

**TRANQUILINO GONZALEZ AND HIS WIFE PAZ JAVELLANA,
PETITIONERS, VS. THE HONORABLE FERNANDO SALAS, JUDGE OF
FIRST INSTANCE OF ILOILO, AND TRINIDAD LEDESMA AND HER
HUSBAND IGNACIO A...**

G. R. No 25425. March 20, 1926

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This action was filed originally in this court by the petitioners for the issuance of a writ of certiorari, ordering the clerk of the Court of First Instance of Iloilo to forward to this court for review the record of the proceedings had in the case pending in said court between the petitioners and the respondents.

As grounds for the remedy, it is alleged: (a) That the respondents on November 3, 1925, filed in the justice of the peace court of Iloilo a complaint for unlawful entry and detainer and for the collection of rents at P1,320 per annum, beginning August 7, 1925, until they shall finally vacate the premises, plus the amount of P500 as attorney's fees and costs; (b) that the petitioners filed an answer to the said complaint, denying generally and specifically each and everyone of the allegations of the complaint, and alleging as a especial defense that the court had no jurisdiction over the subject-matter for the reason that the litigation involved title to real property; (c) that after hearing both parties, the justice of the peace of Iloilo declared himself without jurisdiction to hear and try the case, from which ruling the respondents appealed to the Court of First Instance of Iloilo; (d) that the Court of First Instance of Iloilo, notwithstanding the objection of the petitioners to the jurisdiction of the Court of First Instance based upon the lack of jurisdiction of the justice of the peace court itself from which the case had come, held that it had jurisdiction to hear and determine the case, and tried and decided the case upon its merits in an irregular manner and in excess of its authority; (e) that the respondent judge, Honorable Fernando Salas, exceeding his authority and jurisdiction, rendered judgment ordering the herein petitioners to return to the respondents the property in litigation in the shortest possible time, and sentencing them furthermore to pay the respondents the rents due from August 8, 1925, at the rate of P1,320 per annum; and (f) that the respondents, before the judgment of the Court of First Instance had become final and conclusive and without the knowledge and consent of the petitioners, sold the said property in litigation to one C. N. Hodges.

It appears from the record that on August 7, 1923, petitioners sold the property in question to the respondents for the amount of P11,000 with the right of repurchase for the period of one year from said date, it having been stipulated between the parties that during the time for the repurchase the vendors would remain in possession of the premises, as lessees, paying therefor the sum of P1,320 per year as rent. On August 7, 1924, the same contracting parties agreed to renew the contract of sale with the right of repurchase and lease, dated August 7, 1923, in the sense of extending one year more the life of the said contracts, that is, until August 7, 1925, upon the same conditions contained in the contract of August 7, 1923. Since the petitioners have not made use of their right to repurchase within the time agreed upon, the ownership and title of the respondents over the property sold to them was consolidated by operation of law. (*Domeneeh vs. Montes*, 3 Phil., 412; *Joaquin vs. Aragpn*, 4 Phil, 615;

Albert and Albert vs. Punsalan, 9 Phil., 294; Heirs of Jumerio vs. Lizares, 17 Phil., 112; Lichauco vs. Berenguer, 20 Phil., 12; Yadao vs. Yadao, 20 Phil., 260; Tuazon vs. Goduco, 23 Phil., 342; Magayano vs. Gapuzan, 33 Phil., 453; Dorado and Vista vs. Virifia, 34 Phil., 264.)

The complaint for ouster was filed in the justice of the peace court on November 3, 1925, that is, three months after the expiration of the time for repurchase. If petitioners desired to continue in the possession of the property as lessees, it was their duty to pay the amount of rent as agreed upon". Since they failed so to do, the respondents could bring an action against them for unlawful entry and detainer within one year from the date of the demand to pay the rent (Dorado and Vista vs. Virifia, supra). In support of their contention, petitioners cite the case of Falcon and Falcon vs. Barretto (26 Phil., 72). In the case, however, of Alderete vs. Amandoron and Angosto (46 Phil., 488), this court, in connection with the questions at issue in the said case of Falcon and Falcon vs. Barretto, said:

"Upon the facts so stated there can be no question that the conclusions of the court were entirely correct; the case clearly involved questions of ownership over which the justice of the peace had no jurisdiction. But unfortunately, the decision contains certain dicta from which the inference has been drawn that under no circumstances can a vendee under a pacto de retro sale, maintain an action of forcible entry and detainer against the vendor for the possession of the land sold.

"This view is clearly erroneous. A sale with pacto de retro transfers the legal title to the vendee and this, in the absence of an agreement to the contrary, carries with it the right of possession. * * * "

We do not believe, however, that in the instant case any question as to title to the leased property may be raised, for in the answer of the respondents, it is averred that "Dr. Gonzalez (one of the petitioners) testified at the trial in the justice of the peace court that he needed money, and for that reason he agreed to sell the said property with the right of repurchase, instead of mortgaging it only; that his intention was merely to mortgage it, and that when he signed the document, he knew all its contents." The record also contains Exhibits B and C of the petitioners, which are copies of the aforesaid contracts of sale with right of repurchase and lease, executed by these parties, the contents of which are admitted by the said Doctor Gonzalez.

Article 1572 of the Civil Code provides that: "When the sale is made subject to the right of the vendor to repurchase, the vendee may not make use of the right to oust the lessee until after the expiration of the term within which the vendor might have repurchased the property."

This article, however, is of no application to the present case, for as already stated the complaint was filed in the justice of the peace court three months after the expiration of the extended term of the contract of sale with right of repurchase and lease.

Petitioners also complained because the respondents sold the property in question to one C. N. Hodges on November 2, 1925, when the judgment of the Court of First Instance rendered on appeal had not yet become final and conclusive. Since the title of the purchasers, the herein respondents, was consolidated before said date, for the reason that the petitioners did not make use of their right to repurchase in due time, we find nothing in the sale of the property in question made by the respondents to the aforesaid Hodges to justify the issuance of a writ of certiorari for a review of the proceedings.

In the case of Alderete vs. Amandoron and Angosto, supra, it was again held that in a sale with the right of repurchase "where the fact that the transaction is a true sale with pacto de retro is not disputed, the vendee may maintain an action of forcible entry and detainer against a vendor withholding possession, and a justice of the peace may take cognizance of such action if it is brought within the time limit prescribed by law;" and it was further held that "a vendor * * * who remains on the land as a tenant of the vendee, is estopped from denying the latter's right to the possession upon the termination of the lease." Adhering to the doctrine announced in the case

of Alderete vs. Amandoron and Angosto, supra, we are of the opinion, and so hold, that the respondent judge did not exceed his authority nor jurisdiction in trying, on appeal, the case for unlawful entry and detainer commenced in the justice of the peace court of Iloilo by the respondents against the petitioners, and this being so, the remedy prayed for should be, and is hereby, denied with costs against the petitioners. So ordered.

Malcolm, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

CONCURRING

STREET, J.,

I am in accord with the result reached in this case and would have had nothing to say if the court had frankly declared, as I think it should, that the rule laid down in *Falcon and Falcon vs. Barretto* (26 Phil., 72), and followed in *Tiempo vs. Viuda e Hijos de Reyes* (27 Phil., 33), is overruled. In *Alderete vs. Amandoron and Angosto* (46 Phil., 488), the court refused to apply *Falcon and Falcon vs. Barretto*, supra, but instead of overruling it attempted, as I think unsuccessfully, to differentiate it. The time has now come when it seems to me the profession should be given to understand that the doctrine of *Falcon and Falcon vs. Barretto*, supra, is no longer acceptable to the court. The facts of the present case bring it squarely under the doctrine of the case referred to, and in order to make this clear I call attention to the circumstance that the case before us was tried both in the court of the justice of the peace and in the Court of First Instance upon the controverted question of fact whether the document purporting to be a contract of sale with pacto de retro, which gave origin to the litigation, was really a true sale with right of repurchase or was merely intended as security for a debt. That it was a true contract of sale with pacto de retro and ought to operate in that sense was, I have no doubt, satisfactorily shown; but that fact was an issue, and if the doctrine of *Falcon and Falcon vs. Barretto*, supra, should be applied the court of the justice of the peace had no jurisdiction over the action. The circumstance that in the case before us the seller had entered into the usual agreement with the purchaser whereby the former was to remain in possession during the stipulated period of redemption in the character of a mere lessee cannot affect the case in the slightest degree as the action was not started until after the property had consolidated in the purchaser, and the sole title of the plaintiff to possession was derived from the contract of purchase.

It remains to state why I consider the doctrine of *Falcon and Falcon vs. Barretto*, supra, to be erroneous, as I shall proceed to do. Originally this court appears to have started off right by holding in *Joaquin vs. Aragon* (4 Phil., 615), that where the vendor of land by a contract of sale with pacto de retro unlawfully holds over after the consolidation of the property in the purchaser he may be ousted in an action of unlawful detainer instituted by the purchaser in the court of the justice of the peace, supposing the action to be brought within the statutory period. In *Falcon and Falcon vs. Barretto*, supra, the court appears to have fallen into the error of supposing that where a complaint in an action instituted before a justice of the peace states a cause of action for the recovery of possession by such a purchaser, the vendor may defeat the jurisdiction of the court by merely asserting in his answer that the contract of sale with pacto de retro was intended as a mortgage, thereby raising a question of title and creating what was supposed to be an insuperable obstacle to the exercise of jurisdiction by the justice of the peace over the action. The correct doctrine I take to be as stated in *Mediran vs. Villanueva* (37 Phil., 752), namely, that the circumstance that a claim of ownership is made by either or both parties is not conclusive that the case is beyond the jurisdiction of the justice of the peace. If the complaint shows the jurisdictional facts necessary to sustain the action and the remedy sought is merely to obtain possession, the court of the justice of the peace will have jurisdiction for the purpose of giving possession to the plaintiff, if his case be proved, regardless of any claim of ownership put forth by either party. The doctrine stated in *Falcon and Falcon vs. Barretto*, supra, is in my

opinion wrong, and the continued recognition of the case of any extent by this court is bound to be vexatious in the future to both lawyers and courts.

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