

**SEVERINA FALCON AND ROSARIO FALCON, PLAINTIFFS, VS.
ALBERTO BARRETTO, JUDGE OF FIRST INSTANCE OF RIZAL, ET AL.,
DEFENDANTS.**

G.R. No. 9044. November 03, 1913

Ponente: MORELAND, J.

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MORELAND, J.:

This is a petition for a writ of certiorari. The proceeding in the court below which it is desired that this court shall examine and annul under the writ prayed for is one taken before a justice of the peace under the statute relating to forcible entry and detainer. The complaint in the action alleged that the plaintiff and defendant had, some time prior to the beginning of the action, entered into an agreement concerning certain real estate which is denominated in the law a sale with right to repurchase, the defendant being in debt to the plaintiff in the sum of P927.36, and, as security for the payment thereof, selling to the plaintiff the land described in the agreement, upon the condition that, if the sum of money so secured should be paid within a given time the purchaser would execute a reconveyance, but in case the sum of money secured was not so paid then the purchaser should become and remain the absolute owner of the premises. It prayed "that the court decree that the defendant deliver to the plaintiffs the possession of the land and buildings described therein, and that they have as damages the sum of P25 per month, with costs."

The basis for the demand of judgment was that the plaintiffs, since the 31st day of December, 1912, on which date the right to repurchase pertaining to the defendant and her husband, Dionisio Bimago, now deceased, expired, have had the right of possession of such land and of the buildings located thereon as described in the complaint.

The court found on trial that the instrument constituted a sale with a right to repurchase; that the debt to secure the payment of which the instrument had been made was not paid within the time required therein; that, by reason thereof the purchaser became the absolute owner of the premises described therein; and that, as such owner, he was entitled, under section 80 and the following sections of the Code of Civil Procedure, to prosecute the proceeding of unlawful detention.

The petitioner for the writ appealed from the judgment of the justice of the peace, asserting in the appellate court—that the justice of the peace had no jurisdiction to try the action upon the ground that the relations between the parties under the instrument in question were not such as came within the purview of the act relating to forcible entry and detainer. This contention was overruled by the appellate court which found that the instrument in question constituted a sale with a right to repurchase, that, being such, it created relations which fell within the meaning of section 80 and succeeding sections of the Code of Civil Procedure; that the justice's court, therefore, had jurisdiction; and for these reasons affirmed the judgment of that court.

The contention of the petitioner is, that the justice of the peace had no jurisdiction of the action for the reason that the relations between the parties thereto created by the instrument in question were not such as fall within the purview of the act relating to forcible entry and detainer; and that the justice of peace having no jurisdiction of the

subject matter of the action, the Court of First Instance, on the appeal, had no jurisdiction further than to set aside and annul the void judgment of the justice's court.

We are of the opinion that the contention of petitioner is well founded. The pertinent part of the instrument which is the basis of the proceeding and which was the foundation of the two judgments attacked is as follows:

"That in consideration of the sum of P927.36, which amount we hereby declare that we have received to our entire satisfaction from Mariano Santero, Valentin Toledo, and Mercedes Tibayan, with the consent and approbation of the husband, Baldomero San Juan, the said Mariano Santero, Valentin Toledo, and Mercedes Tibayan being our joint creditors, that part of said sum corresponding to the first being P550.01 and the second P218 and to the third P159.35; we hereby transfer to said Mariano Santero, Valentin Toledo, and Mercedes Tibayan, to their heirs and assigns, as pledge or security in the nature of a pacto de retro, our rights in and to the land of the Pasay Estate Company and our property rights above described, obligating ourselves to our said creditors, their heirs and assigns, to warrant and defend title thereto; and if on or before the 31st day of December of the present year 1912 we do not exercise the right to repurchase, the said creditors, their heirs and assigns, shall become absolute owners of the rights and properties above described, the said pledge or security shall be canceled and this document shall have the force and effect of an absolute sale with all the rights and prerogatives which the law gives to a completed sale."

This instrument is typical of the contract of sale with a right to repurchase. Fundamentally these instruments are executed for the purpose of securing the payment of a debt already existing or one at the moment created. They are in real essence and at bottom a security. While not a mortgage or pledge, they have, from the point of view of the parties, the same general purpose. They secure the payment of a debt. They have the advantage over the mortgage of allowing the borrower to obtain a larger sum than he could obtain upon a mortgage and of permitting the lender to make the instrument effective without trouble or expense. While in a mortgage the mortgagee secures title only after action, in a pacto de retro he secures title by mere lapse of time and by operation of law. The mortgage is never a sale, but the pacto de retro is, from its inception, under the repeated decisions of this court, a sale subject to defeasance and, at the last, a sale absolute.

In every case where there has been a controversy in this court growing out of a sale with a right to repurchase the question of title has been necessarily at issue. This is because the question of title is the only one that can be raised. In these cases it is contended either that the instrument constitutes a mortgage only or that the payments stipulated therein have not been made. Usually it is contended that the instrument is not a sale with a right to repurchase, but is a mortgage instead. The resolution of that question requires, of course, an interpretation of the instrument. If it is a sale with a right to repurchase, the question then arises as to performance. If the time within which the payment is to be made has expired, the title has become irrevocable in the vendee and he is entitled to immediate possession. On the other hand, if the instrument is a mortgage, or if the payment required by the instrument has been made, or if there has been a tender of payment, or if the vendor has tried in good faith to make the payment required by the contract and has been prevented from so doing by some act of the vendee, then the title has not become absolute and the vendor is entitled to retain possession. In other words, in all of these cases the question of title necessarily arises one way or the other. Until the instrument has been defined by interpretation no one knows where the title to the premises is; and if the instrument be found to be a sale with right to repurchase, still no one knows where the title is until the questions revolving around the fact of payment have been settled. Both of these questions affect title, and a bona fide dispute as to either of them will raise the question of title in such a way and to such an extent that it must be one of the necessary determinations of the court trying the cause.

This is a typical case of a sale with right to repurchase as they come to this court, and the typical questions presented in such case are raised herein. It is claimed by the vendor that the instrument is a mortgage and not a

sale with a right to repurchase; that she has paid the amount of the indebtedness within the time required by the terms of the document, and that she is therefore the owner of the premises and entitled, by virtue of such ownership, to retain possession thereof. The vendees, on the other hand, assert that the instrument is not a mortgage but a sale with a right to repurchase; that the time stipulated in the instrument within which payment must be made has expired and that no such payment has been made or tendered; that by virtue of that fact they have become absolute and sole owners of the premises, and, by virtue of such ownership, are entitled to the immediate possession thereof. It is, therefore, clear that the question to be determined in this case is primarily the question of ownership, for upon ownership, pure and simple, depends the right to possession. It is equally clear that the justice's court, therefore, had no jurisdiction of the subject matter of the action and that, as a necessary consequence, the Court of First Instance on appeal had no jurisdiction further than to set aside and annul the judgment entered in the justice's court.

While these observations are sufficient to dispose of the case before us, we may still reach the same conclusion by repeating the statement which we made at the outset, namely, that the contract known as a sale with right to repurchase does not, under any circumstances, create such a relation as falls within the purview of section 80 of the Code of Civil Procedure; and that, therefore, the contention that it is such a sale as to make the vendor and the vendee therein the same kind of a vendor and a vendee mentioned in section 80 is unsustainable. It is our opinion that, in enacting section 80, it was the intention of the Legislature to give the justice of the peace jurisdiction of actions of unlawful detainer based upon sales only in those cases where the sale is admitted and the ownership cannot, therefore, in the nature of things, be disputed. This is necessarily so, for, if the sale itself is disputed—that is, if an attempt is made to take from the parties the quality and relation of vendor and vendee—there is presented instantly the question of ownership; and the right to possession resting wholly upon the fact of sale, such right must wait and be dependent upon the determination of that question. Whether there was really a sale or not and whether the parties take on the qualities of vendor and vendee are matters which go to the very essence of title. But when the question of title necessarily arises the justice's court loses jurisdiction. It is, therefore, apparent that the cases included within the definition of the sale specified in section 80 are only those in which the question of whether or not there was a sale, that is to say, as to who owns the property, cannot arise. This is true as to the other cases described in section 80. No question of title can arise where possession has been obtained by force, intimidation, threat, strategy or stealth, or where there is a lease. There is not a case mentioned in section 80 in which the title to the property can come in question. If it does arise and its determination is necessary for a resolution of the cause, then instantly the case is taken from the domain of section 80 and the justice's court loses jurisdiction. Perhaps it were better said, and more nearly correctly, that the case was never within the section.

Therefore, we say that the conditional sale, which is created by the contract known as a sale with a right to repurchase, is not such a sale and does not create such a relation as is defined by section 80. It is a conditional sale made as security for a debt. If any controversy at all arises over such a contract, it is necessarily one which involves the title to the land in suit. Does the controversy arise over the interpretation of the instrument, that is, as to whether it is a mortgage or a sale with a defeasance? If so, then the question of title arises and must be decided: for if the instrument is a mortgage the title never passed, whereas it did pass if the instrument was a sale with the right to repurchase. Does the question arise over the payment of the sum named in the instrument within the time therein required? If so, the question of title arises because the sale becomes absolute in favor of the vendee only in case there has been a failure of payment, and the vendor becomes again the absolute owner if there has been a payment. Thus, the determination of the question of payment is at the same time a determination of the question of ownership. It is apparent, from what has been said, that the vendee, in ousting the vendor from the possession of the premises after the failure to fulfil the contract, must do so upon the rights inherent in ownership. Under the contract he has no other rights on which he can base the claim to possession. In the same way the vendor must

maintain his right to possession on the theory that he is the absolute owner. He has no other rights in which he can found his continued occupation. From whatever point of view we look, therefore, there cannot arise a contested case relative to a contract of sale with a right to repurchase which falls within section 80; and for that reason the action begun by the vendee to recover possession against the vendor, under said instrument, cannot be within the jurisdiction of a justice's court as that jurisdiction is now defined. The action is one in ejectment. This was true under Spanish law and it is true under the present law.

For these reasons we are of the opinion that the judgment of the justice of the peace was entered without jurisdiction and is therefore of no force or effect. The judgment of affirmance by the Court of First Instance adds nothing to it. If it was without effect before, it was after. We do not at this time enter into a discussion of the right of the Court of First Instance to dismiss the appeal and at the same time affirm the judgment appealed from. If an appeal is dismissed, that terminates the matter before the court, and a judgment of affirmance entered at the same time the appeal is dismissed is inconsistent with the act of dismissal.

The complaint states a cause of action, if we may so speak, in certiorari with respect to the judgment of the justice's court. As to the judgment of the Court of First Instance, we think that nothing need be said inasmuch as, the judgment of the justice of the peace being void, the affirmance by the Court of First Instance made it no less so. The annulment of the justice's court is all that is necessary to put the plaintiffs in the proceeding at bar in a position where the matter in dispute between the parties may be settled in an original action in the Court of First Instance.

The return made to the order to show cause is insufficient in law. It appearing, however, that all the pertinent parts of the record in the court below are now before us, and the whole case having been considered, we find it unnecessary to require the elevation of the record.

The judgments of the justice of the peace and of the Court of First Instance are hereby annulled, with the costs against the defendants.

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

DISSENTING

TORRES, J.,

With due respect for the opinion of the majority of the justices of the court, still I feel obliged to dissent, believing that the justice of the peace of Pasay, Province of Rizal, has jurisdiction under section 80 of Act No. 190 to take cognizance of and try the suit instituted by Mariano Santero et al. with the sole object of recovering possession of the land that he had acquired by purchase from Severina Falcon and her husband, because his ownership of the realty sold had been consolidated by the lapse of the period stipulated for its repurchase without repayment to the vendee of the price of the sale.

The origin of the vendees' right is a sale of realty under right of repurchase with a day set for such repurchase, a contract that was recorded in due form in an instrument ratified before a notary; and therefore the certainty of said contract and the consolidation of the vendees' ownership are prima facie and at a glance fully proven, because the property was not repurchased by the vendor within the period stipulated between the parties.

The circumstance that the vendor remained in possession of the land sold does not affect or invalidate the character and attributes of the contract; and after the sale had once been consummated by lapse of the period for the repurchase, and the ownership of the vendee in said property consolidated, he is entitled to recover it, for there

is no reason whereby the vendor, who is no longer the owner thereof, may unduly retain it.

I see no difference between the right of a vendee in an absolute sale and that of the vendee with right of repurchase after his ownership has been consolidated; and if the former is entitled under said section 80 of the Code of Civil Procedure to ask for restitution of his property in the justice of the peace court, why cannot the latter exercise the same right in the same justice of the peace court, being clothed with the same character of owner, and after his ownership has been consolidated having exactly the same status as the vendee in an absolute sale? Some legal provision must be shown to establish the difference and to prevent him from exercising his right under the law.

Retention of the property sold with right of repurchase is equivalent to usurpation committed by a vendor who has alienated his property absolutely and unconditionally, and that of the tenant who unjustifiably continues to occupy the leased property to the prejudice of the owner, for when the ownership of a vendee with right of repurchase has been consolidated, he is in the same situation and has the same qualifications as the vendee in an absolute sale or the owner of leased property. The contract whence arises the right of the vendees, the present defendants, their qualifications, the price and the time for the resale have been duly proven by a notarial instrument not impugned or shown to be false, and therefore its force and validity are incontrovertible.

There is an ancient principle of law recognized in cases of dispossession, detainer or usurpation that, before everything else, the person dispossessed or the owner of the property usurped or detained must be restored to his possession; and, following this principle, the owners of the realty in question applied to the justice of the peace in order to have the defendant deliver to them possession of the realty sold, which is no longer her property and which she is illegally and unjustly usurping.

The allegation that the contract executed between them was not a sale with right of repurchase but a mortgage, as well as the other contentions of the defendant and her sister the intervener, could be adduced by them in the Court of First Instance in exercising the proper action in the premises. But in spite of all these allegations the plaintiffs undoubtedly deserve the protection of the law and before everything else should be restored and placed in possession of the realty which they have purchased and of which they are now the absolute owners. After they have been placed in possession the vendor may present whatever claims she likes.

In the oral trial they instituted in the justice of the peace court they raised no question other than the recovery of the possession of said realty belonging to them; and if the defendants, now the plaintiffs, in order to avoid a decision favorable to the plaintiffs in that suit, now the defendants in these proceedings, and in order to have them dispossessed from the illegal detainer one of them enjoys, alleged that the latter is still the owner of the realty in litigation, for the reason that the contract entered into between them was a mortgage, such contentions and any other cannot prevent the justice of the peace from granting the petition of the plaintiffs based especially on their right of ownership acquired in virtue of a contract perfectly proven by a notarial instrument.

They could have raised questions over the ownership in the Court of First Instance, but the plaintiffs, who have been despoiled of the possession of the property of which they are the owners, ought first of all to be restored to possession of the realty belonging to them and unduly usurped by the defendant in the justice of the peace court.

If the owner of a thing legitimately acquired by virtue of a sale with right of repurchase, wherein the vendor has not exercised his right of repurchase, is to be denied the right to demand restitution of the possession detained by the latter merely through the presentation of some allegation relating to the property, it must be acknowledged that it will be easy for any vendor or tenant in bad faith to render ineffective the remedy established in section 80 of Act No. 190, the spirit whereof is undoubtedly imbued with the very ancient principle of law: *spoliatus ante omnia restitutus*.

On the foregoing grounds it must be acknowledged that the justice of the peace of Pasay is clothed with full jurisdiction to hear and decide the claim made by Mariano Santero et al. for recovery of possession of the realty in question, and the decision of the Court of First Instance of Rizal has been rendered within its authority by virtue of its jurisdiction on appeal.

For the reasons set forth, issuance of the writ of certiorari requested should be denied, with the costs against the appellant and the intervener in equal parts.

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