

JOSEFA BUNDALIAN ET AL., PETITIONERS, VS. JUAN DE VERA ET AL., RESPONDENTS.*G.R. No. 47641. June 27, 1941*

Ponente: LAUREL, J.

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Carolina Triviño, as guardian of the minors Josefa, Bienvenida and Buenaventura Bundalian, filed a petition before the Court of First Instance of Laguna for authority to mortgage for P6,000 a certain parcel of land belonging to her wards. This petition was granted by the court. On June 30, 1931, she filed a motion before the same court to authorize her to sell the land in question under pacto de retro, on the ground that the money could not be secured by way of mortgage. This was also granted. On September 25, 1931, the guardian entered into a contract with the defendant Juan de Vera, by virtue of which the guardian sold and transferred the land in question to, the defendant for the sum of P5,000, payable upon the approval of the court of the deed of sale. It was stipulated in the deed that if the guardian paid back the purchase price of P5,000 within the period of two years from the date of the approval of the deed by the court, the sale was to be rescinded, otherwise it was to remain in full force and effect. The guardian submitted the above contract to the court for approval, alleging that because of the decline in the price of coconut lands, the maximum price she could obtain for the land was only P5,000. The court approved the deed. On September 30, 1931, the guardian executed a final deed of sale with the right to repurchase in favor of the defendant Juan de Vera. The deed was duly registered. As the guardian failed to repurchase the property within the period stipulated in the deed of sale, defendant Juan de Vera granted her an extension of one year within which to repurchase the property. This was not taken advantage of by the guardian. Thereafter, Juan de Vera executed an affidavit of consolidation and registered the same in the office of the register of deeds. Later on, he sold the land to Jacinto Alvero and Carmen Alvero. These vendee afterwards mortgaged the property with the People's Bank & Trust Company. On March 13, 1936, Carolina Triviño, in her capacity as guardian, and Josefa Bundalian, brought an action against Juan de Vera, Jacinto Alvero, Carmen Alvero and the People's Bank & Trust Company, to annul the sales between Carolina Trivino and Juan de Vera and between the latter and Jacinto Alvero and Carmen Alvero, and also the mortgage executed by Jacinto Alvero and Carmen Alvero in favor of the People's Bank & Trust Company. The Court of First Instance of Laguna ruled for the defendants. The Court of Appeals affirmed the decision of the lower court in May 31, 1940, and the plaintiffs have come on a petition for review by certiorari.

[In the construction of contracts, the court must, if possible, give effect to the intention of the parties. To ascertain this, the whole instrument must be examined. In connection with pacto de retracto contracts, courts will not consider them as such simply because they are so denominated. But when the terms cast not the least shadow of doubt that the contract is one with pacto de retro, the court must give effect to the will of the parties as expressed in the deed. (*Feliciano vs. Limjuco and Calacalzada*, 41 Phil., 147.)] In the case at bar, it is contended by the appellants that the contract entered into between Carolina Trivino and Juan de Vera on September 25, 1931, is one of mortgage and not a sale with pacto de retracto. It appears that the plaintiff Carolina Trivino petitioned the Court of First Instance of Laguna for authority to mortgage the property for P6,000. She later on presented a motion

asking for authority to sell the property under pacto de retracto, alleging that nobody wanted to take in the property by mortgage. The deed of sale of September 25, 1931, is entitled "Escritura de Venta con Pacto de Retro". When Carolina Trivino filed her petition to have the court approve the deed of sale referred to above, the petition, among other things, recited: "Comparece la tutora nombrada en estos autos de los menores arriba nombrados y al Honorable Juzgado respetuosamente solicita su aprobacion a la venta con pacto de retro hecha por la referida tutora", and attached to the petition was "Un ejemplar del contrato de venta con pacto de retro, cuya aprobacion se solicita en la presente * * *" (Bill of Exceptions, pp. 27-28.) Carolina also executed a public document wherein she acknowledged having received P5,000 from Juan de Vera "como importe de la venta con pacto de retro del terreno arriba descrito." (Bill of Exceptions, p. 3L) The price paid for the land is not decisive here, taking into consideration the price of the coconut lands then existing. (Manalo vs. Gueco, 42 Phil., 925.) Neither is the fact that the guardian occupied the land in question during two years following the sale, it having been proved that she occupied the land as a lessee. It is also contended that the lower court erred in not holding that the order of the Court of First Instance of Laguna authorizing the sale by the guardian is invalid on the ground that the provisions of section 569 of the Code of Civil Procedure, as amended, had not been complied with. It appears, however, that the supposed irregularities alleged to have been committed by the lower court were never distinctly, clearly or directly alleged in the complaint. Neither were they proved during the trial. The lower court so found, and we are not inclined to disturb this finding. In the disposition of this case, we have not overlooked the fact that the rights of innocent third parties are here involved. The lower court found that Juan Alvero and Carmen Alvero were purchasers in good faith and the same thing may be said with the defendant, the People's Bank and Trust Company.

The petition is hereby dismissed and the judgment sought to be reviewed in affirmed, with costs against the petitioners. So ordered.

Avanceña, C. J., Diaz, Moran, and Horrilleno, JJ., concur.

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