

EMILIANA RACCA, PLAINTIFF AND APPELLEE, VS. CATALINA VILORIA ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 8156. November 10, 1913*

Ponente: JOHNSON, J.

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This was an action for the recovery of two parcels of land and for damages. The action is based upon the failure to comply with the provisions of an alleged contract of sale or pacto de retro. The plaintiff presented her complaint on the 10th day of November, 1911, alleging that on the 10th day of December, 1908, the defendants sold to her two parcels of land, more particularly described in paragraph 2 of the complaint, under a written contract marked Exhibit A, which contract was alleged to be a pacto de retro, with the condition or provision that the defendants might repurchase the said parcels of land within a period of two years from the date of said contract or pacto de retro; that the two years within which the defendants might repurchase said parcels of land had elapsed; that the defendants had not repurchased said parcels of land. The plaintiff prayed that she be declared to be the owner and entitled to the possession of the parcels of land in question and that the defendants be required to pay her three hundred manojos de palay, together with the sum of P250 as damages.

To said complaint the defendants presented a demurrer which was overruled by the lower court. Whereupon the defendants presented an answer in which they admitted the execution and delivery of said contract (Exhibit A), but insisted that said contract was not a pacto de retro; that it was a simple mortgage; that before the maturity of said contract (the 10th day of December, 1910), they had offered to pay to the plaintiff the amount due under the said contract; that the plaintiff requested them to defer the payment of the amount due under said contract (the sum of P500) until the month of February, 1911; that in the month of February, 1911, in accordance with said agreement, they had offered to pay to the plaintiff the amount due under said contract, together with three hundred manojos de palay, the amount of the rental; that the plaintiff had refused to accept said money or said palay; that in view of the refusal of the plaintiff to accept the amount due under said contract, they had deposited the same with the justice of the peace; that the value of the parcels of land was P2,000. The defendants prayed that they be relieved from any responsibility under said complaint, that the plaintiff pay to them the sum of P300 as damages, and that the court declare null and void said contract, Exhibit A.

Upon the issue thus formed the Honorable Dionisio Chanco, judge, rendered a judgment in which he held that the plaintiff, by virtue of the provisions of said contract (Exhibit A) and the failure of the defendants to comply with its conditions, had become the absolute owner of said parcels of land, and condemned the defendants to deliver the same to her, together with three hundred manojos de palay and to pay the costs. From that judgment the defendants appealed. In this court the defendants make the following assignments of error:

"The trial court erred:

"I. In overruling the demurrer to the complaint.

"II. In not declaring Exhibit A of the complaint null and void.

"III. In regarding Exhibit A of the complaint as a public document.

"IV. In regarding Exhibit A of the complaint as an instrument of sale with right to repurchase instead of interpreting it as an unregistered instrument of mortgage or as a simple contract of loan with guaranty,

"V. In holding that the vendor did not exercise her right of repurchase during the period fixed in the contract, on the supposition that the instrument were a contract of sale with right to repurchase.

"VI. In rendering judgment in plaintiff's favor instead of absolving the defendants.

"VII. In denying the motion for a new trial of the case."

With reference to the first assignment of error, a careful reading of the complaint shows that the lower court committed no error in overruling the demurrer. The complaint contains upon its face all of the necessary allegations to show a cause of action under the alleged contract.

With reference to the second assignment of error, there seems to be no good reason for holding that the lower court committed an error in declaring that Exhibit A was a valid and subsisting document. All of the parties admit that the same was duly signed voluntarily by them and was acknowledged before a notary public. The appellants contend that the notary public was a relative of some of the parties to the contract. No law nor decision of the courts is cited in support of their contention. The mere fact that a notary public, before whom an ordinary contract is executed and delivered, is a relative of some of the parties is not sufficient, in the absence of fraud or collusion, to justify the holding that the contract is null. It was executed before a notary public and is therefore a public document. (*McMicking vs. Kimura*, 12 Phil. Rep., 98; *Gochuico vs. Ocampo*, 7 Phil. Rep., 15; *Hijos de I. de la Rama vs. Robles*, 8 Phil. Rep., 712.)

What we have said with reference to the second assignment of error seems also to be sufficient to answer the argument of the appellants under the third assignment of error.

With reference to the fourth assignment of error an examination of said contract (Exhibit A) is necessary for the purpose of determining or ascertaining whether the same is a pacto de retro or a simple mortgage. An examination of said contract discloses that it contains the following significant language, in paragraph 1:

"I, Catalina Vilorio, * * * of the Province of Ilocos Sur * * * an(my children here present, in consideration of the sum of five hundred pesos (P500), Philippine currency, which Doña Emiliana Racca has paid us, * * * do hereby record that we sell and transfer in the character of sale with right to repurchase the two parcels of land * * *."

It would seem to be difficult to find a contract in which its character is more clearly demonstrated than in the language above quoted. It seems to us to be clearly a pacto de retro instead of a mortgage or simple contract of loan. The language of the contract itself seems to demonstrate that the lower court did not commit the error alleged in the fourth assignment.

With reference to the fifth assignment of error, the plaintiff contends that the defendants did not exercise their right to repurchase the two parcels of land in question within the period prescribed by the said contract. By the terms of the contract it matured on the 10th day of December, 1910. It was the duty of the defendants (the vendors) to complete the repurchase on that date. (Arts. 1509 and 1518, Civil Code.) By their failure to repurchase on that date, unless something existed which excused them, the conditional sale became absolute and they have lost their property. (Art. 1509, Civil Code.) By their failure to repurchase on the date of maturity, in the absence of other facts excusing the repurchase at that time, the conditional sale became absolute. (10 *Manresa*, 296-307, art. 1509.) That being the rule of law, it becomes necessary to examine the record for the purpose of ascertaining just what the defendants (the vendors) did in their alleged effort to repurchase the lands mentioned in said

contract. The defendant, Catalina Vilorio, testified that she sent her son and son-in-law, Santiago Villaluz and Victoriano Guerrero, to the municipality of Santo Domingo, the place where the plaintiff lived, for the purpose of notifying her to come to the municipality of Lapog, for the purpose of receiving "the amount of the repurchase;" that this was in the month of December, 1910. She fails, however, to give the particular day in the month of December when she sent her son and son-in-law to the plaintiff. The fact that Santiago Villaluz and Victoriano Guerrero, in the month of December, 1910, went to the municipality of Santo Domingo, for the purpose of asking or requesting the plaintiff to come to the municipality of Lapog, is supported by the declaration of each of them. Neither of them states the particular day in the month of December when such request was made. They each admit that they did not take the money with them when they went to the municipality of Santo Domingo with which to repurchase the parcels of land mentioned in said pacto de retro. They each declare that when they requested the plaintiff to come to the municipality of Lapog that the latter replied that it was unnecessary to repurchase the land in question until after the crops were harvested. The plaintiff denies absolutely the declarations of these witnesses. She declared that the defendants never offered to repurchase the lands under the contract. The lower court found in accordance with the declaration of the plaintiff. Had the defendants shown or proved by proper and sufficient proof that they had done all that was within their power to do at the time of the maturity of the contract to repurchase the lands in question and that they had been prohibited by some act of the plaintiff, then and under such circumstances the courts would permit them to repurchase at a later date. (Lafont vs. Pascasio, 5 Phil. Eep., 391; Villegas vs. Capistrano, 9 Phil. Rep., 416; Fructo vs. Fuentes, 15 Phil. Rep., 362; Retes vs. Suelto, 20 Phil Rep., 394.)

Considering that the lower court saw and heard the witnesses and had an opportunity to judge of their credibility, and reached the conclusion that the defendants had not done what the law required them to do at the time of the maturity of the contract or pacto de retro, and in the absence of positive and uncontradicted proof to the contrary, we adopt his finding of facts that the defendants did not, at the maturity of the contract, do what the law required them to do in order to complete the repurchase of the lands in question.

With reference to the sixth assignment of error, after a full consideration of all of the facts found in the record and the law applicable thereto, we find no reason for reversing or modifying the judgment of the lower court. The same is, therefore, hereby affirmed, with costs.

Arellano, C. J., Torres, Moreland, and Trent, JJ., concur.

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