

ELIGIO GATMAITAN ET AL., CLAIMANTS AND APPELLEES, VS. JUAN NEPOMUCENO, CLAIMANT AND APPELLANT.*G. R. No. 16212. October 27, 1921*

Ponente: JOHNSON, J.

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This is a cadastral proceeding instituted by the Director of Lands on the 10th day of September, 1917, for the purpose of settling and adjudicating the titles to a large tract of land, consisting of 689 parcels or lots, situated in the municipality of Mabalacat, Province of Pampanga. Lots Nos. 581, 622, and 623 are the only ones involved herein.

Said lots were claimed by Eligio Gatmaitan and his coheirs on the one hand, and Juan Nepomuceno on the other. After hearing the evidence adduced by both parties the Hon. Primitivo S. Agustin, auxiliary judge, rendered a judgment denying the claim of Juan Nepomuceno and ordering the lots in question registered in the names of Eligio Gatmaitan and his coheirs, subject to an incumbrance in favor of the said Juan Nepomuceno for the sum of P3,600. From that judgment Juan Nepomuceno appealed to this court.

The facts in this case are clear and indisputable. It appears that on the 21st day of May, 1898, Nicolas Espinosa y Galang, for himself and as attorney-in-fact of his coheirs, the appellees herein, executed, before the notary public Don Adolfo G. Feijoo, a deed (Exhibit C) whereby he, in his said capacity, sold the lots here in question to the appellant Juan Nepomuceno for the sum of P2,700 with the right of redemption ("con pacto de retro") within five years. Since that date (May 21, 1898) the appellantvendee, Juan Nepomuceno, has been in possession of the parcels of land in question through successive tenants. The appellees never made use of the right of redemption by repurchasing said parcels of land from the appellant. It also appears that at various times subsequent to the execution of the said pacto de retro (Exhibit C) the appellees received from the appellant additional sums, aggregating P900, by way of increase of the price of the land in question.

The lower court in its decision said: "From a minute examination of the evidence introduced at the trial, it appears that Juan Nepomuceno's Exhibit C is a deed of sale for the sum of P2,700 with the right of redemption within five (5) years, which was executed by .Nicolas Espinosa on behalf of himself and as attorney-in-fact of the heirs of Camilo Espinosa." (B. of E., p. 28.)

Notwithstanding the above finding, the lower court held that the said document Exhibit C did not contain the true intention of the parties; that the appellees merely intended thereby to convey the land in question to the appellant as a guaranty for the payment of their debt to him. This conclusion of the lower court was based solely upon the testimony of the appellee Eligio Gatmaitan to the effect that he and his coheirs had only authorized Nicolas Espinosa to mortgage the land in question, and that they had understood the transaction to be a mortgage.

Such conclusion of the lower court, based upon such a self-serving and uncorroborated declaration of the appellee Eligio Gatmaitan, is clearly erroneous, in our opinion.

In the first place, the power of attorney (Exhibit D), executed by the appellees in favor of the said Nicolas Espinosa (now deceased), clearly authorized the latter to sell the land in question "con pacto de retro." It empowered the said attorney-in-fact to do and perform the following acts:

"To do and perform extrajudicially all acts necessary to effect the repurchase of the property or properties in which they may have any interest and which may have been mortgaged or sold to third person with the right to repurchase; to borrow money in order to raise the necessary amount, and to carry out said contracts or acts creating such obligations and making such promises as he may deem advisable; and after making or effecting the redemption or repurchase with such stipulations as to time, price and conditions as may be found agreeable, to sell all such properties as may have come from Don Camilo Espinosa and his wife Dona Josefa Galang and distribute the money among all the heirs, giving each one the share to which he is entitled, said attorney-in-fact being hereby authorized to execute publicly or privately an absolute and irrevocable sale or 'with the right of redemption,' or such other stipulation as to any increase to be given or allowed and as to time, price and conditions, as he may deem more advantageous to all parties interested, making the sale either for cash or on time, and executing such documents as are incidental to the acts or contracts that he may do and perform by virtue hereof, with such clauses as their respective nature may require or may have been specifically agreed upon." (Exhibit D, folios 47, 48, Expediente.)

And in the second place, the pacto de retro (Exhibit C), executed by the said Nicolas Espinosa under and by virtue of the power of attorney above quoted, is no less clear and positive in its terms. It recites as follows:

"Third.—Don Nicolas Espinosa y Galang on behalf of himself and that of his coheirs, his principals, in consideration of the sum of two thousand seven hundred pesos to him heretofore paid in silver coin of lawful currency by the other party, Don Juan Nepomuceno y Henson,' receipt whereof is hereby acknowledged, sells to said Juan Nepomuceno y Henson the properties herein described with the right of redemption within five (5) years, binding himself to answer in case of eviction and to warrant the properties according to law, it being understood that the vendee shall be bound to deliver to any one of the coheirs a deed of sale executed in favor of all the coheirs should they repay to said vendee within the stipulated period the amount representing the price of this sale, said 'vendee to become the absolute owner of the properties should said period elapse without the right of redemption having been exercised.'" (Exhibit C, folios 36, 37, Expediente.)

The above instruments (Exhibits D and C), upon which the appellant relies, are so clear and unequivocal that to attempt to interpret or construe them would be to do violence to the plain language therein used and to read supposed intentions into the provisions thereof that are absolutely unwarranted. The uncorroborated and self-serving declaration of Eligio Gatmaitan, as above indicated, is not sufficient to justify the court in declaring that the transaction between the parties was a mere loan with guaranty, in the face of the unequivocal terms of their written agreement.

The present case is almost on all fours with the case of *Manalo vs. Gueco* (p. 925, post), the only difference being that, in the latter case the pacto de retro was not as clear and positive as that in the present case. All the other facts and surrounding circumstances in the two cases are the same. The additional sums given by the vendee to the vendor, the alleged disproportion between the purchase price and the true value of the land, and the attempt of the vendor during the trial of the cause to vary the terms of the contract—all these facts exist and almost coincide in the two cases. Hence our reasons for revoking the decision of the lower court in the said case of *Manalo vs. Gueco*, supra, are peculiarly applicable to the present case, and would fully answer the contention of the appellees herein. In that case we said:

"We are not unmindful of the fact that sales with pacto de retro are not favored, and that the court will not construe an instrument to be one of sale con pacto de retro, with the stringent and onerous effects which follow, unless the terms of the document and the surrounding circumstances require it. (*Padilla vs. Linsangan*, 19 Phil., 65, 68; *Olino vs. Medina*, 13 Phil., 379.) In consonance with this doctrine, we have also decided that

'parol evidence is competent and admissible in support of allegations that an instrument in writing, purporting on its face to transfer the absolute title to property, or to transfer the title with a mere right of repurchase, was in truth and in fact given merely as security for the repayment of a loan.' (Cuyugan vs. Santos, 34 Phil., 100; Rodriguez vs. Pamintuan and De Jesus, 37 Phil., 876; Cuyugan vs. Santos, 39 Phil., 970.)

"In the present case, however, the terms of the contract entered into between the parties clearly show that the transfer of the land in question by the plaintiffs to the defendant was in the nature of a sale with pacto de retro, and the plaintiffs have shown no circumstances whatever which would justify us in construing the said contract to be a mere loan with guaranty.

"In every case in which we have construed a contract to be a mortgage or a loan with guaranty instead of a sale with pacto de retro, we have done so either because the terms of such contract are ambiguous (i. e., capable of being interpreted either as a loan with guaranty or a sale with pacto de retro), or because the circumstances surrounding the execution or the performance of the contract were incompatible or inconsistent with the theory that said contract was one of purchase and sale. (See Olino vs. Medina, 13 Phil., 379.) In the case of Padilla vs. Linsangan (19 Phil., 65 66), the term employed in the contract to indicate the nature of the conveyance of land was 'pledged' instead of 'sold.' In the case of Manlagnit vs. Sanchez Dy Puico (34 Phil., 325), while the obligor used the terms 'sell and transfer with a right to repurchase,' yet in said contract he described himself as a 'debtor' the obligee as a 'creditor' and the contract as a 'mortgage.' In the case of Rodriguez vs. Pamintuan and De Jesus (37 Phil., 876), the person who executed the instrument purporting on its face to be a deed of sale of certain parcels of land, had merely acted under a power of attorney from the owner of said land, 'authorizing him to borrow money in such amount and upon such terms and conditions as he might deem proper, and to secure payment of the loan by a mortgage' on said lands. In the case of Villa vs. Santiago (38 Phil., 157,161), although a contract purporting to be a deed of sale was executed, the supposed vendor remained in possession of the land and invested the money he had obtained from the supposed vendee in making improvements thereon; the value of the land was more than P10,000, whereas the money borrowed was only P2,300; and there were other circumstances connected with the conduct of the plaintiff (the supposed vendee) which justified the court in holding that the transaction was a mere loan. In the case of Cuyugan vs. Santos (34 Phil., 100), the purchaser accepted partial payments from the vendor, and such acceptance of partial payments 'is absolutely incompatible with the idea of irrevocability of the title of ownership of the purchaser at the expiration of the term stipulated in the original contract for the exercise of the right of repurchase.'

"In the present case no indicia or circumstances analogous to those enumerated in the foregoing cases appear from the record before us. The only circumstance pointed out by the lower court in its decision, as incompatible with the theory of purchase and sale, is the alleged disproportion of the price to the value of the land in question. The money obtained by the plaintiffs from the defendant at the time of the execution of the contract in question was only P3,728, whereas the value of the land was estimated at P7,000. In our opinion, this disproportion of the price to the value of the land is not great enough to justify the conclusion that the transaction was a mere loan, in the absence of other circumstances incompatible with the terms of purchase and sale set forth in the contract itself. In the case of De Ocampo and Custodio vs. Lim (38 Phil., 579), we held that the price in a sale with pacto de retro is not necessarily the true value of the land sold.

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"It appears from the record that subsequent to May 19, 1900, the defendant-purchaser, at various times, delivered to the plaintiffs small sums aggregating P85, as 'increase of price' of the land in question; and as late as May 15, 1903, the defendant, apparently, did not yet consider himself to be the absolute owner of said land, for in a communication to Cosme Manalo (one of the plaintiffs) the said defendant referred to said land as his (Manalo's) land. Evidently, the defendant did not know that, under the law, the time within which the plaintiffs could redeem said land at that time had expired. Such attitude of the defendant, as well as of the plaintiffs, was undoubtedly due to the fact that no definite period for redemption was fixed in the contract, other than that such redemption should not be made within two years from date. We are of the opinion, nevertheless, that such

conduct of the defendant, based upon his ignorance of the law, cannot in any way affect the irrevocability of his title to the land in question, which became vested in him by operation of law. The parties might as well have stipulated in good faith that the vendors could repurchase the land in question within a period of twenty years; yet such stipulation, and the conduct of the purchaser in accord therewith, could not prevent the sale from becoming absolute after the lapse of ten years. (Par. 2, art. 1508, Civil Code)."

Our conclusion from all of the foregoing is that the appellees not having made use of the right of repurchase, the title to the land in question had, long before the commencement of these proceedings, become consolidated in the appellant-vendee, Juan Nepomuceno.

Therefore, the judgment of the lower court is hereby revoked, and it is hereby ordered and decreed that a judgment be entered ordering the registration of lots Nos. 581, 622, and 623 in the name of the appellant, Juan Nepomuceno, with the costs of this instance against the appellees. So ordered.

Araullo, Street, Avancena, and Villamor, JJ., concur.

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