

CELSA PUNCIA ANCHUELO, ET AL., PETITIONERS, VS. INTERMEDIATE APPELLATE COURT AND BENITO GAVINO, ET AL., RESPONDENTS.

G.R. No. 71391. January 29, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review the decision of the Intermediate Appellate Court, now Court of Appeals, which affirmed the decision of the then Court of First Instance in Civil Case No. R-642 (7289) entitled "Celsa Puncia Anchuelo, et al. v. Benito Gavino, et al." for reformation of contract and accounting with damages.

In their complaint filed on April 27, 1972, Antonio Anchuelo and petitioner Celsa Puncia alleged that they are the owners of seven (7) parcels of land covered by Original Certificate of Title (Free Patent) No. 586; that on May 19, 1961, they secured a loan from Benito Gavino and Juana Euste in the amount of P3,000.00 but, instead of executing a deed of mortgage over the said parcels of land, the Gavinos induced the Anchuelos to execute a supposed deed of sale with the understanding that the Gavinos would execute another document on the same day to make the transaction appear as an agreement to resell but its essence is one of repurchase of the same properties after the lapse of nineteen (19) years from the date of execution; that the consideration on both documents in the amount of P28,000.00 is fictitious, the truth, being that the actual amount of the loan obtained was only P3,000.00; that the Anchuelos offered to repurchase the properties for the actual amount of the loan obtained but the Gavinos refused; that Benito Gavino had transferred the properties to his sister and codefendant Martha Gavino and thereafter re-transferred the same properties to his other co-defendants Jaime and Juan both surnamed Gavino; that these transfers resulted in the issuance of certificate of title to those other defendants which were fictitious for want of consideration; hence, the petitioners prayed among others, that the deed of sale be annulled; that they be allowed to repurchase the subject properties; and that the certificate of title of the various defendants covering the subject properties be annulled.

In their Answer, the Gavinos denied the allegations of the complaint and alleged that the deed of sale correctly reflects the true intention of the actual transaction between them and the plaintiffs, and that the amount of P28,000.00 stated in the document as consideration thereof is the purchase price of the subject properties; and that the transfer of the properties from the defendants Benito Gavino and Juana Euste to Martha Gavino and thereafter to Jaime and Juan Gavino were true and legitimate transactions and that there were considerations in such sales. They admitted the execution of the document "Promise to Resell" but alleged it was void for want of consideration.

In the course of the proceedings in the lower court, Antonio Anchuelo died and he was substituted by his children with Celsa Puncia Anchuelo.

The trial court found the facts of the case, as follows:

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"[S]ometime in the year 1954 the Anchuelos were in great financial stress which prompted them to encumber or alienate seven (7) parcels of their conjugal land.

"The seven (7) parcels were mortgaged to the Rehabilitation Finance Corporation (RFC) for P3,000.00 which loan was increased by P2,000.00 on October 9, 1956 (Exhibits 2 & 3).

"A loan of P2,000.00 was also obtained from the Philippine National Bank (PNB) which was secured by a second mortgage on the same property. Three years later, that was on October 16, 1958 the Anchuelos obtained once more a loan for P7,000.00 from Leonor Cayetano. As security they constituted a second mortgage in which the mortgagee was to assume the indebtedness of the Anchuelos to the DBP.

"As the finances of the Anchuelos did not improve, interests from banking institution accumulated, they finally conveyed the property to defendants Benito Gavino and Juana Euste-Gavino for P18,000.00 (Exh. 13) which included the P7,000.00 loaned from Leonor Cayetano and, with assumed interest, becomes P7,850.00 (Exh. 9); the amount of P1,500.00 stated in the Pacto de Retro of Lot 1 of Original Certificate of Title No. 568; and also the amount of P4,541.39 which was paid by Benito Gavino to the RFC and the amount of P2,104.55 paid to the PNB. The balance of P2,105.06 was paid in cash to the Anchuelos.

"On May 19, 1961, the Anchuelo spouses transformed the Pacto de Retro to an absolute sale (Exhs. A, A-1 & Exh. 16) with the increase in price to P28,000.00.

"It should be noted that from the alleged P18,000.00 amount of the supposed consideration, there was a total payment made by the defendant Benito Gavino in the sum of P15,995.94 which is short of P2,105.06 to complete the full amount of P18,000.00. The defendants alleged that the amount was paid in cash (p. 26, TSN, Sept. 12, 1975, Annexes 2, Reconstituted Transcript).

"Out of the P28,000.00 of which the sum of P18,000.00 was considered paid, there exist an existing balance of P10,000.00. How was this amount of P10,000.00 paid by the Gavinos? The amount of P5,500.00 was allegedly paid by the Gavinos when Exhibit A and Exhibit 16 was executed as explained by the defendant, and the sum of P4,500.00 was covered by a Promissory Note dated May 19, 1961 (Exh. 10).

"From the promissory note above-mentioned, it gives December 31, 1962 as the date of maturity. Nevertheless, on November 20, 1961, the amount of P1,600.00 plus one (1) sack of rice worth P24.00 was received by the late Antonio Anchuelo and signed by plaintiff Celsa Puncia Anchuelo (Exh. 10-A). On August 26, 1962, the remaining P2,876.00 was paid (Exh. 10-B).

"It is the observation of the Court that Exhibit 10-B leave no signature or detailed explanation how the P2,876.00 was paid. There was just a statement which reads:

'Paid all total

August 26, 1962

OK'

which to the unbiased mind, does not seem to convey that a specific amount was paid. The original of the promissory note was said to have been returned to the plaintiffs upon redeeming the promissory note before the date of maturity. Why should such promissory note be returned to the plaintiffs since the Gavino spouses were the makers of the Promissory Note?

"The Gavino spouses Benito and Juana, sold the land to Martha Gavino for P30,000.00 thereafter, Martha

Gavino sold the property to Juan and Jaime both surnamed Gavino. All the sales made were duly registered as the sellers and buyers were dealing with titled properties."

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Based on these findings, the trial court promulgated a decision, the dispositive portion of which reads:

"WHEREFORE, the Court finds that the sale between Antonio Anchuelo and Celsa Puncia-Anchuelo on one hand to Benito Gavino and Juana Euste?Gavino on the other hand, is true and valid deed of sale sufficient to transfer ownership. The subsequent sale to Martha Gavino and the sale thereafter to Jaime and Juan both surnamed Gavino are likewise declared valid.

"The preponderance of evidence which strongly favors the defendants, the said defendants are jointly and severally ordered to pay unto the plaintiffs, for the interest of justice, the sum of THREE THOUSAND EIGHT HUNDRED SEVENTY SIX (P3,876.00) PESOS, the amount which was not received by the plaintiffs nor paid to them by reason of the promissory note executed by Benito Gavino. After the payment of said amount, the case should be dismissed. No pronouncement as to damages and costs."

The afore-quoted decision was appealed by the petitioners to the Intermediate Appellate Court.

Except for making the second paragraph of the appealed decision's dispositive portion clearer by correcting it to read as follows:

"The preponderance of evidence strongly favors the defendants but said defendants are jointly. . ."

the trial court's decision was affirmed by the appellate court.

A motion for reconsideration filed by the petitioners was denied. Hence, this petition.

The main issue in this petition is whether or not the petitioners have established their right to repurchase the subject parcels of land.

The petitioners invoke two grounds upon which they base their right to repurchase the subject parcels of land. First, they maintain that the deed of absolute sale (Exhs. A, A-1 and Exh. 16) was fictitious and without any consideration and that the true and real transaction between the Anchuelo spouses on one hand and the Gavino spouses on the other hand was a sale with right of repurchase or *venta con pacto de retro*. Second, they contend that they have the legal right under Section 119 of Commonwealth Act 141 (Public Land Law) to repurchase the parcels of land within five (5) years from May 19, 1961 the date when the deed of absolute sale and agreement to resell was executed.

We find no reason to disturb the findings of the trial court and the appellate court that the disputed deed of sale reflects the true transaction between the Anchuelo spouses on one hand and the Gavino spouses on the other. This is clearly seen in the execution of public documents evidencing the parties' various transactions involving the land and leading to the execution of the questioned deed of sale.

The records show that after the Gavinos had redeemed the Anchuelo properties by paying P4,541.39, P2,104.55, and P7,850.00 to the Development Bank of the Philippines, Philippine National Bank and Leonor Cayetano, respectively, and had given the Anchuelos P2,105.06 in cash, the Anchuelos executed on March 15, 1960 a deed of sale with right to repurchase the seven (7) parcels in favor of the Gavinos.

On May 19, 1961, the Gavino spouses executed a "deed of repurchase" in favor of the Anchuelos where the land was transferred to the latter for P18,000.00. However, on this same day, May 19, 1961, the spouses Anchuelo converted the deed of sale with right to repurchase dated March 15, 1960 into a Deed of Absolute Sale for the increased amount of P28,000.00 in favor of the Gavinos. For the difference of P10,000.00, the Gavinos paid P5,500.00 in cash and P4,500.00 in a promissory note. Three separate payments on the note were eventually effected. On this same date also, May 19, 1961, the Gavinos executed in turn, an agreement to resell the properties to the Anchuelos for P28,000.00 but giving the latter not earlier than nineteen (19) years to redeem the properties.

These public documents are entitled to full faith and credit on their face in the absence of any competent evidence that their execution was tainted by defects or irregularities that would warrant a declaration of nullity. (*Roman v. Court of Appeals*, 112 SCRA 542). The records show that the petitioners have failed to prove their allegations of a fictitious sale or fraud in the execution of the questioned deed. The findings of facts of the trial court and the appellate court are supported by the evidence and appear both credible and logical.

As earlier stated, on the same day that the absolute deed of sale was executed, the Gavino spouses executed an Agreement to Resell the same parcels of land, for the same price in favor of the Anchuelo spouses (Exhibit B). Embodied in the document is the following stipulation:

"That it is a condition of this agreement that the PARTY OF THE SECOND PART, his heirs, assigns and successors in interests, shall not exercise their right to repurchase said parcels of land subject matter of this agreement within the period of nineteen (19) years from the date of execution of this instrument but may only exercise their right after the lapse of said nineteen years from date of the execution of this agreement."

This stipulation clearly violates Article 1601 of the Civil Code, which limits the period for conventional redemption should there be an agreement to the maximum of ten years from the date of the contract. (*Baluyot v. Venegas*, 22 SCRA 412) Where the agreement for repurchase exceeds ten years, we have ruled that the vendor a retro has ten years from the execution of the contract to exercise his right of redemption (*Baluyot v. Venegas*, supra citing *Santos v. Heirs of Crisostomo and Tiongson*, 41 Phil. 342).

The Agreement to Resell was executed on May 19, 1961. The petitioners, therefore had until May 19, 1971 to exercise their right to redeem the subject parcels of land. The records clearly show that the petitioners failed to exercise their right to redeem the parcels of land within this ten-year period.

The petitioners also invoke their right to redeem the subject parcels of land within five (5) years from May 19, 1961. This claim is premised on the fact that the seven (7) parcels of land were originally covered by Original Certificate of Title No.586 issued by the Register of Deeds, Camarines Sur on February 11, 1953 to Antonio Anchuelo pursuant to Free Patent No. U-2776 issued six days earlier.

The appellate court dismissed this theory in this wise:

"In the first place, this issue was never raised in the trial court. Well settled is the rule that questions not raised in the lower court cannot be raised for the first time on appeal (*Garcia v. Court of Appeals*, 102 SCRA 597; *Matienzo v. Sevilla*, 107 SCRA 276). It would indeed be unfair to the adverse party if an entirely new issue is raised on appeal as it had no opportunity to introduce evidence to counteract this new issue. Moreover, there is a different evidence required in order to invoke the right of repurchase under Section 119 of C. A. No. 141.

"Moreover, the Court finds merit in the contention of the appellees that even granting *arguendo* that plaintiffs can still repurchase the land under the Public Land Law, said right had already expired. The instant complaint was filed eleven years after the date of sale was executed on May 19, 1961. Even the filing of Civil Cases Nos. 5694 and 6184 cannot suspend the period of redemption. It appears that the complaint (Exhibit 20) referred to annulment of loan."

We agree.

Section 119 of Commonwealth Act 141 states:

"Every reconveyance of land acquired under the free patent homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance."

We interpreted this provision in *Lee v. Court of Appeals* (68 SCRA 198, 204) as follows:

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"x x x Article 1616 of the Civil Code of the Philippines, in the absence of an applicable provision in Commonwealth Act No. 141, furnishes the guide, to wit: 'The vendor cannot avail himself of the right of repurchase without returning to the vendee the price of the sale x x x'.

"Thus, in the case of *Angao v. Clavano*, 17 Phil. 152, it was held that 'it is not sufficient for the vendor to intimate or to state to the vendee that the former desires to redeem the thing sold, but he must immediately thereupon offer to repay the price x x x'. Likewise, in several other cases decided by the Supreme Court (*Fructo v. Fuentes*, 15 Phil. 362; *Retes v. Suelto*, 20 Phil. 394; *Rosales v. Reyes, et al.*, 25 Phil. 495; *Canuto v. Mariano*, 37 Phil. 840; *De la Cruz, et al. v. Resurreccion, et al.*, 98 Phil. 975; and other cases) where the right to repurchase was held to have been properly exercised, there was a definite finding of tender of payment having been made by the vendor.

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"It is clear that the mere sending of letters by vendor Simeon expressing his desire to repurchase the property without an accompanying tender of redemption price fell short of the requirements of law. Having failed to properly exercise his right of redemption within the statutory five-year period, the right is lost and the same can no longer be revived by the filing of an action to compel redemption after the lapse of the period. x x x."

There is nothing in the records nor in the factual findings of the trial court and the Intermediate Appellate Court to indicate that there was a valid tender of payment of the repurchase price during the five-year period under Section 119 of Commonwealth Act 141 or the ten-year period under Article 1601 of the Civil Code. This is a factual issue which can no longer be threshed out in a petition for review. The findings of the lower courts are supported by the evidence.

The petitioners contend that two civil cases filed ahead of Civil Case No. R-642 (7289) should be deemed to have suspended the running of the ten-year period to repurchase.

The contention is without merit.

The first case, CC No. 5694 filed on November 5, 1963 was for annulment of loan. There is nothing in the complaint to indicate that it was filed to exercise the right of repurchase. We cannot read into the complaint something which is not there.

The second case, CC No. 6184 was entitled annulment of sale and repurchase of property. It was filed on June 24,

1966 but was dismissed because of the petitioners' failure to prosecute their case.

The complaint which gave rise to the present petition was filed on April 21, 1972. The Anchuelo spouses averred in this complaint in Civil Case no. R-642 (7289) that "this case is the same as the one filed in Branch III of this Honorable Court in Civil Case No. 6184 which was dismissed without prejudice, however, upon suggestion by the Presiding Judge, this case is instituted in order to avail further delays in the proceedings for relief under Section 38 of the Rules of Court".

The petitioners' averments indicate that not one of the cases earlier filed could suspend the running of the ten-year period or constitute a valid tender in an effort to repurchase. The petitioners question the deed of sale dated May 19, 1961 as fraudulent because the agreement was intended to be a mortgage but they were "induced x x x to execute a supposed deed of sale". The petitioners question the P28,000.00 consideration as fictitious because the loan they obtained was only P3,000.00. They question the transactions as illegal and the result of the Gavinos taking advantage of their financial necessity and "mental strains". The complaint alleges post offers to repurchase for the actual amount of the loan, meaning P3,000.00, which the respondents allegedly rejected. While the prayer includes a clause "that the plaintiffs be allowed to repurchase the properties in question", the Anchuelos asked that they be paid P10,000.00 annually by the Gavinos from 1961 instead of offering any amount to indicate a willingness to buy back the properties. The theory of the petitioners is that the deed of sale is fraudulent and fictitious. If there was no valid sale, there is nothing to repurchase.

The inevitable conclusion is that the petitioners did not exercise their right to redeem the subject parcels of land within the ten-year prescriptive period. It was only after the ten-year period had already lapsed that the present case was filed. It was only then that the petitioners pursued their right to repurchase the subject parcels of land but without any tender of payment and in terms contradictory of a desire to repurchase.

It is to be noted that the lower courts ordered the private respondents to pay the petitioners the amount of P3,876.00 as the remaining balance of the former in the P28,000.00 price of the subject parcels of land. This amount was arrived at after deducting P1,600.00 and P24.00 paid by the private respondents to cover their P4,500.00 promissory note which was part of the P28,000.00 total price for the parcels of land. The discrepancy is not explained by the evidence. The respondents claim to have paid it as shown by an August 26, 1962 statement which reads "Paid all total. August 26, 1962. OK". The trial court ruled that since no specific amount was mentioned and the note was in the hands of the Anchuelos, it is not proof of payment. The computation is incorrect as the remainder after deducting P1,624.00 from P4,500.00 is P2,876.00 and not P3,876.00.

WHEREFORE, the instant petition is hereby DENIED. Except for the MODIFICATION that the private respondents are ordered to pay the petitioners P2,876.00, the decision of the respondent court is AFFIRMED.

SO ORDERED.

Fernan, (Chairman), Alampay, Paras, and Padilla, JJ., concur.

Bidin, J., took no part considering that said case was assigned to him during its completion stage when he was in the Court of Appeals.

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