

ELEUTERIO CAMPOMANES, PLAINTIFF AND APPELLANT, VS. GEORGE BERBARY ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 8756. December 31, 1913

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Tayabas dismissing the complaint upon the merits with costs.

The action is brought to compel the defendants to receive the sum of P836.27, deposited in court by the plaintiff, and for a declaration that they have no right, title, or interest in or to the seven parcels of land described in the complaint.

It appears that on the 21st of February, 1911, the plaintiff was indebted to Narciso L. Manzano for merchandise to the amount of P1,672.54. On that date, to secure the payment of said debt, the plaintiff executed an instrument in favor of Manzano, duly acknowledged before a notary public, the relevant parts whereof are as follows:

"I, Eleuterio Campomanes, declare that I am in debt to Don Narciso L. Manzano in the sum of sixteen hundred and seventy-two pesos and fifty-four centavos (P1,672.54) Philippine currency, for merchandise received by me for use in my bakery, which I agree to pay in two payments, the first to be made on the last of March of the present year and the other at the end of May of the same year, upon the following conditions: (a) That if the first payment is not made when due it is agreed that the second payment shall become due thereupon; (b) that in case of failure to make either or both of said payments, then and in that event the following described pieces or parcels of land shall be considered sold and transferred to the said Don Narciso L. Manzano, his heirs and assigns, for the said price of sixteen hundred and seventy-two pesos and fifty-four centavos (P1,672.54) Conant, with all of the improvements and appurtenances." [Description of premises here.] "That said above described lands are free from all incumbrances, and on failure to pay my said debt or either of the payments hereinabove specified, said lands shall by that failure become the property of the said Don Narciso L. Manzano, his heirs and assigns, as above stated, the purchase price of which shall be the price above agreed, which is the just value of said premises; that the said Señor Manzano shall thereupon have the right to enter into possession of said lands without the necessity of any further or other writing, the present being hereby declared valid and sufficient for that purpose; and that from that moment he is the absolute owner of the said premises and may exercise the right of transfer and sale, I hereby warranting the title as provided in law."

The plaintiff made the first payment in accordance with the terms of this agreement. On the day the second payment became due, plaintiff alleges that he had an interview with the defendants in this case, who are the assignees of Narciso L. Manzano, and that they agreed to extend the time of payment for a reasonable period. Soon after this alleged conversation and within a reasonable time the plaintiff tendered to the defendants the remaining payment with interest. The defendants refused to accept it upon the ground that the instrument in question constituted a sale with right to repurchase, that the payment specified in the same had not been made as therein required, and that, for that reason, the title to the premises became absolute in them. The plaintiff, having made his tender, thereupon began this action for the purposes above specified.

The court below found in favor of the defendants, basing his decision upon two propositions: First, that the instrument executed between the plaintiff and Manzano was a sale with a right to repurchase and that, second, there having been no agreement to extend the time and the payments not having been made as required by the terms of the instrument, the title to the premises became absolute in the defendants at the expiration of the time fixed. An appeal was taken from this judgment by the plaintiff.

We find ourselves unable to agree with the learned court below upon the fundamental proposition that the document in question is a sale with the right to repurchase. That instrument lacks many of the essentials of such a sale. In a sale of this nature the rights of the parties take effect as soon as the contract itself becomes operative. The sale takes effect at once and title instantly passes. The moment title passes the right of the vendor to repurchase is born. That right is a reservation which, by virtue of its very nature, comes into being at the same instant as the vesting of the title in the purchaser.

In the instrument before us no title passed at the time it was executed and no reservation of a right to repurchase was made which was effective at that time. It contains simply an acknowledgment of a debt with an agreement to pay it and, in case of nonpayment, an agreement that the title to the lands shall pass at the time default in payment is made, that is, in the future. (Decision of the supreme court of Spain, January 18, 1900.) One of the fundamental and essential requisites of a sale with a right to repurchase is the absolute control which the vendor has over the exercise of the right to repurchase. When he shall repurchase, or whether he shall repurchase at all, is left wholly to him, provided he does it within the time required by law.

He may repurchase at any moment he pleases or he may refuse to repurchase at all. Destroyed or restricted this absolute freedom of action, the contract ceases to be one of sale with right to repurchase.

Having found that the instrument is not a sale with right of repurchase, it is unnecessary to go into the question of fact as to whether there was an extension of the time of payment. The instrument not being a pacto de retro, the lands described therein may be redeemed at any time before a court of competent jurisdiction has declared otherwise.

The defendants are hereby declared the owners of the money deposited in court in this action, together with interest thereon up to the time of tender, and the plaintiff is declared the owner of the lands described in this action free from all liens, charges, or incumbrances arising by virtue of the agreement between him and Narciso L. Manzano, and entitled to the immediate possession of the same. No costs in this instance.

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

CARSON, J., with whom concurs TRENT, J., concurring:

I concur.

I think it well, however, to point out that the remarks in the body of the opinion as to the right of the vendor to elect the time when he will exercise a reserved right to repurchase can only be applicable in cases, such as that at bar, wherein there is no contention that the parties to the contract have, by express agreement, designated a definite date upon which such right may be exercised.

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