

ELIAS GALLAR, PLAINTIFF-APPELLEE, VS. HERMENEGILDA HUSAIN, ET AL., DEFENDANTS. BONIFACIO HUSAIN, DEFENDANT-APPELLANT.

G.R. No. 20954. May 29, 1967

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal directly from the Court of First Instance.

A hectare of rice land in Cabatuan, Iloilo, is the subject of this controversy. On January 9, 1919, Teodoro Husain, the owner, sold this land to Serapio Chichirita for P30, reserving for himself the right to repurchase it within six years. The deed of sale, written in the Ilongo dialect, is contained in a private instrument, the English translation of which reads:

"I, Teodoro Husain, single, of legal age, native and resident of the Municipality of Cabatuan, Province of Iloilo, Philippine Is-lands, because of the amount of Thirty Pesos (P30.00), Philippine currency, that was paid to me by Serapio Chichirita, married to Florentina Muyuela, of legal age, native and resident of this Municipality of Cabatuan, Province of Iloilo, Philippine Islands, hereby declare that I am selling to the aforementioned vendee Serapio Chichirita, his heirs, and the heirs of the latter, my one parcel of rice land at Barrio Salacay of this Municipality of Cabatuan, and its descriptions are as follows:

One parcel of rice land that has a seedling of one cavan of palay, legal measure, bounded on the North, land of Juan Alcayaga, on the East, land of Agapito Suero, on the South, land of Elias Gallar and on the West, land of Juan Mina. The said land was inherited by me from my father who is now dead, Clemente Husain.

"I also declare that we have agreed that if the vendor shall have repaid to the vendee the aforementioned amount of P30.00 within six years from this date, the vendee or his heirs shall execute a document of repurchase in my favor, but if after the said term that he cannot return the aforementioned amount, this document shall be considered absolute and irrevocably consummated and in the meantime the vendee shall be the one to make use of the aforementioned land in accordance with the Ley Hipotecaria.

"In truth whereof, I have signed this document at Cabatuan, 9th of January, 1919.

(sgd.) TEODORO HUSAIN

"Signed in the presence of:

"(sgd.)TOMAS JILOCA (sgd.)EUSEBIO JOCANO"

Teodoro Husain did not redeem the land, although shortly after the execution of the deed of sale, that is, on January 28, 1919, the vendee a retro, Chichirita, transferred his right to Graciana Husain, sister of the vendor a retro, in what purports to be a resale of the land. The following annotation appears on the re-verse side of the deed of pacto de retro sale:

"NOTA: The amount stated above was received by me from Graciana Husain and on my own voluntary will as

redemption (gawad) of the same land, and because of this, I am transferring my rights as stated above to Graciana Husain in the presence of her husband Manuel Catalan, and in truth whereof I have signed at Cabatuan, 28 January, 1919.

Thumb marked

Serapio Chichirita"

(English translation)

Graciana Husain subsequently transferred her rights to the land to appellee Elias Gallar in exchange for one cow. The transaction is recorded in a second note added on the reverse side of the deed of sale. The note reads:

"OTRA NOTA:

"The undersigned Graciana Husain, with the consent and knowledge of her husband Manuel Catalan, has agreed with Elias Gallar that all the rights that belongs to her, or she, Graciana Husain, is transferring to the said Elias Gallar in accordance with that stated in the original with the difference that this transfer is definite because it is their agreement in exchange of one head of cow described in the Certificate of Large Cattle existing in the Office of the Municipal treasurer of this town. And in truth whereof, Graciana Husain signed hereunder together with her husband Manuel Catalan.

"(sgd.) MANUEL CATALAN (sgd.) GRACIANA HUSAIN"

(English translation)

Possession of the land, together with the owner's duplicate of the certificate of title of Teodoro Husain, was delivered on the same occasion to appellee who since then has been in possession of the land.

In an affidavit dated March 6, 1928, Chichirita confirmed the "redemption" of the land by Graciana Husain. In another affidavit of the same date, Graciana Husain for her part confirmed having subsequently sold the land to the appellee.

In 1960, appellee asked the Cadastral Court for the issuance to him of a transfer certificate of title but the court dismissed his petition for lack of jurisdiction. (The court, however, granted appellee's request for the amendment of the certificate of title by changing, the surname of "Osaen" to "Husain.") He, therefore, filed this suit in the Court of First Instance of Iloilo on October 10, 1960 to compel Hermenegilda and Bonifacio Husain, as heirs of Teodoro Husain, to execute a deed of conveyance in his favor so that he could get a transfer certificate of title. He also asked for damages.

In their answer, Hermenegilda and Bonifacio Husain denied the sale and contended that the agreement between their father and Serapio Chichirita was that of a mortgage to secure a loan of P30. They claimed that the mortgage had been discharged on January 28, 1919 when Graciana Husain paid Teodoro Husain's debt to Chichirita. Hermenegildo and Bonifacio Husain likewise invoked prescription to bar appellee's action and asked for damages for the value of palay which they claimed they failed to receive on account of appellee's refusal to return possession of the land to them.

The trial court found that after acquiring the land from Teodoro Husain, Serapio Chichirita sold it to Graciana Husain who in turn sold it to the appellee. Accordingly, it ordered the appellants to execute a deed of conveyance of the land in favor of the appellee on the authority of our ruling in *Sapto v. Fabiana*, 103 Phil., 683.

From this judgment, Bonifacio Husain brought this appeal to this Court. He contends that the land in question, which is identified as Lot No. 766 of the Cadastral Survey of Cabatuan, Iloilo and covered by Original Certificate

of Title No. 4521 of the Register of Deeds of Iloilo, is not the same land which Teodoro Husain sold to Serapio Chichirita on January 9, 1919. According to appellant he raised this question at the trial but the lower court passed it up in its decision. The records on appeal do not disclose that appellant made such a claim. About the only hint that he was questioning the identity of the land sold by means of the deed of sale of January 9, 1919 was an objection to a question during the direct examination of the appellee. Thus the follow-ing appears on pages 20-21 of the transcript of notes taken on July 5, 1961:

"Q According to this Exhibit C, you bought the lot referred to in Exhibit A which is Lot 766 in question, was bought by you for one cow. Do you know how much the worth of your cow during that time?

"ATTY. ESMERALDA [for defendants]

Objection, Your Honor. The question is premised on Lot 766 but the document does not mention Lot 766.

"xxx xxx xxx xxx

"COURT

So your objection is that it lacks basis

"ATTY. ESMERALDA

It lacks basis, your Honor."

Otherwise, the records do not show any allegation made, much less evidence presented, by appellant of the supposed difference in the identity of the land sold in the deed of pacto de retro sale and the land now in question. Indeed, the only defense put up by appellant was that the pacto de retro sale was in reality a mortgage and that, at any rate, appellee's action was barred by the statute of limitations. In so doing, appellant joined issues with the appellee and he will not now be permitted to bring up new matters on appeal as this would constitute changing of theory - so utterly unfair to the adverse party[1] that the lower court deliberately, perhaps, ignored the point. It may be added that an admission that the land described in the deed of sale and Lot No. 766 are one and the same is implicit in appellant's defense that the deed of sale did not express the true intention of the parties.

Still it is argued that no action can be brought on the basis of the deed of sale with a right of repurchase because the land in question was redeemed a few days after it had been sold. While it is indeed true that the first note written on the reverse side of the deed of sale speaks of the "redemption" of the land, there is no evidence to show that the vendee, Graciano Husain, was acting in behalf of her brother Teodoro Husain, in the exercise of the latter's right of redemption. Now, unlike a debt which a third par-ty may satisfy even against the debtor's will[2] the right of repurchase may be exercised only by the vendor in whom the right is recognized by contract[3] or by any person to whom the right may have been transferred.[4] Graciana Husain must, therefore, be deemed to have acquired the land in her own right, subject only to Teodoro Husain's right of redemption. As the new owner she had a perfect right to dispose of the land as she in fact did when she exchanged it for a cattle with the appellee.

Now, when Teodoro Husain failed to redeem the land within the stipulated period, i.e., January 9, 1925, its ownership became consolidated in the appellee. True the successive sales are in a private instrument, but they are valid just the same.[5] By the delivery of possession of the land on April 2, 1919 the sale was consummated and title was transferred to the appellee. Indeed, this action is not for specific performance; all it seeks is to quiet title,[6] to remove the cloud cast on appellees, ownership as a result of appellants refusal to recognize the sale made by their predecessor. And, as plaintiff-appellee is in possession of the land, the action is imprescriptible.[7] Appellant's argument that the action has prescribed would be correct if they were in possession as the action to quiet title would then be an action for recovery of real property which must be brought within the statutory period

of limitation governing such actions.[8]

WHEREFORE, the decision appealed from is affirmed, with costs against appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Castro, JJ., concur.

[1] Quinio v. Muñoz, G. R. No. L-17222, Oct. 29, 1965; Agoncillo v. Javier, 38 Phil. 424 (1918).

[2] Spanish Civil Code art. 1158; Phil. Civil Code article 1236.

[3] Ordoñez v. Villaroman, 78 Phil. 117 (1947)

[4] See Gonzaga v. Garcia, 27 Phil. 7 (1914)

[5] Spanish Spanish Civil Code art. 1278; Philippine Civil Code art. 1356; Irureta Goyena v. Tambunting, 1 Phil. 490 (1902).

[6] Phil. Civil Code article 476.

[7] Sapto v. Fabiana, G. R. No. L-11285, May 16, 1958

[8] Ongsiaco v. Ongsiaco, G. R. No. 1-7510, March 30, 1957; Villanueva v. Villanueva, 91 Phil. 43, 46 (1952) (Bengzon, J., concurring)

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