

OLIMPIA FERNANDEZ VDA. DE ZULUETA (SUBSTITUTED BY JOSEFINA, LIBERTY AND GREGORIO ALL SURNAMED ZULUETA), PETITIONERS, VS. ISAURO B. OCTAVIANO AND AURELIO B. OCTAVIANO, RESPONDENTS.

G.R. No. 55350. March 28, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Appeal by certiorari seeking a review of the Decision of respondent Court of Appeals[1] promulgated on 22 April 1980, which reversed the judgment of the Trial Court rendered on 30 June 1975 in favor of petitioners' mother as plaintiff in Civil Case No. 8809 lodged before the Court of First Instance of Iloilo, Branch III.

On 25 November 1952, Olimpia Fernandez Vda. de Zulueta (Olimpia, for brevity), the registered owner of 5.5 hectares of riceland, covered by Transfer Certificate of Title No. T-7428, sold the lot to private respondent Aurelio B. Octaviano (Aurelio, for short), for P8,600.00 subject to the following terms and conditions, to wit:

"That for and in consideration of the sum of EIGHT THOUSAND SIX HUNDRED AND 00/100 (P8,600.00) PESOS, Philippine currency, the VENDOR, her heirs, assigns, executors and administrators sells, transfers, and conveys as it is hereby SOLD, TRANSFERRED AND CONVEYED by way of ABSOLUTE AND DEFINITE SALE the aforementioned described property in favor of the VENDEE, his heirs, assigns, executors and administrators, the manner of payment of the aforementioned amount is to be made as follows:

"That upon the execution of this instrument, VENDEE will pay unto the VENDOR the amount of TWO THOUSAND AND 00/100 (P2,000.00) PESOS, Philippine Currency, and the VENDOR, has, by virtue of this instrument acknowledged receipt of said payment;

"That the remaining balance of SIX THOUSAND SIX HUNDRED AND 00/100 (P6,600.00) PESOS, Philippine Currency, should be paid by the VENDOR to the following person, to wit:

"That on May 31st, 1955, the VENDEE shall pay unto one MAXIMINO GUMAYAN of Leganes, Iloilo, the sum of FIVE THOUSAND AND 00/100 (P5,000.00) PESOS, Philippine Currency, representing the redemption price of the land aforementioned by virtue of a DEED OF SALE WITH PACTO DE RETRO the VENDOR has executed in favor of said Maximino Gumayan on May 21, 1949, ratified before Notary Public Tirso Espeleta and entered in his Notarial Register as Doc. No. 270; Page No. 56; Book No. IV; Series of 1949, the option of the VENDOR to redeem the aforementioned parcel of land pursuant to said Pacto de Retro Sale will be May 21, 1955;

"That the VENDEE will pay unto one MAXIMINO GUMAYAN of Leganes, Iloilo, the sum of ONE THOUSAND SIX HUNDRED AND 00/100 (P1,600.00) PESOS, Philippine Currency, representing the redemption price of the land aforementioned by virtue of a DEED OF MORTGAGE the VENDOR has executed in favor of said Maximino Gumayan on May 8, 1950, ratified before Notary Public Felix Ravena and entered in his Notarial Register as Doc. No. 404; Page No. 24; Book No. VII; Series of 1950, the said Mortgage could be redeemed on or before May 21, 1955, by the herein VENDOR. In other words, the

VENDEE, upon the execution of this instrument shall take the responsibility of redeeming the land aforementioned from one Maximino Gumayan for the sum of P5,000.00 in so far as the Deed of Pacto de Retro Sale is concerned to be due on May 21, 1955 and for another sum also in favor of said Maximino Gumayan for the amount of P1,600.00 in so far as the Deed of Mortgage is concerned to be due on or before May 21, 1955;

"That upon the redemption of the land aforementioned by the VENDEE from one Maximino Gumayan on May 21, 1955, then this instrument shall be considered for all legal purposes, a DEED OF ABSOLUTE AND DEFINITE SALE by the VENDOR in favor of the VENDEE, his heirs, assigns, executors and administrators, and the Register of Deeds for the City and Province of Iloilo is hereby authorized to cancel Transfer Certificate of Title No. 7428 and to issue a new Transfer Certificate of Title in favor of the VENDEE;

"That upon the execution of this instrument, the VENDOR, her heirs, assigns, executors and administrators, has no more rights, interests or participations over the parcel of land aforementioned". (Exhibit "E") (Italics supplied).

Exhibit "E" was registered in the Office of the Register of Deeds of Iloilo under Entry No. 43082 and annotated in the Memorandum of Encumbrances of Transfer Certificate of Title No. T-7428.

On the same date, 25 November 1952, the vendee, Aurelio, signed another document (Exhibit "F") giving the vendor, Olimpia, the "option to repurchase" the property "at any time after May 1958 but not later than May 1960." The full text of that document reads:

"This is to certify that as per instrument of Definite Sale of Lot No. 9234-B of the subdivision plan Psu-26187, being a portion of Lot No. 9234 of the Cadastral Survey of Sta. Barbara, covered by Transfer Certificate of Title No. T-7428, executed by Olimpia Fernandez in my favor, ratified before Notary Public Eugenio G. Gemarino, and entered in his Notarial Register as Doc. No. 119; Page No. 25; Book No. IV; Series of 1952, although same is a Deed of Definite Sale, however, I am giving the said Vendor, Olimpia Fernandez the option to repurchase the aforesaid property from me at any time after May, 1958 but not later than May, 1960. Should she fail to redeem the aforesaid property by paying me back the sum of EIGHT THOUSAND SIX HUNDRED AND 00/100 (P8,600.00) PESOS, Philippine Currency within the period of time stated above, then she will lose all the right to repurchase the land from me.

(SGD.) AURELIO B. OCTAVIANO"

Unlike the deed of sale, this document was not registered.

Aurelio took possession of the land after the sale.

Sometime in May, 1953, Aurelio tried to get the certificate of title covering the subject land from Olimpia for the purpose of registering the deed of absolute sale (Exhibit "E"), but was told that the same was in the possession of Maximino Gumayan, who, in turn, informed him that the title had been deposited with the Philippine National Bank. Consequently, on January 7, 1953, Aurelio filed Civil Case No. 2660 (Aurelio Octaviano vs. Olimpia Fernandez, Maximino Gumayan & PNB) to compel them to deliver the title. Aurelio also caused the annotation of a notice of lis pendens. Four months after the filing of the above Complaint, Aurelio again approached Gumayan for the same purpose, but the latter refused to release the certificate of title unless Aurelio would first pay him the "pagare" receipts representing additional sums of money in the total amount of P1,486.00 borrowed by Olimpia from Gumayan in 1951, 1952 and 1953, which amounts were not included in the mortgage obligation of Olimpia assumed by Aurelio. Aurelio confronted Olimpia about these receipts contending that she had already agreed to sell the property for P8,600.00. To avoid further trouble, Aurelio offered Olimpia the option to repurchase the property. Olimpia did not accept the offer alleging that she had no money at that time to buy back the land. In fact, Olimpia even suggested to Aurelio that he better sell the land to anybody and simply disregard the option to repurchase.[2]

Relying on the express consent of Olimpia to sell the land and believing that she had renounced the option granted her to repurchase the same, Aurelio negotiated with his own brother, respondent Isauro, for the sale of the property sometime in 1954. Isauro agreed to buy the property, and paid Aurelio P10,500.00. Out of this amount, Aurelio paid Gumayan on 8 August 1954 the amount of P6,600.00, representing the obligation of Olimpia that was assumed by Aurelio under the deed of definite sale (Exhibit "E"). This payment was evidenced by certificate of payment annotated as Entry No. 43083 at the back of TCT No. 7428. Additionally, Aurelio also paid Gumayan P1,486.00 covering the "pagare" receipts representing the additional sums of money borrowed by Olimpia from Gumayan, as evidenced by Exhibit "4 — Aurelio". The total amount paid by Aurelio for the property, therefore, was P10,086.00, compared to P8,600.00 contracted for in the deed of sale, Exhibit "E".

On 8 September 1954, Aurelio executed an Affidavit stating that since the defendants in Civil Case No. 2260 had surrendered the title to him, he was causing the cancellation of the notice of lis pendens.

On the same date of 8 September 1954, Aurelio executed in favor of his brother, Isauro, a deed of absolute sale (Exhibit "B"), reflecting a price of P2,000.00 only, allegedly in order to reduce the notarial and registration expenses. Thereafter, TCT No. 7428 in the name of Olimpia was cancelled and TCT No. 16882 was issued, in the name of respondent Isauro Octaviano.

On 16 February 1962 (or about two years after the deadline of May, 1960) Olimpia, through her lawyer, desired to "repurchase" the land and wrote Isauro a letter asking him if he was willing to resell the land as she had the money already to buy it back (Exhibit. "1"). Isauro was initially receptive as shown by his reply letter of March 26, 1962 (Exhibit "G" and "2"—Isauro). Olimpia herself also wrote Isauro an undated letter offering to repurchase the property for P12,000.00, with the request that Isauro lend her the title which she would use as a collateral for a loan that she was intending to secure from a bank to cover the repurchase price (Exhibit "3-A"). Apparently, Isauro eventually refused to allow "repurchase" except allegedly according to Olimpia, for P40,000.00.

Olimpia contends that since 1958, she was looking for Aurelio to tell him of her desire to "repurchase" the property but that Aurelio could nowhere be found.[3]

On 4 October 1971, Olimpia commenced suit for recovery of ownership and possession of the subject land against the Octaviano brothers, both respondents herein. The case was docketed in the Court of First Instance of Iloilo, Branch III, as Civil Case No. 8809. The Complaint averred, inter alia, that Aurelio ex-pressly allowed her in writing to repurchase the land at any time after May, 1958, but not later than May, 1960; that Aurelio fraudulently sold the said land to his brother Isauro without first having consolidated his ownership pursuant to Article 1607 of the Civil Code; that plaintiff could not have exercised her option to repurchase because Aurelio sold the property to his brother, who, being aware of her option to repurchase, cannot be considered an innocent purchaser; that in 1962, Isauro refused to recognize the plaintiff's option to repurchase, but, instead, offered to sell the property at the prevailing price; and, that despite repeated demands made by Olimpia, the Octavianos refused to allow her to redeem the land. It was then prayed that the certificate of title issued in the name of Isauro Octaviano be annulled, and that plaintiff be allowed to repurchase the land.

The Octavianos separately filed their Answers with counterclaims. For his part, Aurelio traversed the material allegations of the Complaint and specifically denied the assertion that, through fraud and with evident intent to deceive Olimpia he sold the lot to his brother without consolidating ownership unto himself. As special and affirmative defenses, Aurelio alleged that the document (Exhibit "F"), purportedly an option to repurchase, was not an express grant to Olimpia of her right to repurchase, but rather, a unilateral offer of Aurelio to resell the property to the said vendor, which offer was not accepted by her; that neither consent nor written authority, nor waiver of Olimpia was necessary for the sale of the land in question for there was no acceptance of his unilateral

offer to sell; nor was there any necessity for the consolidation of ownership pursuant to Article 1607 of the New Civil Code, for, as admitted by Olimpia, what was executed by her was a deed of definite sale and that Olimpia is estopped from alleging fraud for the reason that she herself admitted in her Complaint the existence of that deed of sale.

For his part, respondent Isauro interposed the special defenses that he purchased the land in dispute in good faith; that he took possession thereof upon a just title, free from any liens and encumbrances; that he possessed the land in the concept of owner, continuously, openly and adversely for more than 17 years since 8 September 1954; that he was not privy to the alleged option given to Olimpia by Aurelio; neither had he (Isauro) any knowledge of the said option which Olimpia should have asserted without delay, within the statutory limitation; that more than ten (10) years had elapsed since the alleged violation by Aurelio of the supposed option to resell, without Olimpia having taken any action thereon. As counterclaim, Isauro claimed moral damages and attorney's fees.

After trial on the merits, the Court a quo rendered a Decision on 30 June 1975, finding for Olimpia, the decretal portion of which reads:

"WHEREFORE, decision is hereby rendered in favor of the plaintiff, ordering the defendants:

- 1) To execute the sale of the property in favor of the plaintiff upon the payment of P8,600.00 representing the repurchase price pursuant to their agreement;
- 2) To declare null and void the registration and transfer certificate of title in favor of Isauro B. Octaviano of Lot 9234-B in 1954, the same having been made without the seller having been legally and lawfully entitled to the property being registered in his name, at the time when such sale was executed in 1954, no consolidation of ownership pursuant to law having been made; and
- 3) To return immediately Lot No. 9234-B to the plaintiff plus damages equal to the produce from 1958 until return is complied with.

Without pronouncement as to costs.

SO ORDERED."[4]

On appeal by the Octaviano brothers to the then Court of Appeals, that Tribunal reversed the findings of the Trial Court that the contract was a sale with right of repurchase, ruled instead that the transaction between Olimpia and Aurelio was an absolute sale, and declared Isauro the lawful and absolute owner of the lot in question. Olimpia moved for reconsideration but the same was denied for lack of merit.

In the meantime, Olimpia died, and was substituted by her heirs, Josefina, Liberty and Gregorio, all surnamed Zulueta.

The Petition before us seeks a review of respondent Court's Decision.

We affirm.

- 1) The nature of the transaction between Olimpia and Aurelio, from the context of Exhibit "E" is not a sale with right to repurchase. Conventional redemption takes place "when the vendor reserves the right to repurchase the thing sold, with the obligation to comply with the provisions of Article 1616 and other stipulations which may have been agreed upon".[5]

In this case, there was no reservation made by the vendor, Olimpia, in the document Exhibit "E". The "option to repurchase" was contained in a subsequent document and was made by the vendee, Aurelio. Thus, it was more of an option to buy or a mere promise on the part of the vendee, Aurelio, to resell the property to the vendor,

Olimpia.[6] As held in *Villarica vs. Court of Appeals*:[7]

"The right of repurchase is not a right granted the vendor by the vendee in a subsequent instrument, but is a right reserved by the vendor in the same instrument of sale as one of the stipulations of the contract. Once the instrument of absolute sale is executed, the vendor can no longer reserve the right to repurchase, and any right thereafter granted the vendor by the vendee in a separate instrument cannot be a right of repurchase but some other right like the option to buy in the instant case. . . ." (Italics supplied)

Neither is the contract between Olimpia and Aurelio one of equitable mortgage, which has been defined as "one in which although it lacks some formality, form of words or other requisites, prescribed by a statute, show the intention of the parties to charge a real property as security for a debt and contain nothing impossible or contrary to law".[8] From the provisions of the deed of sale, Exhibit "E", there is nothing therein from which it could be inferred that the property was being utilized as security for a debt. The document was labelled a deed of absolute and definite sale with the vendee Aurelio assuming the payment of the mortgage obligations owing by Olimpia to Maximino Gumayan, and specifically stipulating that upon payment of that indebtedness, the transaction became a deed of definite sale. The presumption that the contract was an equitable mortgage neither arises because the price of the sale at the time it was executed in 1952 was not unusually inadequate; the vendor, Olimpia, did not remain in possession as lessee or otherwise; nor did she bind herself to pay taxes on the land.[9]

Inasmuch as the contract was neither a sale with right of repurchase, nor an equitable mortgage, neither can it be successfully alleged that it partook of a "pactum commissorium" and was, therefore, void. "Pactum commissorium" is a stipulation for automatic vesting of title over the security in the creditor in case of the debtor's default. It bears reiterating, however, that Olimpia was not a debtor, but a vendor. She was so described in the document, Exhibit "E". Olimpia owed nothing to Aurelio, and offered nothing to him as security for the payment of any indebtedness.

It should also be recalled that, irked by the additional "pagares" incurred by Olimpia from Maximino Gumayan, Aurelio had asked Olimpia to buy back the property in 1954 but she demurred for lack of funds.

And what is of greater import is that petitioner waited for an unexplained delay of about 19 years, from the date of the execution of the deed of sale (Exhibit "E") in 1952 and the option to repurchase (Exhibit "F") in the same year up to the time of filing of the Complaint in 1971, before she assailed the nature of her transaction with Aurelio, claiming that the contract was a sale with right of repurchase. If Olimpia really believed so, an action for reformation of instrument was open to her. Likewise, it took her more than 17 years - from the time of registration of the sale to Isauro and the subsequent issuance of a new certificate of title in the latter's name in 1954 up to the commencement of the action in 1971 for recovery of possession and ownership - before she questioned the validity of the sale by Aurelio to Isauro, contending that Aurelio was not yet the registered owner when he sold the land to Isauro, hence, could not transfer ownership thereof, and that he had sold the land without first consolidating ownership in himself. In point of fact, however, there was no need for Aurelio to consolidate ownership since the contract was one of absolute sale and not a pacto de retro sale. It also took Olimpia nine years from the time she sought to exercise her right of repurchase in 1962 up to the institution of the suit for recovery in 1971. Petitioner's long inaction to assert her alleged right should now be deemed barred by laches.

"For a party to deserve the consideration of the courts, he must not only show that he is entitled to the relief prayed for, but must show also that he is not guilty of laches, indifference, negligence or ignorance." [10]

Again,

"The defense of laches is an equitable one and does not concern itself with the character of the defendant's title, but only with whether or not by reason of the plaintiff's long inaction or inexcusable neglect he should be

barred from asserting this claim at all, because to allow him to do so would be inequitable and unjust to the defendant." [11]

And even granting, arguendo that the sale was a pacto de retro sale, the evidence shows that Olimpia, through her lawyer, opted to repurchase the land only on 16 February 1962, approximately two years beyond the stipulated period, that is, "not later than May, 1960".

If Olimpia could not locate Aurelio, as she contends, and based on her allegation that the contract between her was one of sale with right to repurchase, neither, however, did she tender the redemption price to private respondent Isauro, but merely wrote him letters expressing her readiness to repurchase the property.

"It is clear that the mere sending of letters by the vendor expressing his desire to repurchase the property without accompanying tender of the redemption price fell short of the requirements of law." [12]

Neither did petitioner make a judicial consignment of the repurchase price within the agreed period.

"In a contract of sale with a right of repurchase, the redemptioner who may offer to make the repurchase on the option date of redemption should deposit the full amount in court. . . ." [13]

"To effectively exercise the right to repurchase the vendor a retro must make an actual and simultaneous tender of payment or consignment." [14]

2) While it is true that Aurelio was not the registered owner of the property at the time of the sale to his brother in 1954, it should be recalled that by that time he had already complied with the conditions of the deed of sale by redeeming the property from Maximino Gumayan and paying the latter in full. Aurelio may, therefore, be said to have had the right to transfer ownership [15] as also shown by the fact that Maximino Gumayan had surrendered the certificate of title to him so that the authorization to the Register of Deeds to cancel the same and issue a new one as stipulated in the deed of sale became fully operative (Exhibit "E"). Aurelio was not duty bound to wait for the expiration of the alleged redemption period before he could dispose of or transfer ownership of the land for, as elsewhere discussed, the sale was not a sale with right of repurchase.

It is true that by virtue of Exhibit "F", Olimpia could have "repurchased" the property between 1958 and 1960. If she had done so, perhaps, her rights would have been entitled to protection. She was remiss, however, and only attempted to do so in 1962, or way beyond the period granted her.

We might sympathize with her plight, but an individual is expected to take ordinary care of his concerns and cannot expect the law to protect him all the way. [16] To be noted also is the fact that her own lawyer prepared the deed of sale and the separate document giving her the option to "repurchase". [17]

For his part, private respondent Isauro was an innocent purchaser for value and in good faith. As heretofore stated, the instrument granting the "option to repurchase" (Exhibit "F") was not registered nor annotated at the back of the corresponding certificate of title. A purchaser need not explore further than what the Torrens title on its face indicates.

"A purchaser in good faith is one who buys property of another, without notice that some other person has a right to, or interest in such property and pays a full price for the same, at the time of such purchase or before he has notice of the claim or interest of some other persons in the property. Good faith consists in an honest intention to abstain from taking any unconscientious advantage of another." [18]

"Where there was nothing in the certificate of title to indicate . . . any encumbrance thereon, the purchaser is not required to explore farther than what the Torrens title upon its face indicates in quest for any hidden defect or inchoate right, that may subsequently defeat his right thereto. If the rule were otherwise, the efficacy and conclusiveness of the certificate of title which the Torrens system seeks to insure would entirely be futile and

nugatory."[19]

WHEREFORE, the decision of respondent Court of Appeals, being in accordance with law and the evidence, is hereby affirmed, with costs against petitioners.

SO ORDERED.

Relova and Gutierrez, Jr., JJ., concur.

Plana, J., I join Justice Vasquez in his concurring opinion.

Vasquez, J., please see separate opinion.

Teehankee, J., (Chairman), took no part.

[1] Seventh Division composed of J. Venicio Escolin, ponente; and concurred in by JJ. Guillermo P. Villasor and Onofre A. Villaluz.

[2] T.s.n., dated May 9, 1972, pp. 65-71.

[3] T.s.n., dated May 9, 1972, p. 14.

[4] Pp. 38-39, Record on Appeal.

[5] Article 1601, Civil Code.

[6] 10 Manresa, p. 311 cited in Padilla's Civil Code Annotated, Vol. V, 1974 ed., p. 467.

[7] 26 SCRA 189 (1968).

[8] Outline of Civil Law, J.B.L. Reyes and R. C. Puno.

[9] Article 1602, Civil Code.

[10] Samson, et al. vs. Yatco, etc., et al. 104 Phil. 378 (1958).

[11] Pabalate, et al. vs. Echarri, Jr., 37 SCRA 519 (1971).

[12] Lee vs. Court of Appeals, 68 SCRA 197 (1972).

[13] Rumbaoa vs. Arzaga, 84 Phil. 812 (1949).

[14] Catangcatang vs. Legayada, 84 SCRA 51 (1978).

[15] Article 1459, Civil Code.

[16] Vales vs. Villa, 35 Phil. 769 (1916).

[17] T.s.n., May 9, 1972, pp. 31-32.

[18] Fule, et al vs. De Legare, et al, 117 Phil. 367 (1963).

[19] Ibid.

CONCURRING OPINION

VASQUEZ, J.:

My adherence to the conclusion arrived at in the main opinion is induced primarily by the undisputed showing that respondent Isauro Octaviano was an innocent purchaser for value, the document authorizing repurchase not having been registered nor shown to have been known to him.

I entertain misgivings as to view that the document giving the vendor an "option to repurchase" (Exh. F) should be construed independently of the deed purporting to be one of absolute sale (Exh. E). The circumstance alone that Exhibits E and F were executed on the same date, in separate documents which could have been easily joined together, suffices to generate the suspicion that there was a deliberate attempt to hide the real nature of the transaction as one of sale with pacto de retro, and thereby avoid the application of the stringent rules provided for in the New Civil Code regarding the same.

It is true that in *Villarica vs. Court of Appeals*, 26 SCRA 189, a similar transaction was held to be one of absolute sale, with the vendor being given only an option to repurchase in a separate document. I shall not try to make distinctions in an effort to show why the said ruling should not apply herein. It is simply my feeling that the holding in *Villarica* needs re-examination before it is prostituted as a most potent and convenient means of nullifying the provisions of the New Civil Code safeguarding the rights of a person who executed an instrument purporting to be a sale with right of repurchase. By the device resorted to in *Villarica* and in the case at bar, a vendee of property the vendor of which would want to retain the right to repurchase, or a mortgagee who would want to conceal the real nature of the transaction or the exaction of usurious interest could avoid the need for filing the court action for the consolidation of his title, wherein he would be required to prove that the transaction was, indeed, one of sale with right of repurchase instead of being merely one of equitable mortgage and, even if he so succeeds, would necessarily prolong the period of redemption up to the expiration of thirty days from the finality of the judgment in said case (Arts. 1606 and 1607, Civil Code). To my mind, the *Villarica* ruling may only apply if there is adequate showing that the parties acted in good faith in executing the two separate documents, and not to hide the fact that their transaction is one of sale with right of repurchase, or one of equitable mortgage.

If the sale involved in this case is in reality one of sale with pacto de retro, it would not be correct to state that the repurchase may no longer be effected just because the period stipulated therefor had expired. As aforesaid, the New Civil Code abolished automatic consolidation of the ownership of the vendee a retro upon the expiration of the redemption period. It is necessary that the vendee institute an action for consolidation and, if he succeeds therein to show that the transaction is, indeed, one of pacto de retro, the vendor may still redeem the property within thirty days from the finality of the judgment therein.

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