

EMIGDIO UMALE ET AL., PLAINTIFFS AND APPELLEES, VS. ALVARO FERNANDEZ ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 9240. September 29, 1914*

Ponente: PER CURIAM: This appeal through a bill of exceptions was raised by counsel for the defendants from the judgment of June 10, 1912, whereby the Honorable Vicente Jocson, judge, ordered the latter to execute an instrument of redemption of the property in question in favor of the plaintiffs for the sum of P816.80, and directed that the fees of the notary attesting the instrument should be chargeable to the plaintiffs, and the costs of the suit to the defendants. On January 19, 1912, the plaintiffs Emigdio Umale, a widower, and Margarita, Tomasa and Miguel Umale, his children had by his wife. Juana Fernandez, now deceased, filed through an attorney a complaint against Alvaro Fernandez and Engracia Lavadia, alleging therein that, on April 13, 1905, the plaintiff Emigdio Umale and his wife, during her lifetime, sold to the defendant spouses under pacto de retro or right of repurchase, without fixing any period for the redemption, a parcel of land planted with about one hundred coconut trees, its boundaries being specified, situated in the pueblo of Pagsanjan, Laguna; that, although the price of the sale was in the beginning P600, it was subsequently increased to P816.80, on account of the plaintiffs' having received from the defendants various partial payments as an increase of the price; that, on June 12, 1909, the defendants, renouncing their right of having irrevocably acquired the ownership of the property sold under pacto de retro, owing to the lapse of the legal period of four years, granted to the plaintiffs an extension of time for its redemption and executed for this purpose the document in Tagalog, the translation of which is as follows: "I, Alvaro Fernandez, married, have issued this receipt in favor of Emigdio Umale as proof of our agreement concerning their coconut land which has been sold to us under pacto de retro and which they may redeem at any time they may have money of their own without borrowing it from another person. In witness whereof, I have signed hereunder, in Pagsanjan, on this date, June 12, 1909." That, on or about November 9, 1911, the plaintiffs delivered to the defendants and the latter accepted the sum of P800, plaintiff Umale's own money, on account of the price of the redemption of the said property, and that, on or about the 11th of the same month, the plaintiffs delivered to the defendants and the latter accepted, on the same account, the sum of P18.80, plaintiff Umale's own money, which second delivery completed the total sum of the price of the purchase and sale, under right of redemption, of the property in question which was thereby resold to the plaintiffs who, pursuant to the agreement made, took possession of the said land so redeemed; and that the defendants not only had not, up to date, executed the instrument of redemption, but they were disturbing the plaintiffs in their possession of the redeemed property, by means of a complaint charging them with usurpation of possession, notwithstanding that the parties had stipulated the transfer of the possession of the said property to the plaintiffs, by virtue of the said redemption. The latter, therefore, prayed that the defendants be ordered to execute in favor of the plaintiffs the instrument of redemption of the said property, with the costs of the suit against the defendants. The demurrer to the complaint was overruled by an order of February 12, 1912, an exception thereto was taken by the defendants, and the latter's counsel set forth in answer to the complaint: that he made a general denial of each and all of the allegations of the complaint, and, as a special defense, alleged that Emigdio Umale and his wife, Juana Fernandez, sold and conveyed to the defendants the disputed parcel of land, without any special stipulation as to the period for its redemption, and that the vendors did not avail themselves of their right of repurchase within the term allowed by law, wherefore the property in question, free of all charge and encumbrance, now belonged to the defendants. He therefore prayed that his clients be absolved from the complaint, with the costs against the plaintiffs. After a hearing of the case and an examination of the parol and documentary evidence introduced by both parties, the court rendered the judgment aforementioned, to which counsel for the defendants excepted and asked for a rehearing and a reopening of the case. This motion was overruled, an exception was taken by the said counsel and, the proper bill of exceptions having been presented by him, the same was approved, certified, and forwarded to the clerk of this court, together with all the documents and other evidence in the case. In this suit counsel for the plaintiffs seeks to have the

court order the defendants to execute, in behalf of his clients, an instrument of resale of the property mentioned in the complaint, with the costs against the defendants. These latter alleged in their answer that, since the plaintiffs did not avail themselves of their right of redemption within the period fixed by law, the property in question now belongs to the defendants, and prayed that they be absolved from the complaint, with the costs against the plaintiffs. After a careful examination of the issues raised in this suit by the litigating parties, all the Justices of this court unanimously agree that the judgment appealed from should be affirmed, with the costs against the appellants. The majority of this court accept the findings of the trial court, as well as the findings that the plaintiffs¹¹ are entitled to redeem the property sold to the defendants under right of redemption and that the repurchase of the property in question was effected on the 9th and 11th of November, 1911, through the delivery by the plaintiffs to the defendants of the sum of P816.80 as the price of the redemption and of the property redeemed by the plaintiffs from the defendants. Although the period of four years fixed, by law for the resale of the property in dispute had already expired on April 14, 1909, as the sale under right of repurchase was effected without stipulating any period for the redemption, wherefore, after the lapse of the four years prescribed by article 1508 of the Civil Code, the defendant-vendees irrevocably acquired the ownership of the property sold, pursuant to the provisions of the succeeding article, 1509, of the same code, for the reason that the vendors had not returned to the vendee the price of the sale or made the other payments specified in article 1518 of the said code; yet inasmuch as the said spouses, the vendees, had renounced their right and one of them, the husband Alvaro Fernandez, had granted to the plaintiff-vendors the privilege of redeeming the property at any time, as appears from the document executed and signed by the said Fernandez on June 12, 1909, Exhibit B inserted in the complaint, through the renewal of the period for redemption or the extension of the same, it must be held that the said period for redemption was still running, and that the vendors were entitled to redeem the property sold. It was under these premises that Emigdio Umale and his two children, Margarita and Miguel, the successors of their deceased mother, Juana Fernandez, delivered to Fernandez' wife the redemption price, P816.80, and, a few days afterwards, took charge and entered into the possession of the redeemed property, in accordance with the agreement made with her. It is held that the granting of a new period, or the extension of that prescribed in article 1508 of the Civil Code, is valid and effective, as it is not contrary to any provision of law and because it sprang from the disinterestedness of the vendees and the desire to benefit the vendors, the redemptioners, for the reason that the deceased Juana Fernandez, Umale's wife and the other plaintiffs' mother, was a niece of the defendant Alvaro Fernandez. In the absence of an express stipulation with regard to the period of redemption the purchaser, in the exercise of the freedom to make contracts that is possessed by all, has the power to extend the period allowed by law, provided that the new period stipulated does not exceed the ten years fixed by article 1508 of the code. For nothing in this article prohibits an extension, by agreement, of the four years, which is the period prescribed by law in cases where, in sales with right of repurchase, no period for redemption has been fixed by the parties. For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, the said judgment should be, as it is hereby, affirmed, with the costs against the appellants. Arellano, C. J., Johnson and Araullo, JJ., concur. Carson and Moreland, JJ., concur in the result. CONCURRING TORRES, J.

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On January 19, 1912, the plaintiffs Emigdio Umale, a widower, and Margarita, Tomasa and Miguel Umale, his children had by his wife. Juana Fernandez, now deceased, filed through an attorney a complaint against Alvaro Fernandez and Engracia Lavadia, alleging therein that, on April 13, 1905, the plaintiff Emigdio Umale and his

wife, during her lifetime, sold to the defendant spouses under pacto de retro or right of repurchase, without fixing any period for the redemption, a parcel of land planted with about one hundred coconut trees, its boundaries being specified, situated in the pueblo of Pagsanjan, Laguna; that, although the price of the sale was in the beginning P600, it was subsequently increased to P816.80, on account of the plaintiffs' having received from the defendants various partial payments as an increase of the price; that, on June 12, 1909, the defendants, renouncing their right of having irrevocably acquired the ownership of the property sold under pacto de retro, owing to the lapse of the legal period of four years, granted to the plaintiffs an extension of time for its redemption and executed for this purpose the document in Tagalog, the translation of which is as follows:

"I, Alvaro Fernandez, married, have issued this receipt in favor of Emigdio Umale as proof of our agreement concerning their coconut land which has been sold to us under pacto de retro and which they may redeem at any time they may have money of their own without borrowing it from another person. In witness whereof, I have signed hereunder, in Pagsanjan, on this date, June 12, 1909."

That, on or about November 9, 1911, the plaintiffs delivered to the defendants and the latter accepted the sum of P800, plaintiff Umale's own money, on account of the price of the redemption of the said property, and that, on or about the 11th of the same month, the plaintiffs delivered to the defendants and the latter accepted, on the same account, the sum of P18.80, plaintiff Umale's own money, which second delivery completed the total sum of the price of the purchase and sale, under right of redemption, of the property in question which was thereby resold to the plaintiffs who, pursuant to the agreement made, took possession of the said land so redeemed; and that the defendants not only had not, up to date, executed the instrument of redemption, but they were disturbing the plaintiffs in their possession of the redeemed property, by means of a complaint charging them with usurpation of possession, notwithstanding that the parties had stipulated the transfer of the possession of the said property to the plaintiffs, by virtue of the said redemption. The latter, therefore, prayed that the defendants be ordered to execute in favor of the plaintiffs the instrument of redemption of the said property, with the costs of the suit against the defendants.

The demurrer to the complaint was overruled by an order of February 12, 1912, an exception thereto was taken by the defendants, and the latter's counsel set forth in answer to the complaint: that he made a general denial of each and all of the allegations of the complaint, and, as a special defense, alleged that Emigdio Umale and his wife, Juana Fernandez, sold and conveyed to the defendants the disputed parcel of land, without any special stipulation as to the period for its redemption, and that the vendors did not avail themselves of their right of repurchase within the term allowed by law, wherefore the property in question, free of all charge and encumbrance, now belonged to the defendants. He therefore prayed that his clients be absolved from the complaint, with the costs against the plaintiffs.

After a hearing of the case and an examination of the parol and documentary evidence introduced by both parties, the court rendered the judgment aforementioned, to which counsel for the defendants excepted and asked for a rehearing and a reopening of the case. This motion was overruled, an exception was taken by the said counsel and, the proper bill of exceptions having been presented by him, the same was approved, certified, and forwarded to the clerk of this court, together with all the documents and other evidence in the case.

In this suit counsel for the plaintiffs seeks to have the court order the defendants to execute, in behalf of his clients, an instrument of resale of the property mentioned in the complaint, with the costs against the defendants. These latter alleged in their answer that, since the plaintiffs did not avail themselves of their right of redemption within the period fixed by law, the property in question now belongs to the defendants, and prayed that they be absolved from the complaint, with the costs against the plaintiffs.

After a careful examination of the issues raised in this suit by the litigating parties, all the Justices of this court

unanimously agree that the judgment appealed from should be affirmed, with the costs against the appellants.

The majority of this court accept the findings of the trial court, as well as the findings that the plaintiffs¹¹ are entitled to redeem the property sold to the defendants under right of redemption and that the repurchase of the property in question was effected on the 9th and 11th of November, 1911, through the delivery by the plaintiffs to the defendants of the sum of P816.80 as the price of the redemption and of the property redeemed by the plaintiffs from the defendants.

Although the period of four years fixed, by law for the resale of the property in dispute had already expired on April 14, 1909, as the sale under right of repurchase was effected without stipulating any period for the redemption, wherefore, after the lapse of the four years prescribed by article 1508 of the Civil Code, the defendant-vendees irrevocably acquired the ownership of the property sold, pursuant to the provisions of the succeeding article, 1509, of the same code, for the reason that the vendors had not returned to the vendee the price of the sale or made the other payments specified in article 1518 of the said code; yet inasmuch as the said spouses, the vendees, had renounced their right and one of them, the husband Alvaro Fernandez, had granted to the plaintiff-vendors the privilege of redeeming the property at any time, as appears from the document executed and signed by the said Fernandez on June 12, 1909, Exhibit B inserted in the complaint, through the renewal of the period for redemption or the extension of the same, it must be held that the said period for redemption was still running, and that the vendors were entitled to redeem the property sold. It was under these premises that Emigdio Umale and his two children, Margarita and Miguel, the successors of their deceased mother, Juana Fernandez, delivered to Fernandez' wife the redemption price, P816.80, and, a few days afterwards, took charge and entered into the possession of the redeemed property, in accordance with the agreement made with her.

It is held that the granting of a new period, or the extension of that prescribed in article 1508 of the Civil Code, is valid and effective, as it is not contrary to any provision of law and because it sprang from the disinterestedness of the vendees and the desire to benefit the vendors, the redemptioners, for the reason that the deceased Juana Fernandez, Umale's wife and the other plaintiffs' mother, was a niece of the defendant Alvaro Fernandez.

In the absence of an express stipulation with regard to the period of redemption the purchaser, in the exercise of the freedom to make contracts that is possessed by all, has the power to extend the period allowed by law, provided that the new period stipulated does not exceed the ten years fixed by article 1508 of the code. For nothing in this article prohibits an extension, by agreement, of the four years, which is the period prescribed by law in cases where, in sales with right of repurchase, no period for redemption has been fixed by the parties.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, the said judgment should be, as it is hereby, affirmed, with the costs against the appellants.

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

Carson and Moreland, JJ., concur in the result.

CONCURRING

TORRES, J.

The undersigned concurs in the dispositive part of the preceding decision; but, with due respect for the opinion of the majority of his colleagues believes that this decision affirming the judgment appealed from should be rendered upon the following grounds:

Owing to the lapse of considerably more than the four years fixed by article 1508 of the Civil Code for the redemption of the land referred to in the complaint, which was sold under a pacto de retro, wherein no period was stipulated between the parties for its repurchase, the ownership of the defendant-vendees became in fact consolidated by operation of law and as the absolute owners of the property they were enabled freely to dispose of the same in the lawful exercise of their right; in consequence, the plaintiff vendors were in no wise entitled to redeem the land sold, inasmuch as their right to demand the resale by virtue of the contract of April 13, 1905, which fixed no period for such resale, expired on April 14, 1909.

This being the case the vendee and absolute owner of the land, Alvaro Fernandez, two months afterwards, to wit, on June 12th of the said year, made a new agreement with the plaintiff-vendor, Emigdio Umale, empowering him to repurchase the said land at any time, provided he should do so with money of his own and not borrowed from another, and for this purpose the document Exhibit B was executed, which was written in Tagalog and was inserted in the complaint, followed by its translation in Spanish.

When the defendant Fernandez executed this document on June 12, 1909, there had already elapsed considerably more than the four years fixed by the aforecited article 1508 of the code as being the period where none is stipulated by the contracting parties; therefore, at the time the agreement was made, no contract whatever under right of repurchase existed, nor did the vendors, who were the owners of the land, have any right at all to redeem it; that right had expired and the property sold had already passed into the absolute ownership of Alvaro Fernandez.

The latter, however, wished to return, convey, or resell the said land to its former owners, and his intention so to do is very evidently expressed in the document aforementioned. Indeed, Fernandez' wife, on the 9th and 11th of November, 1911, two years and some months after the execution of said document, received in two payments the sum of P816.80, the price of the land resold to the plaintiffs. Several days afterwards she delivered the land to them, and on the 13th of November of the same year the defendant Fernandez forwarded from Manila to the plaintiff Emigdio Umale, residing in Pagsanjan, Laguna, a rough draft of the instrument for the purpose of execution and attestation thereof before a notary.

These acts, the acceptance of the price of the land, the sending of a rough draft of the instrument to be executed for the purpose of the resale, and the delivery of the price of the property to the new purchasers, its previous owners, evidently and unquestionably show that the positive intention of Alvaro Fernandez and his wife was to restore or resell the said land to its former owners, who, through the lapse of the legal period allowed for its redemption, had lost their right of ownership therein.

If afterwards the instrument, the rough draft of which had been made by Alvaro Fernandez, was not signed by the contracting parties, it was due to the fact that these latter could not agree upon the terms in which the instrument was to be drawn up, for Fernandez noted the absence therefrom of certain conditions contained in the rough draft, which were unacceptable to Emigdio Umale and his children, and, as Fernandez and his wife refused to sign the proposed instrument, it was afterwards returned, unsigned, to the plaintiffs, who appeared before the same notary and declared that they annulled the said notarial document and revoked the concessions therein made in behalf of the defendants, Alvaro Fernandez and Engracia Lavadia. (Exhibit C.)

Besides the foregoing, the best proof that it was the intention of the contracting parties to resell or sell anew the said land to those who were its owners, is certain clauses of the said instrument, the rough draft of which, as before stated, was made by the defendant Fernandez, which clauses set forth, among other things, that record is made of the fact that, as the plaintiffs had failed to redeem the land from 1906 to 1911, they were no longer entitled to do so, since the period fixed by law had expired; although, through steps taken by the plaintiffs, they

had induced the spouses Alvaro Fernandez and Engracia Lavadia to return or resell to them the said land at the same price, but subject to the encumbrances and conditions therein contained.

These statements set forth in the said proposed instrument agree with the facts that the price of the sale was received by the wife of the defendant Fernandez and delivery of the land was made to the plaintiffs. It is therefore unquestionable that it was the intention of the defendants to return by means of a new sale the land acquired by the previous sale, and the words or phrases contained in the document Exhibit B which relate to the previous sale and to the right of redemption should be understood as omitted and they cannot in any wise affect the force and validity of the new contract for the redemption of the land by plaintiffs, on account of their being contrary to the explicit provisions of articles 1508 and 1509 of the Civil Code.

After the lapse of the period of four years fixed in article 1508, in default of an express stipulation relative to the said period, which began to run from the date of the contract, the contracting parties, who did not see fit to stipulate any definite date for the redemption, have no right to extend the legal period that has already elapsed, nor to fix a new period for the exercise of the right of redemption which had already expired by operation of law and the failure of the vendors to comply with the obligation of refunding to the vendees the price of the sale, for the latter consequently irrevocably acquired the ownership of the land sold. If the vendees afterwards alienated and returned the property, they did so by virtue of another new contract of sale, independent and distinct from the previous one already terminated.

The intention of the contracting parties, with respect to the new sale covenanted between them, is evident and therefore should prevail over the words that seem to contradict it. Moreover, in order to judge the intention of the contracting parties, attention must principally be paid to their acts, contemporaneous and subsequent to the contract the contract should be construed in the sense most suitable to give it effect, and when it involves a valuable consideration any doubt should be decided in favor of the greatest reciprocity of interests. These rules of interpretation are found in the provisions contained in articles 1281, 1282, 1284, and 1289 of the Civil Code. The contract of new sale, covenanted, consummated, and executed by the parties thereto, should, therefore, be upheld and the defendants should be compelled to execute the instrument demanded by the plaintiffs.

For the foregoing reasons, whereby some of the errors assigned to the judgment appealed from are deemed to have been refuted, the said judgment should be affirmed, with the costs against the appellants, it being understood that the instrument to be executed is one of sale.

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