

FAUSTO ROSALES, PLAINTIFF AND APPELLANT, VS. VICENTE REYES AND JUAN ORDOVEZA, DEFENDANTS AND APPELLEES.

G.R. No. 8162. October 10, 1913

Ponente: TRENT, J.

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TRENT, J.:

This is an appeal from a judgment sustaining a demurrer to the complaint on the ground that it does not state facts sufficient to constitute a cause of action.

On July 29, 1902, Rivera sold a parcel of land to Reyes and Ordoveza for 800 pesos under pacto de recto, on the condition, however, that the repurchase could not be made until after three years from the date of the contract of sale. In this document Rivera states that he was of age. On May 29, 1903, Rivera sold his right to repurchase to Rosales for 1,075 pesos. In the document evidencing this sale, Rivera states that he is 23 years of age. Rosales, who is the plaintiff in this case, alleges that in January, 1908, he tendered 800 pesos to Reyes and Ordoveza with the request that the land be surrendered to him in accordance with the contract entered into between them and Rivera in 1902, but that they refused to accept the money and comply with his request.

1. The first objection to the complaint is that it is inconsistent because plaintiff asks that the contract in question be annulled on the ground that Rivera was a minor when he entered into it in 1902, and then asks that the defendants be required to deliver the land to him upon payment to them of 800 pesos, as per its terms. There is no basis for this objection for the reason that the inconsistency alleged appears in the prayer for relief. As stated in 1 Sutherland on Code Pleading (sec. 186) :

"The demand in the complaint is no part of the statement of the cause of action, and does not give it character. The facts alleged do this, and the plaintiff is entitled to as much relief as they warrant."

See also Philips on Code Pleading (sec. 205), where it is said: "The prayer for relief, though part of the complaint, is no part of the cause of action. A single right of action may entitle the plaintiff to several kinds of relief, and several rights of action may authorize but a single relief."

The contract of 1902 cannot be annuled, however, for the reason that Rivera ratified it by entering into the contract with Rosales in 1903, wherein he stated he was 23 years of age, thus making applicable the provisions of article 1311 (Civil Code), which provides: "It shall be understood that there is an implied confirmation when, being aware of the cause of the nullity and such cause having ceased to exist, the person who may have a right to invoke should execute an act which necessarily implies his wish to renounce such a right."

2. The next objection to the complaint is that the right to repurchase had expired before Rosales attempted to exercise it. This is based upon the first paragraph of article 1508 of the Civil Code, which reads: "The right (to repurchase) * * * in the absence of an express agreement, shall last four years counted from the date of the contract."

The contract of 1902 provided that the right to repurchase could not be exercised within three years from the date

of the contract.

The second paragraph of article 1508 reads: "Should there be an agreement, the period shall not exceed ten years."

Under the Partidas, as under the Roman Law, no attempt was made to limit the duration of contracts with pacto de retro. Unless limited by the contract of the parties, it was generally held that the right to repurchase was perpetual. By its decision of May 12, 1875, the supreme court of Spain first attempted to place a restriction upon the length of such contracts by holding that they gave rise to a personal action of prescription in accordance with the law on prescription of actions. (23 Scaevola, 767.) In recent times, however, practically all those countries where such sales are recognized have found it advisable to limit the time within which the right of redemption can be exercised. (4 Bonel's Com. on the Civil Code, 519.) As stated in *Yadao vs. Yadao* (20 Phil. Rep., 260) : "A pacto de retro is, in a certain aspect, the suspension of the title to the land involved. We are of the opinion that it was the intention of the legislature to limit the continuance of such a condition, with the purpose that the title to the real estate in question should be definitely placed, it being, in the opinion of the legislature, against public policy to permit such an uncertain condition relative to the title to real estate to continue for more than ten years."

It might be added that there are many characteristics of these sales with pacto de retro which stamp them as being in the nature of usurious loans. The property is usually sold for a much smaller sum than it is actually worth, as witness the present case, where Rivera sold the property to the defendants for eight hundred pesos, and then sold his right to repurchase for a considerably larger amount. During the time the right to repurchase lasts the purchaser either takes possession of the property and receives the fruits thereof, or the vendor becomes his tenant and pays him rent for the use of the property. The chief inducement for purchasing property under such conditions is either the hope that the vendor will not be able to raise the amount of the redemption price within the time allowed, or else the prospect of enjoying the products of a property acquired at less than its market value. Doubtful conditions in such a contract should not therefore be construed too harshly against the vendor.

A stipulation in the contract providing that the right to repurchase is suspended for a certain time is undoubtedly a benefit to both the vendor and the purchaser. To the latter it affords a basis upon which he may plan his management and use of the property with some accuracy during the time it is in his possession, as he is in no danger of being suddenly ousted by the vendor's confronting him with the redemption price and demanding the surrender of the property. And for the security thus afforded to the purchaser in the enjoyment of the property he will be more inclined to pay a greater sum for it than he would in the absence of such a provision, thereby benefiting the vendor.

In the present case, the only stipulation of the parties with reference to the right to repurchase was that it could not be exercised within three years from the date of the sale. Had it not been for this condition, it is evident that that right would have expired four years from the date of the sale. But if it were held that, regardless of such a provision, the redemption right expires within four years from the date of the contract unless there is a special provision as to how long this right, once effective, shall continue, many otherwise perfectly valid contracts can be conceived in which the redemption privilege would be unenforceable; For instance, if the stipulation in question had provided that the right to redeem could not be exercised within five years from the date of the contract, it is quite apparent that, according to the argument advanced by the defendants, the vendor could not have redeemed the property at all, for the right to do so would have expired one year previously.

In such a case the question arises, Upon what basis must the duration of the right to repurchase be calculated? Any such contract must necessarily be terminated ten years from the date of its execution, but should the vendor have the privilege to exercise this right for the balance of the ten years, or should he be allowed only four years on the ground that there was no express agreement of the parties upon this point? In all such cases it would seem that

the vendor should be allowed four years from the expiration of the time within which the right to redeem could not be exercised, or in the event that four years would extend the life of the contract beyond ten years, the balance of the ten-year period, on the ground that vendors, where the right to redeem is not thus suspended and no express agreement as to the length of time during which it may be exercised is made, are also allowed four years. This construction, it must be conceded, is the most logical and just.

"When a statute or instrument is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to be adopted." (Sec. 294, Code Civ. Proc.)

The provisions of article 1508 are strictly analogous to the statute of limitations upon actions. As the date on which a right of action expires is determined by the date it accrues and not by some prior event which might be considered as its inchoate beginning, so the right to repurchase is to be calculated from the day upon which that right may be freely exercised by the vendor, subject, of course, to the ten-year limitation of the law. Manresa (vol. 10, p. 303) touches upon this question:

"The starting point for calculating it (the redemption period) we understand is always the date of the contract, since, although the Code only so states in the first of the two said cases, in the second it is expressly prohibited that the period shall exist more than ten years, and it is clear that it would last longer if it were agreed, for example, that it would not begin to run until a certain time had elapsed after the date of the contract. This agreement, in so far as it might imply an extension of ten years, we believe would be null as being contrary to the manifest spirit of the law."

We are of the opinion that the effect of the express stipulation or agreement in the contract which we have been discussing was to extend the life of the contract to seven years from the date of its execution.

3. The next point raised is that the complaint is defective in that it does not allege that the redemption price was judicially deposited upon the refusal of the defendants to surrender the property. In support of this contention counsel for the defendants rely upon the case of Angao vs. Clavano (17 Phil. Rep., 152); 10 Manresa 337, 338; and a decision of the supreme court of Spain of October 16, 1906, cited by Manresa.

Manresa and the supreme court of Spain in its decision of October 16, 1906, rely chiefly upon the second paragraph of article 1618 of the Spanish Code of Civil Procedure, wherein it is provided that in order to perfect a right of action for the recovery of things sold with the right of redemption, the redemption price must be deposited or, in the event that the price cannot be ascertained, a bond for its payment be executed. This is a matter of procedure only, and the provisions of that code are no longer in effect in this country.

An analogy might be drawn from the provisions of section 465 of Act No. 190, which reads: "The judgment debtor, or redemptioner, may redeem the property from the purchaser, at any time within twelve months after the sale, on paying to the purchaser the amount of his purchase, * * *."

This language is fully as strong as the language of article 1518 of the Civil Code, which provides that the "vendor cannot exercise the right of redemption without returning to the vendee the price of the sale." Neither section 465 nor article 1518 makes any provision for cases where the possessor of the property refuses to accept the redemption price and surrender the property. This court, in *Brusas vs. Infante* (13 Phil. Rep., 217), where a judgment debtor sought to redeem property sold under execution and the purchaser refused to accept the price paid for it and surrender the property, held that the offer having been proven, it was not necessary for the judgment debtor to deposit the redemption price.

Again, in the Chattel Mortgage Law, Act No. 1508, a chattel mortgage is defined as a conditional sale, "the condition being that the sale shall be void upon the seller paying to the purchaser a sum of money or doing some other act named. If the condition is performed according to its terms, the mortgage and sale immediately become

void and the mortgagee is thereby divested of his title." (Sec. 3.)

Section 8 provides: "If the mortgagee * * * after performance of the condition before or after the breach thereof, or after tender of the performance of the condition * * *."

A chattel mortgage, it will be observed, is in many respects similar to a sale under pacto de retro, and under section 8 of the Chattel Mortgage Law, a tender of performance is sufficient.

But the settled rule in this jurisdiction upon the precise question involved in this case is that an offer of the money, where the sum required is fixed and certain, is sufficient, and that it is unnecessary to deposit it.

In *Lafont vs. Pascasio* (5 Phil. Rep., 391), the right to repurchase expired on April 30, On April 25 the vendor caused a notary public to deliver a letter to his vendee requesting that she deliver the original document of sale to the notary in order that he might draw up the contract of repurchase. This she refused to do, and the next day the vendor sent her another letter by the same notary, advising her that the latter had in his possession the necessary money to redeem the property, and requesting that she accept the same and execute the proper contract of repurchase. This proposition was also refused, and on April 30, the vendor deposited the amount of the redemption price with the Court of First Instance. This court said:

"The question remains whether the plaintiff did all that he was required by law to do in order to preserve the right secured to him by the contract.

* * * * *

"In regard to the payment of the money, the plaintiff did all that the law required him to do. He offered to pay it to the defendant and deposited it in the hands of a notary for her.

* * * * *

"It is not necessary to decide the question as to whether the six months mentioned in the contract expired on the 30th day of April as claimed by the plaintiff or on the 28th day of April as claimed by the defendant, for the plaintiff, on the 25th and 26th of April, did all that the law required him to do to preserve his right to repurchase the property."

In *Villegas vs. Capistrano* (9 Phil. Rep., 416), the right to repurchase expired on May 13. The vendor, on that date, sent an agent to the residence of the vendee with the necessary money, who found only his wife at home. She told him that she had no authority to act for her husband, but that she would inform him on his return of what had taken place. The money was offered to the defendant himself on May 15, but was refused on the ground that the agent had no authority to act for the vendor. Between this time and June 25 various attempts were made to pay the money but without avail, and on the latter day the agent deposited the redemption price with the Court of First Instance. The court, after quoting extensively from *Lafont vs. Pascasio*, *supra*, said:

"That case is decisive of this. When the plaintiff, on the 13th of May, by his duly authorized agent, presented himself at the residence of the defendant and offered to deliver the money, he did all that the law required him to do to preserve his rights to repurchase. The subsequent deposit of the amount with the clerk of the court was simply additional security for the defendant, but was not a necessary act to be performed by the plaintiff."

In *Fructo vs. Fuentes* (15 Phil. Rep., 362), the right to repurchase expired on September 16. On that day an agent of the vendor called at the vendee's residence and remained there all day awaiting the latter, who was not at home. The agent offered the money to the vendee's wife, but she refused to accept it, telling him to await her husband's return. On the following day, the agent again called at the vendee's residence but could not find him at home. On the following day the agent was successful in finding the vendee at home, but the latter refused to recognize him

as an agent of the vendor and declined to accept the money. On the 20th of September the vendor personally offered his vendee the redemption price, but the latter refused to accept it. In disposing of this case it was said:

"Under these findings of fact it is clearly shown that the plaintiff, not only on the day when the contract fell due made an effort to pay the amount due for the purpose of repurchasing the land in question, but on several consecutive days was this effort made. Without intending to hold that the vendor of land under a pacto de retro does not lose his right to repurchase the same on the day of the maturity of the contract, yet where, as in the present case, at the time of the maturity of the contract, he makes a diligent effort to repurchase, as was done in the present case, and fails by reason of circumstances over which he has no control, we are of the opinion and so hold that he does not lose his right to repurchase his land, by reason of his failure to repurchase on the day of maturity."

In *Retes vs. Suelto* (20 Phil. Rep., 394), the above three cases were cited and affirmed upon the following state of facts. The right to redeem expired on March 16, and on February 24 the vendor tendered the amount due, but the vendee refused to accept it. On March 5 the vendor cited his vendee to appear before a justice of the peace and made a judicial offer to pay the amount of the redemption price, which the purchaser again refused to accept. The money was then deposited to the credit of the purchaser with the municipal president. This court said:

"From the record it appears that the plaintiff had done all that he was required to do for the purpose of securing the return of the possession of the land in question and was entitled to the possession of the same from and after the date on which he made a legal offer to pay the amount of the indebtedness due the defendant. (*Lafont vs. Pascasio*, 5 Phil. Rep., 391.) When a person having the right under a contract of pacto de retro makes a bona fide offer to repurchase, in accordance with the agreement and tenders the necessary amount of money, he has done all the law requires of him to preserve his right and to entitle him to the possession of the property. (*Villegas vs. Capistrano*, 9 Phil. Rep., 416; *Fructo vs. Fuentes*, 15 Phil. Rep., 362.)"

In the case of *Angao vs. Clavano* (17 Phil. Rep., 152), the facts were these: Plaintiff entered into a contract with the defendant on September 25, 1900, whereby a parcel of land owned by him was sold to Clavano with the right to repurchase, to be exercised within one year after the marriage of the vendor. The vendor married on September 8, 1903, and did not offer to repurchase the property until August, 1906. In this case no motion was made for a new trial under section 497 of the Code of Civil Procedure, so the findings of fact were not before this court. It was said:

"On September 9, 1904, the year immediately following the date of defendant's marriage had already fully elapsed and, up to the 8th of September of the said year, that being the last day of the year following his marriage, he had not yet repurchased the property, therefore, from the said date, September 9, defendant's right had already lapsed, for the year had passed and this last date arrived without his having repurchased the land."

The further remarks of the court to the effect that if the vendee refuses to accept the amount of the price when offered it must be placed on deposit in order to prevent title vesting absolutely in the vendee were purely obiter. Such a rule has certainly never been adopted in this jurisdiction. On the contrary, the settled rule, as evidenced by the four decisions discussed above is that a bona fide offer of the redemption price, where that is certain and fixed, is sufficient to preserve the vendor's right of action in cases where the offer is refused. These four decisions dealing, as they do, with a rule of property, and extending over a period of years, cannot be lightly disregarded. They must be held to have crystallized the rule which must obtain in this jurisdiction.

For the above reasons, we are of the opinion that the complaint alleges sufficient facts to constitute a cause of action. The judgment appealed from is reversed, and the cause remanded, with instructions to require the defendants to answer, without costs.

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

DISSENTING

TORRES, J.,

I feel that I must dissent from the majority opinion, because I think that the decision rendered in accordance therewith undoubtedly takes for granted the final resolution of this litigation.

The declaration made by the majority of the court in its decision that facts sufficient to constitute a cause of action are alleged in the complaint is due to the fact that the contract of sale under pacto de retro, executed on July 29, 1902, contains an express stipulation that the repurchase could not be made before the lapse of three years reckoned from said date, wherefore it was held that the period of four years fixed in article 1508 of the Civil Code did not begin to run from the date of the contract, July 29, 1902, but from July 29, 1905, that is, after the three years at the end of which only the repurchase of the land sold could be effected.

No express agreement appears in the notarial instrument setting forth the contract in question regarding the period within which the vendor might repurchase the tract sold, and therefore in the absence of express agreement the right to redeem the land would subsist and could be exercised during the four years fixed in said article 1508, a period reckoned from the date of the contract, according to the positive provision of that article.

It is then unquestionable that the parties did not stipulate any period for the redemption or repurchase of the land sold with right of repurchase and consequently, in the absence of express agreement, as the law says, the right of repurchase will last four years from the date of the contract.

It is contrary to the positive provision of the law, in my humble opinion, to declare that, by reason of the agreement that the repurchase could not be made until the three years reckoned from the date of the contract had elapsed, the four years fixed by the law, in view of the silence of the contracting parties, would run after said three years, or for the remainder of the period of ten years which the law allows as the maximum in case a period is stipulated.

We do not find any provision of law prohibiting this stipulation that the land sold could not be redeemed until three years had elapsed, and by this lack of prohibition of such an agreement the free right of contract is acknowledged, provided that what is contracted be not contrary to law, morality, or public order.

Admitting, then, that the contracting parties could have stipulated such a condition it would not therefore be permissible to affirm that in such case and in the absence of express agreement regarding the period of repurchase it must be held that the period of four years fixed by said article 1508 of the Code should only begin to run after the lapse of the three years stipulated, during which the tract sold could not be repurchased by the vendor.

So far as we know there is no article in the code, nor do we know of any special law or any legal precedent established by the decisions of the courts, which would authorize such a belief to the effect that the basis of reckoning the four years fixed by the law for the redemption, when the contracting parties have not set any period therefor, should be different from the date of the contract itself. The provision of article 1508 is positive and ought not to be understood otherwise than that the period of four years begins to run from the date of the contract, when the contracting parties have not stipulated any period.

The demurrer overruled, it is inferred from the decision of the majority of the court that the period of four years had not even yet elapsed when in the month of January, 1908, the plaintiff, in substitution of the vendor, Maximino Rivera, avers without proof that he proposed to the defendants to acquire by repurchase the land in question, just as in the decision it is held, that facts sufficient to constitute a cause of action were alleged.

By this finding the exception which the defendants might allege—that the period of four years fixed by the law and reckoned from July 29, 1912, has elapsed—is taken for granted, for in the opinion of the majority of the court said four years only began to run from July 29, 1905, a holding that we doubt will encounter support in any article of the code or in the decisions of the courts.

Although the question of whether the mere offer of payment, even though proven and made in good faith, be sufficient to hold that the first paragraph of article 1518 of the Civil Code has been complied with, ought not to be discussed, in view of my opinion that the period of four years had more than elapsed when the alleged offer to repurchase was made in January, 1908, still I wish to take it up, because I also do not agree that the mere offer of repurchase and of payment of the price of the sale would be sufficient, for the reason that said positive article of the code says that the vendor cannot exercise the right of repurchase without paying back to the purchaser the price of the sale; and to pay back is not merely to offer, but actually to settle and pay the price of the sale, and in case the vendor refuses to accept it to deposit it in due form.

The various cases cited in the majority opinion do not demonstrate that the mere offer of payment would be sufficient. The law is held therein to have been fulfilled for the reason that the vendors did all they could to comply with the indispensable requisite of paying back to the purchaser the price of the sale, as said article 1518 of the code requires.

In the decision in the case of *Angao vs. Clavano* (17 Phil. Rep., 152), the following principle was laid down:

"It is not sufficient for the vendor to state to the vendee that the former desires to redeem the thing sold, but he must immediately tender the reimbursement price, and, should the vendee refuse to accept, the vendor must deposit the said price, for, according to article 1509 of the Civil Code, if the vendor does not comply with the provisions of article 1518, the vendee shall irrevocably acquire the ownership of the thing sold."

This principle has been affirmed by the supreme court of Spain in decisions, among others, of December 31, 1897, and October 16, 1906. In the latter the following principles are set forth:

"Repurchase in legal form is not made unless the plaintiff pay back to the defendant the price of the sale or, if necessary, deposit it, according to article 1518 of the Civil Code and 1618 of the code of procedure.

"Offer of the value of the property to be repurchased is not equivalent to payment of the sum, which is what repayment means, as indispensable in every transaction wherein attempt is made to exercise the right of repurchase stipulated for the consummation of the sale."

Such is the true and exact meaning of the provision of the code as set forth by the decisions of the supreme court, and thus also do the commentators, among them the accredited expounder Manresa, understand it, so I regret that I cannot accept as a rule established in this country in accord with the provision of the Civil Code that an offer of the price of repurchase is sufficient to protect the right of the vendor in case the vendee refuses to deliver the property sold under right of repurchase. To offer the price is not to pay it back, as the law directs.

For these reasons it seems to me that it would be strictly lawful and just to affirm the order appealed from, with the costs against the appellant.

DISSENTING

MORELAND, J.,

I agree with the dissenting opinion of Justice Torres, in so far as it holds that the redemption under the sale with a right to repurchase must take place within four years from the date of the instrument.

It is clear that, under the provisions of article 1508 of the Civil Code, in the absence of an express agreement, the right to repurchase expires four years from the date of the contract. The only term in the instrument in question with respect to time is that "it is agreed also that the repurchase shall not take place until three years from this date." This provision is precisely the reverse of that which gives the right referred to in the articles of the Civil Code relating to conventional redemption. It does not prescribe a period within which the repurchase can be made, but, rather, one within which it can not be made. No time being stated in the instrument within which the repurchase may be made, it falls within the provisions of the first paragraph of article 1508, quoted in the opinion of Justice Torres, and the right to repurchase prescribes four years from the date of the contract.

The complaint sets forth the instrument in question, which bears date the 29th of July, 1902, and also alleges that offer of payment was not made until January, 1908. It, therefore, shows upon its face that the action cannot be maintained.

Under the Spanish authorities, the time within which the repurchase may be made is not regarded as a statute of limitations but as a provision which goes to the validity of the contract; and an agreement to extend beyond the period prescribed is null and void.

The question, therefore, as to whether or not the question of the statute of limitations can be raised by demurrer is not involved.

The complaint showing upon its face that there is no cause of action, no other question remains to be discussed.

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