

**PRIMITIVO PAGUIO ET AL., PLAINTIFFS AND APPELLANTS, VS.
TOMASA MANLAPID ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 27235. December 29, 1928*

Ponente: AVANCEÑA, C.J.

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During her lifetime Maria Monzon was the owner of a certain parcel of land with the certificate of title No. 962. On November 23, 1914, she sold it to Felipe Banzon by a private instrument for P2,000, subject to right of repurchase without any definite period, and this instrument she later ratified before a notary on December 29, 1915.

After she died, her children, the present plaintiffs, filed this action praying that that deed of sale with right to repurchase be declared a mere mortgage.

Prior to this suit, Tomasa Manlapid and others had instituted an action for unlawful detainer of this land against Eusebio Paguio, the father of the plaintiffs herein; judgment was rendered in favor of the defendant and upon appeal, was affirmed by this court.[1] Plaintiffs herein likewise pray that that judgment on possession be set aside because the action was brought in bad faith, and the trial court was without jurisdiction to try it.

The appealed judgment absolved the defendants from the complaint.

The only question for our decision is, to our mind, whether the contract upon this land entered into by and between Maria Monzon and Felipe Banzon, the predecessor in interest of the defendants, was a sale with a right to repurchase or merely a mortgage. In our opinion it was a sale. The terms of the instrument are clearly and unequivocally to that effect. There is nothing in the record to justify our construing that contract as a mere mortgage in the face of its plain terms. The appellants attempted to present two documents, one signed by Y. M. Valero and the other by Encarnacion Tuason which the court below did not admit, to show that certain amounts were paid as interest on account of that contract. We believe the trial court did right in refusing to admit these documents, for not having been signed by Felipe Banzon or his representative, or by the administratrix of his property after his decease. It must be borne in mind that after the sale of this land Maria Monzon, the vendor, remained in possession as a lessee, and the appellees hold that the amounts she paid were rents and not interest. The fact that these amounts were actually received by Felipe Banzon during his lifetime, and by the administratrix of his estate after his death, does not show that they were received as interest, although the receipts issued so state, since they were not signed either by Felipe Banzon or by the administratrix. While it is true that the plaintiffs have presented evidence to show that the issuance of these receipts was ordered by Felipe Banzon, during his lifetime, and by Tomasa Manlapid, his widow, after his death, yet there is no evidence that they gave directions that receipt be issued expressly acknowledging receipt of said amounts as payment of interest.

The appellants assert that the appellees did not testify, according to their contention, that the sums paid were for rent and not interest. This is correct. But the appellees presented other evidence to this effect, which, although it was presented in the other case for unlawful detainer was, nevertheless, adduced as evidence in the instant case.

(Exhibit O.) We may add that the appellant Eusebio Paguio himself, in his testimony in the other case which was also presented as evidence in the present one, while he stated that the amounts paid were interest, yet did not seem to be sure on this point, for in other paragraphs he stated that the contract was a sale, and that the instrument dated November 23, 1914, expressed the real contract.

We do not consider that the attempted compromise made in this case, which has not been carried into effect, supports the plaintiffs' contention.

The judgment of this court in the case of unlawful detainer of the same land, mentioned at the beginning, held that the instrument of November 23, 1914 really evidenced a sale with the right to repurchase, and not merely a mortgage. With respect to Eusebio Paguio; who was a party to that, such ruling is *res adjudicata*. Although the same cannot be said of the other appellants, who were not parties therein, yet, we cannot but consider that the evidence which justified that ruling, is also evidence in the case before us. But even without taking into account that judgment of the trial court which was affirmed by this court and confining ourselves to the merits of the case at bar, we find that said instrument did in fact evidence a sale and not a mere mortgage. For this reason, there is no need to consider the other questions raised by the appellants with respect to that judgment, which was rendered with jurisdiction and there is no evidence that it was obtained by fraud.

The fact that, after the sale and during the legal period of redemption, that is, on October 2, 1915, during the hearing of the cadastral case in which this land was claimed by Maria Monzon, and that on October 5, 1917, when the proper decree was issued in her favor, Felipe Banzon did not appear to have this sale recorded, affects neither his rights nor those of his heirs. In the case of *Cabanos vs. Register of Deeds of Laguna and Obiñana* (40 Phil., 620), which is a similar case, this court held:

"However, the contract of sale with *pacto de retro* entered into between the parties still subsists without any alteration, nor has it been rescinded by the certificate of title subsequently obtained by the vendor over the lands sold, inasmuch as the issuance in his favor of said title does not destroy the validity of the executed contract and does not exempt him from the obligation of complying with it in accordance with the provision of articles 1446 et seq. of the Civil Code, for it would then be highly unjust that the defendant, who received the price of the sale of the lands sold, would still remain with said lands thereby enriching himself at the expense and to the great prejudice of the purchaser. The registration of the lands already sold by the vendor cannot serve him as a protecting mantle to cover and shelter his bad faith to the prejudice of the innocent purchaser.

"Said purchaser has no right to institute a real action for the recovery of said lands based upon the consolidation of his ownership thereof due to vendor's failure to exercise the right of repurchase for the latter subsequently obtained the registration; but the purchaser notwithstanding the title obtained by the vendor, has a right and a corresponding subsisting personal action, also arising out of the same contract of purchase and sale, to ask for its compliance and the delivery of the lands sold, after the execution of a document of the absolute sale thereof, which should be annotated in the certificates of title issued to the vendor, the latter being bound on his part to deliver these certificates to the purchaser who thereby becomes the owner of the lands sold, there being no lawful or just reason authorizing the vendor to retain them in his hands after having received their purchase price from the purchaser who claims them with more than sufficient right."

Furthermore, the petition for a new trial on account of the discovery of new evidence must be denied because such evidence is immaterial.

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

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

[1] Manlapid vs. Paguio, G. R. No. 23876, promulgated November 7, 1925, not reported.

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