

JUANITO FLORIZA, PETITIONER, VS. THE HON. COURT OF APPEALS AND EULOGIO TIAMSON, RESPONDENTS.

G.R. No. 15043. February 27, 1961

Ponente: PAREDES, J.

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PAREDES, J.:

A petition to review the decision of the Court of Appeals, in Case CA-G.R. No. 12439-R dismissing the appeal taken by petitioner from the decision of the Court of First Instance of Rizal dated June 16, 1953, and its order in the same Case, dated September 12, 1953.

Respondent Eulogio Tiamson, on October 6, 1952, filed a petition with the CFI of Rizal for the registration of an Affidavit of Consolidation of Ownership, over a residential lot situated in Angono, Rizal, which he alleged to have bought from Petitioner Juanito Floriza, his brothers and sisters, on February 2, 1950, under a pacto de retro sale, the redemption to take place one year hence. The registration was opposed by the supposed vendors a retro on three grounds: viz: (1) that the transaction was not one of pacto de retro, but an equitable mortgage; (2) that respondent Tiamson collected usurious interest, and (3) that one of the co-owners of the lot, who died, left an heir in the person of Eduardo Reyes. The opposition notwithstanding, the lower court on June 16, 1953, rendered judgment declaring the transaction a pacto de retro sale and ordering the Register of Deeds of Rizal, to register the affidavit of consolidation of ownership. The copy of the judgment was received by the oppositors on June 26, 1953. On July 9, 1953, one of the oppositors herein, petitioner Juanito Floriza, in behalf of the other vendors-a-retro, presented a Motion of the following tenor:

"Comes now the above-named oppositor and all the 'Vendor's-a-Retro', signatories to the document executed by them on February 2, 1950, by their undersigned counsel and before this Honorable Court respectfully moves for the repurchase of the land decreed to be registered in the name of Petitioner by Court order dated the 16th of June, 1958, in view of the provisions of Art. 1606, of the Civil Code, third paragraph, * * *".

The lower court promulgated an Order on September 12, 1953, denying the repurchase, on the premise that Tiamson had already acquired a vested right to the property prior to the effectivity of the new Civil Code which granted the right to repurchase and, therefore, paragraph 3 of Article 1606 thereof, is not applicable to the case at bar.

A motion to appeal as pauper, from the decision declaring the transaction a pacto de retro sale (dated June 16, 1953) and from the order denying the motion to repurchase (dated September 12, 1953), was denied in an order dated October 3, 1953, on the ground that the said decision had already become final. This order was, however, reconsidered in a resolution handed down on October 23, 1953, and the appeal was given due course. The Court of Appeals dismissed the appeal, saying:

"The crux of the problem seem to be whether the thirty-day period granted by the third paragraph of Art. 1606 is dependent upon judicial permission to be granted by a court of justice precisely and expressly in its decision declaring a controverted contract to be a conditional sale and not an equitable mortgage. Stated otherwise, does

the right granted by said third paragraph of Art. 1606 require judicial intervention? Our view is that the said right must be exercised within the thirty-day period without need of judicial mandate or intercession. * * *

In this case before us, therefore, the oppositor, having failed to exercise his right to redemption within the thirty-day period after the decision of the lower court became final, has lost that right irretrievably. * * *".

In the present proceedings, petitioner Floriza alleges that the Court of Appeals erred: (1) In denying him the right to repurchase the property in spite of the fact that par. 3, Art. 1606 of the new Civil Code expressly grants said right; and (2) In considering the share of intervenor Eduardo Reyes as having been legally transferred, notwithstanding the fact that he had not participated in the transaction in litigation.

It results, therefore, that pursuant to a petition filed by respondent Eulogio Tiamson, before the Court of First Instance of Rizal, sitting as a Registration Court, the latter had declared that the transaction in question was a contract of sale with pacto de retro instead of an equitable mortgage, as contended by the petitioner Florida, and ordered the Register of Deeds of Rizal to register the affidavit of consolidation of ownership, over the opposition of petitioner Floriza, and ruled that the share of intervenor Eduardo Reyes was legally transferred, notwithstanding his non-participation in the transaction under consideration. Although not raised in the appeal, being of jurisdictional character, this Court believes that the Court of First Instance of Rizal, sitting as a Registration Court, lacked authority to declare the transaction in question a pacto de retro sale, and to order the Register of Deeds to register the affidavit. Interpreting section 112 of Act No. 496 (Land Registration Act), this Court said, in the case of *Tanganan, et al. vs. Republic of the Philippines*, 94 Phil., 171; 50 Off. Gaz., No. 1, p. 115:

"* * *. We are of the opinion that the lower court did not err in finding that it lacks jurisdiction to entertain the present petition for the simple reason that it involves a controversial issue which takes this case out of the scope of section 112 of Act No. 496. While this section, among other things, authorizes a person in interest to ask the court for any erasure, alteration, or amendment. of a certificate of title 'upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased', and apparently the petition comes under its scope, such relief can only be granted if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident property belongs. Thus, it was held that 'It is not proper to cancel an original certificate of Torrens title issued exclusively in the name of a deceased person, and to issue a new certificate in the name of his heirs, under, the provisions of section 112 of Act No. 496, when the surviving spouse claims right of ownership over the land covered by said certificate.' (*Gimenez vs. Castro*, 40 Off. Gaz. (No. 3, 1st Sup.), p. 80). And, in another case, where there was a serious controversy between the parties as to the right of ownership over the properties involved, this court held 'that following the principle laid down in the decision above cited, the issues herein should be ventilated in a regular action, as was done in the case of *Montilla vs. Jalandoni* (TA-R.G. No. 3133) above-mentioned.' (*Government of the Phil. vs. Jalandoni*, 44 Off. Gaz., 1837.)" (Italics supplied).

There is no gainsaying the fact that the petition under consideration involves controversial issue. There was serious objection on the part of petitioner against the registration of the affidavit for consolidation of ownership. While the respondent Tiamson alleged the transaction to be a sale of pacto de retro, the petitioner Floriza claimed it was an equitable mortgage. While the respondent Tiamson pretended that he could acquire the share of the intervenor Reyes, the petitioner contended that said intervenor should not be prejudiced at all. The controversy should, therefore, be threshed out in an ordinary judicial action.

Considering this view, it is deemed unnecessary to pass upon the questions raised in the present appeal.

The judgment dated June 16, 1953, and the order dated September 12, 1953, appealed from are, therefore, reversed, without prejudice to the rights of the parties to ventilate the questions raised in these proceedings, in the

proper court. Without costs.

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

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