

PATRICIO ALIFIO, PLAINTIFF AND APPELLEE, VS. FORTUNATO ADOVE ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 15990. October 29, 1921

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

In his amended complaint, the plaintiff prays that judgment be rendered herein, making absolute the writ of preliminary injunction issued at the time of filing the original complaint; that he be declared the exclusive owner of the land in question, for the reason that the right of redemption alleged by the defendants was extinguished long ago; and that the defendants be sentenced to pay him the sum of P2,000 as damages, and the costs of the proceeding.

In their [amended] answer, the defendants allege that on May 14, 1906, they sold to plaintiff Patricio Alino with the right to repurchase, for the sum of P1,573, the land described in the complaint, no stipulation having been inserted in the deed of sale that was executed as to the period within which the redemption should be made; that before the expiration of the legal period of redemption, to wit, on May 14, 1915, the defendants tendered to the plaintiff the sum of P1,573 for the purpose of redeeming the said land; that as seven parcels of the land were planted to sugar cane, which were to be milled on the land in the year 1916, the plaintiff entered into an agreement with the defendants whereby the plaintiff was to be allowed to mill the canes in that year, and the defendants would have the right to immediately use and cultivate the lands under cultivation; that after the milling, which was finished in July, 1916, the defendants offered again to redeem the land, tendering the sum of P1,573, but as the plaintiff refused to receive it, the defendants deposited said sum in the justice of the peace court of Balayan at the disposal of the sheriff of the court; that the plaintiff having refused to receive said sum, the defendants pray that he be compelled to accept it and to execute the necessary deed of resale.

The court a quo, in its decision, found:

"That on May 14, 1910, the period allowed to the defendants to repurchase the land in question expired, and, consequently, on May 14, 1915, their right of redemption had prescribed and Patricio Alino's title to the land had become absolute; and it is ordered that the defendants return to plaintiff the land in question, together with the improvements thereon as belonging to him, and to pay the plaintiff the sum of P1,325, which is one-half of the net value of the sugar that could have been obtained from the sugar canes, and the costs. The right is reserved to the workers on shares of Patricio Alino, owners of the milled canes, to bring the proper action against the defendants for the recovery of the sum of P1,325."

We have simplified the points at issue in this case by treating the allegations of the counterclaim and the cross-complaint as defendants' special defense, inasmuch as the action, which was at first an injunction proceeding, now has been converted into an action for the recovery of the title to real property. The allegations of the parties being thus stated, the question that we have to decide is whether or not the right of redemption of the defendants could be exercised on May 14, 1915, the land in question having been sold by them to plaintiff on May 14, 1906, with the right to repurchase, but without specifying the period within which the redemption could be

effected.

The appellants contend that their right of redemption can be exercised within ten years from May 14, 1906, alleging in support of this contention that article 1508 of the Civil Code was repealed by section 40 of the Code of Civil Procedure. Appellants' contention is untenable.

It must not be forgotten that according to article 1508 of the Civil Code, in this kind of contracts the period may be either conventional or legal. The former is fixed by the parties and cannot exceed ten years; the latter is fixed by the law at four years. So that in every case there is always a period within which the right of redemption must be exercised. In the case of *Albert and Albert vs. Punsalan* (9 Phil., 294), this court said: "Where the property is sold under an agreement of pacto de retro, and the right to repurchase is not exercised within the time fixed by the agreement or within the maximum period allowed by the Civil Code when no period is stipulated, the title of the purchaser becomes absolute." In the case of *Buencamino vs. Viceo* (13 Phil., 97), it was held that: "In a contract of sale with a right to repurchase, when no time is specified within which the repurchase must be made, it must be done within four years." (*Alano vs. Babasa*, 10 Phil., 511; *Tuazon vs. Goduco*, 23 Phil., 342; *Facundo vs. Macapagal and Crisostomo*, 30 Phil., 284.)

The fact that in 1915, the defendants tried to repurchase the land, depositing the price of the redemption in the court of the justice of the peace of Balayan, does not affect the question at issue. Even admitting that in 1915, the plaintiff was willing to sell the land to the defendants for the sum stated in Exhibit 2, to wit, P11,415, still it can not be said that there was a novation of the original contract, that is, of the contract of purchase and sale in 1906, inasmuch as the title of the plaintiff to the land became absolute in 1910, and there cannot be novation of a contract that has already been consummated. The new contract not having been perfected because of the defendants' failure to comply with the conditions imposed by the plaintiff in 1915, we are of the opinion, and so decide, that the defendants' contention is groundless.

For all of the foregoing, the judgment appealed from is hereby affirmed, with the costs against the appellants. So ordered.

Johnson, Street, and Avancena, JJ., concur.

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