

**MARIANO GONZAGA ET AL., PLAINTIFFS AND APPELLANTS, VS.
FELISA GARCIA ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 8254. March 03, 1914*

Ponente: TRENT, J.

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An appeal from a decision of the Court of Land Registration, denying the registration, in the name of, the appellants, of a parcel of land. The location and identity of the land are undisputed.

The admitted facts are these: Rufino Francisco acquired the land in question by inheritance from the registered owner. On August 20, 1909, he sold it with the right to repurchase the same within one year and with the understanding that the time could be extended one year more, to Vicente San Martin. This sale was registered on August 26, 1909; On August 30, 1909, Francisco's right to repurchase was attached by one Del Rosario. This right of repurchase was sold under execution on December 29, 1909, at a sheriff's sale, Del Rosario being the purchaser. The certificate of sale was registered January 6, 1910, and Francisco having failed to exercise his right of redemption within one year, the sheriff issued his deed to Del Rosario for the interest of Francisco in the land thus sold at the execution sale. This deed was registered January 27, 1911. In November or December, 1911, Del Rosario sold the land to Mariano Gonzaga. In the meantime Martin appeared before the Court of Land Registration and asked that the inscription in the registry of the sale to him under pacto de retro be canceled for the reason that Francisco had paid him the redemption price. This was done on August 22, 1910. On November 9, 1908, Francisco sold the same land to Jose de Lavengco. The document evidencing this sale was never registered. The opponents are the widow and minor children of Jose de Lavengco. Neither Jose nor the opponents ever entered into the possession of the property. The appellants knew nothing of the sale by Rufino Francisco to Jose de Lavengco. Did the appellants acquire a registerable title ?

Section 6, paragraph 5, of Act No. 1108, section 2283 (e), Compilation, provides that: "Instruments known as pacto de retro, made under sections fifteen hundred and seven and fifteen hundred and twenty of the Spanish Civil Code in force in these Islands, may be registered under this title, and application for registration thereof may be made by the owner who executed the pacto de retro sale under the same conditions and in the same manner as mortgagors are authorized to make application for registration."

The right to repurchase real estate sold under pacto de retro is subject to execution and may be sold at public auction to satisfy a judgment against the owner of such a right. By virtue of the sheriff's sale of December 29, 1909, Del Rosario acquired the right to repurchase the land in question from Martin. In November or December, 1911, Del Rosario sold all of his interests to the appellants. The only interest acquired by Del Rosario at the sheriff's sale was the right to repurchase from Martin because this was the only interest that Francisco had at that time. Francisco repurchased the land several months before Del Rosario sold his interests to the appellants. It is therefore clear that the appellants acquired no interest whatever in the land unless the repurchase made by Francisco vested the title in Del Rosario, the then owner of the right to repurchase. We think that Francisco's repurchase did not have this effect. When Francisco's right to repurchase was sold at public auction the judgment

against him was completely satisfied, and he was therefore a stranger to the proceedings. But it is said that under the provisions of article 1158 of the Civil Code the repurchase by Francisco was a payment for Del Rosario and that the former may recover from the latter the price paid.

This article reads: "Any person, whether he has an interest or not in the fulfillment of the obligation, and whether the debtor knows and approves it or is not aware thereof, can make the payment. The person paying for the account of another may recover from the debtor what he may have paid, unless he has done it against his express will. In such case he can only recover from the debtor in so far as the payment has been useful to him."

Del Rosario was not a debtor. He was under no obligations to repurchase the land from Martin. He had a right to do so but whether he exercised this right or not depended upon his own volition. Article 1158 is not for these reasons applicable.

The judgment appealed from is therefore affirmed, with costs against the appellants.

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

Moreland, J., concurs in the result.

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