

**LEONA RAMOS ET AL., PLAINTIFFS AND APPELLANTS, VS.
FRANCISCO ICASIANO ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 27245. December 31, 1927*

Ponente: AVANCEÑA, C.J.

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This action was brought to compel the defendants to sell the land described in the third paragraph of the complaint to the plaintiffs. The judgment appealed from absolved the defendants from the complaint.

On May 24, 1889, Gregorio Ramos and his wife Vicenta Fajardo sold the land in question to the spouses Pastor Villarica and Leonor Reyes, with the right to repurchase for the exercise of which no term was fixed. About the year 1903 Vicenta Fajardo having obtained the consent of the spouses Villarica and Reyes to repurchase this land, redeemed it with money supplied by Francisco Icasiano. That year Fajardo sold the same land to Francisco Icasiano, also with the right to repurchase for the period of fourteen years, charging Icasiano with the duty of drawing up the proper document. This document, however, was not drawn up until after Fajardo's death, which was done shortly after. But before his death, Fajardo executed a will on October 18, 1903, the third and fourth clauses of which are as follows:

"I leave at present a fishery belonging exclusively to me located at the place known as 'Malapad na Balot' in the barrio of San Nicolas of this town of Bulacan, which I sold to Mr. Francisco Icasiano for the sum of five thousand pesos, local currency, with the condition that either I or my heirs shall be entitled to repurchase it from the said Mr. Icasiano or his heirs within the period of ten years. The proper document of sale of this fishery has not as yet been drawn up, but I have long since delivered the documents I had concerning the said fishery to the aforementioned Mr. Icasiano.

"Mr. Francisco Icasiano has already turned over to me the said amount of five thousand pesos, local currency, the price of the sale of the said fishery, but we have also laid down the condition that should I need it, I could take one thousand pesos, local currency, in which case the period is to be extended to fourteen years. My aforesaid children will be at liberty to accept said condition to extend the period to fourteen years for the said sum of one thousand pesos, local currency, from Mr. Icasiano, in case of my death."

This will was introduced by the plaintiffs as evidence, and they contend that it expresses the true transaction between Fajardo and Icasiano.

After Fajardo's death, certain differences arose between his heirs and Francisco Icasiano in regard to the right to repurchase this land, as a consequence of which Icasiano executed the document Exhibit 5 on August 5, 1905, recognizing the right of Fajardo's heirs to repurchase the land after fourteen years.

Subsequently, on August 19, 1918, Icasiano conveyed his rights to said land to Nieves Ramos and Ramon Meneses. The principal question involved in this appeal is whether or not the plaintiffs, as Fajardo's heirs, are still entitled to repurchase the land.

Plaintiffs contend that defendants' obligation to sell them the land arises from a contract of a promise to sell. To

this end, they argue that their right to repurchase by virtue of Exhibit D, of August 3, 1905, was agreed upon after the sale of the land by Fajardo to Icasiano on October 18, 1903, and that therefore it cannot be treated as a right reserved by the vendor to himself at the sale, which is the conventional redemption defined in article 1507 of the Civil Code. But, this right of the plaintiffs to repurchase recognized by Icasiano in Exhibit D is the same one that Fajardo reserved to himself in selling the land to Icasiano in 1903. The purpose of Exhibit D, in 1905, was not to extinguish this right of redemption agreed upon in 1903, but simply to modify its exercise, so that it was not to be exercised until after fourteen years, instead of within fourteen years, as was the case before. An agreement to repurchase becomes a promise to sell when made after the sale, because when the sale is made without such an agreement, the purchaser acquires the thing sold absolutely, and if he afterwards grants the vendor the right to repurchase, it is a new contract entered into by the purchaser, as absolute owner already of the object. In that case the vendor has not reserved to himself the right to repurchase. But, in the present case, Icasiano never acquired, not even for a moment, the absolute ownership of the land, inasmuch as when he bought it from Fajardo, the latter reserved to himself the right to repurchase it which right was never extinguished, but was only modified as to the manner of its exercise in the transaction between Icasiano and Fajardo's heirs. Hence, juridically the transaction between the appellants and appellees is a sale with a right to repurchase, the exercise of which has been suspended for fourteen years. This is exactly the same case as that of Santos vs. Heirs of Crisostomo and Tiongson (41 Phil., 342). That case dealt with a sale with right to repurchase, wherein it was stipulated that the thing sold could not be repurchased until after ten years. The court, examining the effects of this stipulation, said:

"When the stipulation in question is examined, it will be discovered that the intention of the parties was to suppress the exercise of the right of repurchase for, the full period of ten years from the date of the contract and, inferentially, to allow the exercise of that right after the expiration of ten years. In the second paragraph of article 1508 of the Civil Code it is in effect provided that if there should be an agreement with respect to the time of repurchase, the period, shall not exceed ten years. The stipulation under consideration offends against this provision in two particulars, namely, (1) in providing that the right to repurchase may be exercised after ten years shall have elapsed, and (2) in prohibiting the exercise of the same right during the whole period when, according to the statute, it might be lawfully exercised.

"The stipulation is, therefore, illicit; and the result is that the right of repurchase could in fact, under the second paragraph of article 1508 of the Civil Code, have been exercised in this case at any time after the making of the contract and prior to the expiration of ten years. The law must here control over the revealed intention of the parties.

"In what has been said we do not mean to declare that the parties to a contract of sale with pacto de retro cannot under any conditions lawfully suspend the exercise of the right of repurchase. Doubtless they may do so, provided there remains an appreciable space of time for the exercise of the right within the limitation allowed by law. For instance, if it were provided that repurchase should not be effected before five nor after ten years from the date of the contract, we see no reason for supposing the stipulation to be unlawful, it is different where the parties attempt totally to suppress the right during the whole period when it might lawfully be exercised."

According to the doctrine laid down in that case, the appellants are no longer entitled to repurchase the land because the period fixed by article 1508 of the Civil Code for the exercise of this right has already elapsed, the provisions of Exhibit D notwithstanding.

The appellants assign other errors with reference to rulings of the lower court, preventing them from introducing evidence to establish their contention regarding the real facts of the case. As our decision is based on the same facts upon which rests the appellants' contention, there is no reason to consider these errors.

The appellants also assign other errors which should have importance only in case the judgment appealed from is

reversed, and in view of the conclusion at which we have arrived, we abstain from considering them.

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

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

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