

ASUNCION ALBERT Y MAYORALGO AND PUKIFIOACION ALBERT Y AIAYOKALGO, PETITIONERS AND APPELLEES, VS. MARTI NIANO PUNSALAN, SATURNINA PUNSALAN, AND CATALINA SY-TRAPCO, RESPONDENTS AN...

G.R. No. 3190. December 04, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 10th day of November, 1904, the petitioners filed a petition in the Court of Land Registration for the registration of a parcel of land situated in Calle Barredo, district of Malate, in the city of Manila, together with the house erected thereon, bearing the Government police number 20, a more particular description of which land is contained in the second paragraph of said petition.

The petitioners claim that they had acquired the property in question by purchase from Narciso Mayuga y Bautista, Felix Bautista y Ongjungco, Teodorico Bautista y Ongjungco, Sebastian Santos y Rodriguez, and Vicente Albert y Mayoralgo, which purchase was evidenced by a document attached to the petition in said cause, which document has not been registered.

The respondents appeared, opposed the said registration, and alleged that the property in question had been the property of Julian Punsalan, who had given the same in guaranty to Teodorico Bautista. upon condition that the same should be redeemed after his death; that the said Julian Punsalan was the father of the present respondents and died on the 15th day of December, 1890, in the city of Manila, his wife and the legitimate mother of the respondents being Eufemia Concepcion, who died on the 27th day of February, 1881; that the respondents have never conveyed in any manner, to any person, the ownership of the said parcel or lot of land, and that in or about the years 1893, 1894, and 1895, as regards Teodorico Bautista, and after said dates in the years 1901 and 1904, as regards Narciso Mayuga, they had repeatedly made efforts to redeem the lands given in guaranty, as aforesaid, and at all times have been and are now ready to redeem the same.

On the 3d day of January, 1906, after hearing the evidence adduced by the respective parties, the judge of the Court of Land Registration rendered a decision in favor of the petitioners and against the respondents, basing the same upon the following facts:

First. That the petitioners, together with their brother, Vicente Albert y Mayoralgo, purchased the land in question from Narciso Mayuga, Felix Bautista y Ongjungco, Teodorico Bautista y Ongjungco, and Julia Bautista y Ongjungco, who, in their capacity as heirs, judicially declared as such, acquired the lands in question by virtue of the fact that their uncle, the presbyter, Teodorico Bautista, had died intestate.

Second. That Vicente Albert y Mayoralgo sold to his two sisters his interest in said land, as appears by a written document attached to the record in said cause.

Third. That the land in question in the year 1879, was delivered by Julian Funsalan, the father of the present

respondents in consideration of the sum of 130 pesos, to Father Teodorico Bautista, who during his lifetime enjoyed the possession thereof up to the time of his death, which occurred in the year 1895.

The contract under which the petitioners claim their right to the land in question, and the one by which Julian Punsalan delivered the land in question to Father Teodorico Bautista, was in words and figures as follows:

"I, Don Gavino Visco, present gobernadorcillo of Malate, Province of Manila, under appointment by the GovernorGeneral, acting in concert, etc., do hereby certify that on this date there appeared before me the presbyter, Don Teodorico Bautista, and Don Julian Punsalan, a native, married, of age, and a principal in this town; the first named asks, in order that it may serve him as a legal document, that the latter be questioned whether or not it is true that he had mortgaged to the petitioner, on pacto de retro for the sum of one hundred and thirty-four pesos, two parcels of land situated in the barrio of San Roque, within the jurisdiction of this town, the area and description whereof are contained in the title deeds annexed hereto, upon condition that the same shall be redeemed after the death of the respondent, and should the statement be true, that the original papers be handed to the petitioner. Agreeably to such petition, I questioned Don Julian along the lines above set forth by Don Teodorico Bautista. [The respondent] upon being informed through the interpretation of one of my assistants, stated that all the points on which he was questioned were true and correct, and that he himself engaged to punctually and faithfully comply with what had been stipulated, and for such purpose the laws in connection with this matter were referred to.

"In witness whereof, this certificate is issued and signed by me together with the above-mentioned witnesses, excepting Don Julian Punsalan, who, being illiterate, his name was signed at his request by Don Cirilo Unalubia, at this casa-tribunal of Malate, on this the eighteenth day of October, one thousand eight hundred and seventy-nine."

The only question presented in the present case is whether or not the above contract between Julian Punsalan and Father Teodorico Bautista was a pacto de retro, and, if it is a pacto de retro, then the question arises, Did Julian Punsalan or his heirs repurchase or attempt to repurchase the same within the time prescribed by law?

A reading of the above-quoted contract shows that the parties themselves denominated said contract as a pacto de retro "upon condition that the same shall be redeemed after the death of the respondent," and we are of the opinion, and so hold, that the same contract is a pacto de retro.

Said contract was executed and delivered on the 18th day of October, 1879. Father Teodorico Bautista died in the year 1895. Julian Punsalan died in the year 1890, after the provisions of the Civil Code became operative in the Philippine Islands; therefore the provisions of the Civil Code relating to the time within which land sold under a pacto de retro can be repurchased by the vendor applied to said contract, according to paragraph 4 of the transitory provisions of said code. (Art. 1976, Civil Code.) The Civil Code became operative in the Philippine Islands in the year 1889. Article 1508 of said code provides:

"The right referred to in the preceding article [the right to repurchase a thing sold], in the absence of an express agreement, shall last four years, counted from the date of the contract.

"Should there be an agreement, the period shall not exceed ten years."

Article 1500 of said code provides:

"If the vendor should not comply with the provisions of article 1518, the vendee shall irrevocably acquire the ownership of the thing sold."

Article 1518 provides:

"The vendor can not exercise the right of redemption without returning to the vendee the price of the sale, and,

furthermore:

"(1) The expenses of the contract and any other legitimate payment made by reason of the sale.

" (2) The useful and necessary expenses incurred by the thing sold."

The original parties to said contract not having fixed a definite time within which the vendor might repurchase the land in question, the law fixed the time for them at four years; or if it may be considered that the death of the purchaser under the said contract was a definite time, then the period of ten years fixed by the statute had also expired before any attempt on the part of the vendor or his heirs for the repurchase of the land in question had been made, or any attempt to comply with the provisions of said article 1509 or 1518. (See par. 4 of the transitory provisions of the Civil Code and art. 1939 of the same code.)

The lower court found that the heirs and successors in interest of the original vendor, Julian Punsalan, had not repurchased the land within the time prescribed by law, and that therefore the title to the land became absolute in Father Teodorico Bautista and his heirs and successors in interest. (*Espafia vs. Lucido*, [1] 5 Off. Gaz., 550; *Garcia vs. Dianiflon*, [2] 5 Off. Gaz., 536.)

A careful examination of the record brought to this court fully justified the conclusions of the lower court. The judgment of the lower court is therefore hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres, Carson, and Tracey, JJ., concur.

Willard, J., concurs hi the result.

[1] 8 Phil. Rep., 419.

[2] 8 Phil. Rep., 414.

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