

CLARA BADAYOS, PETITIONER, VS. THE COURT OF APPEALS AND SPOUSES MAXIMO LISONDRA AND CONRADA GABISAN, RESPONDENTS.

G.R. No. 57630, March 13, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

We are primarily tasked with the determination of the proper period within which the right to repurchase, granted under the questioned pacto de retro sale, may be exercised.

The factual antecedents of the case are not disputed.

On 9 March 1973, petitioner executed in favor of private respondents spouses a Deed of Sale With The Right to Repurchase over her undivided half portion of Lot No. 3493 of the Talisay--Minglanilla Estate located at Tabunok, Talisay, Cebu for a consideration of Seven Thousand Four Hundred Pesos (P7,400.00); the sale was made subject to the following stipulation:

"That it is the essence of this contract that the vendor, Clara Badayos has the right to repurchase the above described property after two (2) years from and after the execution of this contract for the same amount of SEVEN THOUSAND FOUR HUNDRED PESOS P7,400.00)."[1]

Two (2) years after the execution of the document in question, or specifically on 17 April 1975, private respondents filed with the then Court of First Instance (now Regional Trial Court) of Cebu an action, docketed as Civil Case No. 14516, to consolidate ownership over the property in question; it is alleged therein that "the two years (sic) period from March 9, 1973 had already elapsed but defendant never repurchased the said property in violation of the contract of pacto de Retro Sale."[2]

In her Answer With Counterclaim, petitioner, as defendant, alleges, inter alia, that: (1) the document in question is actually an equitable mortgage intended to secure her loan of P4,000.00 from private respondents who charged an interest of P3,400.00; (2) after the expiration of the two-year period counted from 9 March 1973, she approached the private respondents to request for an extension of time within which to pay the obligation, which was granted, as she was waiting for the approval of the loan of her daughter in the amount of P30,000.00 with the Philippine National Bank; (3) she owns the property in question and is in possession thereof, enjoying its fruits, and paying the taxes thereon; (4) the piece of land, located in the commercial district of Tabunok, Talisay, Cebu, is classified as residential and has a commercial value of P100.00 per square meter; and (6) the private respondents are lessees thereof, paying rentals of "P18.00 only annually, for a term of 20 years to expire in 1976."[3]

In their Reply, private respondents deny that the document in question is an equitable mortgage and that they had granted the petitioner an extension of time within which to pay her obligation.

On 21 July 1975, the trial court issued a pre-trial order setting the case for trial on the merits and stating that the "parties and counsels did not submit any stipulation of facts but relied on their pleadings."[4]

On 11 August 1975, petitioner filed a manifestation informing the trial court that on 4 August 1975, she consigned the amount of P7,400.00 with the Clerk of Court in favor of the private respondents as payment of her obligation and/or redemption of the property in question; thus, the case has become moot and academic and should be dismissed.[5]

Acting on the manifestation, the trial court issued on 2 September 1975 an Order granting the petitioner five (5) days within which to submit a motion to dismiss and the private respondents five (5) days from receipt of said motion to interpose their opposition thereto.[6]

In her motion to dismiss filed on 4 September 1975, petitioner contends that:

"x x x the right of Clara Badayos to pay her obligation or to redeem the property in question occurred after March 9, 1975, and under this state of things, the right of Clara Badayos to pay her obligation or redeem the property has not yet elapsed or expired when she consigned or consigned the amount of P7,400.00 with the Clerk of Court, on August 4, 1975, or even up to the present. Considering that there is no period fixed within which to pay after March 9, 1975, the law comes in and fixed the period which is four (4) years from the date of the contract, as provided for in Art. 1606 of the New Civil Code x x x.

x x x

x x x even granting in gratia argumenti that the right to pay the obligation or to redeem the property has thus elapsed, such rights will be reborn within 30 days after final judgment. So, clearly, x x x there is no more point to proceed with the trial of the case at bar and the case should therefore be dismissed."[7]

Private respondents opposed the motion to dismiss arguing that since the pre-trial order has long become final, the petitioner has lost her right to redeem or repurchase the property and is thus estopped from changing her position that the pacto de retro sale is an equitable mortgage and not a sale with the option to repurchase.[8]

On 13 January 1976, the trial court ordered the petitioner to file an amended answer based on her new stand as presented in the motion to dismiss.[9]

On 21 January 1976, petitioner filed an Amended Answer With Counterclaim incorporating her new stand that the complaint should be dismissed because she has already consigned the P7,400.00 repurchase price with the trial court on 4 August 1975, well within the period prescribed by the document in question.[10]

On 26 February 1976, private respondents filed an Opposition to Admission of Amended Answer contending that petitioner must take a definite stand as to whether she considers the document in question as a contract of sale with option to repurchase or a contract of mortgage.[11]

The trial court, on 25 March 1976, admitted petitioner's Amended Answer With Counterclaim and required private respondents to file a reply thereto.[12]

In their Reply, private respondents contend that petitioner should be considered as having waived her right to repurchase the property as a result of her failure and refusal to exercise such right despite numerous demands.[13]

On 3 November 1976, petitioner filed with the trial court a manifestation that she is reinstating and refiling her 4 September 1975 Motion to Dismiss.[14]

Thereafter, on 17 March 1977, private respondents filed a Rejoinder to Motion to Dismiss asking for a trial on the merits and alleging that the grounds relied upon for a dismissal are matters of defense.[15]

On 27 May 1977, the trial court dismissed the complaint in an Order stating that:

"A (sic) reading of the deed in question it is very clear and in certain terms as shown in the 4th paragraph of

said contract that the right to repurchase the property shall occur after two years from and after the execution of the contract for the same amount of P7,400.00 counted from March 9, 1973.

It appears that defendant's former theory was that the contract was not a deed of sale with the right to repurchase but an equitable mortgage. Later, however, she changed her theory and admitted the allegations in the complaint for consolidation of right of ownership but the right to exercise the right to repurchase was not within two years, but after two years from execution thereof.

Hence, as she is now willing to repurchase the property the defendant argued, and the Court concurs, that the condition of the contract is that the defendant has the right to repurchase for the same amount the half (sic) portion of this Lot No. 3493 after two years from March 9, 1973, effectively on August 11, 1975 a little over two years from March 9, 1973 she (sic) consigned the same amount of P7,400.00 as repurchase price in favor of the plaintiffs thru the Clerk of Court and now asks for the dismissal of the case as she has opted to exercise the right to repurchase within the terms and contents of the contract.

The Court further concurs with the defendant's arguments that even if the complaint is decided in favor of the plaintiffs consolidating their title and under Art. 1606 of the Civil Code, the defendant has still 30 days from final judgment to exercise the right to repurchase and failure to exercise the same the execution of the judgment may follow for the sale of the property at public auction to cover the judgment debt.

Finding the motion to dismiss meritorious, the same is GRANTED."[16]

Their motion[17] for the reconsideration of this Order having been denied for lack of merit,[18] private respondents appealed to the Court of Appeals, which docketed the case as C.A.-G.R. No. 62677-R.

In its decision promulgated on 4 May 1981, the Court of Appeals reversed the appealed Order principally on the ground that since petitioner abandoned her theory of equitable mortgage, she should have exercised her right of redemption within two (2) years from 9 March 1973, or on or before 9 March 1975. Since she failed to do so, she lost that right. The appellate court held:

"As found by the court below in the disputed order of May 27, 1977, the defendant changed the theory of her case in the amended answer from one of an equitable mortgage to one of a deed of sale with right of repurchase, and contended that her right to repurchase the subject land has not yet expired when she consigned on August 11, 1975 the sum of P7,400.00, pursuant to the penultimate paragraph on the contract. Such being the case, and without any objection from the defendant-appellee, the issue as to the nature of the transaction is settled, it is a deed of sale with right to repurchase.

The facts show that the defendant failed to redeem the land on May 9, 1975, which is the expiration date of the two-year period from the execution of the contract on March 9, 1973. This is admitted by the appellee in both her answer and amended answer. We cannot over emphasize (sic) this point. And this fact is confirmed by the fact that the defendant requested for an extension of time to redeem the land. This too is admitt4d (sic) by the appellee in her amended answer. But the plaintiffs did not grant the request of the appellee but filed instead the present suit on April 17, 1975.

It appearing that the appellee had failed to redeemed (sic) the subject property as stipulated in the contract, it follows that the action for consolidation of ownership of the subject land is tenable. The fact that defendant consigned the redemption price in court does not cure the defect because the consignment was effected after the defendant had incurred (sic) delay."[19]

Petitioner sought reconsideration of the foregoing decision but the same was denied.[20]

Hence, the petitioner filed the instant petition for review on certiorari on 25 August 1981. Petitioner contends that she neither changed nor abandoned her theory that the contract in question is an equitable mortgage but merely

alleged alternative defenses, including the defense that if the contract is a true sale with right to repurchase, then there is nothing more to litigate in view of her exercise of the right to repurchase; granting even that the contract is a true sale with right to a repurchase, she still had the time to exercise her right; the dismissal of the case by the trial court was justified because it became moot and academic; and that there is no procedural or substantive justification for the Court of Appeals to declare the private respondents as the lawful owners of the property by consolidation, without any trial on the merits.

To the mind of this Court, the principal issue is whether or not petitioner was able to repurchase the property in question within the period stipulated in the deed of sale with right to repurchase. The fourth paragraph of said deed expressly provides:

"That it is the essence of this contract that the vendor, Clara Badayos has the right to repurchase the above described property after two (2) years from and after the execution of this contract for the same amount of SEVEN THOUSAND FOUR HUNDRED PESOS (P7,400.00)."[21]

The respondent Court interpreted this provision to mean that the two-year period shall commence from the date of the execution of the contract, i.e., from 9 March 1973, and that the right must be exercised within that period. This is not correct. The petition then is impressed with merit.

The foregoing stipulation is clear and needs no further interpretation; hence, its literal meaning is binding. It simply means that petitioner can redeem the property in question "AFTER TWO (2) years from and after the execution of the contract," NOT WITHIN two (2) years from such execution. Since the contract was executed on 9 March 1973, petitioner can redeem the property only after 9 March 1975. The rule in this jurisdiction is that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.[22]

It is to be noted, however, that while the parties agreed on the period within which the right may not be exercised or will be deemed suspended, they did not specify the period within which such may be exercised thereafter. This suspension remains valid[23] as long as Article 1606 of the Civil Code is not violated. Said Article reads:

"The right referred to in article 1601, in the absence of an express agreement, shall last four years from the date of the contract.

Should there be an agreement, the period cannot exceed ten years. x x x."

While the counting of this four-year period shall begin from the execution of the contract,[24] where the right is suspended by agreement until after a certain time, event or condition, the period shall be counted from the time such right could be exercised, but not exceeding ten (10) years from the execution of the contract.[25] Applying this provision to the instant case, the period to repurchase the property must be deemed to be four (4) years from 9 March 1975 or until 9 March 1979. Since petitioner consigned the repurchase price on 11 August 1975, a fact private respondents did not deny, this Court declares that this consignment operated as a valid offer or tender of the redemption price. It must be emphasized that consignment was not necessary for the reason that the relationship that existed between petitioner and private respondents, in respect to the right of redemption, was not one of debtor-creditor. Petitioner was exercising a right, not discharging an obligation, hence a mere tender of payment is sufficient to preserve the right of a vendor a retro.[26]

The foregoing renders unnecessary discussions on the other secondary issues raised.

WHEREFORE, the petition is GRANTED. The challenged decision of the respondent Court in C.A.-G.R. No. 62677-R, promulgated on 4 May 1981, is hereby SET ASIDE and the Order of the trial court of 27 May 1977 in Civil Case No. R-14516 is hereby REINSTATED and AFFIRMED.

Costs against private respondents.

IT IS SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Record on Appeal, 6.

[2] Id., 3.

[3] Record on Appeal, 9-10.

[4] Id., 19-20.

[5] Id., 20-21.

[6] Record on Appeal, 22-23.

[7] Id., 24-29.

[8] Id., 43-46.

[9] Record on Appeal, 47-50.

[10] Id., 52-59.

[11] Id., 59-60.

[12] Id., 67.

[13] Id., 68-69.

[14] Record on Appeal, 69-70.

[15] Id., 74-76.

[16] Record on Appeal, 76-79.

[17] Id., 80-86.

[18] Id., 94.

[19] Rollo, 18-20.

[20] Id., 27.

[21] Record on Appeal, 6.

[22] Article 1370, Civil Code.

[23] PARAS, E.L., Civil Code of the Philippines, Annotated, vol. V., 11th ed., (1986), 215-216, citing Santos vs. Heirs of Crisostomo, 41 Phil. 342; Rosales vs. Reyes, 25 Phil. 495.

[24] Borlaza vs. Ramos, G.R. No. 3433, 16 July 1951; 53 O.G. 3774, June, 1957.

[25] Rosales vs. Reyes, 25 Phil. 495 (1913); Lucido vs. Calupitan, 27 Phil. 148 (1914); Medel vs. Francisco, 51 Phil. 367 (1927); see also Santos vs. Heirs of Crisostomo, 41 Phil. 342 (1921); Tayao vs. Dulay, 13 SCRA 758 (1965); Baluyot vs. Venegas, 22 SCRA 412 (1968).

[26] TOLENTINO, Civil Code of the Philippines, vol. IV, 1985 ed., 322-323, citing *Rosales vs. Reyes*, 25 Phil. 495.

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