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[G.R. No. 3227. March 22, 1907]

PEDRO ALCANTARA, PLAINTIFF AND APPELLEE, VS. AMBROSIO ALINEA ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

On the 13th day of March, 1905, the plaintiff filed a complaint in the Court of First Instance of La Laguna, praying that judgment be rendered in his behalf ordering the defendants to deliver to him the house and lot claimed, and to pay him in addition thereto as rent the sum of 8 pesos per month from February of that year, and to pay the costs of the action; and the plaintiff alleged in effect that on the 29th day of February, 1904, the defendants, Ambrosio Alinea and Eudosia Belarmino, borrowed from him the sum of 480 pesos, payable in January of said year 1905 under the agreement that if, at the expiration of the said period, said amount should not be paid it would be understood that the house and lot, the house being constructed of strong materials, owned by the said defendants and located in the town of San Pablo on the street of the same name, Province of La Laguna, be considered as absolutely sold to the plaintiff for the said sum; that the superficial extent and boundaries of said property are described in the complaint; and that, notwithstanding that the time for the payment of said sum has expired and no payment has been made, the defendants refuse to deliver to plaintiff the said property, openly violating that which they contracted to do and depriving him to his loss of the rents which plaintiff should receive, the same counting from February, 1905.

The defendants, after the overruling of a demurrer to the complaint herein, answered denying generally and specifically all the allegations contained in the complaint, except those which were expressly admitted, and alleged that the amount claimed included the interest; and that the principal borrowed was only 200 pesos and that the interest was 280 pesos, although in drawing the document by mutual consent of the parties thereto the amount of indebtedness was made to appear in the sum of 480 pesos; and that as their

special defense defendants alleged that they offered to pay the plaintiff the sum of 480 pesos, but the plaintiff had refused to accept the same, therefore they persisted in making said offer and tender of payment, placing at the disposal of the plaintiff the said 480 pesos first tendered; and defendants asked for the costs of action.

After having taken the evidence of both parties and attaching the documents presented in evidence to the record, the judge on November 27, 1905, rendered a judgment ordering the defendants to deliver to the plaintiff the house and lot, the object of this litigation, and to pay the costs of the action, not making any finding upon the question of loss or damages by reason of the absence of proof on these points. The defendants duly took exception to this decision, and asked for a new trial of the case on the ground that the findings of the court below in its decision were plainly contrary to law, which motion was overruled and from which ruling defendants also excepted.

We have in this case a contract of loan and a promise of sale of a house and lot, the price of which should be the amount loaned, if within a fixed period of time such amount should not be paid by the debtor-vendor of the property to the creditor-vendee of same.

Either one of the contracts are perfectly legal and both are authorized respectively by articles 1451, 1740, and 1753, and those following, of the Civil Code. The fact that the parties have agreed at the same time, in such a manner that the fulfillment of the promise of sale would depend upon the nonpayment or return of the amount loaned, has not produced any change in the nature and legal conditions of either contract, or any essential defect which would tend to nullify the same.

If the promise of sale is not vitiated because, according to the agreement between the parties thereto, the price of the same is to be the amount loaned and not repaid, neither would the loan be null or illegal, for the reason that the added agreement provides that in the event of failure of payment the sale of the property as agreed will take effect, the consideration being the amount loaned and not paid. No article of the Civil Code, under the rules or regulations of which such double contract was executed, prohibits expressly, or by inference from any of its provisions, that an agreement could not be made in the form in which the same has been executed; on the contrary, article 1278 of the aforesaid code provides that "contracts shall be binding, whatever may be the form in which they may have been executed, provided the essential conditions required for their validity exist." This legal prescription appears firmly sustained by the settled practice of the courts.

The property, the sale of which was agreed to by the debtors, does not appear mortgaged in favor of the creditor, because in order to constitute a valid mortgage it is indispensable that the instrument be registered in the Register of Property, in accordance with article 1875 of the Civil Code, and the document of contract, Exhibit A, does not constitute a mortgage, nor could it possibly be a mortgage, for the reason that said document is not vested with the character and conditions of a public instrument.

By the aforesaid document, Exhibit A, said property could not be pledged, not being personal property, and notwithstanding the said double contract the debtor continued in possession thereof and the said property has never been occupied by the creditor.

Neither was there ever any contract of antichresis by reason of the said contract of loan, as is provided in articles 1881 and those following of the Civil Code, inasmuch as the creditor-plaintiff has never been in possession thereof, nor has he enjoyed the said property, nor for one moment ever received its rents; therefore, there are no proper terms in law, taking into consideration the terms of the conditions contained in the aforesaid contract, whereby this court can find that the contract was null, and under no consideration whatever would it be just to apply to the plaintiff articles 1859 and 1884 of the same code.

The contract *(pactum commissorium)* referred to in Law 41, title 5, and Law 12, title 12, of the fifth *Partida*, and perhaps included in the prohibition and declaration of nullity expressed in articles 1859 and 1884 of the Civil Code, indicates the existence of the contracts of mortgage or of pledge or that of *antichresis*, none of which have coincided in the loan indicated herein.

It is a principle in law, invariably applied by the courts in the decisions of actions instituted in the matter of compliance with obligations, that the will of the contracting parties is the law of contracts and that a man obligates himself to that to which he promises to be bound, a principle in accordance with Law 1, title 1, book 10 of the *Novisima Recopilacion*, and article 1091 of the Civil Code. That which is agreed to in a contract is law between the parties, a doctrine established, among others, in judgments of the supreme court of Spain of February 20, 1897, and February 13, 1904.

It was agreed between plaintiff and defendants herein that if defendants should not pay the loan of 480 pesos in January, 1905, the property belonging to the defendants and described in the contract should remain sold for the aforesaid sum, and such agreement must be complied with, inasmuch as there is no ground in law to oppose the compliance with that

which has been agreed upon, having been so acknowledged by the obligated parties.

The supreme court of Spain, applying the aforementioned laws of Spanish origin to a similar case, establishes in its decision of January 16, 1872, the following legal doctrine:

> "Basing the complaint upon the obligation signed by the debtor, who judicially recognized his signature; and after confessing to have received from the plaintiff a certain amount, binding himself to return same to the satisfaction of the plaintiff within the term of four years, or in case of default to transfer direct domain of the properties described in the obligation and to execute the necessary sale; and the term having expired and the aforesaid amount not having been paid, said plaintiff has his right free from impediment to claim same against the heirs of the debtor."

The document of contract has been recognized by the defendant Alinea and by the witnesses who signed same with him, being therefore an authentic and efficacious document, in accordance with article 1225 of the Civil Code; and as the amount loaned has not been paid and continues in possession of the debtor, it is only just that the promise of sale be carried into effect, and the necessary instrument be executed by the vendees.

Therefore, by virtue of the reasons given above and accepting the findings given in the judgment appealed from, we affirm the said judgment herein, with the costs against the appellants.

After the expiration of twenty days from the date of the notification of this decision let judgment be entered in accordance herewith and ten days thereafter let the case be remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Mapa, Johnson, and *Tracey, JJ.,* concur.

DISSENTING

WILLARD, J.:

This contract violates the fundamental principle of the Spanish law, which does not permit a

debtor, at the time he secures a loan of money, to make an agreement whereby the mere failure to pay the loan at maturity shall divest him irrevocably of all his interest in the specific property mentioned in the agreement without any right on his part to redeem or to have the property sold to pay the debt. (Civil Code, arts. 1859, 1872, and 1884.) I therefore dissent.

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