

AMBROSIO T. ALOJADO, AS ADMINISTRATOR OF THE INTESTATE ESTATE OF THE DECEASED JUANA MABAQUIAO, PLAINTIFF AND APPELLANT, VS. M. J. LIM SIONGCO ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 27084. December 31, 1927*

Ponente: AVANCEÑA, C.J.

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On October 12, 1907 Juana Mabaquiao sold the land described in the complaint to Nicolas Alegata for the sum of P7,744. After the death of Nicolas Alegata, proceeding for the settlement of his estate was instituted, and on October 23, 1913 his property, which included that purchased from Juana Mabaquiao, was adjudicated to Lim Kang Sang and Lim Eng Teeng, his only heirs. On November 11, 1913 they sold this land to Lim Ponso & Co., with the right to repurchase for the period of one year, which period expired without this right having been exercised. On February 15, 1918 Lim Ponso & Co. transferred this land unconditionally to Lim Siongco and Lim Kingko.

Upon the death of Juana Mabaquiao, proceeding for the settlement of her intestate estate were also instituted in which Ambrosio T. Alojado was appointed administrator. The latter, in said capacity, now brings this action against Lim Sionco, Lim Kingko and Lim Ponso & Co. and prays that he be declared the absolute owner of this land with the improvements thereon, and that the defendants be ordered to restore and respect his right of ownership, possession and usufruct of the property; and, moreover, that other pronouncements be made as prayed for in his complaint. The court absolved the defendants from the complaint and plaintiff appealed from this judgment.

The plaintiff contends that the contract executed by Juana Mabaquiao with Nicolas Alegata on October 12, 1907 was not a contract of sale with the right to repurchase, but a contract of antichresis. This contention is untenable. From the terms of the contract it is clearly a sale with the right to repurchase. It speaks in unequivocal terms of a sale and the conveyance of land with the right to repurchase, and the character of the contract is that of a sale with the right to repurchase. The contract is very defective in its wording, especially so where it refers to the period within which to exercise the right to repurchase. But, examining it as a whole, it clearly appears that it was the parties' intention that the vendor could repurchase the land without delay when he had the means to pay the purchase price. What characterizes a contract of antichresis is that the creditor acquires the right to receive the fruits of the property of his debtor with the obligation to apply them to the payment of interest, if any is due, and then to the principal of his credit. Nowhere in the contract in question does this character of a contract of antichresis appear. The only substantial thing agreed upon between the parties was that Juana Mabaquiao could repurchase the land when she had the means. The decision of this court in the case of *De la Vega vs. Ballilps* (34 Phil., 683), which the appellant invokes in support of his contention, is in no way applicable. That case dealt with a contract called mortgage by the parties and the court held that in reality it was contract of antichresis. But in the contract in that case it was agreed that the debtor assigned and transfer the ownership and possession of the land

to the creditor for his management and enjoyment as a profit from the amount for which it had been mortgaged. This agreement, which characterizes the contract of antichresis, does not exist in the instant case.

An attempt was made, by the testimony of Eulogia Espanola, Juana Mabaquiao's granddaughter, to prove that the contract entered into between Juana Mabaquiao and Nicolas Alegata, was that Mabaquiao, or any of her heirs, might recover possession of the land any time upon the payment of P7,744, and that while this remained unpaid the land would continue in the possession of Nicolas Alegata, with the obligation to deliver one-fifth of the products therefrom to Mabaquiao. Eulogia Espanola testified having been present when the contract was entered into. Against this declaration the witness Vicente Gomez was presented, who also stated that he was present at the time the contract was entered into and contradicted Eulogia Espanola's testimony and, furthermore, stated that the latter was not present then. The evidence is of such a character as not to justify in any manner the alteration of the clear terms of the document in the sense that it expresses a contract of sale.

This action was brought in January, 1922, fifteen years after the contract was entered into. This being a sale with the right to repurchase, the question, after this lapse of time, is reduced to whether or not the title to the land conveyed by Juana Mabaquiao has been consolidated. The contract, as has been noted, fixes the period for the exercise of the right of redemption until Juana Mabaquiao, or her heirs has the means. Whether or not this is considered a period, it is clear that the title transmitted to Nicolas Alegata has been consolidated. According to article 1508 of the Civil Code, when no period of redemption is fixed it shall last four years, and if it is fixed, it shall not exceed ten years. The right of redemption not having been exercised within the period of ten years, the title of Nicolas Alegata, or his heirs, has by this fact alone been consolidated at any events.

Considering the case from this point of view, the appellant argues that, as it was never the intention of the parties that, after a certain period, the land could not be repurchased by the vendor, the contract cannot be one of sale with the right to repurchase, because it conflicts with the nature of this contract, an essential element of which is the right of the purchaser to consolidate his title immediately after the period of redemption has passed.

Another contention of the appellant is that if the right of redemption in this case is considered null after ten years, this nullity must likewise affect the sale itself. These questions have been resolved by this court in the case of *Yadao vs. Yadao* (20 Phil., 260). In that case the contract contained a stipulation that the vendor could repurchase the land any time he had the money, it being understood that he could not exercise this right of redemption after ten years, and not having done so within that period, the court held that the vendor irrevocably acquired title to the land. In that case, notwithstanding the fact that the right of redemption after ten years had been declared null, the sale itself, however, was considered valid and the title acquired thereunder consolidated; and that is because the stipulation to repurchase is accidental to a sale and may be made at the will of the parties. A contract of absolute sale may be made without this stipulation. It seems logical that if this stipulation is made and it is declared null, its nullity cannot affect the sale itself since the latter might be entered into without said stipulation.

The judgment appealed from is affirmed, with the costs against the appellant. So ordered.

Johnson, Street, Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ. concur.

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