Civil Law—*Pacto De Retro Sales Without Stipulation for the Period of Repurchase.*

BORLAZA AND BORGONIA v. RAMOS AND ARVISU
G. R. No. L-8483, Prom. July 16, 1951

Admittedly one of the gravest problems in the law on contracts is that raised by the much-abused pacto de retro sale, often made a shield for usurious loans secured by real mortgage.[1] Some of these, however, may be really contracts of sale with reservations of the right to repurchase, although they may be defective in form. Usually, a period within which the repurchase is to be effected is agreed upon expressly.[2] But this is not always the case, for there may be no such period provided for.[3]

In the absence of any stipulation as to the period of repurchase, the law steps in.[4] Article 1606 of the Civil Code [5] provides that the period of repurchase shall be four years from the date of the con-

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[1] In several cases, the Supreme Court found out contracts which were drafted as pacto de retro sales were really usurious loans. Cabigao v. Lim, 50 Phil. 844; Aquino v. Deala, 63 Phil. 583; Ignacio v. Chua Hong, 52 Phil. 940; Marquez v. Valencia, 44 O.G. 895; Escoto v. Arcilla, G.R. No. L-2819.

[2] In case a stipulation is made as to the length of the period for repurchase, the same cannot exceed ten years. Art. 1606, par. 2, Civil Code. See Yadao v. Yadao, 20 Phil. 260; Rosales v. Reyes, 25 Phil. 495.

But should the period stipulated exceed ten years, the stipulation for the excess is null and void and does not affect the validity of the contract. Montero v. Salgado, 27 Phil. 631; Alojado v. Lim Siongco, 51 Phil. 339.

In Soriano v. Abalos, G.R. No. L-1525 (July 27, 1949), however, the Court considered the stipulation to repurchase "at any time they have the money" as expressing a time even if it be indefinite. This follows closely the rulings in Espana v. Lucido, 8 Phil. 419; Bandong vs. Austria, 31 Phil. 479; Jumero v. Lizares, 17 Phil. 112; and Gonzaga v. Go, 40 O.G. (7 Sup.) No. 11, 71.

[3] See for example, Tuason v. Goduco, 23 Phil. 342; Dorado v. Virina, 34 Phil. 264; and Medel v. Francisco, 51 Phil. 367.

But see Yacapin v. Neri, 40 Phil. 61, in which the Supreme Court considered the right of repurchase as arising from a contract orally made, independent of the contract of sale. The ruling seems erroneous under Art. 1508, par. 1 of the old Civil Code, now Art. 1606, par. 1 of the present Code.

Even without a stipulation as to the period, the period provided for by the Civil Code can be extended by the parties by subsequent agreement, provided the total period should not exceed ten years. See Umale v. Fernandez, 28 Phil. 89; Castillo v. Belisario, 25 Phil. 89.

[4] Article 1606, par. 1, Civil Code. See also Padilla, *Civil Code Annotated*, Vol. II, pp. 882-883.

[5] This provision of the present Code was taken from Art. 1508 of the Spanish Civil Code in substantially the same words, except with the addition of a third paragraph. The additional paragraph gives the vendor the right to repurchase within thirty days from a judgment declaring the contract a true sale with right to repurchase and not an equitable mortgage. See Padilla, *op. cit.*, p. 883.

tract. This legal provision exists primarily to protect the vendor's right to redeem. The matter of the period is one of public interest,[6] although the vendor may lose his right of repurchase if he fails to exercise it within the legal period.

This was re-stated by the Supreme Court in the case under discussion. It appeared that the Pile brothers and sisters executed a deed conveying two adjoining parcels of land to Isidro Borgonia and Gregorio Ramos, both taking possession of the northern and southern parcels, respectively. The Piles repurchased the northern parcel and recovered its possession from Borgonia,[7] and then executed a deed of sale of the two parcels in favor of the plaintiffs before the other parcel could be redeemed.[8] When the plaintiffs tendered the repurchase price to Ramos for the other parcel, the latter refused on the ground that the period for repurchase had expired. So, the plaintiffs deposited the money with the clerk of court.[9] Subsequently, Ramos executed an affidavit of consolidation of title to the southern parcel.[10] Hence, plaintiffs sued Ramos to compel him to accept the repurchase price and deliver possession of said parcel to them.

It should be noted that the pacto de retro sale between the Piles and Ramos did not provide for a period within which the repurchase

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[6] On this point, the policy of the law is to prevent the keeping of the ownership of property subject to resolutory conditions for a long time. The sense of the Code in this respect is, therefore, restrictive, and doubts should be construed in favor of the repurchase. Tolentino, *Civil Code Annotated*, Vol. II, p. 892, citing 10 Manresa 302.

[7] Had Ramos been a party to the repurchase, he could have compelled the vendors *a retro* to redeem the whole property, assuming that it was undivided. In this case, however, there were two distinct parcels. See Art. 1611, Civil Code.

[8] The vendors *a retro* had no legal title to the property, so they only sold to the plaintiffs their right of redemption as to the southern parcel. The northern parcel, however, was validly sold to plaintiffs because there was a repurchase of the same prior to the second sale.

Pending the redemption, the vendor has no right over the property except the right to redeem it. Such right can be transferred, as was held in Davis v. Neyra, 24 Phil. 417; Evangelista v. Abad (C.A.), 36 O.G. 2913. The vendor may thus register the property in his name only with an express statement of the purchasers' title thereto, although this seems doubtful. Montera v. Martinez, 14 Phil. 541; Montero v. Salgado, 27 Phil. 631.

[9] The tender, if made within the period for redemption, would be sufficient. In case of the vendee's refusal, such offer is unnecessary, and the proper action on the part of the vendor is to deposit the money in court. Villegas v. Capistrano, 9 Phil. 416; Martin v. Manuel, 47 O.G. No. 2, 768; Rumbaoa v. Arzaga, 47 O.G. 1827; Gonzaga v. Go, 40 O.G. (7 Sup.) No. 11, p. 71; cited in Padilla, *op. cit.*, 898-899.

[10] Under Art. 1509 of the old Civil Code, the vendee irrevocably acquires ownership of the property sold. The provisions of Art. 1607 of the new Code relaxes the stringency of this rule, providing that the recording of the affidavit of consolidation should be made only under a judicial order after the vendor has been duly heard.

Decisions under the old Code deprived the vendor *a retro* of all rights upon the mere failure to redeem. See Ortiz v. Ortiz, 26 Phil. 280; Krapfenbauer v. Orbeta, 52 Phil. 201; Patricio v. Aragon, 4 Phil. 615; Rafols v. Rafols, 22 Phil. 236; Gonzales v. Salas, 49 Phil. 1.

was to be effected. It merely provided that the possession, ownership and usufruct of the property were to be held by the vendee *a retro* "from now on and until the repurchase has not as yet (been) done." [11] The Supreme Court considered this merely as a reservation of the right of repurchase, and not an agreement as to the period within which it should be exercised. In thus affirming the judgment of the Court of Appeals which sustained the trial court's findings, it followed the rule laid down in earlier decisions.[12]

Plaintiffs, however, petitioned for a writ of certiorari to review this finding of the Court of Appeals, urging that it is contrary to the ruling made in *Estiva vs. Alvero*.[13] Without giving this contention any consideration in the decision,[14] the Supreme Court applid Article 1508 of the old Civil Code [15] and held that the repurchase should have been made within four years from the date of the contract. Plaintiffs and their predecessors in interest having failed to do so, they lost their right upon the consolidation of title in the vendee *a retro*.[16]

The strictness of the rule is obvious. Plaintiffs could have obtained an extension of the legal period of four years by subsequent agreement.[17] This they failed to do. And even if they did so, their unilateral action would be void without the vendee's concurrence.[18] The stringency of the rule under the old Civil Code lies in the fact that mere failure to redeem within the legal period consolidated the title of the vendee *a retro*, entitling the latter to execute an affidavit of consolidation.[19] The rule under the present Code has relaxed this to some extent, as such affidavit cannot now be recorded in the Registry of Property without a judicial order after the vendor has been duly heard.[20] The right of the vendor is thus given more protection under the present Code.

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[11] *Id.*, p. 3. Cf. Soriano v. Abalos, G.R. No. L-1525, holding that the phrase "any time" is an expression of a period for repurchase, following the earlier cases of Jumero v. Lizares, 17 Phil. 112; Bandong v. Austria, 31 Phil. 479; and Gonzaga v. Go, G.R. No. 47061.

[12] See Note 11.

[13] 37 Phil. 497. An examination of the issues involved in this case will reveal its inapplicability to the case at bar. The Court said in that case;

"We do not deem it proper to make such a finding in these proceedings instituted solely for the registration of the property in question, and not for the declaration of other rights."

[14] Nowhere in the decision is the case referred to in Note 13 considered.

[15] Now Art. 1606 of the present Civil Code. See Note 5.

[16] See Note 10.

[17] This is possible despite the absence of a period in the contract, provided the extension of the legal period appears in another agreement. See Umale v. Fernandez, 28 Phil. 89.

[18] While the exercise of the right is potestative because it depends upon the will of the vendor, an express stipulation must be assented to by both parties. Padilla, *op. cit.*, p. 870. See also Art. 1256, old Civil Code.

[19] Art. 1509, old Civil Code. See Note 10.

[20] Art. 1607, new Civil Code.

The Supreme Court, however, did not have any opportunity to apply the rule under the present Code inasmuch as the contract was made in 1936. Thus, the old rule in the former Code was proper because contracts are governed by the laws existing at the time of their execution.[21] While it is true that the parties thereto are bound by the rule that the contract is the law as between themselves, they could not have stipulated against the law.[22]

Another question in issue involved the principle of estoppel. Borlaza, one of the petitioners, was the notary public who drafted and acknowledged the execution of the deed. Before the court he claimed that said instrument was only an equitable mortgage and not a pacto de retro sale.[23] Both the Court of Appeals and the trial court were of the opinion that he was estopped from asserting that it was an equitable mortgage, a finding questioned before the Supreme Court. The objection was based on the claim that the rule on estoppel [24] was erroneously applied by the lower courts for this was a question of substance not yet decided by the Supreme Court. The latter, however, held that there was no use of the term "estoppel" in its technical sense but only as an aid in weighing the eviddence. Accordingly, it seems as if the Court allowed the use of the principle of estoppel for a new purpose not at all contemplated by the present rule.[25] This enlarges the scope of estoppel principles to some extent.[26]

It should be noted that the vendee *a retro* executed the affidavit of consolidation of title after the tender of the repurchase price by plaintiffs. This seems to be an act of bad faith on his part if considered alone. That would be the conclusion if he did not have the legal title to the property.[27] But at the time of the sale to the plaintiffs, Ramos was already the legal owner of the property. Plaintiffs, therefore, only bought one parcel from the Piles—the one repurchased from Borgonia. As to the other parcel, they only bought

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[21] Art. 1258, old Civil Code.

[22] Art. 1255, old Civil Code, corresponding to Art. 1306 of the new Civil Code. Cf. Molina v. De la Riva, 6 Phil. 12; Warner Barnes and Co. v. Jaucian, 13 Phil. 4.

[23] The new Civil Code now has provisions on the presumption of a contract as an equitable mortgage. See Arts. 1602, 1603, and 1604.

In addition, reformation of the contract may be had at the instance of the apparent vendor. Art. 1605.

See also Report of the Code Commission, pp. 61-63.

[24] Rule 123, sec. 68, Rules of Court.

[25] The provision referred to applies only to parties to an instrument. The presumption is conclusive in such cases.

[26] Under the new Code, there are provisions on estoppel extending the rule in the Rules of Court. See Arts. 1431-1439.

[27] The vendee *a retro* is the legal owner of the property, and the right of redemption is only a personal right as between the parties. So, the execution of an affidavit of consolidation of title by the vendee is only a formality under the old Code. This negatives bad faith in the present case. See Lichauco v. Berenguer, 20 Phil. 12; Alderete v. Amandoron, 46 Phil. 488.

the right of redemption.[28] Their failure to exercise such right made them lose it perpetually.

The present decision does justice to the established rule that the period of redemption shall be four years in the absence of a stipulation regarding the same. At the same time, it illustrates the evil sought to be avoided by the present Civil Code.[29] It is unfortunate, however, that the facts of the case did not warrant application of the new rule requiring the registration of the affidavit of consolidation pursuant to a judicial order.

[28] The right of redemption is within the commerce of man and can be alienated. See Note 8.

[29] The Code Commission observed that in many cases the real intention of the parties to a pacto de retro sale is that the pretended purchase price is money loaned. Then they draw up another contract purporting to be a lease of the property to the vendor who pays rentals, which in fact are usurious interests. The usury law is thus defeated. See Report of the Code Commission, pp. 61-63.