

POTENCIANA TABIGUE, PLAINTIFF AND APPELLEE, VS. FRANK E. GREEN, DEFENDANT AND APPELLANT.*G.R. No. 4277. August 18, 1908*

Ponente: WILLARD, J.

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On the 1st day of February, 1906, the plaintiff sold the land in controversy to the defendant by an absolute deed. Notwithstanding, however, the character of the transfer, the plaintiff had the right to redeem the same within a certain time thereafter. At the time the deed was made, proceedings were pending in the Court of Land Registration for the inscription of the land in the name of the plaintiff.

On the 20th of October, 1906, the defendant wrote a letter to the witness Zialcita in which he stated that the case in the Land Court had been decided in favor of the plaintiff; that within a few days the decree would be sent to the registrar of Leyte for record; that the decree and inscription would be in the name of the plaintiff; that the deed which he, the defendant, already had from the plaintiff would not be sufficient, and that it would be necessary for the plaintiff to sign another deed after the registration had been made in her favor; and the defendant charged the witness Zialcita with the duty of procuring this additional deed, which he inclosed, and recording it at once. The letter contained also the following statement:

"Tell the lady that, although the period has expired, yet, should she be able to redeem the property within three months from the date of this new document, I will agree to it, and you may keep this letter as evidence of my agreement to that effect."

The judgment of the land court was duly entered in favor of the plaintiff, and on the 15th day of December, 1906, the land was registered in her name in the office of the registrar of titles in Leyte, and on the same day a certificate of ownership in the form required by the Land Registration Act (No. 496) was executed and delivered to the plaintiff. On the 16th day of December, 1906, the plaintiff executed and delivered to the defendant an absolute deed of the property, and on the 19th day of December a new certificate of ownership was, in accordance with the law, executed and delivered to the defendant, certifying that he was the sole owner of the property. Prior to the time when the plaintiff executed the deed of December 16, 1906, the defendant's letter above referred to had been delivered to her, and she then had it in her possession and still has it.

Concerning the above facts, there is no dispute. There is a question, however, as to what took place when the last deed was executed by the plaintiff. The defendant's witnesses testify that she then waived the right to redeem which was given her by the letter of October 20, and stated that in lieu thereof Mr. Green should pay her something when he sold the land to the military Government. The amount that she was to receive was not fixed, but the witnesses testified that she left that to the determination of Mr. Green. The plaintiff and her witness deny that she ever waived her right to redeem, insisted upon it, and within a few days offered to redeem by paying P1,900, the consideration mentioned in her deed of December 16.

It is not disputed that on the 22d day of December, 1906, the attorney for the plaintiff made to the defendant a

written offer to redeem. The defendant refused to permit the redemption, and he testified that on the 24th or 25th of December, 1906, he executed a deed of the land to the military government and sent the same to Manila to be forwarded to Washington. The consideration for this deed was P3,000, which was to be paid when the conveyance was approved by the military authorities. There was no evidence that such approval had been given, or that the money had been paid.

The court below decided the case in favor of the plaintiff, holding that she had a right to redeem. Upon the disputed question of fact above referred to, we can not say, after reading the evidence, that it preponderates against the decision of the trial court. Its finding, therefore, must, in that respect, be sustained.

At the time of the conveyance of the 16th of December, the land in question was registered land and must be governed by the provisions of Act No. 496. Section 50 of that law provides in part as follows:

"An owner of registered land may convey, mortgage, lease, charge, or otherwise deal with the same as fully as if it had not been registered,"

The fact that after that agreement was made, and before this action was brought, the defendant had executed a deed of conveyance to a third person does not deprive the plaintiff of her rights. The same section 50 provides further:

"But no deed, mortgage, lease, or other voluntary instrument, except a will, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the land, * * *"

By virtue of the terms of this section, the deed made by the defendant to the Government operated only as a contract to convey and was subject to the previous contract made with the plaintiff by virtue of which she was allowed to redeem.

No question seems to have been made in the court below as to the amount necessary for the redemption. The plaintiff testified that it was P1,900 and this testimony was not contradicted.

The judgment of the court below ordered that the defendant transfer his title to the premises in controversy to the plaintiff upon the payment into court of the sum of P1,900, and that the acting register of deeds cancel title number three, in the name of the defendant, and register the land in the name of the plaintiff, and deliver the title of the same to her. Act No. 496 contemplates the surrender of the original certificate whenever the land is transferred from one person to another, and we think that the judgment should specifically order the defendant to deliver that certificate for cancellation. With this modification, the judgment of the court below is affirmed, with the costs of this instance against the appellant. So ordered.

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

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