

MARCELINA EDROSO, PETITIONER AND APPELLANT, VS. PABLO AND BASILIO SABLAN, OPPONENTS AND APPELLEES.

G.R. No. 6878. September 13, 1913

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

The subject matter of this appeal is the registration of certain property classified as required by law to be reserved. Marcelina Edroso applied for registration and issuance of title to two parcels of land situated in the municipality of Pagsanjan, Province of Laguna, one of 1 hectare 77 ares and 63 centares, and the other of 1 hectare 6 ares and 26 centares. Two applications were filed, one for each parcel, but both were heard and decided in a single judgment.

Marcelina Edroso was married to Victoriano Sablan until his death on September 22, 1882. In this marriage they had a son named Pedro, who was born on August 1, 1881, and who at his father's death inherited the two said parcels. Pedro also died on July 15, 1902, unmarried and without issue, and by his decease the two parcels of land passed through inheritance to his mother, Marcelina Edroso. Hence the hereditary title whereupon is based the application for registration of her ownership.

Two legitimate brothers of Victoriano Sablan—that is, two uncles german of Pedro Sablan—appeared in the case to oppose the registration, claiming one of two things: Either that the registration be denied, "or that if granted to her the right reserved by law to the opponents be recorded in the registration of each parcel." (B. of E., 11, 12.)

The Court of Land Registration denied the registration and the applicant appealed through a bill of exceptions.

Registration was denied because the trial court held that the parcels of land in question partake of the nature of property required by law to be reserved and that in such a case application could only be presented jointly in the names of the mother and the said two uncles of Pedro Sablan.,

The appellant impugns as erroneous the first idea advanced (second assignment of error), and denies that the lands which are the subject matter of the application are required by law to be reserved—a contention we regard as indefensible.

Facts: (1) The applicant acquired said lands from her descendant Pedro Sablan by inheritance; (2) Pedro Sablan had acquired them from his ascendant Victoriano Sablan, likewise by inheritance; (3) Victoriano Sablan had likewise acquired them by inheritance from his ascendants, Mariano Sablan and Maria Rita Fernandez, they having been adjudicated to him in the partition of hereditary property had between him and his brothers. These are admitted facts.

A very definite conclusion of law is that the hereditary title is one without a valuable consideration [gratuitous title], and it is so characterized in article 968 of the Civil Code, for he who acquires by inheritance gives nothing in return for what he receives; and a very definite conclusion of law also is that the uncles german are within the third degree of blood relationship.

"The ascendant who inherits from his descendant property which the latter acquired without a valuable consideration from another ascendant, or from a brother or sister, is under obligation to reserve what he has acquired by operation of law for the relatives who are within the third degree and belong to the line whence the property proceeded." (Civil Code, art. 811.)

Marcelina Edroso, ascendant of Pedro Sablan, inherited from him these two parcels of land which he had acquired without a valuable consideration—that is, by inheritance from another ascendant, his father Victoriano. Having acquired them by operation of law, she is obligated to reserve them intact for the claimants, who are uncles or relatives within the third degree and belong to the line of Mariano Sablan and Maria Rita Fernandez, whence the lands proceeded. The trial court's ruling that they partake of the nature of property required by law to be reserved is therefore in accordance with the law.

But the appellant contends that it is not proven that the two parcels of land in question have been acquired by operation of law, and that only property acquired without a valuable consideration, which is by operation of law, is required by law to be reserved.

The appellees justly argue that this defense was not alleged or discussed in first instance, but only herein. Certainly, the allegation in first instance was merely that "Pedro Sablan acquired the property in question in 1882, before the enforcement of the Civil Code, which establishes the alleged right required by law to be reserved, of which the opponents speak; hence, prescription of the right of action; and, finally, opponents' renunciation of their right, admitting that it existed and that they had it" (p. 49).

However that be, it is not superfluous to say, although it may be unnecessary, that the applicant inherited the two parcels of land from her son Pedro, who died "unmarried and without issue." The trial court so held as a conclusion of fact, without any objection on the appellant's part. (B. of E., 17, 20.) When Pedro Sablan died without issue, his mother became his heir by virtue of her right to her son's legal portion under article 935 of the Civil Code:

"In the absence of legitimate children and descendants of the deceased, his ascendants shall inherit from him, to the exclusion of collateral's."

The contrary could only have occurred if the heiress had demonstrated that any of these lands had passed into her possession by free disposal in her son's will; but the case presents no testamentary provision that demonstrates any transfer of property from the son to the mother, not by operation of law, but by her son's wish. The legal presumption is that the transfer of the two parcels of land was abintestate or by operation of law, and not by will or the wish of the predecessor in interest (Act No. 190, sec. 334, No. 26.) All the provisions of article 811 of the Civil Code have therefore been fully complied with.

If Pedro Sablan had instituted his mother in a will as the universal heiress of his property, all he left at death would not be required by law to be reserved, but only what he would have perforce left her as the legal portion of a legitimate ascendant.

"The legal portion of the parents or ascendants is constituted by one-half of the hereditary estate of the children and descendants. The latter may unrestrictedly dispose of the other half, with the exception of what is established in article 836." (Civil Code, art. 809.)

In such case only the half constituting the legal portion would be required by law to be reserved, because it is what by operation of law would fall to the mother from her son's inheritance; the other half at free disposal would not have to be reserved. This is all that article 811 of the Civil Code says:

No error has been incurred in holding that the two parcels of land which are the subject matter of the application

are required by law to be reserved, because the interested party has not proved that either of them became her inheritance through the free disposal of her son.

Proof of testate succession devolves upon the heir or heiress who alleges it. It must be admitted that a half of Pedro Sablan's inheritance was acquired by his mother by operation of law. The law provides that the other half is also presumed to be acquired by operation of law—that is, by intestate succession. Otherwise, proof to offset this presumption must be presented by the interested party, that is, that the other half was acquired by the man's wish and not by operation of law.

Nor is the third assignment of error admissible—that the trial court failed to sustain the renunciation of the right required by law to be reserved, which the applicant attributes to the opponents. Such renunciation does not appear in the case. The appellant deduces it from the fact that the appellees did not contradict the following statement of hers at the trial:

"The day after my brother-in-law Pablo Sablan died and was buried, his brother came to my house and said that those rice lands were mine, because we had already talked about making delivery of them" (p. 91).

The other brother alluded to is Basilio Sablan, as stated on page 92. From the fact that Basilio Sablan said that the lands belong to the appellant and must be delivered to her it cannot be deduced that he renounced the right required by law to be reserved in such lands by virtue of the provisions of article 811 of the Civil Code, for they really belong to her and must be delivered to her.

The fourth assignment of error sets up the defense of prescription of the right of action. The appellant alleges prescription of the opponents' right of action for requiring fulfillment of the obligation they attribute to her recording in the property registry the right required by law to be reserved, in accordance with the provisions of the Mortgage Law; and as such obligation is created by law, it prescribes in the time fixed in No. 2 of section 43 of Act No. 190. She adds: "Prescription of the right alleged to be reserved by force of law has not been invoked." (Eighth allegation.)

The appellant does not state in her brief what those provisions of the Mortgage Law are. Nor did she do so in first instance, where she says only the following, which is quoted from the record: "I do not refer to the prescription of the right required by law to be reserved in the property; I refer to the prescription of the right of action of those who are entitled to the guaranty of that right for seeking that guaranty, for to those who are entitled to that right the Mortgage Law grants a period of time for recording it in the property registry, if I remember correctly, ninety days, for seeking entry in the registry, but as they have not exercised that right of action, such right of action for seeking here that it be recorded has prescribed. The right of action for requiring that the property be reserved has not prescribed, but the right of action for guaranteeing in the property registry that this property is required by law to be reserved" (p. 69 of the record).

The appellees reply: It is true that their right of action has prescribed for requiring the applicant to constitute the mortgage imposed by the Mortgage Law for guaranteeing the effectiveness of the right required by law to be reserved; but because that right of action has prescribed, that property has not been divested of its character of property required by law to be reserved; that it has such character by virtue of article 811 of the Civil Code, which went into effect in the Philippines in December, 1889 and not by virtue of the Mortgage Law, which only went into effect in the country by law of July 14, 1893; that from December, 1889, to July, 1893, property which under article 811 of the Civil Code acquired the character of property reserved by operation of law was such independently of the Mortgage Law, which did not yet form part of the positive legislation of the country; that although the Mortgage Law has been in effect in the country since July, 1893, still it has in no way altered the force of article 811 of the Civil Code, but has operated to reinforce the same merely by granting the right of action

to the persons in whose favor the right is reserved by operation of law to require of the person holding the property a guaranty in the form of a mortgage to answer for the enforcement, in due time, of the right; that to lose the right of action to the guaranty is not to lose the right itself; that the right reserved is the principal obligation and the mortgage the accessory obligation, and loss of the accessory does not mean loss of the principal. (Fifth and sixth allegations.)

The existence of the right required by law to be reserved in the two parcels of land in question being indisputable, even though it be admitted that the right of action which the Mortgage Law grants as a guaranty of final enforcement of such right has prescribed, the only thing to be determined in this appeal is the question raised in the first assignment of error, that is, how said two parcels of land can and ought to be registered, not in the property registry established by the Mortgage Law, but in the registry newly organized by Act No. 496. But as there have slipped into the allegations quoted some rather inexact ideas that further obscure such an intricate subject as this of the rights required to be reserved in Spanish-Philippine law, a brief digression on the most essential points may not be out of place here.

The Mortgage Law of July 14, 1893, to which the appellees allude, is the amended one of the colonies, not the first enforced in the colonies and consequently in the Philippines. The preamble of said amended Mortgage Law states:

"The Mortgage Law in force in Spain for thirty years went into effect, with the modifications necessary for its adaptation, in the Antilles on May 1, 1880, and in the Philippines on December 1, 1889, thus commencing in those regions the renovation of the law on real property, and consequently of agrarian credit."

The Civil Code went into effect in the Philippines in the same year, 1889, but on the eighth day.

Two kinds of property required by law to be reserved are distinguished in the Civil Code, as set forth in article 968 thereof, where it says:

"Besides the reservation imposed by article 811, the widow or widower contracting a second marriage shall be obliged to set apart for the children and descendants of the first marriage the ownership of all the property he or she may have acquired from the deceased spouse by will, by intestate succession, by gift, or other transfer without a valuable consideration."

The Mortgage Law of Spain and the first law that went into effect in the Philippines on December 1, 1889, do not contain any provision that can be applied to the right reserved by article 811 of the Civil Code, for such right is a creation of the Civil Code. In those laws appear merely the provisions intended to guarantee the effectiveness of the right in favor of the children of the first marriage when their father or mother contracts a second marriage. Nevertheless, the holding of the supreme court of Spain, for the first time set forth in the decision on appeal of November 8, 1894, has been reiterated:

"That while the provisions of articles 977 and 978 of the Civil Code that tend to secure the right required to be reserved in the property refer especially to the spouses who contract second or later marriages, they do not thereby cease to be applicable to the right established in article 811, because, aside from the legal reason, which is the same in both cases, such must be the construction from the important and conclusive circumstance that said provisions are set forth in the chapter that deals with inheritances in common, either testate or intestate, and because article 968, which heads the section that deals in general with property required by law to be reserved, makes reference to the provisions in article 811; and it would consequently be contradictory to the principle of the law and of the common nature of said provisions not to hold them applicable to that right."

Thus it was again stated in a decision on appeal, December 30, 1897, that: "As the supreme court has already declared, the guaranties that the Code fixes in articles 977 and 978 for the rights required by law to be reserved to which said articles refer, are applicable to the special right dealt with in article 811, because the same principle

exists and because of the general nature of the provisions of the chapter in which they are found."

From this principle of jurisprudence it is inferred that if from December, 1889, to July, 1893, a case had occurred of a right required to be reserved by article 811, the persons entitled to such right would have been able to institute, against the ascendant who must make the reservation, proceedings for the assurance and guaranty that articles 977 and 978 grant to the children of a first marriage against their father or mother who has married again. The proceedings for assurance, under article 977, are: Inventory of the property subject to the right reserved, annotation in the property registry of such right reserved in the real property and appraisal of the personal property; and the guaranty, under article 978, is the assurance by mortgage, in the case of realty, of the value of what is validly alienated.

But since the amended Mortgage Law went into effect by law of July 14, 1893, in the Philippines this is not only a principle of jurisprudence which may be invoked for the applicability to the right reserved in article 811 of the remedies of assurance and guaranty provided for the right reserved in article 968, but there is a positive provision of said law, which is an advantage over the law of Spain, to wit, article 199, which read thus:

"The special mortgage for guaranteeing the right reserved by article 811 of the Civil Code can only be required by the relatives in whose favor the property is to be reserved, if they are of age; if minors, it will be required by the persons who should legally represent them. In either case the right of the persons in whose favor the property must be reserved will be secured by the same requisites as set forth in the preceding articles (relative to the right reserved by article 968 of the Civil Code), applying to the person obligated to reserve the right the provisions with respect to the father."

In article 168 of the same law the new subsection 2 is added in connection with article 199 quoted, so that said article 168 reads thus:

"Legal mortgage is established:

"1. * * *

"2. In favor of the relatives to whom article 811 of the Civil Code refers, for the property required to be reserved, upon the property of the person obligated to reserve it."

This being admitted, and admitted also that both the litigating parties agree that the period of ninety days fixed for the right of action to the guaranty, that is, to require the mortgage that guarantees the effectiveness of the right required by law to be reserved, has prescribed, it is necessary to lay down a principle in this matter. Now it should be noted that such action has not prescribed, because the period of ninety days fixed by the Mortgage Law is not for the exercise of the right of action of the persons entitled to the right reserved, but for the fulfillment of the obligation of the person who must make the reservation.

Article 191 of the law reads thus: "If ninety days pass without the father's instituting in court the proceeding to which the foregoing article refers, the relatives themselves may demand fulfillment, etc., * * * applying, according to said article 199, to the person obligated to reserve the right the provisions with respect to the father."

Article 203 of the regulation for the application of the Mortgage Law says: "In the case of article 199 of the law the proceedings to which article 190 thereof refers will be instituted within the ninety days succeeding the date of the date of the acceptance of the inheritance by the person obligated to reserve the property; after this period has elapsed, the interested parties may require the institution of such proceedings, if they are of age; and in any other case, their legal representatives."

Thus it clearly appears that the lapse of the ninety days is not the expiration by prescription of the period for the exercise of this right of action by the persons in whose favor the right must be reserved, but really the

commencement thereof, and enables them to exercise it at any time, since no limit is set in the law. So, if the annotation of the right required by law to be reserved in the two parcels of land in question must be made in the property registry of the Mortgage Law, the persons entitled to it may now institute proceedings to that end, and an allegation of prescription against the exercise of such right of action cannot be sustained.

Since the applicant confesses that she does not allege prescription of the right of action for requiring that the property be reserved, for she explicitly so stated at the trial, and as the case presents no necessity for the proceedings that should be instituted in accordance with the provisions of the Mortgage Law, this prescription of the right of action cannot take place, because such right of action does not exist with reference to instituting proceedings for annotation in the registry of Act No. 496 of the right to the property required by law to be reserved. It is sufficient, as was done in the present case, to intervene in the registration proceedings with the claim set up by the two opponents for recording therein the right reserved in either parcel of land.

Now comes the main point in the appeal. The trial court denied the registration because of this finding set forth in its decision:

"Absolute title to the two parcels of land undoubtedly belongs to the applicant and the two uncles of the deceased Pedro Sablan, and the application cannot be made except in the name of all of them in common." (B. of E., p. 20.)

It must be remembered that absolute title consists of the rights to use, enjoy, dispose of, and recover. The person who has in himself all these rights has the absolute or complete ownership of the thing; otherwise, the person who has the rights to use and enjoy will have the usufruct, and the person who has the rights of disposal and recovery the direct title. The person who by law, act, or contract is granted the right of usufruct has the first two rights of using and enjoying, and then he is said not to have the fee simple—that is, the rights of disposal and recovery, which pertain to another who, after the usufruct expires, will come into full ownership.

The question set up in the first assignment of error of the appellant's brief is this:

"What are the rights in the property of the person who holds it subject to the reservation of article 811 of the Civil Code?"

There are not lacking writers who say, only those of a usufructuary, the ultimate title belonging to the persons in whose favor the reservation is made. If that were so, the person holding the property could not apply for registration of title, but the person in whose favor it must be reserved, with the former's consent. This opinion does not seem to be admissible, although it appears to be supported by decisions of the supreme court of Spain of May 21, 1861, and June 18, 1880, prior to the Civil Code, and of June 22, 1895, somewhat subsequent to the enforcement thereof.

Another writer says: "This opinion only looks at two salient points—the usufruct and the fee simple; the remaining features of the arrangement are not perceived, but become obscured in the presence of that deceptive emphasis which only brings out two things: that the person holding the property will enjoy it and that he must keep what he enjoys for other persons." (Manresa, VII, 189.)

In another place he says: "We do not believe that the third opinion can now be maintained—that is, that the surviving spouse (the person obligated by article 968 to make the reservation) can be regarded as a mere usufructuary and the descendants immediately as the owner; such theory has no serious foundation in the Code." (Ibid., 238.)

The ascendant who inherits from a descendant, whether by the latter's wish or by operation of law, acquires the inheritance by virtue of a title perfectly transferring absolute ownership. All the attributes of the right of

ownership belong to him exclusively—use, enjoyment, disposal and recovery. This absolute ownership, which is inherent in the hereditary title, is not altered in the least, if there be no relatives within the third degree in the line whence the property proceeds or they die before the ascendant heir who is the possessor and absolute owner of the property. If there should be relatives within the third degree who belong to the line whence the property proceeded, then a limitation to that absolute ownership would arise. The nature and scope of this limitation must be determined with exactness in order not to vitiate rights that the law wishes to be effective. The opinion which makes this limitation consist in reducing the ascendant heir to the condition of a mere usufructuary, depriving him of the right of disposal and recovery, does not seem to have any support in the law, as it does not have, according to the opinion that has been expressed in speaking of the rights of the father or mother who has married again. There is a marked difference between the case where a man's wish institutes two persons as his heirs, one as usufructuary and the other as owner of his property, and the case of the ascendant in article 811 or of the father or mother in article 968. In the first case, there is not the slightest doubt that the title to the hereditary property resides in the hereditary owner and only he can dispose of and recover it, while the usufructuary can in no way perform any act of disposal of the hereditary property (except that he may dispose of the right of usufruct in accordance with the provisions of article 480 of the Civil Code), or any act of recovery thereof except the limited one in the form prescribed in article 486 of the Code itself, because he totally lacks the fee simple. But the ascendant who holds the property required by article 811 to be reserved, and the father or mother required by article 968 to reserve the right, can dispose of the property they inherit itself, the former from his descendant and the latter from his or her child in first marriage, and recover it from anyone who may unjustly detain it, while the persons in whose favor the right is required to be reserved in either case cannot perform any act whatsoever of disposal or of recovery.

Article 975 states explicitly that the father or mother required by article 968 to reserve the right may dispose of the property itself:

"Alienation of the property required by law to be reserved which may be made by the surviving spouse after contracting a second marriage shall be valid only if at his or her death no legitimate children or descendants of the first marriage survive, without prejudice to the provisions of the Mortgage Law."

It thus appears that the alienation is valid, although not altogether effective, but under a condition subsequent, to wit: "If at his or her death no legitimate children or descendants of the first marriage survive."

If the title did not reside in the person holding the property to be reserved, his alienation thereof would necessarily be null and void, as executed without a right to do so and without a right which he could transmit to the acquirer. The law says that the alienation subsists (to subsist is to continue to exist) "without prejudice to the provisions of the Mortgage Law." Article 109 of this Law says:

"The possessor of property subject to conditions subsequent that are still pending may mortgage or alienate it, provided always that he preserve the right of the parties interested in said conditions by expressly reserving that right in the registration."

In such case, the child or legitimate descendant of the first marriage in whose favor the right is reserved cannot impugn the validity of the alienation so long as the condition subsequent is pending, that is, so long as the remarried spouse who must reserve the right is alive, because it might easily happen that the person who must reserve the right should outlive all the persons in whose favor the right is reserved and then there would be no reason for the condition subsequent that they survive him, and, the object of the law having disappeared, the right required to be reserved would disappear, and the alienation would not only be valid but also in every way absolutely effective. Consequently, the alienation is valid when the right required by law to be reserved to the children is respected; while the effects of the alienation depend upon a condition, because it will or will not

become definite, it will continue to exist or cease to exist, according to circumstances. This is what the law establishes with reference to the reservation of article 968, wherein the legislator expressly directs that the surviving spouse who contracts a second marriage shall reserve to the children or descendants of the first marriage ownership. Article 811 says nothing more than that the ascendant must make the reservation.

Manresa, with his recognized ability, summarizes the subject under the heading, "Rights and obligations during the existence of the right required by law to be reserved," in these words:

"During the whole period between the constitution in legal form of the right required by law to be reserved and the extinction thereof, the relatives within the third degree, after the right that in their turn may pertain to them has been assured, have only an expectation, and therefore they do not even have the capacity to transmit that expectation to their heirs.

"The ascendant is in the first place a usufructuary who should use and enjoy the things according to their nature, in the manner and form already set forth in commenting upon the articles of the Code referring to use and usufruct.

"But since in addition to being the usufructuary he is, even though conditionally, the owner in fee simple of the property, he can dispose of it in the manner provided in articles 974 and 976 of the same Code. Doubt arose also on this point, but the Direccion General of the registries, in an opinion of June 25, 1892, declared that articles 974 and 975, which are applicable by analogy, for they refer to property reserved by law, reveal in the clearest manner the attitude of the legislator on this subject, and the relatives within the third degree ought not to be more privileged in the right reserved in article 811 than the children in the right reserved by article 975, chiefly for the reason that the right required to be reserved carries with it a condition subsequent, and the property subject to those conditions can validly be alienated in accordance with article 109 of the Mortgage Law, such alienation to continue, pending fulfillment of the condition." (Civil Code, VI, 270.)

Another commentator corroborates the foregoing in every way: He says:

"The ascendant acquires that property with a condition subsequent, to wit, whether or not there exist at the time of his death relatives within the third degree of the descendant from whom they inherit in the line whence the property proceeds. If such relatives exist, they acquire ownership of the property at the death of the ascendant. If they do not exist, the ascendant can freely dispose thereof. If this is true, since the possessor of property subject to conditions subsequent can alienate and encumber it, the ascendant may alienate the property required by law to be reserved, but he will alienate what he has and nothing more because no one can give what does not belong to him, and the acquirer will therefore receive a limited and revocable title. The relatives within the third degree will in their turn have an expectation to the property while the ascendant lives, an expectation that cannot be transmitted to their heirs, unless these are also within the third degree. After the person who is required by law to reserve the right has died, the relatives may rescind the alienation of the realty required by law to be reserved and they will acquire it and all the rest that has the same character in complete ownership, in fee simple, because the condition and the usufruct have been terminated by the death of the usufructuary." (Morell, Estudios sobre bienes reservables, 304, 305.)

The conclusion is that the person required by article 811 to reserve the right has, beyond any doubt at all, the rights of use and usufruct. He has, moreover, for the reasons set forth, the legal title and dominion, although under a condition subsequent. Clearly he has, under an express provision of the law, the right to dispose of the property reserved, and to dispose of is to alienate, although under a condition. He has the right to recover it, because he is the one who possesses or should possess it and have title to it, although a limited and revocable one. In a word, the legal title and dominion, even though under a condition, reside in him while he lives. After the right required by law to be reserved has been assured, he can do anything that a genuine owner can do.

On the other hand, the relatives within the third degree in whose favor the right is reserved cannot dispose of the

property, first because it is in no way, either actually, constructively or formally, in their possession; and, moreover, because they have no title of ownership or of fee simple which they can transmit to another, on the hypothesis that only when the person who must; reserve the right should die before them will they acquire it, thus creating a fee simple, and only then will they take their place in the succession of the descendant of whom they are relatives within the third degree, that is to say, a second contingent place in said legitimate succession in the fashion of aspirants to a possible future legacy. If any of the persons in whose favor the right is reserved should, after their right has been assured in the registry, dare to dispose of even nothing more than the fee simple of the property to be reserved his act would be null and void, for, as was definitely decided in the decision on appeal of December 30, 1897, it is impossible to determine the part "that might pertain therein to the relative at the time he exercised the right, because in view of the nature and scope of the right required by law to be reserved the extent of his right cannot be foreseen, for it may disappear by his dying before the person required to reserve it, just as it may even become absolute should that person die."

Careful consideration of the matter forces the conclusion that no act of disposal inter vivos of the person required by law to reserve the right can be impugned by him in whose favor it is reserved, because such person has all, absolutely all, the rights inherent in ownership, except that the legal title is burdened with a condition that the third party acquirer may ascertain from the registry in order to know that he is acquiring a title subject to a condition subsequent. In conclusion, it seems to us that only an act of disposal mortis causa in favor of persons other than relatives within the third degree of the descendant from whom he got the property to be reserved must be prohibited to him, because this alone has been the object of the law: "To prevent persons outside a family from securing, by some special accident of life, property that would otherwise have remained therein." (Decision of December 30, 1897.)

Practically, even in the opinion of those who reduce the person reserving the right to the condition of a mere usufructuary, the person in whose favor it must be reserved cannot attack the alienation that may be absolutely made of the property the law requires to be reserved, in the present case, that which the applicant has made of the two parcels of land in question to a third party, because the conditional alienation that is permitted her is equivalent to an alienation of the usufruct, which is authorized by article 480 of the Civil Code, and, practically, use and enjoyment of the property required by law to be reserved are all that the person who must reserve it has during his lifetime, and in alienating the usufruct all the usefulness of the thing would be transmitted in an incontrovertible manner. The question as to whether or not she transmits the fee simple is purely academic, sine re, for it is not real, actual and positive, as is the case of the institution of two heirs, one a usufructuary and the other the owner, by the express wish of the predecessor in interest.

If the person whom article 811 requires to reserve the right has all the rights inherent in ownership, he can use, enjoy, dispose of and recover it; and if, in addition to usufructuary, he is in fact and in law the real owner and can alienate it, although under a condition, the whole question is reduced to the following terms:

Cannot the heir of the property required by law to be reserved, merely because a condition subsequent is annexed to his right of disposal, himself alone register the ownership of the property he has inherited, when the persons in whose favor the reservation must be made agree thereto, provided that the right reserved to them in the two parcels of land be recorded, as the law provides?

It is well known that the vendee under pacto de retracto acquires all the rights of the vendor:

"The vendee substitutes the vendor in all his rights and actions." (Civil Code, art. 1511.)

If the vendor can register his title, the vendee can also register this same title after he has once acquired it. This title, however, in its attribute of being disposable, has a condition subsequent annexed—that the alienation the

purchaser may make will be terminated, if the vendor should exercise the right granted him by article 1507, which says:

"Conventional redemption shall take place when the vendor reserves to himself the right to recover the thing sold, with the obligation to comply with article 1518, and whatever more may have been agreed upon," that is, if he recovers the thing sold by repaying the vendee the price of the sale and other expenses. Notwithstanding this condition subsequent, it is a point not at all doubtful now that the vendee may register his title in the same way as the owner of a thing mortgaged-that is to say, the latter with the consent of his creditor and the former with the consent of the vendor. He may alienate the thing bought when the acquirer knows very well from the title entered in the registry that he acquires a title revocable after a fixed period, a thing much more certain and to be expected than the purely contingent expectation of the person in whose favor is reserved a right to inherit some day what another has inherited. The purposes of the law would be defeated in not applying to the person who must make the reservation the provision therein relative to the vendee under pacto de retracto, since the argument in his favor is the more powerful and conclusive; *ubi eadem ratio, eadem legis dispositio*.

Therefore, we reverse the judgment appealed from, and in lieu thereof decide and declare that the applicant is entitled to register in her own name the two parcels of land which are the subject matter of the application, recording in the registration the right required by article 811 to be reserved to either or both of the opponents, Pablo Sablan and Basilio Sablan, should they survive her; without special finding as to costs.

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

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