

**LUCIANO VITUG DIMATULAC, PLAINTIFF AND APPELLEE, VS.
DOLORES CORONEL, DEFENDANT AND APPELLANT.***G.R. No. 14132. January 22, 1920*

Ponente: STREET, J.

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The plaintiff in this action, Luciano Vitug Dimatulac, resident of the municipality of Lubao, in the Province of Pampanga, seeks to redeem several parcels of land, with a dwelling-house and other improvements thereon, from a contract of sale with pacto de retro, whereby said property was transferred by the plaintiff on June 30, 1911, to the defendant, Dolores Coronel. The trial judge sustained the action and entered a judgment requiring the defendant to permit the redemption and to surrender Such of the property as is now in her possession. From this judgment the defendant appealed.

It appears in evidence that, upon June 30, 1911, the plaintiff sold the property in question to Dolores Coronel for the sum of P9,000, reserving the privilege to repurchase within the period of five years. The contract contained a provision, commonly found in contracts of this character, converting the vendor into a lessee of the vendee at an agreed rental, payable annually in the months of January and February, and permitting the vendor to retain possession of the property as lessee until the time allowed for repurchase should be past. It was also stipulated that in the event the original vendor (now lessee) should fail to pay the agreed rental for any year of the five, the right to repurchase would be lost and the property consolidated in the vendee.

Under this contract the payment of rent should have begun in the year 1912. The vendor, however, entirely failed in the performance of this obligation and continued in arrears upon account of rent for at least three years. In view of this default Dolores Coronel, the vendee, decided to take advantage of the clause in the contract by which the consolidation of the property was accelerated; and to this end she impleaded Dimatulac in a civil action (No. 1092 of the Court of First Instance of Pampanga) to compel him to surrender the property in question and to pay the pastdue rent. This action was settled by a compromise, which was reduced to writing, approved by the Judge of the Court of First Instance, and entered of record in that action on April 9, 1915. By the terms of this compromise Dimatulac agreed to place at the disposition of Dolores Coronel all the property to which the action related, including the crops already harvested thereon but not yet converted into money; and inasmuch as Dimatulac had already made an agreement with a third person for the sale of the growing cane, Dolores Coronel was authorized to arrange with the buyer as to the price, to receive the proceeds, and to apply the same to the satisfaction of the past-due rent. In conformity with this agreement Dimatulac surrendered to Dolores Coronel the possession of most, but not all, of the parcels in question, including the crops harvested and to be harvested thereon.

Thus the situation remained until in May of the year 1916, when Dimatulac, through his wife, offered to redeem the entire property under the original contract of sale with pacto de retro, the five years named therein as the period during which repurchase might be effected not having as yet expired. This redemption Dolores Coronel refused to concede, on the ground that the title to the property had become absolute in herself. Thereupon the present action was instituted, as already stated, to compel her to permit redemption.

It is undeniable that the clause in the contract of sale with pacto de retro of June 30, 1911, providing for extinction of the right of the plaintiff to repurchase in case he should default in the payment of the rent for any year was lawful. The parties to a contract of this character may legitimately fix any period they please, not in excess of ten years, for the redemption of the property by the vendor; and no sufficient reason occurs to us why the determination of the right of redemption may not be made to depend upon the delinquency of the vendor—now become lessee—in the payment of the stipulated rent. The supreme court of Spain sustains the affirmative of this proposition (decision of January 18, 1900); and although such a provision, being of a penal nature, may involve hardship to the lessee, the consequences are not worse than such as follow from many other forms of agreement to which contracting parties may lawfully attach their signatures. Nevertheless, admitting the validity of such a provision, it is not to be expected that any court will be reluctant to relieve from its effects wherever this can be done consistently with established principles of law.

Considering this clause in the light of a penal provision, or stipulation for the forfeiture of the right to repurchase, it is at once evident that Dolores Coronel, upon the default in the payment of any of the installments of annual rent, had the choice either to avail herself of the forfeiture and take possession of the property as owner or to waive the forfeiture and claim the payment of the past-due rent as a subsisting debt. She could not claim for the rent during the whole period and at the same time assert her ownership to the whole, the two positions being mutually inconsistent. The trial court was, therefore, justified in holding that when provision was made in the compromise agreement of 1915 for the payment of the past-due rent and the claim therefor was recognized as a subsisting debt, Dolores Coronel in effect waived the forfeiture which was incident to the nonpayment of the rent on the date due. She could not insist on the performance of the principal obligation and at the same time exact the penalty (art. 1153, Civ. Code). Furthermore, when she assumed possession of the property, by taking it out of the hands of the former owner, then her lessee, his obligation for future rent ceased. In *Municipality of Moncada vs. Cajuigan* (21 Phil. Rep., 184), it was held that where the lessee was ousted before the expiration of the stipulated period, the landlord could not recover rent from the date of such ouster, even though by the contract the rent was payable prior to the date of the ouster and was then in arrears.

It results from the foregoing that Luciano Vitug Dimatulac, the former owner of the property in question and plaintiff herein, was relieved from the forfeiture resulting from his failure to pay the rent upon the date due; and his right to repurchase must be considered to have been still subsisting when the offer to redeem was made.

Counsel for the appellant insists that the rights of the parties with respect to the property in question were conclusively settled by the compromise agreement effected with the approval of the court in civil case No. 1092, it being supposed that by that agreement Dolores Coronel was recognized as absolute owner. In this we are unable to concur. Any right which Dolores Coronel may have derived from that contract is entirely consistent with the title which she had acquired under the original contract; and there is nothing in the compromise agreement which has the necessary effect of extinguishing the right of redemption. Her possession under this agreement must therefore be considered to be of the same character, and her rights of the same extent, as if she had taken possession at once when the original contract was executed. (Art. 1815, Civ. Code.) It must be admitted that the provision for the lease, under which the plaintiff was permitted to retain possession of the property, was abrogated as a result of the compromise agreement, but it would be an unnecessary and unjust inference to say that the right of redemption created by the original contract had also been destroyed. Every intendment both of law and equity favors the preservation of that right.

As already stated, the plaintiff Dimatulac did not surrender all of the property of Dolores Coronel as he had agreed to do in the compromise of 1915. This circumstance can not affect the solution of this case, and it is immaterial whether he remained in possession of part in defiance of Dolores Coronel or retained it with her

consent. Of course he might be required to account for the value of the use and occupation of the property so retained, prior to the offer to redeem, but his right to redeem within the period limited by the contract cannot be made to depend upon his performance in good faith of the compromise agreement.

What has been said effectually disposes of all the grounds of error assigned by the appellant in this Court. The affirmance of the judgment is therefore appropriate and it is accordingly ordered that the same be affirmed, with costs against the appellant. So ordered.

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

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