

GREGORIO GARCIA, PLAINTIFF AND APPELLANT, VS. MARCELO DONCILLO ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 31291. October 28, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

Gregorio Garcia appeals to this court from a judgment of the Court of First Instance of Bulacan, the dispositive part of which is as follows:

"Wherefore, the defendants Francisca Mistica, Marcelo Doncillo and the spouses Melecio Alarilla and Petrona Alcaraz are hereby absolved from the complaint; and the action is dismissed in so far as it prays for the cancellation of the transfers and conveyances made by Alejandro Andrade in favor of Francisca Mistica, Marcelo Doncillo and the spouses Melecio Alarilla and Petrona Alcaraz, declaring their titles to the parcels of land purchased by them, valid and final, being as they are, in possession of their respective transfer certificates thereto. In justice and fairness to the plaintiff, however, judgment is hereby rendered in his favor, ordering the defendant Alejandro Andrade to pay him the sum of P9,877.57, with interest from the filing of the complaint with this court on August 24, 1926. Alejandro Andrade is likewise ordered to pay the costs of this instance.

"It is so ordered"

The following facts were proved at the trial without discussion:

On June 17, 1923, the defendant Alejandro Andrade received the sum of P8,000 from the plaintiff as the anticipated price of one-half of a parcel of land situated in the municipality of Anao, Province of Tarlac, with the stipulation in the deed, Exhibit A, executed for that purpose, that the sale would be perfected on June 17, 1924, the date upon which the litigation of Andrade over the land in question, which is the Anao Cadastre, was supposed to terminate. It was also stipulated in the contract, Exhibit A, that, if the aforesaid sale to the herein appellant of one-half of said land was not made within the aforesaid period, Andrade bound himself to return the said sum of P8,000, without interest, to said plaintiff. To guaranty the compliance of his obligation contracted by virtue of said contract, Andrade pledged the lands here in question as a security therefor. On June 3, 1924, that is, fourteen days before the expiration of the stipulated period in said contract Exhibit A, Andrade executed a deed of sale in favor of the herein appellant of the lands which were the subject matter of the former contract, with the stipulation that the vendor would repurchase the sale within three years from the date of the execution thereof, that is, the period for the repurchase would expire on June 3, 1927.

This deed of conditional sale was recorded in the registry of deeds of Bulacan on November 4, 1924. It was also stipulated therein that the lands were subject to a lease during the period of repurchase, at an annual rental of P1,481.74.

Pending the period of repurchase, Alejandro Andrade applied for and succeeded in securing the registration and inscription in his name of the parcels of land sold to the plaintiff, in registration case No. 452, record No. 25514, and a decree was issued in his favor on October 14, 1924, as well as certificate of title No. 979, on December 19th of the same year, without the knowledge and consent of Gregorio Garcia, and without stating in his application the sale with pacto de retro in the latter's favor of the six parcels of land-

On January 15, 1925, Andrade executed a deed of sale with pacto de retro of the aforesaid six parcels of land in favor of Melecio Alarilla for the sum of P5,000, annotating said sale on certificate of title No. 2087. Later, that is, on April 28, 1926, Melecio Alarilla executed another deed of resale of the same parcels of land in favor of Alejandro Andrade, which deed was also annotated on certificate of title No. 979.

On April 28, 1926, the date of the resale, Alejandro Andrade executed a deed of absolute sale of lot No. 6 in favor of Petrona Alcaraz, wife of Melecio Alarilla, for the sum of P1,000. Some days later, that is, on May 12, 1926, Alejandro Andrade executed another deed of sale of lot No. 3 in favor of said Petrona Alcaraz, for the sum of P2,800.

On the same date, April 28, 1926, Alejandro Andrade executed a deed of sale of lots Nos. 4 and 5 in favor of Francisca Mistica for the sum of P4,200.

On May 12, 1926, Alejandro Andrade also executed a deed of absolute sale of parcels 1 and 2 in favor of his father-in-law, Marcelo Doncillo, for the sum of P1,000.

The pertinent part of section 19 of Act No. 496, as amended by section 6 of Act No. 1108, provides as follows:

"SEC. 19. Application for registration of title may be made by the following persons, namely:

* * * * *

"But the authority given to the foregoing four classes of persons is subject to the following provisos:

* * * * *

"(b) That a mortgagor shall not make application without the consent in writing of the mortgagee.

* * * * *

"(e) Instruments known as pacto de retro, made under sections fifteen hundred and seven and fifteen hundred and twenty of the Spanish Civil Code in force in these Islands, may be registered under this Act, and application for registration thereof may be made by the owner who executed the pacto de retro sale under the same conditions and in the same manner as mortgagors are authorized to make application for registration.

"But, notwithstanding the foregoing provisos, if the holder of a mortgage upon the land described in the application, does not consent to the making of the application, it may be entered nevertheless and the title registered subject to such mortgage, which may be dealt with or foreclosed as if the land subject to such mortgage had not been registered. But the decree of registration in such case shall state that registration is made subject to such mortgage, describing it, and shall provide that no subsequent certificate shall be issued and no further papers registered relating to such land after a foreclosure of such mortgage."

If, according to the law, the vendor with pacto de retro must secure the consent of the vendee to register his title, and in case of the latter's refusal the Vendor must have said lien appear in his application, the fact that he applied for and secured the registration of the six parcels of land and the issuance of the corresponding certificate of title in his favor, without complying with said requisites of the law, constitutes fraud, and said vendee with pacto de retro may compel the aforesaid vendor to make a record of said lien in his certificate of title. (Cabanos vs. Register of Deeds of Laguna, and Obimana, 40 Phil., 620.)

In dismissing the complaint filed by Gregorio Garcia in so far as it prays for the cancellation of the transfers or conveyances made by Alejandro Andrade in favor of Francisca Mistica, Marcelo Doncillo and the spouses Melecio Alarilla and Petrona Alcaraz, the lower court found that said defendants acquired their rights to their respective parcels of land in good faith, and without knowledge of the fraud on the part of Alejandro Andrade in securing his title as well as in the issuance of the corresponding certificate.

In the motion for a new trial filed by the appellant in the lower court, it is alleged that the defendants Marcelo Doncillo, Francisca Mistica and the spouses Melecio Alarilla and Petrona Alcaraz knew that the parcels of land purchased by them were sold with pacto de retro to the herein plaintiff-appellant, Gregorio Garcia. Said allegation is supported by the affidavits of witnesses who, should the motion for a new trial be granted, would testify as to the knowledge of the said defendants of the existence of said sale with pacto de retro when they acquired the parcels of land in question.

The plaintiff-appellant, Gregorio Garcia, having the right, as we have stated, as vendee with pacto de retro of the aforesaid six parcels of land, to compel Alejandro Andrade by judicial order, to have his right of ownership noted in the certificate of title issued in favor of said Alejandro Andrade, he likewise may compel the defendants, as vendee of the rights of Alejandro Andrade by judicial order to note his right of ownership in their respective certificates of transfer of title, if it is proven at the new trial that said defendants were aware of said sale with pacto de retro at the time they [purchased the aforesaid parcels of land, and therefore acted in bad faith. (*Angelo vs. Director of Lands*, 49 Phil., 838.) There is no doubt that after one year from the issuance of the decree of registration by the General Land Registration Office, no legal remedy exists for the review of said decree, but the vendor with pacto de retro who succeeded in registering the land sold without stating the right of the vendee in his certificate of title, may be compelled to note said right therein; and the vendees of the rights of the vendor with pacto de retro by virtue of said certificate of title, who were aware of the rights of the aforesaid vendee with pacto de retro, may likewise be compelled to note said rights of the vendee with pacto de retro in their respective certificates of transfer of title, inasmuch as the act does not have the effect of reviewing the decree but only of compelling the assignee of a Torrens title who knew of the fraud committed by the assignor at the time of the assignment, to do or to permit to be done in his title that which his assignor was bound to do or to permit to be done. The Land Registry Law protects a purchaser in good faith, but not one in bad faith.

It having been proved prima facie by the affidavits accompanying the motion for a new trial in support thereof, that the herein defendants and appellees are not purchasers in good faith of the parcels of land in question, and it appearing that the evidence is newly discovered and would probably change the result of the case, said motion should be granted.

Wherefore, the judgment appealed from is hereby set aside, and it is ordered that the case be remanded to the lower court for a new trial, to enable the plaintiff-appellant to present his newly discovered evidence as to the knowledge of the defendants-appellees of the existence of the sale with pacto de retro of the six parcels of land in question in his favor at the time of the assignment thereof, without prejudice to the right of the defendants-appellees to present any evidence which they may deem fit to refute that of the plaintiff-appellant regarding the alleged fraud, with costs against the appellees. So ordered.

Avanceña, C. J., Johnson, Street, and Johns, JJ., concur

Villamor, J., dissents.

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