

PERSHING TAN QUETO, PETITIONER-APPELLANT, VS. CARMELITO, RUFO, HERACLEO AND ELENA, ALL SURNAMED CANDONGO, AND VICENTE CALIMPONG, REPRESENTING DECEASED WIFE, BENITA CANDONGO, RES...

G.R. No. 50065. July 30, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an appeal from a decision of the Court of First Instance of Misamis Occidental in Special Civil Case No. 0224 which denied a petition filed by a vendee a retro to consolidate his ownership after the expiration of the period of redemption. Originally elevated to the Court of Appeals, the case was certified to Us because it involves questions of law only.

The facts are as follows: "Based on the pleadings filed by parties the Court finds that Pedro Candongo, during his lifetime, inherited from his deceased parents 858 square meters of Lot 484 located at Misamis Annex, Ozamiz City; that on June 14, 1958, the surviving heirs of Pedro Candongo, namely: Carmelito, Benita, Rufo, Heracleo and Elena, all surnamed Candongo, sold under pacto-de-retro in favor of petitioner Pershing Tan Queto for P1,000.00, 612 square meters thereof as described in the amended petition redeemable with a period of two (2) years since the execution of the instrument; that the petitioner has declared the land for taxation purposes in his name and has paid the land taxes thereon; that the period of redemption has never been extended; and that the heirs of Pedro Candongo have failed to redeem the land within the stipulated period of two years on June 14, 1960 and that the transaction is indeed a pacto de retro sale." (Decision, pp. 45-46 of the Record on Appeal.)

Cited as respondents in the Amended Petition for consolidation were: Carmelito, Rufo, Heracleo and Elena all surnamed Candongo; and Vicente Calimpong, the surviving spouse of Benita Candongo who died on September 23, 1958. It is to be noted that the respondents comprise the vendors-a-retro except for Vicente Calimpong who is the widowed spouse of Benita. (Record on Appeal, p. 31.)

Carmelito, Rufo, Heracleo and Elena renounced and waived their respective rights of redemption even before the filing of the amended petition on July 28, 1971. They did not file any opposition to the petition.

Vicente Calimpong did not oppose the petition. However, the children of Benita with Vicente, namely: Lolita (25 years old), Lucita (23 years old), Jimmy (21 years old), Luzvilla (19 years old), Vicente, Jr. (17 years old), and Edwin (15 years old) formally opposed the petition. They claimed that they inherited their mother's right of redemption and that the transaction was really an equitable mortgage because the price was inadequate. (Record on Appeal, pp. 38-41.)

The parties have not disputed the finding of the court a quo "that the transaction is indeed a pacto de retro sale." Hence the sole issue is whether or not the lower court erred in denying the petition.

In justifying the denial, the court a quo said:

"When Benita Candongo died on September 23, 1958, her surviving husband Vicente Calimpong and children, Lolita, Lucita, Jimmy, Luzvilla, Vicente, Jr., and Edwin inherited from her the real right to redeem the land under the terms of the contract.

'The right of Vito de Vera to repurchase the land under the terms of the contract is a real right (derecho real) and consequently transmissible to his heirs upon his death.' (De Vera vs. De Vera, CA-G.R. No. 33-R [L-219] October 11, 1947; 44 O.G. 3318).

"Said heirs of Benita Candongo have up to reaching the age of majority to redeem the pacto de retro sale. This right inures to the other vendors a retro mentioned in the document of sale.

"Under Article 1620 of the Civil Code, a co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or any of them, are sold to a third person. The share of the late Benita Candongo has remained undivided among her surviving heirs. Consequently, Luzvilla Calimpong, Vicente Calimpong, Jr., and Edwin Calimpong can redeem not only their shares under the contract of pacto de retro sale but also the shares of their other co-heirs by exercising the right of legal redemption." (Record on Appeal, pp. 46-47.)

Petitioner-appellant has made the following assignment of errors:

"I

"THE TRIAL COURT ERRED IN FINDING THAT THE HEIRS OF BENITA CANDONGO HAVE UP TO REACHING THE AGE OF MAJOR-ITY TO REDEEM THE PACTO DE RETRO SALE.

"II

"THE TRIAL COURT ERRED IN FINDING THAT THIS RIGHT INURES TO THE OTHER VENDORS A RETRO MENTIONED IN THE DOCUMENT OF SALE.

"III

"THE TRIAL COURT ERRED IN INVOKING ARTICLE 1620 OF THE CIVIL CODE UNDER WHICH THE OPPOSITORS-APPELLEES CAN REDEEM NOT ONLY THEIR SHARES UNDER THE CONTRACT OF PACTO DE RETRO SALE BUT ALSO THE SHARES OF THEIR OTHER CO-HEIRS.

"IV

"THE TRIAL COURT ERRED IN DENYING THE PETITION FOR CONSOLIDATION OF OWNERSHIP, WITH COSTS."

We do not find it necessary to discuss the assignment of errors in extenso. The briefs of the litigants have not been helpful at all possibly because the decision of the lower court is both incoherent and incomprehensible.

True it is that the right of redemption of Benita Candongo passed to her heirs upon her death but no law justifies the lower court's statement that they "have up to reaching the age of majority to redeem the pacto de retro sale." Moreover, the court improperly applied Article 1620 of the Civil Code where it said that the right of redemption "inures to the other vendors a retro mentioned in the document of sale." That provision covers the case where some or one of the co-owners sell(s) their/his share(s) in the property owned in common but not the case where all of the co-owners have sold their shares as in this case. Thus, Article 1620 of the Civil Code provides:

"Art. 1620. A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them, are sold to a third person. If the price of the alienation is grossly excessive, the

redemptioner shall pay only a reasonable one.

Should two or more co-owners desire to exercise the right of redemption, they may only do so in proportion to the share they may respectively have in the thing owned in common." (Emphasis supplied.)

Since there is no doubt that the period of redemption had expired without redemption having been effected, the petitioner is entitled to a consolidation of his ownership under the sale with pacto de retro.

WHEREFORE, the decision of the court a quo is hereby reversed and another one is entered granting the petition for consolidation of ownership. Costs against the appellees.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., and De Castro, JJ., concur.

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