

**CRISANTO LICHAUCO ET AL., PETITIONERS AND APPELLANTS, VS.
JOSE BERENGUER, TESTAMENTARY EXECUTOR OF MACARIO
BERENGUER, OPPONENT AND APPELLEE.**

G.R. No. 5933. August 26, 1911

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Crisanto Lichauco, on his own behalf, and his brothers, Faustino, Zacarias, Galo, and his sister, Timotea Lichauco, his coheirs, applied for the registration, in the new property registry, of two rural estates situated in the pueblo of Arayat, Province of Pampanga, one of which, in the barrio of Batasan, has an area of 204 hectares, 33 ares, and 38.795 centares, and the other, in the sitio of Panantaglay, barrio of Calumpang, 120 hectares, 69 ares, and 58 centares. The boundaries and other particulars relating to these lands are specified in the application, which, for the purpose of this opinion, are taken to be true.

With respect to both the said properties, the applicants allege that they obtained them by inheritance from their grandmother, Cornelia Laochangco, and that the latter, in turn, had acquired them from Macario Berenguer, through purchase with an agreement that the vendor should have the right to redeem them. Jose Berenguer, the son of Macario Berenguer and the administrator of his estate, opposed the registration of the first of the aforementioned properties, and acquiesced in that of the second. The trial was had with respect to the first tract of land above referred to, documentary and oral evidence was adduced by the parties, and the Court of Land Registration decided:

"The adverse claim presented, relative to the parcel of land situated in Batasan, is allowed; consequently, the registration of the same land applied for by the applicants, is denied. Upon entry of a general default the adjudication and registration of the second parcel, situated in Panantaglay, of 120 hectares, 69 ares, and 58 centares, is decreed (at 12.10 p. m.) in favor of the applicants.

"When this decision shall have become final, let the decree issue, and the registrar of deeds for Pampanga shall cancel the registration entries found in the name of Cornelia Laochangco on pages 192 and 196 of volume 1 of the district of Arayat, properties Nos. 23 and 24, respectively, second inscriptions."

The applicants appealed from this judgment in so far as it denied the registration of the first parcel of land, and their bill of exception having been filed with this court, with right to a review of the evidence, they alleged against the said judgment the following assignments of error:

- The finding that the contract executed between Cornelia Laochangco and "Macario Berenguer was not a sale with right of repurchase, as it appears to be in the instrument (Exhibit C of the applicants), but a real loan.
- The finding that the instrument (Exhibit C) did not convey to the applicants any right of ownership whatever, and that it was of no value and effect, as well also as the registration of the same in the old registry; and
- The allowance of the adverse claim filed by Jose Berenguer, as to the parcel of land situated in Batasan, and the

denial of its registration in the new registry.

The evidence to be considered with respect to the three preceding assignments of error, are: First, on the part of the applicants, the public instrument executed by Macario Berenguer in favor of Cornelia Laochangco (Exhibit C); second, on the part of the opponent, the account current between Cornelia Laochangco and Macario Berenguer (Exhibit 5); and, third, the oral testimony produced concerning this documentary evidence.

The public instrument, Exhibit C, in part reads as follows:

"Don Macario Berenguer declares and states that he is the proprietor in fee-simple of two parcels of fallow unappropriated crown land situated within the district of his pueblo. The first has an area of 73 quinones, 8 balitas, and 8 loanes, located in the sitio of Batasan, and its boundaries are, etc., etc. The second is in the sitio of Panantaglay, barrio of Calumpang, has an area of 73 hectares, 22 ares, and 6 centares, and is bounded on the north, etc., etc."

In the executory part of the said instrument, it is stated:

"That under condition of right to repurchase (pacto de retro) he sells the said properties to the aforementioned Dona Cornelia Laochangco for P4,000 and upon the following conditions: First, the sale stipulated shall be for the period of two years, counting from this date, within which time the deponent shall be entitled to repurchase the land sold upon payment of its price; second, the lands sold shall, during the term of the present contract, be held in lease by the undersigned who shall pay, as rental therefor, the sum of 400 pesos per annum, or the equivalent in sugar at the option of the vendor; third, all the fruits of the said lands shall be deposited in the sugar depository of the vendee, situated in the district of Quiapo of this city, and the value of which shall be applied on account of the price of this sale; fourth, the deponent acknowledges that he has received from the vendor the purchase price of P4,000 already paid, and in legal tender currency of this country * * *; fifth, all the taxes which may be assessed against the lands surveyed by competent authority, shall be payable by and constitute a charge against the vendor; sixth, if, through any unusual event, such as flood, tempest, etc., the properties hereinbefore enumerated should be destroyed, wholly or in part, it shall be incumbent upon the vendor to repair the damage thereto at his own expense and to put them into a good state of cultivation, and should he fail to do so he binds himself to give to the vendee other lands of the same area, quality and value."

The account current (Exhibit 5), which the applicants' counsel acknowledged to be correct, as taken from their books, although impugned by him as irrelevant on account of the relation of facts therein made concerning Cornelia Laochangco and Macario Berenguer being different from that appearing in the preceding instrument, contains the following statements:

- Prior to June 28, 1889, Berenguer owed Laochangco 2,656.02 4/8 pesos;
- Subsequent to this date, June 28, 1889, and up to October 5 of the same year, the former from time to time received from the latter other amounts which, on the date last mentioned, amounted to the sum of 3,949.91 pesos, which sum, by a payment made by Berenguer on the same date, October 5, 1889, of 229.68 pesos, was reduced to 3,720.23 pesos.
- On the same day, October 5, 1889, Laochangco gave Berenguer 1,000 pesos more.
- From October 9, 1889, to August 40, 1890, Berenguer received other amounts until his debt to Laochangco, all told, aggregated 4,912.43 pesos; and as the former had paid to the latter 1,023.82 pesos, he still owed him, on August 10, 1890, 3,888.61 pesos.
- The account current ran on until July 16, 1896, without Berenguer receiving any more money, the only items of the said account current being the amounts of sugar which Berenguer turned in and which were credited to him, to wit, 454.87 pesos' worth, in 1893; 515 pesos' worth, in 1894; 806.37 pesos' worth, in 1896, and the interest

thereon charged to him by his creditor at the rate of 12 per cent per annum.

The opponent maintained, and his theory was accepted by the trial court, that Berenguer's contract with Laochangco was not one of sale with right of repurchase, but merely one of loan secured by those properties, and, consequently, that the ownership of the lands in question could not have been conveyed to Laochangco, inasmuch as it continued to be held by Berenguer, as well as their possession, which he had not ceased to enjoy.

Such a theory is, as argued by the appellants, erroneous. The instrument executed by Macario Berenguer, the text of which has been transcribed in this decision, is very clear. Berenguer's heirs may not go counter to the literal tenor of the obligation, the exact expression of the consent of the contracting parties contained in the instrument, Exhibit C. Not because the lands may have continued in possession of the vendor, not because the latter may have assumed the payment of the taxes on such properties, nor yet because the same party may have bound himself to substitute by another any one of the properties which might be destroyed, does the contract cease to be what it is, as set forth in detail in the public instrument. The vendor continued in the possession of the lands, not as the owner thereof as before their sale, but as the lessee which he became after its consummation, by virtue of a contract executed in his favor by the vendee in the deed itself, Exhibit C. Right of ownership is not implied by the circumstance of the lessee's assuming the responsibility of the payment of the taxes on the property leased, for their payment is not peculiarly incumbent upon the owner, nor is such right implied by the obligation to substitute the thing sold for another while in his possession under lease, since that obligation came from him and he continues under another character in its possession - a reason why he guarantees its integrity and obligates himself to return the thing even in a case of force majeure. Such liability, as a general rule, is foreign to contracts of lease and, if required, is exorbitant, but possible and lawful, if voluntarily agreed to, and such agreement does not on this account involve any sign of ownership, nor other meaning than the will to impose upon oneself scrupulous diligence in the care of a thing belonging to another.

The purchase and sale, once consummated, is a contract which by its nature transfers the ownership and other rights in the thing sold. A pacto de retracto, or sale with right to repurchase, is nothing but a personal right stipulated between the vendee and the vendor, to the end that the latter may again acquire the ownership of the thing alienated.

"It is true, very true indeed, that the sale with right of repurchase is employed as a method of loan; it is likewise true that in practice many cases occur where the consummation of a pacto de retro sale means the financial ruin of a person; it is also, unquestionable that in pacto de retro sales very important interests often intervene, in the form of the price of the lease of the thing sold, which is stipulated as an additional covenant." (Manresa, Civil Code, p. 274.)

But in the present case, unlike others heard by this court, there is no proof that the sale with right of repurchase, made by Berenguer in favor of Laochangco is rather a mortgage to secure a loan.

The account current between Berenguer and Laochangco appears to be nothing but the beginning of some business transactions in sugar, which gave rise to the contract of purchase and sale under pacto de retracto, and the continuation of the same transactions which maintained that contract beyond the period fixed for the redemption. When, on October 5 1889, Berenguer's debt amounted to 3,720.23 pesos, Cornelia Laochangco gave him 1,000 pesos more; so that she increased his debt to 4,720.23 pesos. The trial record offers no explanation of this conduct on the part of his creditor other than that derived from the fact that two days afterwards, on the 7th of the same month of October, 1889, Berenguer executed the instrument of sale under pacto de retracto, of two parcels of land, one of 204 hectares and the other of 120, for the price of 4,000 pesos "which Berenguer acknowledges that he has received from the vendee, already paid and in the legal tender currency of this country."

Among other fundamental reasons, the one just above mentioned is enough to establish the close relation between the account current and the contract of purchase and sale, under pacto de retracto, of the two parcels of land which are the subject of this case; and this explains how it came to be covenanted in the said instrument of October 7, 1889, that "all the fruits of the said lands shall be deposited in the sugar depository of the vendee, situated in the district of Quiapo of this city, and the value of which shall be applied on account of the price of this sale."

The term of two years, stipulated in the instrument for the exercise of the right of redemption, depended on such covenant, by the express will of the vendee, and, likewise by her express will, the term fixed for the redemption was extended until at least the year 1896, during which time it appears that Berenguer continued to deposit "the fruits of the said lands in the sugar depository of the vendee," as payments on account of the price of the sale.

Until 1896, at least, there is no reason why the sale of the two parcels of land may be considered to have been consummated; until then the vendee, on account of and as the price of the repurchase, had continued to receive quantities of sugar, whereby it appears that the said vendee admitted, as late as 1896, the exercise of the right of repurchase on the part of the vendor who had been paying the price in sugar.

And up to the present time the right to the exercise of the privilege of redemption still subsists, more than one-half of the repurchase price having already been paid (excepting what is owing as rentals on the lease); and in this state of affairs it is utterly impossible to consider the right of repurchase as lapsed by considering the sale of the two said parcels of land as consummated, at any intermediate time or until a settlement shall have been made with respect to the value of the sugar turned in, in relation to the amount or price of the sale, and until the status of the right of redemption, as already exercised by means of partial payments of the price of the sale, shall have been determined.

Conventional redemption is the right which the vendor reserves to himself to recover the thing sold, with the obligation to reimburse to the vendee the price of the sale, the expenses of the contract, and any other legitimate payment made by reason of the sale, and the useful and necessary expenses incurred for account of the thing sold. (Civil Code, articles 1507 and 1518.)

The right of redemption, in the present case, began to be exercised from the year following that of the sale and continued, during seven years, until 1896, in such wise that already in August, 1890, the price which the vendor must reimburse to the vendee had been reduced to 3,888.61 pesos, and the reduction was continued by the deposits of sugar intended to cancel the debt. This was done by the express will of both parties, who believed that by so doing, they best served their interests, and in that manner they covenanted and acted one towards the other, without the least contradiction or complaint. The exercise of the right of redemption having been commenced and such advancement having already been made up to 1896 in the way of reimbursement of the price of the repurchase, by the amount of sugar which the vendee had received from the vendor for the purpose of reimbursing the price of the sale, it is in no manner permissible, at the will of the heirs of the vendee, to consider an ownership irrevocable, the revocation of which had begun and continued by mutual agreement of both contracting parties.

The term of two years stipulated for the redemption expired; but in the contract itself there is the additional covenant that the vendor shall deposit under the control of the vendee all the fruits of the lands leased for the purpose of repaying the price of the sale. After the expiration of that term of two years, the vendee continued receiving in subsequent years fruits of the leased lands, under that additional agreement that they all should be placed in his control in order to cancel the price of the sale. These are facts absolutely incompatible with the term stipulated and with the idea of the vendee becoming the owner of the lands merely by the expiration of the two years.

The vendee, who has been reimbursed by the vendor for a part of the repurchase price, is bound to fulfil the obligation to sell back, derived from the sale with right to repurchase, or must show reason why he may keep this part of the price and, notwithstanding his so doing, be considered released from effecting the resale. He may be entitled to require the completion of the price, or that he be paid other expenses before he returns the thing which he had purchased under such a condition subsequent; but the exercise of the right of redemption having been begun and admitted, the irrevocability of the ownership in such manner acquired is in all respects incompatible with these acts so performed.

For this reason, this court does not consider it necessary to come to any conclusion relative to the testimony of the opponent, Jose Berenguer, in so far as he testified that the agreement with right to repurchase was already canceled by the conveyance, in payment (which his father, during the latter's lifetime, had made to one of the heirs of the vendee) of the 120 hectare tract of land in Panantaglay, nor relative to the fact, an act at present consummated, of the applicants already being the owners, both of a part of the repurchase price and of one of the parcels of land which was the subject matter of the redemption.

It is sufficient for the purposes of the appeal to find, as we Hereby do find, that the right of redemption has not lapsed - a lapse which was the ground for the application for registration that was based on the consolidation of the ownership of the two parcels of land, in the vendee, from whom the applicants derive their right. Nor had that right lapsed, with respect to the Panantaglay land; but as this land was, with the assent of the opponent, adjudicated in the judgment appealed from, the adjudication by such assent is effective.

But, with respect to the Batasan land, of more than 204 hectares in area, the trial court did not commit the third of the errors alleged in the appeal, by denying its registration in the new registry in the name of the applicants, as such denial is in accord with the law and the merits of the case, not by virtue of the findings contained in the judgment, but of those of the present decision, by reason of which latter the registration applied for is not permissible.

The judgment appealed from is affirmed, only in so far as it finds that "the adverse claim presented, relative to the parcel of land situated in Batasan, is allowed; consequently, the registration applied for by the applicants, in connection with the same land, is denied."

That part of the judgment appealed from whereby the cancellation is ordered "of the registration entries found in the name of Cornelia Laochangco in the old registry of deeds of Pampanga Province, on pages 192 and 196 of volume 1 of the district of Arayat, properties, Nos. 23 and 24 respectively, second inscription," is reversed in so far as such entries concern the purchase and sale, with right of redemption, of the property No. 24, which is that of Batasan, - an inscription related to the more extensive one concerning the property No. 23, or that of Panantaglay.

No special finding is made as to the costs of this instance. So ordered.

Torres, Mapa, and Johnson, JJ., concur.

CONCURRING

CARSON, J., with whom concurs MORELAND, J.,

I agree with the reasoning and the disposition of this case as set out in the foregoing opinion.

Out of abundance of precaution, nevertheless, I deem it proper to observe in connection therewith, that I do not understand that it establishes the doctrine that a contract, moulded or cast in the form of a pacto de retro (sale with

right to repurchase) which nevertheless was in truth and in fact a contract in the nature of a mortgage, or an advance of money on security of the property formally conveyed, may not be inquired into and enforced in accordance with its intent and the will of the parties when the contract was executed.

As stated by Manresa, in the citation set out at length in the majority opinion, "It is true, very true indeed, that the sale under pacto de retro (that is with right to repurchase) is employed as a method of loan." Since it is the duty of the courts to ascertain and give effect to the true intent of the contracts brought before them for adjudication and enforcement, or in other words, since the will of the parties to a mutual agreement controls, I think that wherever superior rights of innocent third parties have not intervened, and the true nature of the contract entered into is established by the production of competent testimony the contract thus established, and that contract alone, should be enforced, without regard to the form in which it is expressed.

In making this observation I am not unmindful of the considerable number of cases in which we have declined to recognize, the claims of vendors under pactos de retro (contracts with right to repurchase); that these contracts were in truth and in fact contracts in the nature of mortgages or of loans secured by the conveyed property. I think, however, that in all these cases the record will be found to disclose that the parties wholly failed to sustain these allegations with competent and convincing evidence.

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