

EUSEBIO CABIGAO, PLAINTIFF AND APPELLEE, VS. IGNACIO VALENCIA, DEFENDANT AND APPELLANT.

G.R. No. 31448. October 10, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

Ignacio Valencia appeals from the judgment of the Court of First Instance of Bulacan in not ordering the plaintiff-appellee to refund to him the sum of P159.70, paid by him as land tax, as a condition precedent to the repurchase of the land in question, in accordance with the provisions of article 1518 of the Civil Code.

In support of his appeal, the appellant assigns the following alleged errors committed by the lower court in its judgment:

"1. The lower court erred in holding that the (owner) vendor in a sale with pacto de retro of a parcel of land is not under obligation to refund or reimburse the vendee therein the sum paid by the latter as land tax during the pendency of the contract, in accordance with article 1518 of the Civil Code.

"2. The lower court erred in overruling the demurrer interposed by the defendant to the complaint." The pertinent part of article 1518 of the Civil Code provides as follows:

"ART. 1518. The vendor cannot exercise the right of redemption without returning to the vendee the price of the sale, and furthermore:

* * * * *

"2. The useful and necessary expenditures incurred upon the thing sold."

It will be seen that what the law requires is that before the vendor may exercise the right of conventional redemption, he must return to the vendee, among other things, the useful and necessary expenditures incurred upon the thing sold. The payment of the land tax is far from being: an expenditure incurred upon the thing sold. The land tax is a charge against the owners of urban and rural property to help in the expenditures of the Government in maintaining order and in protecting the rights of said property owners. According to article 1511 of the Civil Code, the vendee as subrogated to all the rights and actions of the vendor in sales with pacto de retro; in other words, the vendee becomes the owner of the thing sold while the vendor has not repurchased it. If the vendee is, therefore, the owner of the thing sold while the period of redemption lasts, and he is the one who takes advantage thereof and of its fruits; and if the object of the land tax is to contribute to the expenses of the Government in the protection of his rights, it is but just that he should bear said charge.

In this connection, Manresa, in volume IV, page 258 of his Commentaries on the Civil Code, commenting on the contrary doctrine laid down by the Supreme Court of Spain in its decision of May 29, 1882, says the following:

"IS THE PAYMENT OF THE LAND TAX A NECESSARY EXPENDITURE?—This question is generally solved on the assumption that the land tax is an incumbrance upon, or charge against, the net income of the property and not against the property itself, for which reason by the strict law of equity, the same must be paid

by the one receiving its fruits.

"The decision of May 29, 1882, held that the payment of the taxes upon property in one's possession is a necessary expenditure.

"We do not agree with this doctrine nor with its ground.

"The payment of the tax is necessary; but not in the sense that the law defines necessary expenditures. The thing itself is neither impaired nor destroyed by the nonpayment of this expenditure. If the possessor does not make any quarterly payments, the property may be attached and sold at public auction. The possessor may lose it and cease from its possession, but the property will neither be lost nor impaired. The possessor who pays complies with his duty, thereby assuring his possession; but with this payment the property is not altered in the least. Nor can it be said that it refers to the lawful defense of the thing, and that in this sense there exists a necessary expenditure. Nobody questions the right of the possessor, and if he is deprived of the thing, it is he, on the contrary, who questions the legal right of the State to require all persons under its care and protection to pay taxes.

"The Code agrees with this doctrine: the payment of the land tax is neither necessary nor useful, nor purely for ostentation or pleasure; it is a charge against the property and as such must be considered included in the second paragraph of article 452. It would be absurd to require the payment of that charge of a person who does not derive any benefit from the property.

"The property is in reality subject to the payment of the tax; there is a legal mortgage on it; it is immaterial that for the imposition of the charge the benefit derived is taken into consideration. Carefully considered, that same benefit is what is taken as a basis for the assessment, although the annuity affects the property. The essential thing is that this expenditure is not incurred for the conservation of the thing itself."

For the foregoing considerations, we are of the opinion and so hold, that the necessary and useful expenditures incurred upon the thing sold mentioned in the second paragraph of article 1518 of the Civil Code do not include the payment of the land tax.

Wherefore, finding no error in the judgment appealed from, the same is hereby affirmed in all its parts, with costs against the appellant. So ordered.

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

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