

**MACARIO FACUNDO, PLAINTIFF AND APPELLEE, VS.
HERMENEGILDA MACAPAGAL AND GREGORIO CRISOSTOMO,
DEFENDANTS AND APPELLANTS.**

G.R. No. 8677. March 24, 1915

Ponente: ARAULLO, J.

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ARAULLO, J.:

Alleging that he is the owner of a parcel of land described in the complaint, situated in the barrio of San Jose, municipality of Cabanatuan, Nueva Ecija, that he had mortgaged it to the defendant Hermenegilda Macapagal for the sum of P23, for a period of thirty years, and that said defendant had refused to return it to him despite the fact that said period had elapsed and he had tendered her the said sum, plaintiff asked in writing on November 8, 1911, that the said defendant be ordered to return the said land to him, upon payment of said P23, and be further sentenced to pay the costs in the case.

Since it appeared in defendant's answer that she had in turn mortgaged the said land to Gregorio Crisostomo, the latter was on plaintiff's motion included as a defendant in the case. After filing a demurrer to the complaint, which was overruled, Crisostomo excepted to the order and in answering the complaint on February 5, 1912, averred that the land claimed therein had been possessed by him publicly, quietly, and peacefully as absolute owner for over ten years without any interruption, under lawful title, and in good faith; that the action instituted by the plaintiff was improper, as it did not meet the legal conditions required; that the right of action had now prescribed; and he concluded by praying that he be absolved from the complaint, with the costs against the plaintiff.

After trial and examination of the evidence, the Court of First Instance of Nueva Ecija rendered judgment under date of April 30 of the same year, 1912, ordering the defendant Gregorio Crisostomo to restore immediately to the plaintiff, upon payment by the latter of P23, possession of the said land, and decreeing that his mortgage thereon be canceled, without special finding as to costs. This judgment, after due exception and motion for a new trial by said defendant and exception to the order denying this, has been submitted by means of the corresponding bill of exceptions to this Supreme Court for review.

In making the above ruling, the lower court held that the contract entered into in the year 1890 between the plaintiff and Pio de Guzman, son and not the husband as is erroneously stated in the same judgment, of the defendant Hermenegilda Macapagal, was a mortgage and not a sale with right of repurchase; and hence, according to the appellant, the lower court incurred the principal error that she assigns in her brief.

In effect, from the evidence taken it appears that the plaintiff Macario Facundo testified at the trial that he mortgaged the land under consideration to Pio de Guzman, but that this mortgage has not been reduced to writing, a requisite necessary for establishing its existence; furthermore, to consider said mortgage legally constituted it should have been made in a public instrument and such instrument inscribed in the registry. Hence, there was no such mortgage.

On the other hand, the same evidence demonstrates that the same plaintiff filed in the justice of the peace court of

Cabanatuan of the said Province of Nueva Ecija on February 4, 1895, an application under that same date in summary possessory information proceedings relating to the same parcel of land, drawn up, as may be seen in Exhibit 1 in folio 22 of the record, in the following terms:

"To the justice of the peace court:

"I, Don Macario Facundo, resident and landholder of this town, married, of legal age, with personal cedula of the tenth class, No. 990243, respectfully appear before you and represent: That as I possess the parcel of rice land located in the sitio of Paludpud of this jurisdiction, 1 hectare and 25 ares in area, bounded on the north by the creek called Salusoy, on the south by the property of Don Tomas Carlos, on the east by that of Don Mariano de Castro, and on the west by that of Don Antero Soriano, which property I have acquired through purchase for the sum of fifty pesos and which is encumbered to the extent of twenty-three pesos in favor of Don Pio de Guzman under a contract of sale with right of repurchase, with possession for twenty years and free of all incumbrance; and lacking documentary title of ownership I offer the summary information required by the law, and pray that the *teniente de sementeras* hear the case and that the conterminous landholders be summoned."

Said summary information was approved by the justice of the peace court on the 8th of the same month of February, and at the trial the authenticity of the said application was proven, as well as the authenticity of the signature of the plaintiff Macario Facundo affixed thereto (despite the fact that he did not acknowledge it to be his) by means of the testimony of Don Catalino Ortiz, who was at that time justice of the peace of the said town of Cabanatuan and who heard the application and approved it, and, according to his own statement, saw the plaintiff sign the application.

The language of said application quoted above, clearly sets forth that the plaintiff sold to Pio de Guzman, the predecessor in interest of the defendant Hermenegilda Macapagal, with right of repurchase for the said sum of P23—that is, the same sum that he states in his complaint—the parcel of land which, on the erroneous ground that he has mortgaged it to said defendant, he is trying to redeem from her, said sale with right of repurchase having been made for no definite term or period, since the words "with possession for twenty years," set down in the said application, do not refer to the period of the sale with right of repurchase, because if such had been the purpose and intention of the applicant Facundo, he would have said "for the term or period of twenty years," and not the time that he had possessed the said land on the date when he filed his application, since it was a necessary requisite, under the Mortgage Law then in force, for an applicant seeking a possessory information to state in his application the time of his possession.

Pio de Guzman died before the vendor Macario Facundo repurchased from him the realty in question and the defendant Hermenegilda Macapagal, his mother and successor in interest, entered into possession thereof, as the plaintiff Facundo has himself acknowledged in instituting against her the action in this case to secure redemption, as is stated in the complaint, of the said land, upon payment of P23 which the complaint states to be the amount of the mortgage and, as has been proven in the case, of the sale with right of repurchase. Said land was transferred by absolute sale and free from indebtedness and encumbrance by Hermenegilda Macapagal on October 22, 1903, to the other defendant, Gregorio Crisostomo, for the identical sum of P23, as is recorded in a public instrument executed and ratified on the same date before the notary public, Catalino Ortiz, in the said municipality of Cabanatuan, Province of Nueva Ecija, the vendee having entered into possession of the said land and having received from the vendor the possessory information secured by Macario Facundo that has been referred to above.

Since there was no express stipulation between the plaintiff Macario Facundo and Pio de Guzman with respect to the period within which the former might redeem the land sold to the latter, said Facundo could have exercised that right within four years from the year 1890 in which, according to the complaint, said contract was made

(Civil Code, art. 1508), a period that expired in the year 1894. Since the vendor with right of repurchase, Facundo, did not exercise that right, his right of action to redeem the land from Pio de Guzman and his successor in interest, Hermenegilda Macapagal, prescribed, so they acquired by consolidation absolute ownership thereof, and therefore Hermenegilda Macapagal was able to freely dispose of it by absolute sale on October 22, 1903, to the defendant Gregorio Crisostomo; and as the latter has since that time been in possession of the land, as owner, in good faith and with lawful title, the action instituted against him in this case by Macario Facundo is improper.

We therefore reverse the judgment appealed from and absolve the defendant-appellant, Gregorio Crisostomo, from the complaint, without special finding as to costs. So ordered.

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

Johnson, J., did not sit in this case.

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