

**TOMAS, ENRIQUE, AND ALEJANDRA TUAZON, PLAINTIFFS AND APPELLANTS, VS. ISMAEL AND ESTEBAN GODUCO, DEFENDANTS AND APPELLEES.***G.R. No. 7053. November 04, 1912*

Ponente: TORRES, J.

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This is an appeal by the plaintiffs, from a judgment rendered by the Honorable George N. Hurd, judge.

On May 28, 1910, counsel for the plaintiffs, Tomas, Enrique, and Alejandra, surnamed Tuazon, set forth in a written petition: That in or about the year 1897 the parties above named, his clients, mortgaged to the defendant, Ismael Goduco, for P60, a parcel of land situated in the barrio of Santa Cruz, of the pueblo of Gapan, Nueva Ecija (the area and boundaries being given), under the condition that they might redeem the land within twenty years after the execution of the contract, Which was a private document then in the possession of the said defendant; that the defendant took possession of the mortgaged land in 1897, with no right to hold the same and without the plaintiffs' consent, and continued in possession, thus causing the former damages to the amount of P50 a year, since the said land had a rental value of 26 cavanos of rice per annum, the ordinary price of which was P2 a cavan; and that, about the middle of the aforesaid month of May the plaintiffs endeavored to redeem the said land, but that the defendant refused to deliver the same, alleging that he had already sold it to Esteban Goduco. Plaintiffs' counsel, therefore, asked for the annulment of the sale of the said land effected by the defendant Ismael Goduco in behalf of Esteban Goduco, if such a contract really and actually was executed, and that Ismael Goduco be ordered to surrender the land to the plaintiffs, to receive from them the sum of P60, as the price of its redemption, and, furthermore, to cancel the mortgage; or, that the court declare this latter instrument to be canceled and sentence the said defendant to pay to the plaintiffs the sum of P50 per annum from 1897 up to the date of the petition, a total of P650, as an indemnity for the damages suffered by the latter, and the costs.

On June 27, 1910, the defendants answered and denied each and all of the allegations, except those contained in paragraphs 1 and 5, and alleged as a special defense that the plaintiffs sold the land in question to the defendant, on May 23, 1897, under pacto de retro without stipulated term, on which date the property was delivered to him; that, in April, 1908, Ismael Goduco sold the said land to the other defendant, Esteban Goduco, who quietly and peaceably entered into its possession as its absolute owner; that the plaintiffs' right of redemption had already prescribed; and that the facts alleged did not constitute a right of action. They therefore prayed that they be absolved from the complaint, with the costs against the plaintiffs.

On October 21 of the same year the trial was held and documentary evidence was presented. On the 21st of December following, the court decided the case in favor of the defendants by ordering its dismissal with the costs upon the plaintiffs, who, through their counsel, entered an appeal from the judgment and moved for a rehearing. This motion was denied by an order of January 21, 1911, and an exception thereto was taken by the attorney for the plaintiffs.

Upon presentation of the proper bill of exceptions, the said attorney requested that the same be approved, certified, and transmitted, together with the evidence, to the clerk of this court, which was done.

The issue raised in this suit is to be decided in accordance with the text of the contract, written in Tagalog and inserted in the record as page 20, a translation of which, found on page 16, is as follows:

"In this pueblo of Gapan, Province of Nueva Ecija, this 23d day of May, 1897, we, brothers and sister, Tomas Tuazon, unmarried, Enrique Tuazon, married, and Alejandra Tuazon, widow, natives of the said province, of age, and with personal registration certificates of the 10th class, Nos. 1,458,882, 1,458,878 and 2,004,170, those of the men being series 1 of the present year, and that of the woman of the issue of last year, 1896, as she has not yet obtained a new certificate, all delivered to them in the capital of this province, hereby set forth that, for the price of one hundred and four (104) cavanos of palay, duly received by us, we have, in accordance with an agreement unanimously made by and between ourselves, the aforesaid brothers and sister, sold as by mortgage to the spouses Ismael Goduco and Teodora Mendoza, residents of our pueblo, the following parcel of land of our ownership situated in the sitio of Cupang, of the barrio of Santa Cruz of this pueblo, containing an area such as is usually required for sowing two and one-half cavanos of seed rice, and bounded on the east by the lands of Don Juan Tongco, and our land that is mortgaged to Don Ambrosio Manucdoc; on the north, toward Pangasinan, by the highway leading to the barrio; on the west, by the land of Don Juan Parungao, and on the south, toward San Miguel de Mayumo, by that of the said Don Ambrosio.

"Furthermore we have made the following stipulations:

"1. I, Tomas Tuazon, will cultivate the land without requiring any advance of palay (commonly known as bugnos).

"2. I will use my own carabao in cultivating the ground and we will not ask for any agricultural implements that may be required but the expenses of sowing and harvesting shall be borne by us (ourselves and the said spouses) in equal shares.

"3. We will divide the crops equally between us, and I will transport their share of the crop to their warehouse or depository; my share shall be paid to them entirely.

"4. I will commit no breach of this contract, but if it be impossible for me to comply therewith, I shall be substituted by my brother and sister; however, should this agreement be violated by ourselves to the detriment of our creditor, he may eject us and oblige us to redeem the land, and we shall have no right to refuse to do so and will pay the damage; and if we should be unable to redeem the land from the mortgage, we will permit him to sell it to another, without right, on our part, to lay any claim to the same. As the contract set forth in this instrument was made between us by common accord, we waive any right that lies in our behalf that might tend to contradict the terms of our agreement.

"Before signing this instrument we read the same in the presence of two witnesses, Don Ambrosio Manucdoc and Don Juan Parungao.

"In witness whereof, we have stamped this instrument and signed it together with our said witnesses.

(Sgd.) "TOMAS TUAZON.

"ENRIQUE TUAZON.

"ALEJANDRA TUAZON.

(Sgd.) "AMBROSIO MANUCDOC,

"JUAN PARUNGAO,

"Witnesses."

From the terms of the contract, the Spanish translation of which has been literally copied, the conclusion clearly followf that the contract executed between the parties and contained in the said instrument, is one of sale under pacto de retro, and this construction must be given to it in view of the literal meaning of the several clauses therein which evidence the intention of the contracting parties, for they used in it the words "we have sold" and, further on, stated that in case of their nonfulfillment to the prejudice of the spouses Ismael Goduco and Teodora Mendoza the plaintiffs were willing that they should be ejected and obliged to redeem the land, and if they should be unable to redeem it, they authorized the said spouses to sell it to another, with no right on the plaintiffs' part to lay any claim to the land.

The words "we have sold as by mortgage," "to the detriment of our creditor" and "if we should be unable to redeem the land from the mortgage," contained in the said instrument, can in no wise 'affect the nature and true character of the contract executed between the parties.

The addition of the words "as by mortgage" does not alter or modify the true contract between the contracting parties, as it is construed to be upon judging the sense and spirit of the statements taken as a whole, contained in the document found on page 20 of the record, wherein it appears that it was the intention of the parties to execute a contract of sale with right of repurchase. During the trial in first instance, case No. 3190, *Albert y Mayoralgo, vs. Punsalan et al.*, there was exhibited a document attested by a *gobenadorcillo* of the pueblo of Malate, wherein it appears that Julian Punsalan stated before this official that he, the latter, had mortgaged under pacto de retro to Teodorico Bautista, for 134 pesos, two parcels of land in the barrio of San Roque, Malate, with the condition that they might be redeemed after his death. It was decided in that case that the contract which was recognized and affirmed by Punsalan before the said local authority, was one of sale with right of repurchase. (9 Phil. Rep., 294.)

The pacto de retro, the right to repurchase and the obligation to sell back to the vendor, does not accord with the contract of mortgage which is usually made for the purpose of guaranteeing the fulfillment of a principal obligation, nor can it be deemed to be subject to stipulations inherent in a mortgage or connected therewith. A creditor can not appropriate to himself the things or real property given in mortgage, nor dispose of them (arts. 1857 and 1859, Civil Code); while a purchaser under a pacto de retro, as soon as, rights of dominion are consolidated as prescribed by law, may dispose of the same as their absolute owner and without restriction.

Moreover, aside from the statements Above made with reference to the contents of the document aforementioned, page 20 of the record, the said contract appears to have. been drawn up in a private instrument and as such is not susceptible of inscription in the registry of property, while, in order that a mortgage may be deemed to be legally constituted, it is indispensable that the instrument in which it appears be a public document and be recorded in the property register. Therefore, a mortgage in legal form was not constituted by the said private document.

Pursuant to the provisions of article 1278 of the Civil Code, contracts shall be binding, whatever may be the form in which they may have been executed, provided the essential conditions required for their validity exist, as prescribed in article 1261 of the code.

The agreement contained in the said instrument, according to the preinserted translation, is perfectly valid and effective, since it unites all the essential requisites of a legal contract, which are: the consent of the contracting parties, a definite object as the subject of the contract, and a consideration for the obligation; and such an agreement may be made in a private instrument, as the law does not require it to be set forth in a public document.

The said contract with right of repurchase was executed on May 23, 1897, since which date up to May 23, 1910, when suit was filed, thirteen years elapsed. Article 1508 of the Civil Code prescribes:

"The right referred to in the preceding article (1507), 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 contract in question having been made after the said code came into force, since December, 1889, it is undeniable that the right to repurchase the land, On the part of the plaintiffs, has prescribed, inasmuch as the four years fixed by law, in the absence of an express agreement as in the present case, have more than elapsed, and, furthermore, the period of ten years has also elapsed; the maximum time the law allows when a term is stipulated between the contracting parties. The appellants, therefore, are not now entitled to claim, as they do, the right to redeem the land in question. (Alano vs. Babasa, 10 Phi. Rep.,511;)

In consideration, then, of the fact that; by the said prescription of the plaintiffs and appellants' right to demand the right to repurchase the land concerned, the purchaser's dominion over the same became consolidated a dominion which, at first provisional, became absolute by operation of law, pursuant to the provisions of article 1509 of the Civil Code, which prescribe that "if the vendor shall not comply with the provisions of article 1518, the vendee shall irrevocably acquire the ownership of the thing sold"; it must, therefore, be concluded that the purchaser of the land in question, Ismael Goduco, being the absolute owner of the property, had the authority to dispose of it, in accordance with article 348 of the same code, and that the conveyance he made to Esteban Goduco is perfectly legal and effective, aside from the fact that Ismael Goduco proceeded in strict accord with the aforesaid instrument, page 20 of the record.

The foregoing conclusions make it unnecessary to decide whether the plaintiffs are or are not entitled to the damages demanded in the complaint, since a decision in this matter could be required only when it has been proved that the purchaser, Ismael Goduco, violated the contract and is not now the owner of the land in dispute; those who failed to fulfill the stipulations were the plaintiffs, and hence they finally lost their right to redeem the land sold. Therefore, no legal or just reason exists whereby Ismael Goduco may be compelled to return the land by resale, nor for the annulment of the contract of sale executed by him, and Esteban Goduco, to whom was transmitted by the said Ismael Goduco the latter's lawful right acquired from the preceding owners of the land.

For the foregoing reasons, which refute the errors assigned to the judgment appealed from, it is our opinion that the said judgment should be as it is hereby affirmed, with the costs against the appellants.

Arellano, C. J., Mapa and Johnson, JJ., concur.

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