

LUIS FRUCTO, PLAINTIFF AND APPELLEE, VS. MAXIMIANO FUENTES, DEFENDANT AND APPELLANT.

G.R. No. 5629. March 02, 1910

Ponente: JOHNSON, J.

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JOHNSON, J.:

An action to repurchase a parcel of land sold under a pacto de retro. The complaint contained the following allegations:

"1. On or about the 16th day of September, 1907, the plaintiff executed a notarial deed in Tagalog in favor of the defendant, an exact copy of which, together with its Spanish translation, is attached as Exhibit A, and forms an integral part of this complaint.

"2. The deed mentioned in the foregoing paragraph refers to the sale with pacto de retro, within the term of one year from the execution thereof, of a rice field, for P149.80, made by the plaintiff in favor of the defendant, the description of which land is as follows:

"It is located in the barrio of Tubuan, municipality of Pila, La Laguna, and has an area of about two cavanes of rice seed or 3,783 square meters, and is bounded on the north by the shore of the Laguna de Bay; on the east, by land belonging to D. Benito Lacdang; on the south, by land belonging to D. Higinio Benitez; and on the west, by an irrigation ditch, known as 'Paraan.'

"3. On or about the 16th of September, 1908, Jose Riñon, of Pila, representing the plaintiff, called on the defendant to redeem the land described in this complaint, and was there from the morning until late at night; but "the said defendant was not at his house and did not return that day, and then the said Riñon offered the amount of the repurchase to the plaintiff's wife, but the latter refused to accept the amount, telling him to wait her husband's return. On the following day, that is to say, on the 17th of September, 1908, the said Jose Riñon went to the defendant's house again, but he did not find him. On the third day, that is, on the 18th of the same month of September, 1908, the said Jose Riñon appeared at the defendant's house once more, and having found him there, he offered him the amount of the repurchase of the land in question but the defendant refused to accept it, stating that he recognized no one but the plaintiff, notwithstanding the statement made by Jose Riñon to the effect that he represented the said plaintiff.

"4. On or about the 20th of September, 1908, as soon as the plaintiff became aware of what had happened to his representative, he went to the defendant personally, and in a friendly manner repeatedly offered him the amount of the repurchase, but the latter refused, and still refuses, to allow the redemption desired by the plaintiff.

"5. This breach of the contract and bad faith on the part of the defendant has caused plaintiff damages to the extent of P300, for expenses incurred during said friendly demands made in order to effect the repurchase.

"For all the above reasons the plaintiff requests the court to render judgment: (a) ordering the defendant to receive from the plaintiff the amount of the repurchase of the land described in this complaint, after the execution of the deed of retracto; (b) adjudging the defendant to pay the plaintiff the sum of P300 for damages,

with the costs of this trial; and (c) allowing moreover, any further relief to which he may be entitled in justice and equity."

The defendant presented an answer as follows:

"That he denies each and all of the statements of the complaint generally and specifically, and admits only that the rice field, subject of this complaint, is the same described in Exhibit A of the plaintiff, and as special defense he alleges:

"That the right of repurchase alleged by the plaintiff has elapsed according to the precise terms of the sale made by the said plaintiff in favor of the defendant.

"Therefore, the defendant asks the court to render judgment in his favor, absolving him from the complaint, with the costs against the plaintiff, and to allow other proper relief."

After hearing the evidence adduced during the trial of the cause, the lower court rendered a judgment in favor of the plaintiff and against the defendant, permitting the plaintiff to repurchase the land in question, as follows:

"In this case the plaintiff seeks to redeem the land described in the complaint, which he sold to the defendant with pacto de retro on or about the 16th day of September, 1907, for the sum of P149.80, and for the term of one year, and alleges that on the day of the expiration of the contract, i. e., the 16th of September, 1908, he sent a representative of his to redeem the land and pay the said amount; but, the defendant being absent from his house, the said representative tried to deliver the money to the defendant's wife; the latter, however, several times refused to accept it, and some days later the defendant also refused to accept the money.

"The defendant answered that the sale of the land in question was made, but he denies that the offer to repurchase had been made to him in due time, and that the period has already elapsed.

"The question then is only whether or not the amount, or value of the land sold under pacto de retro, was duly offered by the plaintiff on the day of the expiration of the contract.

"The preponderance of the evidence has shown that, as to the land sold under pacto de retro by the plaintiff to the defendant for the sum of P149.80, on September 16, 1907, an attempt was made to redeem it on September 16, 1908, the last day of the term fixed, and for several days thereafter, which repurchase and delivery of the money to the defendant's wife could not be effected because of the latter's refusal, and that of the defendant himself some days later.

"It is then duly established that the plaintiff did his best to fulfill the terms of the contract, by sending the money to repurchase the land sold under pacto de retro, within the term stipulated, and if the repurchase could not be effected, it was due to the behavior and refusal of the defendant, and for this reason the plaintiff is entitled, in my opinion, to repurchase the land in question according to the contract made between the parties.

"Therefore, the court holds that the plaintiff has a right to repurchase the land, after paying the value thereof, that is to say, the sum of P149.80, and the expenses of the deed, and the defendant is accordingly ordered to execute the corresponding deed of resale in favor of the plaintiff, after the repayment of the said amount, the plaintiff having to make the said payment within the period of one month from the day following the notification of this decision, and the defendant shall execute the deed within the period of ten days, and then the land shall be immediately returned to the plaintiff, after payment of the value thereof. No special finding as to costs. So ordered."

After receiving notice of this judgment, the defendant presented a motion for a new trial, which motion was denied. The defendant presented no exception to the order of the court denying his motion for a new trial. This court can not therefore examine the evidence adduced during the trial of the cause.

In this court the defendant and appellant made the following assignments of error;

"1. The court erred in rendering judgment against the defendant notwithstanding the fact that it was proved at the trial, and it was admitted as true by the same plaintiff, Luis Fructo, that the period fixed in the contract has elapsed.

"2. The court erred in rendering judgment to the effect that it has been proven that Luis Fructo, plaintiff, endeavored to exercise his right of repurchase of the land in question on September 16, 1908.

"3. The court erred in rendering judgment and declaring that the defendant, Maximiano Fuentes, refused to accept the redemption of the land in question on September 16, 1908."

Not being able to examine the evidence adduced during the trial of the cause by reason of the failure of the defendant and appellant to except to the order of the judge denying the motion for a new trial, we are governed by the findings of fact made by the lower court. Under these findings of fact it is clearly shown that the plaintiff, not only on the day when the contract fell due made an effort to pay the amount due for the purpose of repurchasing the land in question, but on several consecutive days was this effort made. Without intending to hold that the vendor of land under a pacto de retro does not lose his right to repurchase the same on the day of the maturity of the contract, yet where, as in the present case, at the time of the maturity of the contract, he makes a diligent effort to repurchase, as was done in the present case, and fails by reason of circumstances over which he has no control, we are of the opinion and so hold that he does not thereby lose his right to repurchase his land, by reason of his failure to repurchase on the day of maturity.

The judgment of the lower court is therefore hereby affirmed with costs. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Moreland, JJ., concur.

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