

PEDRO MONTIERO, PETITIONER AND APPELLEE, VS. VIRGINIA SALGADO Y ACUÑA, OPPONENT AND APPELLANT.*G.R. No. 7287. March 29, 1913*

Ponente: TORRES, J.

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Appeals raised through bills of exceptions by the opponent from the single judgment rendered on April 28, 1911, in cases Nos. 4767 and 4768, whereby the judges of the Court of Land Registration, Charles H. Smith, Jesse George, Pedro Concepcion, and James A. Ostrand, sustained their previous judgment of December 22, merely indicating that the property concerned was sold under pacto de retro to the opponent for the sum specified in such previous judgment; and therefore denying the motion made by counsel for the opponent, Virginia Salgado.

In the said judgment of December 22 the Honorable Jesse George, judge, ordered the registration of the six parcels of land, the subject matter of case No. 4768, in the name of Severa Poniente, and of the four parcels of land, the subject matter of case No. 4767, in the name of Pedro Montiero, subject to a mortgage for the sum of P2,500 in favor of Virginia Salgado y Acuña.

On June 27, 1908, Pedro Montiero requested, in case No. 4767, inscription in the property registry, in accordance with law, of four parcels of land situated in the barrio of Buhanginan, of the pueblo of Lilio, Laguna, the respective situation, boundaries, and area of which land were set forth in the written application, in conformity with the technical description and plan accompanying the same, which estate belonged to him absolutely; and at the last assessment was appraised at \$960 United States currency, having been acquired by him through inheritance from his parents, Esteban Montiero and Sotera Consul; that there was no encumbrance thereon, or any person who had any right or share therein, except that he had sold it under pacto de retro to Benito Javier.

On April 27, 1908, Pedro Montiero, in representation of his wife, Severa Poniente, applied, in case No. 4768, for the registration of a parcel of land situated in the barrio of Buhanginan, of the pueblo of Lilio, and also of five other parcels of land in Cabuayan, of the pueblo of Nagcarlan, Laguna, the location, boundaries, and area of which, respectively, are set forth in detail in the written application, in conformity with the technical description and plans thereto attached; that these parcels had been at the last assessment appraised at \$830 United States currency, and had been acquired by her by inheritance from her mother, Casimira Artita; that there was no encumbrance thereon, or any person who had any right or share therein, except that she had sold them under pacto de retro to Benito Javier.

Javier opposed the foregoing¹ applications in both cases, wherefore the judge of the land court refused the registrations requested; but inasmuch as the applicant spouses afterwards repurchased the said parcels of land, the opponent, Benito Javier, withdrew his opposition and asked that titles be issued to the applicants as they had requested.

At this stage of the proceedings, counsel for Virginia Salgado, by writings of October 28, 1910, presented in the two aforesaid cases, set forth that his client had acquired by purchase from the spouses Pedro Montiero and

Severa Poniente the ten parcels of land, inscription whereof was requested in both cases, and his petition was accompanied by the muniments of title, consisting of a deed of sale executed by the said spouses on October 25, 1910, in behalf of the petitioner, Virginia Salgado, and ratified before a notary public; wherefore he asked for inscription of the lands in the name of Virginia Salgado, and issuance to her of the corresponding title; and in connection with this petition, the court ordered, on November 17, that the petitioner, Montiero, and the opponent, Javier, state before the same, on the morning of December 20, 1910, why the lands concerned should not be registered in the name of Virginia Salgado, as she requested, further providing that should they fail to appear on the day, and at the hour and place specified, they would be declared in general default, Virginia Salgado's application would be granted, and they would be forever estopped from impugning the same and the decree that would be issued.

On December 22, 1910, the single judgment aforementioned was rendered in both cases and, in view of the exception entered by counsel for Virginia Salgado and of his motion for a rehearing, the court en banc on April 28 decided the opponent's claim by a single ruling in both cases, from which decision an exception was taken, and the corresponding bills of exception were presented for the two cases, approved, and forwarded to the clerk of this court.

This case concerns inscription in the property registry of ten parcels of land owned, six of them, by the married woman Severa Poniente, represented by her husband, Pedro Montiero, and the other four by the husband named himself. The first question which arises for solution, before proceeding to determine whether the registration applied for should be granted, is whether the said parcels of land really were or were not sold by the applicant spouses to the opponent, Virginia Salgado, and if so, what the conditions and nature of the sale were, in order to decide whether it is proper to register the property in question in the names of the said Pedro Montiero and Severa Poniente, respectively.

When these two persons applied to the Court of Land Registration for the registration of their respective estates, eight parcels of the said land had been sold under pacto de retro to Benito Javier, who consequently duly opposed the registration sought; but as soon as the land had been repurchased and Benito Javier had received the greater part of the money, P2,500, which the applicants had obtained from Virginia Salgado, he withdrew his opposition and even asked that the title be issued to the said spouses; and when it was thought that the case would be continued in the Court of Land Registration, Virginia Salgado appeared to oppose the registration requested, alleging that she was the owner of the land and asking that title thereto be issued in her name.

It is an unquestionable fact that Virginia Salgado, upon furnishing to the spouses Poniente and Montiero the money needed by them for the repurchase of the lands sold to Benito Javier, required those spouses to execute in her behalf two instruments on the same date, October 25, 1910. In one of them, entitled an absolute sale, the spouses Pedro Montiero and Severa Poniente declare that they sell and convey forever to Virginia Salgado and to her successors in interest, in consideration of the sum of P2,700, the ten parcels of land mentioned, repurchased from Benito Javier. In the other instrument, entitled a conditional sale, Virginia Salgado, as owner of the said ten parcels of land, binds herself to sell them to the said spouses, Montiero and Poniente, in accordance with the agreement made with these latter, within the period comprised between July 1 and December 31, 1925; and that, should the said period elapse without these spouses having exercised their right, they would lose all right of action derived from the present agreement; that the said ten parcels of land should be sold without division; that the price should be the sum of P2,700, the value of all the improvements and crops on the land on the day of the sale, according to expert appraisal, and the amount of all the necessary and needful expenses, including documentation; that, in case the owner should need to sell the said lands, she would have to record the agreement, to insure respect for the rights of the spouses Montiero and Poniente; and that, after the lapse of six months from the date of

the instrument, October 25, 1910, the said spouses might negotiate with Virginia Salgado in regard to the sale and to the right conceded them under that agreement.

In order to estimate and define the character, nature, and conditions of the two contracts contained in either instrument, as well as to determine the intention of the contracting parties in executing them, the stipulations made by these parties in both documents, which must be held to be one single contract by and between the same parties regarding the conveyance of the ten parcels of land under the conditions of the sale, must be examined and weighed together. Said contracts cannot be viewed as separate and independent, for they both constitute a single contract of sale with the engagement to resell the land, the subject matter of the stipulations, within the term, in the manner and under the conditions set forth in one of said instruments. The private document of December 1, 1910, presented at the trial and not impugned as false, virtually completes the contents of the two instruments executed on the same date by and between the applicants, Montiero and Poniente, and Virginia Salgado, who furnished the money wherewith to repurchase from Benito Javier eight of the ten parcels of land in question.

The Court of Land Registration en banc, composed of four judges, after consideration of the contents of both instruments, with due regard of the spirit and terms of the contracts, of the manifest intention of the contracting parties, as disclosed by the literal text of both documents, and also of the statements made under oath by Pedro Montiero, not denied or rebutted at the hearing by either Virginia Salgado and her attorney, who was the very notary that authenticated the said two instruments and interpreted their contents to the contracting spouses, who did not know or understand Spanish,' held that the contract made by and between the parties who executed the aforementioned two instruments, drawn up on the same date, was one of sale with pacto de retro, and that he stipulation with respect to the excess of the term of ten years fixed for the repurchase of the said ten parcels of land was null and void, inasmuch as, pursuant to article 1508 of the Civil Code, in case of an express agreement the period shall not exceed ten years.

Under the aforementioned hypothesis that the conveyance in question was effected under pacto de retro it must be determined whether the two spouses who, according to the said instruments, sold the ten parcels of land in litigation are entitled to apply for registration thereof in their names, once the applicants' ownership of the parcels has been unquestionably established.

In decision No. 5096, rendered in the case of Mortera vs. Martinez (14 Phil. Rep., 541), the following syllabus appears:

"1. Articles 1507 to 1520 of the Civil Code have not been repealed, either expressly or by implication, by subsection (c) of section 6 of Act No. 1108 of the Philippine Commission, and therefore the well-known form of contract of sale with pacto de retro still subsists.

"2. Subsection (e))of section 6 of Act No. 1108 authorizes the registration of instruments of sale with pacto de retro in the registry of property, at the request of the person selling the realty, under the same conditions and in the same manner as mortgages in loan contracts secured by mortgage; but said law has not considered the latter contract as being the same as that of sale with pacto de retro, for the reason that the two are entirely different in nature and character. (Art. 1507 et seq., arts. 1857 to 1862 and 1874 et seq., Civil Code; Villarruel vs. Encarnacio'n, 5 Phil. Rep., 360.)

"3. The provision which authorizes the registration of an instrument of sale with pacto de retro at the request of the seller of the realty is not incompatible with the articles of the Civil Code that deal with such contract; according to article 1510, an action to enforce the redemption of the property sold may be maintained against every possessor who derived his right from the purchaser with pacto de retro, for the reason that said action is real in character, and not merely personal; therefore, the right of the owner of the realty coexists with that of the purchaser, and the document may fee entered in the registry."

Hence, according to the principle laid down in the aforecited decision, based on an express provision of law, the vendor of real property under pacto de retro may apply for registration thereof, provided, of course, that he record the purchaser's right thereto.

Accepting in all other respects the grounds of the judgment appealed from, and deeming the foregoing to be a refutation of the errors assigned to the said judgment by the appellant, the same should be and is hereby affirmed, with the costs against the appellant.

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

Trent, J., dissents.

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