

JOSE ALANO ET AL., PLAINTIFFS AND APPELLANTS, VS. JOSE BABASA, DEFENDANT AND APPELLEE.*G.R. No. 4274. March 23, 1908*

Ponente: TORRES, J.

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On the 27th of May, 1907, Juana Cantos, assisted by her husband, Jose Alano, filed an amended complaint alleging that her legitimate father had contracted a debt of P1,030 in favor of Fulgencio Babasa and Maria Cantos, the parents of the defendant Jose Babasa, and that in order to guarantee said debt he had pledged a parcel of land situated in the barrio of Pinamukan, municipality of Batangas, the area and boundaries of which are stated, upon condition that the creditors should enjoy the usufruct of said land from the date of the contract, July 18, 1883, and for such purpose they took possession of the property during seven years, after which time the debtor would be entitled to redeem it at any time by paying his debt; and on account of the death of the said creditors, the plaintiff's husband, in her name, spoke personally and through other persons to the defendant, Babasa, who now holds and enjoys the usufruct of the land, seeking to redeem the same, and although the defendant in the beginning engaged to permit its redemption, later on he offered to definitely purchase the land at an increase of P1,370 in the price, but as the plaintiff did not agree to this, he then absolutely declined to permit the redemption to which she was entitled, and she therefore asked that judgment be entered in her favor ordering that the defendant, in compliance with what had been agreed to, permit the land in question to be redeemed for said amount, or by some other means under the law, and directing that the land be returned to her without payment for the reason that the defendant had enjoyed its fruits during so many years of possession of the property, and that he be sentenced to pay the costs.

In answer to the above the defendant made a general and specific denial of each and all the facts stated in the complaint, and as a special defense alleged that the land described had been sold with right of repurchase by the parents of the plaintiff Juana Cantos, to Fulgencio Babasa, father of the defendant, on the 18th of July, 1883, for the sum of 1,000 pesos, of which 300 pesos were furnished by the defendant himself, and that the period stipulated for the repurchase was seven years from said date; that the parents of the plaintiff, who lived many years after the expiration of the said period of seven years granted for said repurchase, had not exercised their right; and in view thereof he asked that the complaint be dismissed with the costs against the plaintiffs.

Evidence was adduced at the trial, the witnesses offered by both parties were examined, the documents exhibited being attached to the records. On the 23d of July, 1907, the court rendered judgment in favor of the defendant with the costs against the plaintiffs, who excepted to the judgment and moved for a new trial on the ground that the same was manifestly contrary to the weight of the evidence; said motion was denied on the 24th of July, 1907, to which ruling the plaintiffs excepted.

The contract entered into between the married couple, Tomas Cantos and Maria Cuevas, on the one part and Fulgencio Babasa on the other, appears at folio 28 of the original bill of exceptions written in Tagalog, translated into Spanish, and is as follows:

"We, the spouses, Tomas Cantos and Maria Cuevas, of age, natives and residents of this capital of Batangas, hereby set forth that we own a parcel of high land in the barrio of Pinamukan, within the limits of this capital, having an area of 30 cavanese of paddy seed, more or less, being bounded on the E. by the property of the children of the late Leon Cantos; on the W. by the property of Doña Maria Cantos; on the N. by the river; and on the S. by * * * have found it fit to sell this land with the right of repurchase, and as a matter of fact D. Fulgencio Babasa bought it, with said right, for the sum of 1,000 pesos, all in silver, which we have received from him, of which sum 300 pesos belong to D. Jose Babasa, son of the aforesaid D. Fulgencio; it has been agreed to between us that we shall convey to him the said land from this day, and that he will cause the same to be worked from this date as if it were his own property for a period of seven years; that we shall have the right to redeem it for the said sum of 1,000 pesos at the expiration of seven years in such a manner that said land shall be under his care as long as we do not pay the redemption money. This is what we have agreed to, which we ratify and bind ourselves personally and with our property, present and future, waiving all such rights as may be contrary to this document. In witness whereof we attach our signatures in the presence of the witnesses who are cognizant of this fact, on this, the 18th day of July, 1883. (Signed) Tomas Cantos. (Signed) Fausto Echavaria. (Signed) Julian Pastor."

The said document in the Tagalog dialect is an authentic one for the reason that it was so admitted by the plaintiffs when the same was exhibited by the defendant.

The selling spouses state in the document above alluded to that they saw fit to sell a parcel of land which they owned in the barrio of Pinamukan, within the territory of the capital, with the right of repurchase, to the said Fulgencio Babasa, who in fact bought it for the sum of 1,000 pesos, silver coin, which they received from him, and that out of said sum, 300 pesos came from Jose Babasa, the son of the purchaser.

The stipulated contract, owing to its form and the terms in which the document has been prepared, is in no way a contract of loan with mortgage, but a real contract of sale with right to repurchase treated of in article 1507 et seq. of the Civil Code. It is valid, perfect, and efficient, because the three requisites prescribed by article 1261 of the Civil Code are present therein, and is binding notwithstanding the fact that it has been drawn up as a private document, in accordance with the provisions of article 1278 of said code, inasmuch as the legalization of a contract by means of a public writing and its entry in the register are not essential solemnities or requisites for its validity and efficacy as between the contracting parties, but conditions of form which the law imposes in order that it may be effective as against third persons, and that a publicly executed and recorded agreement may be respected by the latter.

Moreover, it was agreed by the contracting parties, that from the date of the contract, July 18, 1883, the sellers of the land would deliver it to the purchaser in order that he might work the same as if it were his own property for seven years beginning from said date.

It was likewise stipulated that at the expiration of the said seven years the sellers would be entitled to redeem it for the said sum of 1,000 pesos, but that so long as it was not repurchased by return of the sale price, the property would continue to be at the disposal of the purchaser.

So that the redemption or repurchase could not be effected until after the lapse of the seven years agreed to, although no period was fixed within which the repurchase, which the plaintiffs might have demanded since the 19th of July, 1890, was to take place.

The question set up by the appellants is: Within what period may the sellers repurchase from the buyer the thing sold? It is admitted that Law 42, title 5, Partida 5, which is cited, does not fix the period within which the thing sold should be redeemed, but it is affirmed that the right of conventional redemption gives place to a personal action, the prescription of which is fixed by Law 63 of Toro, now Law, 5, title 8, book 11 of the Novísima

Recopilacion, at twenty years; therefore, the demand for redemption has been interposed within the said twenty years which have not yet expired.

In order to show that the court below has not erred in rendering its decision, especially on this point, attention is called to the fact, already mentioned, that the plaintiffs had the right to redeem said land from the 19th of July, 1890, the day after the seven years named in the contract had expired, on which date the Civil Code, which became effective on the 8th of December, 1889, was in force; therefore, in view of the provisions of article 1939 thereof the rules prescribed by it are perfectly applicable to this case, and it should be noticed that since July, 1890, to May, 1907, at which latter date the complaint was interposed, the four years fixed by article 1508 for the exercise of the right of repurchase, in the absence of an express covenant, have more than expired, notwithstanding the fact that the contract is subject to the provisions of the laws in force prior to the enforcement of the said Civil Code.

However, if notwithstanding what has been agreed to by the parties, which in the matter of contracts is the law, according to the constant jurisprudence of courts, it were certain that the right to repurchase commenced from the very date of the contract or on the succeeding day, said article 1939 is also applicable to this case, and for the better understanding of the same it is copied herein:

"ART. 1939. Prescription, which began to run before the publication of this code, shall be governed by the prior laws; but if, after this code became operative, all the time required in the same for prescription has elapsed, it shall be effectual, even if according to said prior laws a longer period of time may be required."

So that in either case and even though it were considered that the right of repurchase would only prescribe by the lapse of twenty years, which time for prescription began either in July, 1883, or in the same month of 1890, such long period of time had not yet expired when the said code went into effect in December, 1889; therefore, in accordance with article 1939 inserted above, the provisions of article 1508 should be strictly observed when deciding this litigation, which article provides that in the absence of an express agreement the right to recover the thing sold shall only last and may only be exercised within four years counted from the date of the contract; this term, counted from December, 1889, when the said, code went into effect, to the date in 1907 on which the complaint was filed, has expired. The said four years constitute a special period for prescription of the right to repurchase.

As to the allegation that the plaintiff, Juana Cantos, was a minor at the time when the said four years had expired, for the purpose of this decision it suffices to state the special provision of the Civil Code in connection with the effects which prescription produces on persons of all classes, including privileged and juridical persons, as may be seen from article 1932, which reads :

"ART. 1932. Rights and actions shall extinguish by prescription to the prejudice of all kinds of persons, including juridical persons, in the terms prescribed by law.

"Persons incapacitated to administer their property shall always retain the right to sue their legal representatives whose negligence may have been the cause of the prescription."

The principle which this article establishes is applicable without distinction to all such as were the owners of property subject to prescription, according to article 1936 of said code, which repeals all previously recognized exceptions and brings everybody, for high considerations of public interest, under the general rules of the law although for reasons of equity there is reserved to incapacitated persons the right to sue their representatives or guardians for damages suffered through the fault or negligence of the latter.

Furthermore, it is known that since the time when the Civil Code went into effect no sale with right of repurchase

can be made for an indefinite period inasmuch as article 1508 of the same fixes the period at four years if no term has been agreed to, and in case of agreement said term can not exceed ten years, and said article is applicable even to contracts entered into prior to the Civil Code, by virtue of the provisions of article 1939, cited above, for the reason that property should not be subject indefinitely or for a long time to resolutory conditions such as redemption, and prescription during its running does not create a vested right but only a hope of the realization or the effecting of the same; therefore, in answer to the exigencies of the public good and the interests of society, the provisions of the said article were enacted by the legislator, employing therein a restricting and limiting system as security for the ever to be respected right of ownership. This case is similar to that of Garcia et al. vs. Diamson (8 Phil. Rep., 414).

For the reasons above set forth, and accepting the considerations contained in the judgment appealed from, it is our opinion that the same should be affirmed, and that the complaint interposed by the appellants against the defendant, Jose Babasa, be dismissed with the costs of this instance against the said appellants. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

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