Recent Cases

ENRIQUE BAUTISTA vs. EUSTAQUIO FULE

G. R. L-1577 Jan. 31, 1950

Felipe Suarez, owner of an unregistered coconut land in Alaminos, Laguna, sold it to Gregorio Atienza for ₱1,300 with the right to repurchase within 10 years. Atienza, in turn, sold it to Valentin Dimaano for ₱100 subject to redemption within 5 years. (The last transaction was later considered by the Court of Appeals as a mere equitable mortgage). Four years later, the land was levied upon to satisfy a judgment against Atienza in a case brought by Bautista and on April 10, 1935, the land was sold to Bautista at public auction. Seven days later, the sale was registered under Act 3344. Under the law, Atienza had the right to redeem within 1 year. But before the expiration of the period, on Jan. 13, 1936, the land was repurchased from Atienza, redeemed from Dimaano and sold to Fule by the original owner and vendor a retro, Felipe Suarez.

Bautista, to recover the land from Fule, brought an action contending that the repurchase from Atienza was fraudulent and fictitious and that it should have been from him and not from Atienza that the repurchase was made. The CFI dismissed the action, affirmed by the Court of Appeals and brought to the Supreme Court for review.

The question is whether Fule by virtue of the transactions acquired a right superior to that acquired by Bautista as purchaser in a prior sale that was registered.

Sec. 24 of Rule 39, provides that the purchaser of real property at an execution sale shall be "substituted to and acquire all the right, title, interest and claim of the judgment debtor thereto," subject to the right of redemption therein provided. The right acquired by the purchaser is of course inchoate and does not become absolute until after the expiration of the redemption period without the right of redemption having been exercised. But inchoate though it may be, it is like any other right entitled to protection and must be respected until it is extinguished by redemption.

The right or title acquired by Bautista at the execution sale was never extinguished for Atienza failed to redeem it. Neither was Bautista's right extinguished by the subsequent repurchase from Atienza by Suarez. Having been divested of all his right to the property as a result of the execution sale, Atienza had nothing more to transmit to Suarez except the right to redeem within the statutory period. It is true that the sale at execution did not foreclose Suarez' right to repurchase as vendor a retro. But the repurchase should have been from the holder of the title and not from him who, having been divested thereof, in accordance with law, had nothing more to convey except the bare right of redemption. And Atienza never made a conveyance of that right. Neither did he exercise it himself and even supposing that the right passed to Suarez when he repurchased, the redemption period passed without the right having been exercised.

Fule may not claim ignorance of the execution sale for it was registered. He is deemed to have had constructive notice of it. With such notice he is not entitled to the right of a purchaser in good faith.

In justifying the repurchase from Atienza the lower court cites Art. 1510 of the Civil Code. It should be noted that in authorizing the vendor a retro to enforce right of repurchase against any person who holds under the vendee, the article has provided a saving clause in favor of rights of third persons under the provisions of the Mortgage Law, whose function may, in case of unregistered land be deemed to be performed by Act 3344.

So the repurchase from Atienza instead of from Bautista did not divest the latter of his right to said land on purchase at auction sale. The right is now absolute because it was not redeemed. Obviously, Fule's remedy is against Atienza for the recovery of the sum paid to him in the repurchase. Judgment reversed.

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ANSELMO BULASAG, ET AL. vs. ALIPIO RAMOS AND COURT OF INDUSTRIAL RELATIONS
G. R. L-2347 Jan. 23, 1950

Certiorari taken by some tenants who have been dismissed by their landlords for just cause according to the Court of Industrial Relations.

Landlord Alipio Ramos filed a petition in the Tenancy Law Enforcement Division of the Dept. of Justice for authority to dismiss his six tenants from their landholdings in Balayan, Batangas on the ground that said tenants refused to sign contracts of tenancy in accordance with law. Authority was granted and upon appeal to CIR, was also granted.

Prior to the 1946-47 agricultural year, the sharing was on a 50-50 basis, tenants furnishing animals, farm implements and expenses. The landlord also shared in expenses because the harvesters who usually were planters were given 1/10 of gross produce. Before the agricultural year 1947-48, the landlord advised the tenants to execute tenancy contracts with the requirements of the Philippine Rice Share Tenancy Law (Act 4054 as amended) and on the sharing basis of 55-45 in favor of the tenants, the landlord sharing equally in the expenses. The tenants refused and proposed the sharing basis of 70-30 in their favor.

The main issue is whether the tenant's refusal to execute the contracts is a just cause for dismissal.

The CIR held that under the facts, the proposal terms and conditions under which the tenants were to be engaged were in all respects fair. They were not unjust, burdensome or prejudicial to the interests of the tenants. They provide for a better and improved sharing basis and greater profits compared to the conditions before the conflict arose.

The contracts proposed by the tenants and by the landlord are both permitted by law and when, as in the instant case, the landlord and tenants fail to reach an understanding, the Tenancy Law Enforcement Division, in the first instance, and the CIR, on appeal, may in their discretion, and under the circumstances of each case determine which of the two contracts may prevail and if the contract as proposed by the landlord is favored, refusal of the tenants to sign may be deemed to be sufficient cause for dismissal.

The landlord is the owner of the farm and as such has the choice in formulating the terms of his contracts of tenancy provided he does not violate thereby the provisions of law intended for the protection of tenants and does not furthermore deliberately impose conditions that are burdensome and injurious to the interests of the tenants. Although the Philippine Rice Share Tenancy Law was intended to give the tenants a better parti-

cipation in the fruits of their labor, there is nothing in the Act intended to destroy all the attributes of ownership, such for instance as the right of the owner to freely dispose of his property in a manner that is not offensive to the limitations contained in the Act. Therefore, if the contracts of tenancy proposed by the owner are not forbidden by specific provisions of the Tenancy Law and are not injurious to the tenants, they must be respected and the tenants' refusal to sign them is a just cause for dismissal.

● MILAGROS NARTATEZ

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SIMPLICIO DURAN vs. TAN
G. R. No. L-2760, Feb. 11, 1950

Facts: Petitioners were charged with and convicted of qualified theft by the C. F. I. of Rizal City. The offense consisted of having stolen an automobile belonging to Ned C. Cook which was parked in Port Area, Manila and which was later found in San Juan, Rizal City. At the trial, a motion for dismissal based on the trial court's alleged lack of jurisdiction, it having been claimed that the offense charged having been committed in Manila, should be cognizable by the C.F.I. of Manila. From the denial of said motion, petitioners brought this petition. Held: "From Sections 5, 9 and 14 (a) of Rule 106 of the Rules of Court and in accordance with settled jurisprudence, the commission of an offense is triable only in the courts of the place where the offense was committed.

"In the instant case, the offense charged was fully committed in the City of Manila where the automobile was allegedly stolen from its parking place in Port Area. The fact that said automobile was later found in Rizal City is not an essential ingredient of the crime but a mere circumstance which could add nothing to the nature of the offense or to its commission. Hence, this circumstance cannot be made determinative of the jurisdiction of the trial court over the criminal action.

"The American rule that larceny is a continuing offense does not apply to theft because "carrying away" which is one of the characteristics of larceny is not an essential ingredient of theft. If ..... every moment's continuance of the thief's possession is a new taking and asportation, then criminal action would never prescribe against a thief in possession of the stolen thing."

Petition granted.

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CONRADO MELLO vs. PEOPLE
G. R. No. L-3580 March 22, 1950

Facts: Petitioner was charged in the Rizal CFI with frustrated homicide. On December 29, 1949 at 8:00 a.m., the petitioner pleaded "not guilty" to the offense charged, and at 10:15 p.m. of the same day, the victim died. On January 4, 1950, an amended information was filed charging petitioner with consummated homicide. A motion to quash the amended information on the ground of double-jeopardy having been denied by the trial court, this petition for prohibition was filed.

Held: "Under Sec. 13, 2nd paragraph of Rule 106, it was proper for the court to dismiss the first information and order the filing of a new one for the reason that the proper offense was not charged in the former and the latter did not place the accused in a second jeopardy for the same or identical offense.

"The protection of the constitutional inhibition is against a second jeopardy for the same offense, the only exception being, as stated in the Constitution, that 'if an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.' The phrase same offense, under the general rule, has always been construed to mean not only that the second offense charged is

exactly the same as the one alleged in the first information, but also that the offenses are identical. There is identity between the two offenses when the evidence to support the conviction for one offense would be sufficient to warrant a conviction for the other. This so-called 'same evidence test' which was found to be vague and deficient, was restated by the Rules of Court in a clearer and more accurate form. (See Sec. 9, Rule 113 and Sec. 5, Rule 116).

"The rule of identity does not apply, however, when the second offense was not in existence at the time of the first prosecution, for the simple reason that in such case there is no possibility for the accused, during the first prosecution, to be convicted for an offense that was then inexistent. Thus, when the accused was charged with physical injuries and after conviction the injured person dies, the charge for homicide against the same accused does not put him twice in jeopardy.

"Accordingly, an offense may be said to necessarily include or to be included in another offense .... when both offenses were in existence during the pendency of the first prosecution, for otherwise, if the second offense was then inexistent, no jeopardy could attach therefor during the first prosecution, and consequently a subsequent charge for the same cannot constitute a second jeopardy.

"We expressly repeal the ruling laid down in People v. Tarok, Vol. 40 Off. Gaz., 3488, as followed in People v. Villasis, L-1218 promulgated Sept. 15, 1948.

"It is well to observe that when a person who has already suffered his penalty for an offense, is charged with a new and greater offense .... said penalty may be credited to him in case of conviction for the second offense."

Petition denied.

● MARIANO AMPIL, JR.