

[G.R. No. 2001. February 14, 1907]

**SALVADOR PANGANIBAN, PLAINTIFF AND APPELLEE, VS. AGUSTIN CUEVAS,
DEFENDANT AND APPELLANT.**

D E C I S I O N

ARELLANO, C.J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Pangasinan, wherein it was held that the land and *camarin* in question were the property of Salvador Panganiban, and the defendant, Agustin Cuevas, was ordered to return the said property to the plaintiff, Panganiban, and to pay the costs of proceedings, the court reserving to the said plaintiff the right to bring an action for damages against the defendant and holding that the deposit in the hands of the clerk, amounting to 200 pesos, Mexican currency, made by Cuevas was improperly made, which said sum the court ordered refunded to the said Cuevas. This case was tried in accordance with the provisions of the former Code of Civil Procedure, and it appears:

(1) That on the 10th of December, 1897, Salvador Panganiban was the owner of a *camarin* and lot, the *camarin* being of bamboo and nipa construction, divided into five apartments, each apartment having two doors opening on the front, the whole property being more specifically described in the instrument executed by the said Panganiban, wherein he sold and transferred the same to one Francisco Gonzalez for the sum of 1,300 pesos, it having been stipulated therein, among other things: "Seventh. The vendor reserves the right to repurchase the property within six months from date, after complying with the obligations mentioned in article 1518 of the Civil Code, and in case of his failure to do so within the time stipulated, the vendee will pay to him the additional sum of 200 pesos and will become the absolute owner of the property and the vendee may dispose of the same, as long as the condition subsequent continues to exist with the limitations provided by the Mortgage Law, of the provisions of which he has been duly informed." (Record, p. 45.) This deed was recorded in the Register of Property on the 13th of August, 1900.

(2) That on the 1st of August, 1900, Francisco Gonzalez sold the property to Agustin Cuevas for the same price, the following statement appearing in the deed of sale: "Second. That the vendor (Panganiban) reserves to himself the right to repurchase the property thus sold within the period of six months from the tenth of December, 1897, for the same price, thirteen hundred pesos, and in case he fails to do so, the said Gonzalez will pay to the vendor, Salvador Panganiban, the additional sum of two hundred pesos * * *." (Record, p. 49.) This instrument was recorded on the same date as the instrument executed on the 13th of August, 1900.

(3) That on the said 13th of August, 1900, Cuevas asked for and was granted, in *ex parte* proceedings, the judicial possession of the property on the 14th of the said month, notice thereof having been given to those who occupied the various apartments, among them Panganiban's wife in the latter's absence. (Record, pp. 52-55.) Subsequently, on the 10th of August, he attempted to pay Panganiban the sum of 200 pesos, which he deposited in court, and Cuevas, in a petition presented to the said court stated: "* * * I have succeeded to all the rights of the former purchaser, Francisco Gonzalez, and desiring to acquire the ownership of the property irrevocably, I deposit the additional sum of two hundred pesos which my grantor undertook to pay * * *." (Record, p. 133.) This sum Panganiban refused to receive. (Record, p. 135.)

(4) That on the 1st of October of the same year, 1900, Cuevas brought an action for ejectment against Panganiban. (Record, pp. 138-141.)

(5) And that on the 12th of the same month Panganiban filed a complaint in this action for the recovery of possession, the proceedings in the action for ejectment having been suspended. (Record, pp. 27-39.)

Such are the antecedents of the present case.

The complaint contains the following allegations:

(1) That in the month of May, 1898, Panganiban attempted to effect the repurchase of the property, but the creditor, Gonzalez, being absent from his place of residence on account of the war, he was unable to do so, nor was he able to deposit the purchase price with the clerk of the court for the same reason; and (2) that the revolution broke out about that time and the land and improvements in question were seized by the Filipino government from Francisco Gonzalez, the property having been redeemed by Panganiban from the Filipino government on the 12th of November, 1898. These facts the plaintiff attempted to prove by

the records of the proceedings relating to the said seizure and repurchase, which records he attached to his complaint and made a part thereof, and further by the receipt of the purchase price paid to the revolutionary government which had seized the land from Gonzalez.

The defendant, Cuevas, objected to the introduction of evidence upon these points, admitting the facts, and stated: "(1) That both parties were bound by the terms of the contract which is the basis of this action; (2) that there is no doubt that the deposit alleged to have been made by the plaintiff could not have been made; and (3) that the other facts alleged by the plaintiff, even though they were fully established, such as the fact that Panganiban was absent from the town * * *, that Hison was then commissioned by the Filipino government to resell the property, and other facts of minor importance, would not change the essence of the question * * *." (Record, p. 120.)

From the evidence of record we draw the following conclusions:

The appellee alleges, and the appellant admits, that the property in question was repurchased (properly or improperly) by the appellee from the revolutionary government. The first, second, third, and sixth assignments of error refer to this point. This fact was established by the original document appearing on page 180 of the record and by the testimony of the witnesses for the appellee, uncontradicted by the appellant.

It is a fact admitted by the appellant that the property of Francisco Gonzalez was seized by the revolutionary government and subsequently returned to him by the latter.

Several witnesses testified, and their testimony appears uncontradicted by the appellant, that when the property seized from Francisco Gonzalez, among the same the house and lot in question, was returned to him, the latter property was retained by the revolutionary government without any protest on his part, and that on November, 1898, the said house and lot was resold to Panganiban by the revolutionary government some time before Gonzalez's property was returned to him.

It is an evident fact that from November, 1898, until the 15th of August, 1900, when Cuevas took judicial possession of the property by an *ex parte* proceeding, Panganiban had been in the quiet and peaceful possession of the property. This fact was established by the testimony of the witnesses referred to and by the judicial proceedings introduced in evidence in this case, from which it appears that when the occupants of the various apartments of Panganiban's house were notified of the judicial possession given to Cuevas,

Faustina Terrado, “who occupied one of the apartments of the said house,” was also notified, as the “wife of Salvador Panganiban, who was *absent* when the notice was served upon the said occupant.” (Record, p. 54.)

If Panganiban had not been absent and had simply objected to the possession sought by Cuevas, the latter could not have been given possession of the premises in such an *ex parte* proceeding as that instituted by him for this purpose, and it would have been necessary for Cuevas to bring an ordinary action, everything remaining as it was prior to the institution of such *ex parte* proceeding.

It was sufficient to restore everything to its former condition in order to preserve the regularity and consistency required in judicial proceedings by the old Code of Civil Procedure, which provided that the proper action in such cases should be a plenary action for possession.

Panganiban was in possession of the property in question from November, 1898, until the 14th of August, 1900—that is to say, for more than a year—quietly and peacefully, with title in good faith. He could not, therefore, be called upon to surrender the said possession, particularly in view of the fact that he had not acquired the same by forcible or unlawful means. Cuevas or Gonzalez had a right to deposit the 200 pesos in court and attempt to acquire in a separate action the ownership of the property in question by virtue of the stipulation contained in the deed.

In view of the fact that all these rights and actions have been discussed in these proceedings, this court, by virtue of the authority and powers vested in it, will now proceed to decide all the questions raised on this appeal.

The first question relates to the repurchase made by the appellee, as to which the appellant claims that the Court of First Instance erred in deciding that the sale made by the revolutionary government was valid and that all the obligations incurred by Panganiban in favor of Gonzalez had been extinguished as the result of the repurchase. (Assignments of error 1, 2, 3, and 6.) The appellee in his complaint relied, however, for the validity and efficacy of the said sale upon article 1164 and paragraph 2, article 1163, of the Civil Code, and in his brief filed in this court he relies upon the provisions of paragraph 3, article 1203, and articles 1209, 1210, 1249, and 1253 of the same code.

Article 1164 of the Civil Code provides that “a payment made in good faith to the person who is in possession of the credit shall release the debtor,” and article 1163, paragraph 2,

reads as follows: "A payment made to a third person shall also be valid in so far as it may have been beneficial to the creditor."

But the revolutionary government to which the payment was made was not in possession of the credit; it did nothing but seize the property of the vendor, including the house and lot in question. Seizure is not, in itself, a confiscation. The appellee in his brief admits that there was no confiscation. The reason why the seizure was made does not appear. A seizure or embargo is nothing but a prohibition enjoining the owner from disposing of his property. By the mere embargo of a property the owner does not lose his title thereto. The authorities (lawful or unlawful) who, legally or illegally, order the seizure do not become the owners of the same. What the vendor in this case did was to attempt to reacquire the ownership of the property transferred to the vendee from a third person to whom the property had not been transferred by the said vendee in any manner whatsoever. Therefore, the vendor could not have acquired the ownership of the property from a person who was not the owner of the same. This is obvious.

If the revolutionary government, by reason of the seizure or the embargo, did not acquire the title to the property vested in the vendee, neither could the purchaser have acquired from the latter, even though through an embargo, the credit which the said vendee had under the right of redemption in case such redemption should take place; if the property of the vendee thus seized had included the right to demand the stipulated price for the repurchase, perhaps the payment of such price to the person rightfully entitled to it under the embargo would have been proper. But there was nothing, it is alleged, but an embargo of the real estate of the vendee including the property in question. So that article 1164 of the Civil Code is not applicable to the case at bar, nor is paragraph 2 of article 1163 applicable to this case, because there is nothing in the record to show that a payment made by Panganiban to the revolutionary government was for the benefit of Gonzalez. "That the creditor was benefited by the payment made to a third person by his debtor can not be presumed, and must, therefore, be satisfactorily established by the person interested in proving this fact." (Manresa, 8 Civil Code, 257.)

Finally assuming, without deciding, that the payment of the 1,300 pesos in question to the revolutionary government was properly made, yet it does not appear that the deed of sale had been canceled—that is to say, that no other deed of repurchase canceling the said deed of sale had been executed—in short, the obligation the payment of which was necessary to redeem the property was not canceled. This is also one of the conclusions arrived at by the court below in its decision. A credit is not extinguished against the will of the creditor

except by the judgment of a court or by the expiration of the period prescribed by the statute of limitations.

Paragraph 3 of article 1203 provides that "obligations may be modified by subrogating a third person to the rights of the creditor." Article 1209 provides that "the subrogation of a third person to the rights of a creditor can not be presumed except in the cases expressly mentioned in the code, it being necessary in other cases to prove such subrogation clearly in order that it may be effective." Paragraph 3 of article 1210 provides that "when the person who is interested in the fulfillment of the obligation pays, subrogation shall be presumed." Article 1249 provides that "presumptions are not admissible, except when the fact from which they are to be deduced is fully proved." And article 1253 provides that "in order that presumptions, not established by law, may be admitted as means of evidence, it is indispensable that between the fact demonstrated and the one it is desired to deduce there should exist a precise and direct connection according to the rules of human judgment." All these provisions of law are relied upon by the appellee in his brief in support of the following proposition: "All the facts above set out, and particularly those relating to the embargo and the deposit of the property of Gonzalez and the return of the same after redemption, established the presumption of the existence of an obligation on the part of Gonzalez in favor of the so-called Philippine government either for war taxes or some other indebtedness. * * *" (Brief, p. 9.)

But no other fact except the embargo of Gonzalez's property and the return of the same to Panganiban having been proved, the contention of the appellee is absolutely contrary to the provision of article 1209 of the Civil Code above quoted.

In conclusion, we hold that the court below committed the errors pointed out by the appellant under the first, second, third, and sixth assignments.

The payment made by Panganiban to the revolutionary government of the 1,300 pesos which he should have paid to Francisco Gonzalez in order to redeem the property, could not have extinguished the obligation incurred by him in favor of the latter. The supreme court of Spain, in a judgment rendered on the 28th of February, 1896, said: "The payment of the debt in order to extinguish the obligation must be made to the person or persons in whose favor it was incurred or to his or their duly authorized agent. It follows, therefore, that the payment made to a third person, even through error and in good faith, shall not release the debtor of the obligation to pay and will not deprive the creditor of his right to demand payment. If it becomes impossible to recover what was unduly paid, any loss resulting

therefrom shall be borne by the deceived debtor, who is the only one responsible for his own acts unless there is a stipulation to the contrary or unless the creditor himself is responsible for the wrongful payment.”

The fourth and fifth assignments of error relate to the second question, in so far as the appellant claims that the court below erred in holding that neither Gonzalez nor Cuevas ever had a title to the property in question, they not having paid as stipulated in the contract the additional 200 pesos, and in holding that the irrevocability of the sale depended upon the payment of the said additional sum of 200 pesos. The question arises whether there were one or two conditions stipulated in the contract which should be complied with in order to make the conditional sale irrevocable. The appellant contends that there was only one condition stipulated, to wit, the lapse of a period of six months, whereas the appellee claims that there were two conditions, viz, the lapse of the period of six months and the payment of 200 pesos in addition to the purchase price.

This question may be decided as a matter of fact by reference to appellant’s own statement as set out in the third paragraph of this decision, wherein he is quoted as saying: “Desiring to acquire the ownership of the property irrevocably, I deposit the additional sum of two hundred pesos. * * *” So that prior to that deposit he had the conviction that he had not as yet acquired the ownership of the property irrevocably. And as a matter of law, first, by the terms of the agreement itself, according to which, after setting forth the true conditions, to wit, the lapse of the time provided therein and the additional payment of 200 pesos, the appellant, referring to the acquisition of the ownership in an irrevocable manner, stipulated as follows: “Shall pay the sum of two hundred pesos in addition to the sum already stated, the vendee acquiring the ownership of the property irrevocably;” and, second, because the agreement to pay an additional sum of 200 pesos presupposes that the first conditional sale was made in consideration of the sum of 1,300 pesos, but the consideration for the irrevocable and definite sale was 1,500 pesos; and it is well known that where property is sold, the consideration therefor being paid at the time of the sale, title does not pass to the vendee unless the property is actually delivered and the purchase price actually received.

There can be no question, therefore, that up to the 10th of August, 1900, when Cuevas deposited the 200 pesos in court for the purpose, as stated, of acquiring the ownership irrevocably, the property could have been redeemed.

The third question is whether after the deposit of the 200 pesos on August 10, 1900, the vendor lost his right to repurchase the property.

The provisions of the Civil Code relating to this subject are as follows:

“Consignation shall be made by depositing the things due at the disposal of the judicial authorities before whom the tender shall be proved in a proper case and the notice of the consignation in other cases.” (Art. 1178.) There is nothing in the record to show that Cuevas tendered the payment of the 200 pesos in question to Panganiban or that he gave notice of his intention to deposit the said sum in court in case said tender was refused by Panganiban. According to article 1176, “If the creditor to whom the tender of payment has been made should refuse to accept it, without reason, the debtor shall remain released from all liability by the consignation of the thing due,” and, further, that “the same effect shall be produced by the consignation alone when made in the absence of the creditor, or when the latter shall be incapacitated to accept the payment when it is due, and when several persons claim to have a right to collect it, or when the instrument mentioning the obligation has been mislaid.” There being no evidence of anything except the consignation and the plaintiff Panganiban not being either absent or incapacitated so that the consignation alone could have produced the effect of releasing the debtor, it follows that the consignation made by Cuevas did not produce the effect which it would have produced had it been made as provided in the code. It is therefore evident that Cuevas never complied with the condition stipulated in the contract in order to acquire the ownership irrevocably.

It appears, therefore, from the facts as established in this case:

(1) That Salvador Panganiban did not comply with the condition stipulated in the contract in order to reacquire the ownership of the property sold by him on condition of redemption, for the reason that he did not pay the price agreed upon to the creditor or to his duly authorized agent or to the person entitled to receive the same for the creditor.

(2) That Agustin Cuevas did not comply with the other condition imposed upon him (or upon Gonzalez) by the terms of the contract in order to acquire the ownership of the property irrevocably, as he did not make the additional payment agreed upon for the definite sale of the property in such a manner as would have relieved him of this liability under the law.

So that even after the 10th of August, 1900, and up to the present date, the redemption of the property could have been effected and the parties could have enforced their respective rights as though nothing had been done, for nothing was done in the manner prescribed by law so as to have sufficient force to create a juridical status or become *res adjudicata*.

The judgment of the court below is accordingly reversed without special provision as to

costs. And being of the opinion that this action was brought for the purpose of securing the repurchase of the property, and for this purpose we shall consider the complaint amended so as to make it conform to the facts established by the evidence, we hold that Salvador Panganiban may repurchase the property if he so desires; and the court below is accordingly directed to require the said Panganiban to comply with the provisions of article 1518 of the Civil Code, and in case he complies therewith to the satisfaction of the court, to enter judgment authorizing the repurchase and requiring Agustin Cuevas to execute the deed of resale, canceling the former deed of sale and the entry thereof made in the Registry of Property, or otherwise to dismiss the action. After the expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the case be remanded to the court below for execution. So ordered.

Torres, Mapa, and Johnson, JJ., concur.

Carson, J., concurs in the result.