

RAMON MORTERA, PETITIONER AND APPELLEE, VS. INOCENTE MARTINEZ ET AL., OPPONENTS AND APPELLANTS.*G.R. No. 5096. December 02, 1909*

Ponente: TORRES, J.

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On the 23d of August, 1907, Jose de Guzman filed a petition with the Court of Land Registration requesting that the property of which he is the absolute owner be registered in accordance with the Land Registration Act. Said property consists of a parcel of land together with all improvements thereon, with the exception of some small houses of light materials belonging to Benedicto Martinez, Maria Dianquina, Macario Fornilosa, Pablo Cacatian, Isidro Martinez, Sebastian Martinez, and Exequiela Buñi; the said land is bounded on the northeast by the property of Ambrosio Cariquitan, heirs of Nicasio Aguirre and Jacinto Buenagala; on the southeast by that of Ramon Mortera y Javier Camatcho; on the southwest by Calle Washington, and on the northwest by Calle Taft; said land has an area of 4,545 square meters, and appears more fully described in the plan and specifications attached to the petition as Exhibit 1, and made a part thereof.

At the last assessment the property with the improvements thereon was assessed at P1,818, and according to the best knowledge and belief of the petitioner no incumbrance of any kind exists upon it, nor does any person consider himself entitled thereto or possessing any interest therein; the property is now occupied by the said Benedicto Martinez, Maria Dianquina, Macario Fornilosa, Pablo Cacatian, Isidro Martinez, Sebastian Martinez, and Exequiela Buñi.

The property was purchased by the petitioner on the 23d of May, 1907, from Inocente Martinez y Ticson for the sum of P1,306, by means of an instrument drawn up by Francisco Godinez y Galan, his attorney in fact and legal representative, before the notary Joaquin Rodriguez Serra; said instrument was duly recorded in the registry of deeds of La Laguna under No. 332, entry No. 44, volume 3 of the municipality of San Pablo, La Laguna, on the 24th of May of said year, the vendor, Inocente Martinez, reserving the right to redeem or repurchase the property for the same price and conditions within a period of forty days counted from said date until the 2d of July, 1907. It was stipulated in the said instrument that if the period for redemption should expire without the vendor availing himself of his right to repurchase the sale to the petitioner would become finally consummated and irrevocable.

The term agreed upon expired without the vendor or his agent availing themselves of the right of repurchase, so the registrar of La Laguna, at the request of the petitioner, recorded the confirmation of the ownership in his favor under entry No. 339 of book 2, folios 181 and 182, on the 5th day of July, 1907. Various documents relating to the petition were attached thereto and numbered from 1 to 9.

After the foregoing petition was presented, and due summons had been served on the owners of the adjoining lands and other interested parties, Inocente Martinez and Exequiela Buñi opposed the registration asked for. On the 5th of July, 1908, Jose de Guzman set forth in writing that by means of a public instrument, ratified on August 20, 1907, before the notary Williams, the exponent had sold to Ramon Mortera y Javier Camatcho the land sought

to be registered in these proceedings, for which reason the latter is the sole proprietor of the said property, and the decree granting the registration of the land should properly be made in favor of Mortera, and that his name should be substituted from said date as the petitioner in this case. In support of his averment he offered in evidence the bill of sale appearing at folio 56 of the record as Exhibit H.

By a writing dated June 9, 1908, Inocente Martinez stated that he objected to the registration applied for by Jose de Guzman on the ground that, according to the power of attorney granted to Francisco Godinez, the latter was not authorized by his principal to sell the property with pacto de retro unless within the legal term established by article 1508 of the Civil Code; that the said agent exceeded his authority, in violation of article 1714 of the said code, and in consequence the sale with right to repurchase made by said Godinez to the petitioner Guzman is null and void, since he caused him great loss in selling the property, inasmuch as the same is already sold under pacto de retro to Exequiela Buñi; that he had received offers to purchase it for the sums of P3,500 and P4,500, but he had not accepted them and was awaiting a better price; therefore he prayed the court to consider him as an opponent, to appoint a day for the trial of the case, to deny the registration applied for, to hold that the instrument of sale under pacto de retro was null and void, and to decree the registration of the building lot or land in question in favor of the opponent with costs against the petitioner.

By a writing of the same date Exequiela Buñi opposed the registration asked for on the ground that said lot had been sold to her with pacto de retro for a period of six years from March, 1904, as shown by the bill of sale executed by Inocente Martinez in her favor; she therefore prayed that the registration be denied.

At the trial of the case on August 8, 1908, counsel for the petitioner objected to the admission of the opposition of Exequiela Buñi inasmuch as the latter did not allege the possession of any right, title, or interest in the property in question; that said opposition had not been sworn to as provided by law; and that it was not alleged therein that the person subscribing was duly authorized to sign the written opposition, or to take the prescribed oath. To this the counsel for the opponent answered that the latter had sworn and complied with all the requisites of the law.

At the hearing of the case, counsel for Martinez amended his written opposition, and set forth that Francisco Godinez, in making use of the power of attorney granted him, exceeded his authority by selling the property with pacto de retro for a period of forty days; that the property, at the time when the sale was carried out, was in course of litigation between the municipality of San Pablo as plaintiff and Martinez as defendant, to decide the question of ownership, and that the sale was effected without regard to the provisions of article 1291, paragraph 4, of the Civil Code; for said reason the sale could be rescinded and was void. The trial court overruled the petitioner's demurrer and the latter excepted.

Evidence was adduced by both parties to the suit and their exhibits were made of record. After the trial, the court rendered judgment on the 22d of August, 1908, denying the registration applied for by Jose de Guzman, substituted by Ramon Mortera, and sustaining the oppositions presented; after declaring a general default, the court decreed the adjudication and registration of the property described in the petition in favor of Inocente Martinez, subject to two mortgages, to wit, one for P1,306 in favor of the said Mortera for a period of forty days beginning on the 23d of May, 1907, already expired, and another for P500 in favor of Exequiela Buñi for a period of six years from the 23d of March, 1904; the court further decreed that upon the judgment becoming final, the registrar of deeds of La Laguna should cancel all entries made in the old register relating to the said property.

On learning of the decision, the petitioner filed a motion before the court in bane praying that the decision of August 22 be vacated, the registration of the property in favor of the petitioner be granted, and that the oppositions presented be denied. On the 17th of September following the motion was heard by the court in bane and on the 21st day of said month judgment was rendered by the majority, dismissing the oppositions, and, after

declaring a general default, ordering the adjudication and registration of said property in favor of the petitioner. This decision was rendered by W. L. Goldsborough, associate judge, and Juan Sumulong, acting associate judge. Judge S. del Rosario, presiding, wrote a dissenting opinion holding that the registration of the property should be decreed in the name of the opponent Martinez, with the incumbrances set out in his reversed decision of the 22d of August.

The above majority decision was excepted to by the opponents whose counsel moved for the reopening of the case on the ground that the judgment of the full court was contrary to the result of the evidence and to law; the motion was overruled on the 5th of October; the opponents excepted and filed a bill of exceptions, which was approved and submitted to this court.

No controversy has been raised by the parties with regard to the facts alleged in this case. The questions set up therein which are to be decided by this court are merely questions of law.

Have articles 1507 to 1520 of the Civil Code been repealed by Act No. 1108 of the Philippine Commission, and in consequence thereof have contracts of sale with pacto de retro been abolished, and with regard to the legal effects thereof have they been placed on the same footing as a loan contract secured by mortgage? This is the principal question discussed by the contending parties and set forth in the opposed decisions rendered in this case, one of which, the majority decision, is the one appealed from.

Section 6 of Act No. 1108, among other things, says:

"Section nineteen of said Act is further amended by adding after subsection (d) the following paragraph:

" '(e) Instruments known as pacto de retro, made under sections fifteen hundred and seven and fifteen hundred and twenty of the Spanish Civil Code in force in these Islands, may be registered under this Act, and application for registration thereof may be made by the owner who executed the pacto de retro sale under the same conditions and in the same manner as mortgagors are authorized to make application for registration.' "

The amended section is section 19 of Act No. 496, touching registration of property in so far as said section 19 does not authorize the registration of the right to redeem, or to repurchase property sold with pacto de retro, inasmuch as the above paragraph (e) lays down as a rule that instruments of sale with that covenant, executed by virtue of articles 1507 and 1520 of the Civil Code in force, may be registered, according to said Act No. 1108, at the request of the owner who sold it with pacto de retro, under the same conditions and in the same manner as mortgages.

From neither the letter nor the spirit of the law, as contained in the above paragraph, can it be inferred in any manner whatsoever that the said articles and others of the Civil Code bearing on conventional repurchases have thereby been repealed. The language employed by the law-maker is clear and positive, and his intention and purpose are manifest; it can not possibly be deduced therefrom that he ever thought of abolishing or eliminating from the various forms of contracts and agreements recognized by and which are not contrary to law, good morals, or public order that of contract of sale with pacto de retro.

From the mere perusal of the said paragraph (e) of Act No. 1108 it is not possible to conclude that the articles of the Civil Code relating to contracts of sale with pacto de retro have been expressly or impliedly repealed; the law that is said to repeal them contains no words or conceptions annulling or repealing the articles of the Civil Code above referred to in formal and manifest terms, or at least it contains no provisions contrary to and incompatible with the prescriptions of the said articles. The provision that authorizes the registration of the instrument of sale with pacto de retro at the request of the owner of the realty is not incompatible with the prescriptions of the Civil Code.

Article 1510 of the Civil Code reads:

"The vendor may bring his action against every possessor whose right arises from that of the vendee, even though in the second contract no mention should have been made of the conventional redemption; without prejudice to the provisions of the mortgage law with regard to third persons."

In the decision rendered in case No. 4737, Pandaquila vs. Gaza et al. (12 Phil. Rep., 663), it was held that, in accordance with the provision of the above-cited article—

"The seller of land has a right of action to enforce the redemption thereof as against any other possessor who derived his right from the purchaser under pacto de retro, inasmuch as said action is of the nature of a real right."

Therefore, if the right to enforce the redemption is valid as against third persons it is unquestionable that the right of conventional redemption from which the former arises is of a real and not merely personal character. The registration of property sold with pacto de retro shows the coexistence of the right of the purchaser and of the vendor, the former as the temporary owner of the thing sold, and the latter as unquestionably entitled to again become the owner through the exercise of his right of action to enforce the redemption or purchase. The registration authorized by Act No. 1108, far from repealing the aforesaid articles of the Civil Code, has amplified the provisions of section 19 of Act No. 496 and the Mortgage Law in relation to such contracts, and recognizes the prescriptions of the Civil Code and especially the real character with which the right of redemption is clothed.

From the fact that instruments of sale with pacto de retro may be registered at the request of the owner selling, under the same conditions and in the same manner as mortgages, the repeal or abolition of the contract of sale with pacto de retro is not to be inferred from the language of the law, nor is this class of contracts placed on the same footing as mortgages. The two contracts are absolutely different in their nature and character, as may be seen from the mere perusal of articles 1507 et seq. and articles 1857 to 1862 and 1874 and following of the Civil Code. It was so understood and accepted in the decision rendered by this court in the case of Villarruel vs. Encarnacion (5 Phil. Rep., 360).

The registration of the land in favor of the applicant was refused by the dissenting judge, and a decree was issued for the entry of the property in the name of the opponent for the reason that the contract which appeared in the instrument of the 23d of May, 1907, is not one of sale with pacto de retro, but of loan secured by mortgage of the land said to have been sold, because articles 1507 and following of the Civil Code had been repealed by Act No. 1108, which excluded from the various contracts recognized by law that of sale with pacto de retro; but once it has been conclusively shown that there was no such repeal, and that that of purchase and sale with pacto de retro subsists, as well as the articles of the code that regulate the celebration, character, validity, and effects of the said form of contract, we must inquire whether Mortera's dominion over the land in question may be duly registered in accordance with the law on the subject.

According to the notarial instrument of July 22, 1907, Ramon Mortera y Javier acquired the land or building lot in question by purchase from Jose de Guzman, the owner, for the sum of P1,500; the sale was recorded in the registry of property of La Laguna on the 27th of August, 1907. Jose de Guzman, the vendor, had previously acquired the said land from its former owner, Inocente Martinez y Ticson, by means of a contract of purchase and sale with pacto de retro, it being redeemable within forty days; this appears in the instrument of May 23, 1907, executed in his name by his attorney in fact, Francisco Godinez y Galan, according to the power of attorney granted to the latter by the said Martinez, and executed before a notary on the 6th of September, 1906. The term stipulated for the redemption having elapsed without the vendor or his agent having repurchased the land, its ownership became vested in the purchaser. It was so entered in the registry, following the entry of registration of the said instrument

of sale.

The above-mentioned acts and contracts by which the ownership of the property in question was transferred, the notarial documents executed by the contracting parties, together with the entries made in the registry, have not been impugned either criminally or civilly; on the contrary, the said documents have been admitted as being authentic and duly executed with all legal formalities.

As to the allegation that the land had been sold in violation of the provisions of article 1291, No. 4, of the Civil Code, being as it was the subject of litigation between the municipality of San Pablo and Martinez, it fulfills the purpose of this decision to state that by the judgment of March 2, 1907, rendered by the Court of First Instance of La Laguna prior to the first sale, it was held that the land in question was the property of the defendant, and he was therefore absolved of the complaint with the costs against the plaintiff municipality.

The instrument of the 23d of March, 1904, ratified before a notary on the 31st of December following, wherein it appears that Inocente Martinez sold what appears to be the same land with pacto de retro for 500 pesos to his sister-in-law, Exequiela Buñi, has not been registered. In the articles of the partnership formed by the said Martinez and Francisco Godinez it appears among other things as corporate capital; and as the opponent, Buñi, has not alleged further title to said land (which she admits to be owned by Martinez), than that arising from the said unregistered document, her opposition, like that of Inocente Martinez, can not, under the law, prevent the registration applied for. The land, as has been satisfactorily proven in this case, is the absolute property of Mortera.

Wherefore the decision rendered by the majority of the judges of the Court of Land Registration on the 21st of September, 1908, is hereby affirmed with the costs against the appellant; let this decision be communicated to the said court in order that action be taken in accordance with the law. So ordered.

Arellano, C.J., Mapa, Johnson, and Moreland, JJ., concur.

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