

**IRENEO LEAL, JOSE LEAL, CATALINA LEAL, BERNABELA LEAL,  
VICENTE LEAL, EULOGIA LEAL, PATERNO RAMOS, MACARIO DEL  
ROSARIO, MARGARITA ALBERTO, VICTORIA TORRES, JUSTINA  
MANUEL, JULIAN...**

*G.R. No. 65425. November 05, 1987*

Ponente: SARMIENTO, J.

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**SARMIENTO, J.:**

In its resolution dated September 27, 1983, the respondent Intermediate Appellate Court[1], speaking through Justice Porfirio V. Sison, ordered, in part, the petitioners to accept the sum of P5,600.00 from the private respondent as repurchase price of the lots described in the "Compraventa" and, thereafter, to execute a Deed of Repurchase to effect transfer of ownership over the same properties to the private respondent.

This ruling was a complete reversal of the earlier decision,[2] dated June 28, 1978, penned by Justice Paras, of the Court of Appeals, in the same case, affirming the trial court's dismissal of the private respondent's complaint.

The petitioners, feeling aggrieved and astonished by the complete turnaround of the respondent court, come to us with this petition for review by certiorari.

The antecedent facts are undisputed.

This case brings us back almost half a century ago, on March 21, 1941, when a document entitled "Compraventa," written entirely in the Spanish language, involving three parcels of land, was executed by the private respondent's predecessors-in-interest, Vicente Santiago and his brother, Luis Santiago, in favor of Cirilo Leal, the deceased father of some of the petitioners. Pursuant to this "Compra-venta," the title over the three parcels of land in the name of the vendors was cancelled and a new one was issued in the name of Cirilo Leal, who immediately took possession and exercised ownership over the said lands. When Cirilo died on December 10, 1959, the subject lands were inherited by his six children, who are among the petitioners, and who caused the consolidation and subdivision of the properties among themselves.

Between the years 1960 and 1965, the properties were either mortgaged or leased by the petitioners -- children of Cirilo Leal -- to their co-petitioners.

Sometime before the agricultural year 1966-1967, Vicente Santiago approached the petitioners and offered to repurchase the subject properties. Petitioners, however, refused the offer. Consequently, Vicente Santiago instituted a complaint for specific performance before the then Court of First Instance of Quezon City on August 2, 1967.

After trial, the court a quo rendered its decision, dismissing the complaint on the ground that the same was still premature considering that there was, as yet, no sale nor any alienation equivalent to a sale. Not satisfied with this decision, the private respondent appealed to the Court of Appeals and the latter, acting through the Fourth

Division and with Justice Edgardo Paras as ponente, affirmed the decision of the court a quo.

The petitioners seasonably filed a motion to amend the dispositive portion of the decision so as to include an order for the cancellation of the annotations at the back of the Transfer Certificates of Title issued in their favor. The private respondent, on the other hand, filed a timely motion for reconsideration of the above decision and an opposition to petitioners' motion to amend. These incidents were not resolved until the then Court of Appeals was abolished and in lieu of which the Intermediate Appellate Court was established. In view of the said reorganization, this case was reassigned to the Fourth Civil Cases Division.

Resolving the abovementioned motion for reconsideration, the respondent court, in a resolution penned by Justice Sison and promulgated on September 27, 1983, ruled, as follows:

WHEREFORE, Our decision of June 28, 1978 is hereby reversed and set aside and another one is rendered ordering: (1) defendants-appellees surnamed Leal to accept the sum of P5,600.00 from plaintiff-appellant (substituted by Salud M. Santiago) as repurchase price of the lots described in the "Compraventa" of March 21, 1941, and thereafter to execute a deed of repurchase sufficient in law to transfer ownership of the properties to appellant Salud M. Santiago, the same to be done within five (5) days from payment; (2) ordering the same defendants Leals and defendant Clemente Samario to indemnify appellant in the sum of P3,087.50 as rental for the year 1967-1968 and the same amount every year thereafter; (3) ordering all the defendants jointly and severally to pay the sum of P1,500.00 as attorney's fees and other expenses of litigation; and (4) ordering defendant Register of Deeds of Rizal to cancel Transfer Certificate of Title No. 42535 in the names of Vicente Santiago and Luis Santiago upon presentation of the deed of sale herein ordered to be executed by the appellees in favor of Salud M. Santiago and to issue thereof another Transfer Certificate of Title in the name alone of Salud M. Santiago. No costs here and in the courts (sic) below.

SO ORDERED."

Verily, the well-spring whence the present controversy arose is the abovementioned "Compraventa," more particularly paragraph (b) thereof, to wit:

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"(b) En caso de venta, no podran vender a otros dichos tres lotes de terreno sino al aqui vendedor Vicente Santiago, o los herederos o sucesores de este por el mismo precio de CINCO MIL SEISCIENTOS PESOS (P5,600.00) siempre y cuando estos ultimos pueden hacer la compra."[3]

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which is now the subject of varying and conflicting interpretations.

It is admitted by both parties that the phrase "they shall not sell to others these three lots but only to the seller Vicente Santiago or to his heirs or successors" is an express prohibition against the sale of the lots described in the "Compraventa" to third persons or strangers to the contract. However, while private respondent naturally lauds the resolution of Justice Sison, which sustains the validity of this prohibition, the petitioners, on the other hand, endorse the decision penned by Justice Paras, which states, in part:

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Finally, there is grave doubt re the validity of the ostensible resolutive condition here, namely, the prohibition to sell the lots to persons other than the vendor (appellant); certainly, a prohibition to alienate should not exceed at most a period of twenty years, otherwise there would be subversion of public policy, which naturally frowns on unwarranted restrictions on the right of ownership.[4]

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We agree with the Paras ponencia.

Contracts are generally binding between the parties, their assigns and heirs; however, under Art. 1255 of the Civil Code of Spain, which is applicable in this instance, pacts, clauses, and conditions which are contrary to public order are null and void, thus, without any binding effect.

Parenthetically, the equivalent provision in the Civil Code of the Philippines is that of Art. 1306, which states: "That contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy." Public order signifies the public weal -- public policy.[5] Essentially, therefore, public order and public policy mean one and the same thing. Public policy is simply the English equivalent of "orden publico" in Art. 1255 of the Civil Code of Spain.[6]

One such condition which is contrary to public policy is the present prohibition to sell to third parties, because the same virtually amounts to a perpetual restriction on the right of ownership, specifically the owner's right to freely dispose of his properties. Thus, we hold that any such prohibition, indefinite and unlimited as to time, so much so that it shall continue to be applicable even beyond the lifetime of the original parties to the contract, is, without doubt, a nullity. In the light of this pronouncement, we grant the petitioners' prayer for the cancellation of the annotations of this prohibition at the back of their Transfer Certificates of Title.

It will be noted, moreover, that the petitioners have never sold, or even attempted to sell, the properties subject of the "Compraventa."

We now come to what we believe is the very issue in this case, which is, whether or not under the aforequoted paragraph (b) of the "Compraventa" a right of repurchase in favor of the private respondent exists.

The ruling of the Fourth Division (Justice Paras) is that the said stipulation does not grant a right to repurchase. Contrarily, the resolution of the Fourth Civil Cases Division (Justice P. V. Sison) interpreted the same provision as granting the right to repurchase subject to a condition precedent.

Thus, the assailed Resolution, reversing the earlier decision of the same respondent court, ruled:

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The all-important phrase "en caso de venta," must of necessity refer to the sale of the properties either by Cirilo or his heirs to the Santiago brothers themselves or to their heirs, including appellants Vicente Santiago including appellants Vicente Santiago and Salud M. Santiago, for the same sum of P5,600.00, "siempre y cuando estos ultimos pueden hacer la compra" (when the latter shall be able to buy it).

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x x x We repeat, the words envision the situation contemplated by the contracting parties themselves, the resale of the lots to their owners, and NOT to a sale of the lots to third parties or strangers to the contract x x x[7]

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The law provides that for conventional redemption to take place, the vendor should reserve, in no uncertain terms, the right to repurchase the thing sold.[8] Thus, the right to redeem must be expressly stipulated in the contract of sale in order that it may have legal existence.

In the case before us, we cannot find any express or implied grant of a right to repurchase, nor can we infer, from any word or words in the questioned paragraph, the existence of any such right. The interpretation in the resolution (Justice Sison) is rather strained. The phrase "in case of sale" should be construed to mean "should the

buyers wish to sell" which is the plain and simple import of the words, and not "the buyers should sell," which is clearly a contorted construction of the same phrase. The resort to Article 1373 of the Civil Code of the Philippines is erroneous. The subject phrase is patent and unambiguous, hence, it must not be given another interpretation.

But even assuming that such a right of repurchase is granted under the "Compraventa", the petitioner correctly asserts that the same has already prescribed. Under Art. 1508 of the Civil Code of Spain (Art. 1606 of the Civil Code of the Philippines), the right to redeem or repurchase, in the absence of an express agreement as to time, shall last four years from the date of the contract. In this case then, the right to repurchase, if it was at all guaranteed under the "Compraventa," should have been exercised within four years from March 21, 1941 (indubitably the date of execution of the contract), or at the latest in 1945.

In the respondent court's resolution, it is further ruled that the right to repurchase was given birth by the condition precedent provided for in the phrase "siempre y cuando estos ultimos pueden hacer la compra" (when the buyer has money to buy). In other words, it is the respondent court's contention that the right may be exercised only when the buyer has money to buy. If this were so, the second paragraph of Article 1508 would apply -- there is agreement as to the time, although it is indefinite, therefore, the right should be exercised within ten years, because the law does not favor suspended ownership. Since the alleged right to repurchase was attempted to be exercised by Vicente Santiago only in 1966, or 25 years from the date of the contract, the said right has undoubtedly expired.

WHEREFORE, in view of the foregoing, the Resolution dated September 27, 1983, of the respondent court is SET ASIDE and the Decision promulgated on June 28, 1978 is hereby REINSTATED. The annotations of the prohibition to sell at the back of TCT Nos. 138837, 138838, 138839, 138840, 138841, and 138842 are hereby ordered CANCELLED. Costs against the private respondent.

### **SO ORDERED.**

Yap, (Chairman), Melencio-Herrera, and Padilla, JJ., concur.

Paras, J., no part, penned the original CA decision.

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[1] Intermediate Appellate Court, Fourth Civil Cases Division: Justice P.V. Sison, ponente and Chairman, with the concurrence of Justices Bidin, Veloso, and Jurado.

[2] Court of Appeals, Fourth Division: Justices Paras, Gaviola, and de la Fuente.

[3] Translated into English, it reads: "In case of sale, they shall not sell to others these three lots but only to the seller Vicente Santiago, or to his heirs or successors for the same price of P5,600.00, when the latter shall be able to pay it."

[4] Decision, 9-10; Rollo, 64-65.

[5] *Bough v. Cantiveros*, No. 13300, September 29, 1919, 40 Phil. 209.

[6] *Ferrazzini v. Gsell*, No. 10712, August 10, 1916, 34 Phil. 697.

[7] Decision, 12; Rollo, 90.

[8] Art. 1507, Civil Code of Spain (Art. 1601 of the Civil Code of the Philippines): "Conventional redemption shall take place when the vendor reserves the right to repurchase the thing sold, with the obligation to comply with the provisions of Art. 1616 and other stipulations which may have been agreed upon."

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