

**SPOUSES CIPRIANO VASQUEZ AND VALERIANA GAYANELO,
PETITIONERS, VS. HONORABLE COURT OF APPEALS AND SPOUSES
MARTIN VALLEJERA AND APOLONIA OLEA, RESPONDENTS.**

G.R. No. 83759. July 12, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition seeks to reverse the decision of the Court of Appeals which affirmed the earlier decision of the Regional Trial Court, 6th Judicial Region, Branch 56, Himamaylan, Negros Occidental in Civil Case No. 839 (for specific performance and damages) ordering the petitioners (defendants in the civil case) to resell Lot No. 1860 of the Cadastral Survey of Himamaylan, Negros Occidental to the respondents (plaintiffs in the civil case) upon payment by the latter of the amount of P24,000.00 as well as the appellate court's resolution denying a motion for reconsideration. In addition, the appellate court ordered the petitioners to pay the amount of P5,000.00 as necessary and useful expenses in accordance with Article 1616 of the Civil Code.

The facts of the case are not in dispute. They are summarized by the appellate court as follows:

"On January 15, 1975, the plaintiffs?spouses (respondents herein) filed this action against the defendants-spouses (petitioners herein) seeking to redeem Lot. No. 1860 of the Himamaylan Cadastre which was previously sold by plaintiffs to defendants on September 21, 1964.

"The said lot was registered in the name of plaintiffs. On October 1959, the same was leased by plaintiffs to the defendants up to crop year 1966-67, which was extended to crop year 1968-69. After the execution of the lease, defendants took possession of the lot, up to now and devoted the same to the cultivation of sugar.

On September 21, 1964, the plaintiffs sold the lot to the defendants under a Deed of Sale for the amount of P9,000.00. The Deed of Sale was duly ratified and notarized. On the same day and along with the execution of the Deed of Sale, a separate instrument, denominated as Right to Repurchase (Exh. E), was executed by the parties granting plaintiffs the right to repurchase the lot for P12,000.00, said Exh. E likewise duly ratified and notarized. By virtue of the sale, defendants secured TCT No. T-58898 in their name. On January 2, 1969, plaintiffs sold the same lot to Benito Derrama, Jr., after securing the defendants' title, for the sum of P12,000.00. Upon the protestations of defendant, assisted by counsel, the said second sale was cancelled after the payment of P12,000.00 by the defendants to Derrama.

Defendants resisted this action for redemption on the premise that Exh. E is just an option to buy since it is not embodied in the same document of sale but in a separate document, and since such option is not supported by a consideration distinct from the price, said deed for right to repurchase is not binding upon them.

After trial, the court below rendered judgment against the defendants, ordering them to resell lot No. 1860 of the Himamaylan Cadastre to the plaintiffs for the repurchase price of P24,000.00, which amount combines the price paid for the first sale and the price paid by defendants to Benito Derrama, Jr.

Defendants moved for, but were denied reconsideration. Excepting thereto, defendants-appealed, xxx." (Rollo,

pp. 44-45)

The petition was given due course in a resolution dated February 12, 1990.

The petitioners insist that they can not be compelled to resell Lot No. 1860 of the Himamaylan Cadastre. They contend that the nature of the sale over the said lot between them and the private respondents was that of an absolute deed of sale and that the right thereafter granted by them to the private respondents (Right to Repurchase, Exhibit "E") can only be either an option to buy or a mere promise on their part to resell the property. They opine that since the "RIGHT TO REPURCHASE" was not supported by any consideration distinct from the purchase price it is not valid and binding on the petitioners pursuant to Article 1479 of the Civil Code.

The document denominated as "RIGHT TO REPURCHASE" (Exhibit E) provides:

"RIGHT TO REPURCHASE"

KNOW ALL MEN BY THESE PRESENTS:

I, CIPRIANO VASQUEZ, x x x x, do hereby grant the spouses Martin Vallejera and Apolonia Olea, their heirs and assigns, the right to repurchase said Lot No. 1860 for the sum of TWELVE THOUSAND PESOS (P12,000.00), Philippine Currency, within the period TEN (10) YEARS from the agricultural year 1969-1970 when my contract of lease over the property shall expire and until the agricultural year 1979-1980.

IN WITNESS WHEREOF, I have hereunto signed my name at Binalbagan, Negros Occidental, this 21st day of September, 1964.

SGD. CIPRIANO VASQUEZ

SGD. VALERIANA G. VASQUEZ SGD. FRANCISCO SANICAS"

(Rollo, p. 47)

The Court of Appeals, applying the principles laid down in the case of *Sanchez v. Rigos*, 45 SCRA 368 [1972] decided in favor of the private respondents.

In the *Sanchez* case, plaintiff-appellee Nicolas Sanchez and defendant-appellant Severino Rigos executed a document entitled "Option to Purchase," whereby Mrs. Rigos "agreed, promised and committed x x x to sell" to Sanchez for the sum of P1,510.00, a registered parcel of land within 2 years from execution of the document with the condition that said option shall be deemed "terminated and lapsed," if "Sanchez shall fail to exercise his right to buy the property" within the stipulated period. In the same document, Sanchez" x x x hereby agree and conform with all the conditions set forth in the option to purchase executed in my favor, that I bind myself with all the terms and conditions." (Emphasis supplied) The notarized document was signed both by Sanchez and Rigos.

After several tenders of payment of the agreed sum of P1,510.00 made by Sanchez within the stipulated period were rejected by Rigos, the former deposited said amount with the Court of First Instance of Nueva Ecija and filed an action for specific performance and damages against Rigos.

The lower court rendered judgment in favor of Sanchez and ordered Rigos to accept the sum judicially consigned and to execute in Sanchez' favor the requisite deed of conveyance. Rigos appealed the case to the Court of Appeals which certified to this Court on the ground that it involves a pure question of law.

This Court after deliberating on two conflicting principles laid down in the cases of *Southwestern Sugar and Molasses Co. v. Atlantic Gulf and Pacific Co.*, (97 Phil. 249 [1955]) and *Atkins, Kroll & Co., Inc. v. Cua Hian Tek*, 102 Phil. 948 [1958]) arrived at the conclusion that Article 1479 of the Civil Code which provides:

"ART. 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price."

and Article 1324 thereof which provides:

"ART. 1324. When the offerer has allowed the offeree a certain period to accept, the offer may be withdrawn at any time before acceptance by communicating such withdrawal, except when the option is founded upon a consideration, as something paid or promised.

should be reconciled and harmonized to avoid a conflict between the two provisions. In effect, the Court abandoned the ruling in the *Southwestern Sugar and Molasses Co.* case and reiterated the ruling in the *Atkins, Kroll and Co.* case, to wit:

"However, this Court itself, in the case of *Atkins, Kroll and Co., Inc. v. Cua Hian Tek*, (102 Phil. 948, 951-952) decided later than *Southwestern Sugar & Molasses Co. v. Atlantic Gulf & Pacific Co.*, (Supra) saw no distinction between Articles 1324 and 1479 of the Civil Code and applied the former where a unilateral promise to sell similar to the one sued upon here was involved, treating such promise as an option which, although not binding as a contract in itself for lack of separate consideration, nevertheless generated a bilateral contract of purchase and sale upon acceptance. Speaking through Associate Justice, later Chief Justice, Cesar Bengzon, this Court said:

"Furthermore, an option is unilateral: a promise to sell at the price fixed whenever the offeree should decide to exercise his option within the specified time. After accepting the promise and before he exercises his option, the holder of the option is not bound to buy. He is free either to buy or not to buy later. In this case however, upon accepting herein petitioner's offer a bilateral promise to sell and to buy ensued, and the respondent ipso facto assumed the obligation of a purchaser. He did not just get the right subsequently to buy or not to buy. It was not a mere option then; it was bilateral contract of sale.

Lastly, even supposing that Exh. A granted an option which is not binding for lack of consideration, the authorities hold that

"If the option is given without a consideration, it is a mere offer of a contract of sale, which is not binding until accepted. If, however, acceptance is made before a withdrawal, it constitutes a binding contract of sale, even though the option was not supported by a sufficient consideration. xxx.' (77 *Corpus Juris Secundum* p. 652. See also 27 *Ruling Case Law* 339 and cases cited.)"

This Court affirmed the lower court's decision although the promise to sell was not supported by a consideration distinct from the price. It was obvious that Sanchez, the promisee, accepted the option to buy before Rigos, the promisor, withdrew the same. Under such circumstances, the option to purchase was converted into a bilateral contract of sale which bound both parties.

In the instant case and contrary to the appellate court's finding, it is clear that the right to repurchase was not supported by a consideration distinct from the price. The rule is that the promisee has the burden of proving such consideration. Unfortunately, the private respondents, promisees in the right to repurchase failed to prove such consideration. They did not even allege the existence thereof in their complaint. (See *Sanchez v. Rigos supra*)

Therefore, in order that the Sanchez case can be applied, the evidence must show that the private respondents accepted the right to repurchase.

The record, however, does not show that the private respondents accepted the "Right to Repurchase" the land in

question. We disagree with the appellate court's finding that the private respondents accepted the "right to repurchase" under the following circumstances: x x as evidenced by the annotation and registration of the same on the back of the transfer of certificate of title in the name of appellants. As vividly appearing therein, it was signed by appellant himself and witnessed by his wife so that for all intents and purposes the Vasquez spouses are estopped from disregarding its obvious purpose and intention."

The annotation and registration of the right to repurchase at the back of the certificate of title of the petitioners can not be considered as acceptance of the right to repurchase. Annotation at the back of the certificate of title of registered land is for the purpose of binding purchasers of such registered land. Thus, we ruled in the case of *Bel Air Village Association, Inc. v. Dionisio* (174 SCRA 589 [1989]), citing *Tanchoco v. Aquino* (154 SCRA 1 [1987]), and *Constantino v. Espiritu* (45 SCRA 557 [1972]) that purchasers of a registered land are bound by the annotations found at the back of the certificate of title covering the subject parcel of land. In effect, the annotation of the right to repurchase found at the back of the certificate of title over the subject parcel of land of the private respondents only served as notice of the existence of such unilateral promise of the petitioners to resell the same to the private respondents. This, however, can not be equated with acceptance of such right to repurchase by the private respondent.

Neither can the signature of the petitioners in the document called "right to repurchase" signify acceptance of the right to repurchase. The respondents did not sign the offer. Acceptance should be made by the promisee, in this case, the private respondents and not the promisors, the petitioners herein. It would be absurd to require the promisor of an option to buy to accept his own offer instead of the promisee to whom the option to buy is given.

Furthermore, the actions of the private respondents - (a) filing a complaint to compel re-sale and their demands for resale prior to filing of the complaint cannot be considered acceptance. As stated in *Vda. de Zulueta v. Octaviano* (121 SCRA 314 [1983]):

"And even granting, arguendo that the sale was a pacto de retro sale, the evidence shows that Olimpia, through her lawyer, opted to repurchase the land only on 16 February 1962, approximately two years beyond the stipulated period, that is, 'not later than May, 1960.'

If Olimpia could not locate Aurelio, as she contends, and based on her allegation that the contract between her was one of sale with right to repurchase, neither, however, did she tender the redemption price to private respondent Isauro, but merely wrote him letters expressing her readiness to repurchase the property.

'It is clear that the mere sending of letters by the vendor expressing his desire to repurchase the property without accompanying tender of the redemption price fell short of the requirements of law.' (*Lee v. Court of Appeals*, 68 SCRA 197 [1972])

Neither did petitioner make a judicial consignment of the repurchase price within the agreed period.

'In a contract of sale with a right of repurchase, the redemptioner who may offer to make the repurchase on the option date of redemption should deposit the full amount in court x x x.' (*Rumbaoa v. Arzaga*, 84 Phil. 812 [1949])

'To effectively exercise the right to repurchase the vendor a retro must make an actual and simultaneous tender of payment or consignment.' (*Catangatang v. Legayada*, 84 SCRA 51 [1978])

The private respondents' ineffectual acceptance of the option to buy validated the petitioner's refusal to sell the parcel which can be considered as a withdrawal of the option to buy.

We agree with the petitioners that the case of *Vda. de Zulueta v. Octaviano*, (supra) is in point.

Stripped of non-essentials the facts of the Zulueta case are as follows: On November 25, 1952 (Emphasis supplied) Olimpia Fernandez Vda. de Zulueta, the registered owner of a 5.5 hectare riceland sold the lot to private respondent Aurelio B. Octaviano for P8,600.00 subject to certain terms and conditions. The contract was an absolute and definite sale. On the same day, November 25, 1952, (Emphasis supplied) the vendee, Aurelio signed another document giving the vendor Zulueta the "option to repurchase" the property at anytime after May 1958 but not later than May 1960. When, however, Zulueta tried to exercise her "option to buy" the property, Aurelio resisted the same prompting Zulueta to commence suit for recovery of ownership and possession of the property with the then Court of First Instance of Iloilo.

The trial court ruled in favor of Zulueta. Upon appeal, however, the Court of Appeals reversed the trial court's decision.

We affirmed the appellate court's decision and ruled:

"The nature of the transaction between Olimpia and Aurelio, from the context of Exhibit "E" is not a sale with right to repurchase. Conventional redemption takes place 'when the vendor reserves the right to repurchase the thing sold, with the obligation to comply with the provisions of Article 1616 and other stipulations which may have been agreed upon. (Article 1601, Civil Code).

In this case, there was no reservation made by the vendor, Olimpia, in the document Exhibit "E". The 'option to repurchase' was contained in a subsequent document and was made by the vendee, Aurelio. Thus, it was more of an option to buy or a mere promise on the part of the vendee, Aurelio, to resell the property to the vendor, Olimpia. (10 Manresa, p. 311 cited in Padilla's Civil Code Annotated, Vol. V, 1974 ed., p. 467) As held in *Villarica v. Court of Appeals* (26 SCRA 189 [1968]):

""The right of repurchase is not a right granted the vendor by the vendee in a subsequent instrument, but is a right reserved by the vendor in the same instrument of sale as one of the stipulations of the contract. Once the instrument of absolute sale is executed, the vendor can no longer reserve the right to repurchase, and any right thereafter granted the vendor by the vendee in a separate instrument cannot be a right of repurchase but some other right like the option to buy in the instant case. xxx' (Italics ours)"

The appellate court rejected the application of the Zulueta case by stating:

"xxx [A]s found by the trial court from which we quote with approval below, the said cases involve the lapse of several days for the execution of separate instruments after the execution of the deed of sale, while the instant case involves the execution of an instrument, separate as it is, but executed on the same day, and notarized by the same notary public, to wit:

"A close examination of Exh. "E" reveals that although it is a separate document in itself, it is far different from the document which was pronounced as an option by the Supreme Court in the *Villarica* case. The option in the *Villarica* case was executed several days after the execution of the deed of sale. In the present case, Exh. E" was executed and ratified by the same notary public and the Deed of Sale of Lot No. 1860 by the plaintiffs to the defendants were notarized by the same notary public and entered in the same page of the same notarial register xxx."

The latter case (*Vda. de Zulueta v. Octaviano*, *supra*), likewise involved the execution of the separate document after an intervention of several days and the question of laches was decided therein, which is not present in the instant case. That distinction is therefore crucial and We are of the opinion that the appellee's right to repurchase has been adequately provided for and reserved in conformity with Article 1601 of the Civil Code, which states:

""Conventional redemption shall take place when the vendor reserves the right to repurchase the thing sold,

with the obligation to comply with the provision of Article 1616 and other stipulations which may have been agreed upon." (Rollo, pp. 46-47)

Obviously, the appellate court's findings are not reflected in the cited decision. As in the instant case, the option to repurchase involved in the Zulueta case was executed in a separate document but on the same date that the deed of definite sale was executed.

While it is true that this Court in the Zulueta case found Zulueta guilty of laches, this, however, was not the primary reason why this Court disallowed the redemption of the property by Zulueta. It is clear from the decision that the ruling in the Zulueta case was based mainly on the finding that the transaction between Zulueta and Octaviano was not a sale with right to repurchase and that the "option to repurchase was but an option to buy or a mere promise on the part of Octaviano to resell the property to Zulueta.

In the instant case, since the transaction between the petitioners and private respondents was not a sale with right to repurchase, the private respondents cannot avail of Article 1601 of the Civil Code which provides for conventional redemption.

WHEREFORE, the petition is GRANTED. The questioned decision and resolution of the Court of Appeals are hereby REVERSED and SET ASIDE. The complaint in Civil Case No. 839 of the then Court of First Instance of Negros Occidental 12th Judicial District Branch 6 is DISMISSED. No costs.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

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