

FELIX ANGAO, PLAINTIFF AND APPELLANT, VS. NICOLAS CLAVANO, DEFENDANT AND APPELLEE.*G.R. No. 5853. October 04, 1910*

Ponente: TORRES, J.

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On March 10, 1909, Felix Angao filed a written complaint with the Court of First Instance of Misamis, in which it was alleged that in 1899 the plaintiff made a contract of the kind known in the locality as a pledge contract and sanctioned by local custom - with Ambrosio Bugahud, whereby Angao granted the use of his land, planted with 120 coconut trees, to the said Bugahud in exchange for 43 pesos which he had received from the latter as a loan, under the condition that the plaintiff should be bound after his marriage to repay the said sum to the creditor who in turn should return the land, situated in the place called Ynamucan of the pueblo of Langaran, Misamis, and bounded on the north and east by land of Gervasio Poriran and Mariano Bugahud, and on the south and west by a mangrove swamp. The complaint further alleged that the plaintiff married in October, 1906, and that in the same year, after his marriage, he offered to pay his said debt in order that his creditor might return to him his coconut land, but that Ambrosio Bugahud then told him that the property was in the possession of Nicolas Clavano, to whom he had deeded his rights in the said land; that, although the debtor, in company with Bugahud, made a demand upon Clavano for the restitution of the land and offered to pay him the said sum, Clavano refused to accept the said 43 pesos and persisted in refusing to return to him the coconut plantation and to accept the 43 pesos on the several occasions when he was requested to do so by the plaintiff. It was therefore prayed that judgment be entered against the defendant by ordering him to accept the said 43 pesos and to deliver the coconut plantation to its owner, the plaintiff.

The defendant, Nicolas Clavano, in his answer denied each and all the facts alleged in the complaint in each and all the paragraphs thereof, and asked that he be absolved from the complaint with the costs against the plaintiff.

The case having come to trial the attorneys of the litigating parties presented, during the taking of the evidence, the written agreement, consisting of ten pages, in which it appears that the Exhibit A, thereto attached as a part thereof, is the contract entered into between Felix Angao and Nicolas Clavano with respect to this land in question, and that this land is the same that is described in the complaint and mentioned in the document Exhibit A.

In view of the evidence adduced the trial court, on July 27, 1909, rendered judgment by absolving the defendant from the complaint with the costs against the plaintiff who, oh being notified thereof, took an exception thereto and filed an appeal before this court, for which purpose the proper bill of exceptions was presented, certified to and forwarded to the clerk of this court.

The plaintiff demands the fulfillment of the obligation contracted by the defendant by virtue of an agreement, with right of repurchase stipulated in the sale of a parcel of land, as specified in the instrument written in the dialect of the province, a translation of which is inserted in the judgment appealed from. The said obligation consists in that

the defendant shall accept the amount of the repurchase and deliver the land sold, to the plaintiff, the owner thereof.

But before entering into a consideration of the issues raised and the errors attributed to the judgment of the trial court in the appeal raised by the plaintiff, it must be borne in mind that this court is obliged to accept the statement of facts and the findings as to the weight of the evidence, such as they appear in the judgment appealed from, and has no authority to examine the former nor review the latter, inasmuch as the appellant did not petition for an annulment of the said judgment and the granting of a new trial. This court must, therefore, restrict its action in the present litigation to a determination of the issues of law. (Sec. 497, Code of Civil Procedure, and Act No. 1596, which modified that section.)

Under the foregoing premises, and in consideration of the fact that the plaintiff Felix Angao allowed the year following that of his marriage, celebrated on September 8, 1903, to lapse without having availed himself of his right to repurchase the land sold under pacto de retro to Nicolas Clavano, it is unquestionable that he has lost his right to repurchase or recover the property sold, and that the purchaser's right therein has, by operation of the law, become perfected.

The contract set forth in the instrument above mentioned contains a condition, which is the marriage and a certain period of time after which the right of repurchase shall lapse. It was covenanted that if, after one year from the time of the marriage of the plaintiff Angao, the latter should not redeem the land sold, the vendee, the defendant Clavano, would be the true owner of the coconut land in question, and the vendor Angao should only be entitled to claim from the former the sum of 20 pesos as an additional price of the said land.

Angao married on September 8, 1903, from which date he was entitled to redeem the land sold by him, inasmuch as the condition stipulated between the contracting parties had been complied with, to wit, the marriage of one of them. On September 9, 1904, the year immediately following the date of defendant's marriage had already fully elapsed and, up to the 8th of September of the said year, that being the last day of the year following his marriage, he had not yet repurchased the property, therefore, from the said date, September 9, defendant's right had already lapsed, for the year had passed and this last date arrived without his having repurchased the land.

The trial court found, in its judgment, that when the plaintiff wished to redeem the land and offered to repay the P43 in August, 1906, more than one year had elapsed since his marriage. This judicial finding can not be set aside, inasmuch as it is impossible to review the evidence in the case, and even were it possible to do so, the record does not show that the plaintiff demanded of the defendant the redemption of the land by offering him, in the act of making the demand, the payment of its price, nor that the latter was deposited with some authority or with a commissioned notary within the period of one year counting from the date of the defendant's marriage, since on the arrival of the 9th of September, 1904, he had already lost his right, according to the agreement. (Arts. 1508, 1509, Civil Code.) Article 1518 provides:

"The vendor can not exercise the right of redemption without returning to the vendee the price of the sale."

So that it is not sufficient for the vendor to intimate or to state to the vendee that the former desires to redeem the thing sold, but he must immediately thereupon offer to repay the price, and, should the vendee refuse to accept the amount of the price thus offered, it must be placed on deposit, for if these conditions are not complied with, as in the present case, the provisions of article 1509 of the Civil Code become applicable, wherein it is provided that "if the vendor should not comply with the provisions of article 1518, the vendee shall irrevocably acquire the ownership of the thing sold."

For the foregoing reasons, whereby the errors alleged have been disposed of, and the judgment appealed from

being in accordance with the law, it is hereby affirmed, with the costs against the appellant.

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

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