

JULIAN MEDIANTE AND NICOMEDES GARCIA, PLAINTIFFS AND APPELLEES, VS. VALENTIN ROSABAL, DEFENDANT AND APPELLANT; CLEOFÉ VDA. DE NERI, INTERVENOR AND APPELLANT.

G.R. No. 48290. September 30, 1942

Ponente: PARAS, J.

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PARAS, J.:

The land here in question originally belonged to Macario Rosabal and Tomasa Valmoria who, on April 9, 1929, executed an alleged contract of sale—which was never recorded in the registry of deeds—in favor of Ramon Neri San Jose, deceased husband of the intervenor-appellant, for the consideration of P500, with right of repurchase within three years. The land, however, remained in the possession of the defendant Valentin Rosabal, son of the vendors, under an alleged contract of lease requiring the payment of a quarterly rental of P30. By virtue of a writ of execution issued in civil case No. 8521 of the justice of the peace court of Cebu, entitled *Texaco Co., Inc. vs. Valentin Rosabal and Macario Rosabal*, the same land was sold at public auction to the plaintiff Nicomedes Garcia for P445.50 on April 17, 1931, a sale which was recorded in the registry of deeds of Misamis Oriental on June 25, 1931. On May 14, 1931, Nicomedes Garcia in writing allowed Valentin Rosabal to redeem the land (Exhibit B of the plaintiff—Exhibit 3 of the defendant) and accordingly received from the latter P120 upon account of the redemption price, which payment was later increased to P200, after which no other sum is alleged to have been paid. Subsequently, Nicomedes Garcia sold his rights and interest over the land to the plaintiff Julian Mediente who thereafter brought an action against Valentin Rosabal for the recovery of said land, which action was however dismissed.

In the present case, the plaintiff Julian Mediente and the intervenor Cleofé Vda. de Neri both claim ownership, and seek to recover the possession, of the land in question, the first relying on the title acquired by him from his co-plaintiff Nicomedes Garcia, and the second on the sale made by Macario Rosabal and Tomasa Valencia (parents of the defendant Valentin Rosabal) to her deceased husband Ramon Neri San Jose. The Court of First Instance of Misamis Oriental gave judgment for the plaintiff Julian Mediente, on the ground that the sheriff's sale under which his grantor derived title, being registered in the registry of deeds, gave him proprietary rights superior to the unregistered sale relied upon by the intervenor-appellant in conformity with article 1473 of the Civil Code. As regards the defendant Valentin Rosabal, the trial court ruled that, as he failed to pay the redemption price in full, the ownership of the land had become consolidated in Nicomedes Garcia. The present appeal was interposed by the defendant, as well as by the intervenor.

The first ground advanced by the trial court for its judgment cannot be sustained, since article 1473 of the Civil Code, which gives preference to one of two deeds which is first recorded, is not applicable to an execution sale of real estate not registered under Act No. 496. [*Fabian vs. Smith, Bell & Co.* (8 Phil., 496) ; *Boncan vs. Smith, Bell & Co.* (9 Phil., 109) ; *Casimiro vs. Fernandez* (9 Phil., 562); *Buzon vs. Licauco* (13 Phil, 354).] Neither can the second ground be upheld. The moment the purchaser (Nicomedes Garcia) at the sheriff's sale accepted partial payment from the judgment debtor (Valentin Rosabal) upon account of the redemption price, a resale was effected

in the latter's favor, and Garcia was only entitled to recover the balance from Rosabal and to look to the land merely as security for its payment, the reason being that Garcia was under no obligation to receive less than the whole amount of the repurchase money and by his acceptance of a part thereof, he changed the character of his title and surrendered his right to enforce a forfeiture under the statute. [21 American Jurisprudence, 125, and Murphy vs. Teutsch (132 N. W., 435, 436), citing Southard vs. Pope's Ex'rs. (48 Ky., 261) ; Ott. vs. Rape (24 Wis., 336; 1 Am. Rep., 186); Whiting vs. Butler (29 Mich., 133) ; Spath vs. Hankins (55 Ind., 155) ; Felton vs. Smith (84 Ind., 486).]

With respect to so much of the case as refers to the opposing claims of the defendant Valentin Rosabal and the intervenor Cleofe Vda. de Neri, it is the opinion of the court that the alleged sale with pacto de retro relied upon by the latter is really an equitable mortgage, in view of the following considerations: (1) The vendors, through their son, the defendant Valentin Rosabal, remained in possession of the land sold. It must be remembered, in this connection, that the latter was considered an owner of the land even during the life of the alleged sale with pacto de retro, not only because it was levied upon and sold by the sheriff in connection with civil case No. 8521 as his and his father's property, but because the purchaser at the execution sale allowed him to redeem it under the circumstances hereinabove noted. (2) Valentin Rosabal was required to pay during his possession the rental of P30 every three months, obviously in the nature of interest. (3) In spite of his failure to pay the alleged rentals, the vendee or his successor in interest did not care to take legal steps for his ejectment and for the first time asserted a claim of ownership only upon the filing by the plaintiffs of the present case in 1935 (or more than three years after the expiration of the period of redemption fixed in the alleged sale), Cleofe Vda. de Neri appearing merely as an intervenor.

The appealed judgment is, therefore, reversed, and the defendant-appellant, who is declared to be the owner of the land in question, is hereby sentenced to pay to the plaintiff Julian Mediante the sum of P245, and to the intervenor-appellant the sum of P500. As the equitable mortgage in favor of the intervenor-appellant is prior to the lien acquired by Julian Mediante under the execution sale, it is further held that the land is subject, first, to the intervenor's equitable mortgage and, then, to Mediante's lien. So ordered, without pronouncement as to costs.

Yulo, C. J., Ozaeta, and Bocobo, JJ., concur.

DISSENTING

MORAN, J.,

I cannot agree with the following statement of the majority:

"The moment the purchaser (Nicomedes Garcia) at the sheriff's sale accepted partial payment from the judgment debtor (Valentin Rosabal) upon account of the redemption price, a resale was effected in the latter's favor, and Garcia was only entitled to recover the balance from Rosabal and to look to the land merely as security for its payment, the reason being that Garcia was under no obligation to receive less than the whole amount of the repurchase money and by his acceptance of a part thereof, he changed the character of his title and surrendered his right to enforce a forfeiture under the statute. 21 American Jurisprudence, 125, and Murphy vs. Teutsch (132 N. W., 436, 436), citing Southard vs. Pope's Ex'rs. (48 Ky., 261); Ott. vs. Rape (24 Wis., 336; 1 Am. Rep., 186); Whiting vs. Butler (29 Mich., 133); Spath vs. Hankins (66 Ind., 155); Felton vs. Smith (84 Ind., 486)."

No legal provision or authority can be found in support of this statement. The American authorities relied upon are contrary to the theory maintained by the majority. It is held therein that by accepting a part of the redemption

price the purchaser waives his right to enforce a forfeiture and make the purchase absolute upon the expiration of one year as provided by law, and he thereby "gives to the owner of the land the right to redeem after the expiration of the year." Since the effect of the partial payment, according to these authorities, is that the owner is given authority to redeem after the expiration of one year, then redemption cannot be deemed to have been effected by such partial payment, as the majority holds. On the other hand, the majority's theory seems to be contrary to logic. The acceptance by the purchaser of a partial payment of the redemption price cannot be regarded as a waiver of his right to collect the whole price prior to making the resale, unless, of course, there is an express understanding to that effect, and there is none in the instant case. The most that can be inferred from such acceptance is that the purchaser agrees to receive the redemption price by instalments and that he would effect the resale after the price is completely paid. In mortgage contracts, for instance, the fact that the mortgagee accepts a partial payment does not mean that the redemption of the property mortgaged is effected thereby and the mortgage rescinded the balance having become a purely personal credit. It only implies that the mortgage debt is allowed to be paid by instalments instead of by cash. The rulings laid down by this Court in connection with contractual redemptions may apply in the instant case. In *Santos vs. Cuyugan* (34 Phil., 100, 120-121), it was held:

"* * *. If the original transaction was in truth and in fact one of purchase and sale of real estate, with a reserved right of repurchase in the vendor, then the purchaser, by the acceptance from the vendor of the sum of P1,000, waived and surrendered his rights under the original contract, and entered into a new contract with the vendor, under which he obligated himself to cancel the deed, or resell the land to the original vendor on the payment of the balance of the original purchase price." (Italics mine.)

In *Lichauco vs. Berenguer* (20 Jur. Fil. 13), Macario Berenguer sold a parcel of land to Cornelia Laochangco with the right to repurchase within two years. But after the expiration of the two-year period, the purchaser had been receiving partial payments of the redemption price, and this Court, through the late Chief Justice Don Cayetano Arellano, said:

"El comprador que ha sido reembolsado por el vendedor de parte del precio de la retroventa esta vujeto al cumplimiento de la obligation de retro-vender, que ha naeido ya, como efecto del pacto de retracto, o a mostrar razon por que puede quedarse con esta parte del precio y no obstante ello considerarse libre de llevar a efecto la retroventa. Podra tener derecho a exigir que se le complete el precio o a que Be le satiafagan otroa gastos de que debe ser reembolsado antes de devolver la tosa que habia eomprado con tal condicion resalutoria; pero empezado y admitido el ejercicio del derecho de retracto, os de todo punto incompatible con estoa hechos realizados, la irrevocabilidad del dominio de tal modo adquirido." (Italics mine.)

In other words, this Court has held that the vendee may be compelled to comply with his obligation to resell, but that also he has the right to demand that the redemption price be completed before he may be required to deliver the property. This is far from the holding of the majority decision to the effect that, with the payment of a part of the redemption price, the resale is deemed effected.

The two aforementioned decisions of this Court are predicated upon article 1124 of the Civil Code which reads as follows:

"The right to resolve reciprocal obligations, in case one of the obligors should fail to comply with that which is incumbent upon him, is deemed to be implied.

"The person prejudiced may choose between exacting the fulfillment of the obligation or its resolution with indemnity for loss and payment of interest in either case. He may also demand the resolution of the obligation even after having' sleeted its fulfillment, should the latter be found impossible.

"The court shall decree the resolution demanded, unless there should be grounds which justify the allowance of

a term for the performance of the obligation."

The obligation of the vendee to resell the property is reciprocal with the obligation of the vendor to pay the whole redemption price. And unless there is a different agreement between the parties, the obligation of the vendee to resell the property may be demanded only upon fulfillment by the vendor of his obligation to pay the full redemption price. Failure of the vendor to complete the redemption price leaves the vendee free from his obligation to resell (*Gutierrez Hermanoa vs. Oria Hermanos & Co.*, 30 Phil., 431). In such case, the right of the vendee to rescind the contract is implied, although he is given the right to demand the fulfillment of the obligation by the Vendor.

I cannot either agree with the following statement of the majority:

"With respect to so much of the case as refers to the opposing claims of the defendant Valentin Rosabal and the intervenor Chote Yds. de Neri, it is the opinion of the court that the alleged sale with pacto de retro relied upon by the latter is really an equitable mortgage, in view of the following consideration: (1) The vendors, through their son, the defendant Valentin Rosabal, remained in possession of the land sold. It must be remembered, in his connection, that the latter was considered an owner of the land even during the life of the alleged sale with pacto de retro, not only because it was levied upon and sold by the sheriff in connection with civil case No. 8521 as his and his father's property, but because the purchaser at the execution sale allowed him to redeem it under the circumstances hereinabove noted, (2) "Valentin Rosabal was required to pay during his possession the rental of P30 every three months, obviously in the nature of interest. (3) In spite of his failure to pay the alleged rentals, the vendee or his successor in interest did not care to take legal steps for his ejectment and for the first time asserted a claim of ownership only upon the filing by the plaintiffs of the present case in 1935 (or more than three years after the expiration of the period of redemption fixed in the alleged sale), Cleto Vda. de Neri appearing merely as an intervenor."

It is said in this paragraph that "the vendors, through their son, the defendant Valentin Rosabal, remained in possession of the land sold." (*Italic mine.*) There is absolutely no evidence to this effect. Since this case is appealed to this Court upon pure questions of law, we have to accept, without any modification whatsoever, the facts found by the trial court. And in the decision appealed from there is nothing to show that the vendors remained in possession of the land sold through the defendant Valentin Rosabal. It is true that the vendors Macario Rosabal and Tomasa Valencia were parents of Valentin Rosabal, but the contract of sale executed by the former was completely separate from the contract of lease executed by the purchaser in favor of Valentin Rosabal. The mere fact that the latter was a son to the vendors does not necessarily mean that he was a mere instrument of his parents in the execution of the contract of lease. If we follow the majority's reasoning, a son can never act independently of his father.

The majority, after assuming that Valentin Rosabal was acting merely as an instrument of his father in the lease of the property, further assumed that the rentals paid by Valentin Rosabal were "obviously in the nature of interest." Again, there is absolutely no evidence to support this assumption. The use by the majority of the term "obviously" clearly signifies the imaginary character of the fact they assumed. Thus, the statement of the majority that the contract with pacto de retro is merely a loan, is supported only by inferences founded upon other inferences absolutely without any basis but on facts more or less imaginary.

And this is in violation of clear provisions of law and is contrary to well-settled doctrines laid down by this Court. It is a well-known rule of law that "when the terms of an agreement have been reduced to writing, it is to be considered as containing all those terms, and, therefore, there can be between the parties and their successors in interests, no evidence of the terms of the agreement other than the contents of the writing." (Rule 123, section 22.) It is true that one of the exceptions to this rule is where there is an allegation made in a pleading that the writing fails to express the true intent and agreement of the parties. [Rule 123, section 22, par. (a).] But we have said that

in order to adjudge the agreement of the parties different from what appears in the writing, the evidence in that regard must be conclusive or beyond doubt. (Cuyugan vs. Santos, 34 Phil., 120.) Here, not only is there no conclusive evidence, but there is no evidence at all that the agreement of the parties is different from what appears in the writing.

In my opinion, this case should be decided in favor of the intervenor-appellant, Cleofe Vda. de Neri.

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