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[G. R. No. 18706. November 27, 1922]

“P. CHAVES Y HERMANO,” APPLICANT AND APPELLANT, VS. RAMON B. NERI AND VICENTE NERI SAN JOSE, OPPONENTS AND APPELLEES.

D E C I S I O N

AVANCEÃ‘A, J.:

> “P. Chaves y Hermano” filed an application for the registration of three parcels of land described in the same, which registration was opposed by Ramon B. Neri and Vicente Neri San Jose. The trial court, sustaining the opposition, denied the registration applied for, from which decision the applicant appeals.

In a public document (Exhibit G) dated July 15, 1911, the opponents sold to Porfirio Chaves, with right of repurchase and for the sum of P4,000, several parcels of land, among which were the three parcels here in question. The period of redemption was four years.

It was agreed that on and after that date the said parcels were to be considered as delivered to the vendee, and that the vendee was to lease the same to the vendors for a period of four years from said date at a monthly rental of P160, payable at the end of each month. Subsequently the applicant succeeded to the rights acquired by Porfirio Chaves by virtue of this contract.

A few days before the expiration of the period of redemption, that is, on May 8, 1915, opponents, who were in arrears in the payment of rents, and demand having been made on them to return the leased land, signed a public document wherein they acknowledged that the applicant, as the true owner of the land in question, had the right to demand delivery thereof.

Shortly thereafter and on the 9th day of May, 1915, the applicant, by means of a public

document, donated to the wives of the opponents one of the parcels, and the opponents signed the same document, authorizing their respective wives to accept this donation and, at the same time, in consideration of this donation, binding themselves to secure the registration of the lands in the name of the applicant.

Before the expiration of the redemption period the applicant suggested to the opponents that they find another purchaser who might offer more for the lands. To this end they made offers to Mr. Jose Reyes as the representative of the partnership "Vda. e Hijos de Placido Reyes." The offer was accepted and a provisional contract was executed whereby the partnership of "Vda. e Hijos de Placido Reyes" bound itself to purchase the lands for the sum of P16,500 under the conditions stipulated in that document. Afterwards, however, the partnership of "Vda. e Hijos de Placido Reyes" refused to purchase the lands and in the meantime the period of redemption had expired. That is why in August, 1916, the opponents commenced an action against the partnership "Vda. e Hijos de Placido Reyes" for damages on account of the nonfulfillment of the said contract. One of the allegations of the opponents in their complaint is that the partnership "Vda. e Hijos de Placido Reyes" knew that the land which it bound itself to purchase had an incumbrance of P4,000 which should be reimbursed to the applicant, as this sum had been paid by him on account of the lands and that this sum so advanced by the applicant would be paid from the agreed purchase price of P16,500, and if payment was not so made by April of the year 1915, the applicant would become the absolute owner in fee simple of the lands, as in fact it so happened on May 8, 1915, when the title to these lands was irrevocably consolidated in the applicant.

It results from what has been said that it was not only the clear intention of the opponents to sell the lands to the applicant, but that that was their object, as evidenced by the contract which they afterwards executed. And such is the fact not only because of the stipulations in the document, but also because the opponents later delivered the lands to the applicant, the purchaser, thus acknowledging its full ownership; furthermore because they accepted the donation of one of the parcels of the lands sold, binding themselves at the same time to obtain Torrens title for the rest in the name of the applicant; and lastly because they filed an action for damages against the partnership "Vda. e Hijos de Placido Reyes" on the ground, precisely, that the contract entered into between the opponents and the applicant was a sale with the right of redemption. And withal, after nearly ten years from the execution of the contract in 1911, and six years after the consolidation of the title to the applicant, and the delivery to her of the lands in 1915, the opponents in 1921 contended that the contract entered into by them was a mere contract of loan. And they, make this contention precisely in the same proceedings in which the applicant is seeking to register the purchased lands,

and this, in spite of their promise to secure the registration of these lands in the name of the applicant upon their accepting the donation of one of the parcels purchased, made by the applicant to the wives of the opponents. It must be borne in mind that this donation was evidently made to compensate any injustice that might have been committed in fixing the selling price.

The court below denied the application on the ground that the contract of purchase and sale with the right of repurchase upon which the applicant bases her right to register the lands was, in reality, but a loan secured by a mortgage, citing in support of its opinion several decisions of this court in which, in spite of the clear language of the document purporting to be a purchase and sale with right to repurchase, the court held it to be a mere loan secured by a mortgage. But it should be noted that those decisions had reference to cases wherein it appeared that the parties really intended to make only a contract of loan secured by a mortgage.

The circumstances of the present case are very different, for it is evident that the intention of the parties was to enter into a contract of purchase and sale. This being so, there is nothing to justify us in holding that the contract was merely one of loan secured by a mortgage. The court cannot make the contract for the parties, nor determine their rights in accordance with a contract which they did not make.

The judgment appealed from is reversed, and the applicant declared to be entitled to the registration in its name of the lands described in the application, without special pronouncement as to costs. So ordered.

Araullo, C. J., Street, Malcolm, Villamor, Ostrand, Johns, and *Romualdez, JJ.,* concur.

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