200.00, we "do by these presence, sell, cede and convey by way of Sale With Right of Repurchase to the said spouses, Panfilo Ulanday and Simplicia Fabia, their heirs or assigns, all of our shares, interests and participations in the following described land; * * * that we reserve the right to repurchase said shares, interest and participations in said lands within a period of ten (10) years from the date hereof; * * * and we warrant the peaceful possession, enjoyment and temporary ownership of our conditional vendees within the life of this agreement." These terms can only indicate that the intention of the parties was to enter into a contract of sale with right to repurchase and not an equitable mortgage. Since appellants did not present any parole evidence to show a contrary intention but merely submitted the document Exhibit A, we have no other alternative than to consider the very terms expressed in said document in determining the intention of the parties.

It should be noted that the trial court in determining the amount to be paid by Rufino Ceynas as his share in the redemption price, it took into account the value of the amount stipulated in accordance with the present currency and did not convert it under the Ballantine scale of values, and appellants now contend that this is an error considering that the parties did not specify in their contract the currency under which the repurchase should be made. We do not find any error in this regard, for the court merely acted in accordance with the contract and the jurisprudence on the matter. Thus, under the contract, the vendors were allowed to exercise their right to repurchase within the period of 10 years from the day of execution (February 22, 1944) on Condition that they may exercise their right only after the expiration of the first five years. "This means that their right to repurchase only became vested after the liberation of the Philippines, in which case, following a long line of decisions of this Court, payment can only be effected in accordance with the present currency,

"Accordingly, as decided by the Supreme Court in other cases, where the parties have agreed that the payment of the obligation shall be made in the currency that would prevail by the end of the stipulated period, and this takes place after liberation, the obligation shall be paid in accordance with the currency then prevailing, or Philippine currency (*Roño vs. Gomez*, 46 Off. Gaz., Sup. 11, 339; *Gomez vs. Tabia*, 47 Off. Gaz., 641). Therefore, the present claim should be paid in accordance with the present legal tender or the Philippine currency." (*Londres vs. The National Life Insurance Company of the Philippines*, [2] 94 Phil., 627).

It appears however that under the contract entered into on February 22, 1944, the vendors were given the right to repurchase the property within ten (10) years from said date, which expired on February 22, 1954, or years after the new Civil Code entered into effect (August 30, 1950). And since the purpose of the present action is to obtain a judicial declaration that the agreement entered into between the parties is a simple mortgage and not a sale with pacto de retro, which question was decided in the sense that it is the latter, we are of the opinion that the provisions of Article 1606, paragraph 3, of the new Civil Code may apply to appellants and, therefore, they may be allowed to still exercise the right of redemption within thirty (30) days from the time the judgment may become final. To this effect, we hold that not only Rufino Ceynas but also his co-appellants can exercise the right to redeem their shares in the property in question upon payment of their respective shares in the repurchase price, payment of which shall be made in accordance with the present currency.

Modified as above indicated, the decision appealed from is affirmed, without costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Concepcion, Endencia, and Barrera, JJ., concur.

[1] Article 1612, paragraph 1, new Civil Code.

[2]De Leon vs. Syjuco, Inc. 90 Phil., 311; Ilusorio vs. Busuego, L-882, September 30, 1949; Gutierrez vs. Zarate, et al., L-9631, December 18, 1956; De Villa vs. Fabricante, et al., supra, p. 672.

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