

MARIA YADAO, PLAINTIFF AND APPELLANT, VS. MARCELO YADAO, DEFENDANT AND APPELLEE.

G.R. No. 6708. September 22, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Ilocos Sur, the Hon. Dionisio Chanco presiding, sustaining a demurrer interposed to the complaint and, the plaintiff failing to amend within the time prescribed by law, dismissing the complaint, with costs.

The complaint in this action alleges:

"That on or about one of the days of the month of February, 1898 (one thousand eight hundred and ninety-eight), the plaintiff, in consideration of the sum of P4.50 and the relations existing between the plaintiff and the defendant, sold to the defendant the land above described on the condition that the plaintiff might repurchase the same when- ever she had the money, the defendant taking possession of the land by virtue of the agreement referred to."

The court below sustained the demurrer upon the ground that the Civil Code requires (art. 1508) that "the right referred to in the preceding article, in the absence of an express agreement, shall last four years counted from the date of the contract. Should there be an agreement, the period shall not exceed ten years." The court was of the opinion that under the provisions of the Civil Code referred to a pacto de retro could not exist as such for a longer period than ten years, and that if the property 'which was the subject of the agreement was not redeemed within that time the title would pass irrevocably to the vendee.

No reason has been presented to us and no authority has been cited which militates in any way against the correctness of the decision rendered by the court below. A pacto de retro is, in a certain aspect, the suspension of the title to the land involved. We are of the opinion that it was the intention of the legislature to limit the continuance of such a condition, with the purpose that the title to the real estate in question should be definitely placed, it being, in the opinion of the legislature, against public policy to permit such an uncertain condition relative to the title to real estate to continue for more than ten years.

The plaintiff in the case not having repurchased the land within the time prescribed by law can not maintain the action. That defect appearing upon the face of the complaint, the demurrer was the proper pleading and its allowance by the trial court was a proper exercise of his discretion.

The judgment appealed from is affirmed, with costs.

Torres, Johnson, and Carson, JJ., concur.

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