43 Phil. 880

[G. R. No. 18500. October 02, 1922]

FILOMENA SARMIENTO AND HER HUSBAND EUSEBIO M. VILLASENOR, PLAINTIFFS AND APPELLANTS, VS. GLICERIO JAVELLANA, DEFENDANT AND APPELLANT.

D E C I S I O N

AVANCEÃ‘A, J.:

On August 28, 1911, the defendant loaned the plaintiffs the sum of P1,500 with interest at the rate of 25 per cent per annum for the term of one year. To guarantee this loan, the plaintiffs pledged a large medal with a diamond in the center and surrounded with ten diamonds, a pair of diamond earrings, a small comb with twenty-two diamonds, and two diamond rings', which the contracting parties appraised at P4,000. This loan is evidenced by two documents (Exhibits A and 1) wherein the amount appears to be P1,875, which includes the 25 per cent interest on the sum of P1,500 for the term of one year.

The plaintiffs allege that at the maturity of this loan, August 31, 1912, the plaintiff Eusebio M. Villasenor, being unable to pay the loan, obtained from the defendant an extension, with the condition that the loan was to continue, drawing interest at the rate of 25 per cent per annum, so long as the security given was sufficient to cover the capital and the accrued interest. In the month of August, 1919, the plaintiff Eusebio M. Villasenor, in company with Carlos M. Dreyfus, went to the house of the defendant and offered to pay the loan and redeem the jewels, taking with him, for this purpose, the sum of P11,000, but the defendant then informed them that the time for the redemption had already elapsed.

The plaintiffs renewed their offer to redeem the jewelry by paying the loan, but met with the same reply. These facts are proven by the testimony of the plaintiffs, corroborated by Carlos M. Dreyfus. The plaintiffs now bring this action to compel the defendant to return the jewels pledged, or their value, upon the payment by them of the sum they owe the defendant, with the interest thereon.

The defendant alleges, in his defense, that upon the maturity of the loan, August 31, 1912, he requested the plaintiff, Eusebio M, Villasenor, to secure the money, pay the loan and redeem the jewels, as he needed money to purchase a certain piece of land; that one month thereafter, the plaintiff, Filomena Sarmiento, went to his house and offered to sell him the jewels pledged for P3,000; that the defendant then told her to come back on the next day, as he was to see his brother, Catalino Javellana, and ask him if he wanted to take the jewels for that sum; that on the nqxt day the plaintiff, Filomena Sarmiento, went back to the house of the defendant who then paid her the sum of P1, 125, which was the balance remaining of the P3,000 after deducting the plaintiffs' loan.

It appearing that the defendant possessed these jewels originally, as a pledge to secure the payment of a loan stated in writing, the mere testimony of the defendant to the effect that later they were sold to him by the plaintiff, Filomena Sarmiento, against the positive testimony of the latter that she did not make any such sale, requires a strong corroboration to be accepted. We do not find the testimony of Jose Sison to. be of sufficient value as such corroboration. This witness testified to having been in the house of the defendant when Filomena went there to offer to sell the defendant the jewels, as well as on the third day when she returned to receive the price. According to this witness, he happened to be in the house of the defendant, having gone there to solicit a loan, and also accidentally remained in the house of the defendant for three days, and that that was how he happened to witness the offer to sell, as well as the receipt of the price on the third day. But not only do we find that the defendant has not sufficiently established, by his evidence, the fact of the purchase of the jewels, but also that there is a circumstance tending to show the contrary, which is the fact that up to the trial of this cause the defendant continued in possession of the documents, Exhibits A and 1, evidencing the loan and the pledge. If the defendant really bought these jewels, it seems natural that Filomena would have demanded the surrender of the documents evidencing the loan and the pledge, and the defendant would have returned them to plaintiff.

Our conclusion is that the jewels pledged to defendant were not sold to him afterwards.

Another point on which evidence was introduced by both parties is as to the value of the jewels in the event that they were not returned by the defendant. In view of the evidence of record, we accept the value of P12,000 fixed by the trial court. From the foregoing it follows that, as the jewels in Question were in the possession of the defendant to secure the payment of a loan of P1,500, with interest thereon at the rate of 25 per cent per annum from August 31,1911, to August 31, 1912, and the defendant having subsequently extended the

term of the loan indefinitely, and so long as the value of the jewels pledged was sufficient to secure the payment of the capital and the accrued interest, the defendant is bound to return the jewels or their value (P12,000) to plaintiffs, and the plaintiffs have the right to demand the same upon the payment by them of the sum of P1,500, plus the interest thereon at the rate of 25 per cent per annum from August 28, 1911.

The judgment appealed from being in accordance with this finding, the same is affirmed without special pronouncement as to costs. So ordered.

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

RESOLUTION ON A MOTION FOR RECONSIDERATION

April 4, 1923

AVANCEÑA, J,:

The defendant contends that the plaintiffs' action for the recovery of the jewels pledged has prescribed. Without deciding whether or not the action to recover the thing pledged may prescribe in any case, it not being necessary for the purposes of this opinion, but supposing that it may, still the defendant's contention is untenable. In the document evidencing the loan in question there is stated: "*I transfer by way of pledge the following jewels*" That this is a valid contract of pledge there can be no question. As a matter of fact the defendant does not question it, but takes it for granted. However, it is contended that the obligation of the defendant to return the jewels pledged must be considered as not stated in writing, for this obligation is not expressly mentioned in the document. But if this contract of pledge is in writing, it must necessarily be admitted that the action to enforce the right, which constitutes the essence of this contract, is covered by a written contract. The duty of the creditor to return the thing pledged in case the principal obligation is fulfilled is essential in all contracts of pledge. This constitutes, precisely, the consideration of the debtor in this accessory contract, so that if this obligation of the creditor to return the thing pledged, and the right of the debtor to demand the return thereof, are eliminated, the contract would not be a contract of pledge. It would be a donation.

If the right of the plaintiffs to recover the thing pledged is covered by a written contract, the time for the prescription of this action is ten years, according to section 43 of the Code of Civil Procedure.

The defendant contends that the time of prescription of the action of the plaintiffs to recover the thing pledged must be computed from August 28, 1911, the date of the making of the contract of loan secured by this pledge. The term of this loan is one year. However, it is contended that the action of the plaintiffs to recover the thing pledged accrued on the very date of the making of the contract, inasmuch as from that date they could have recovered the same by paying the loan even before the expiration of the period fixed for payment. This view is contrary to law. Whenever a term for the performance of an obligation is fixed, it is presumed to have been established for the benefit of the creditor as well as that of the debtor, unless from its tenor or from other circumstances it should appear that the term was established for the benefit of one or the other only (art. 1128 of the Civil Code). In this case it does not appear, either from any circumstance, or from the tenor of the contract, that the term of one year allowed the plaintiffs to pay the debt was established in their favor only. Hence it must be presumed to have been established for the benefit of the defendant also. And it must be so, for this is a case of a loan, with interest, wherein the term benefits the plaintiffs by the use of the money, as well as the defendant by the interest. This being so, the plaintiffs had no right to pay the loan before the lapse of one year, without the consent of the defendant, because such a payment in advance would have deprived the latter of the benefit of the stipulated interest. It follows from this that appellant is in error when he contends that the plaintiffs could have paid the loan and recovered the thing pledged from the date of the execution of the contract and, therefore, his theory that the action of the plaintiffs to recover the thing pledged accrued from the date of the execution of the contract is not tenable.

It must, therefore, be admitted that the action of the plaintiffs for the recovery of the thing pledged did not accrue until August 31, 1912, when the term fixed for the loan expired. Computing the time from that date to that of the filing of the complaint in this cause, October 9, 1920, it appears that the ten years fixed by the law for the prescription of the action have not yet elapsed.

On the other hand, the contract of loan with pledge is in writing and the action of the defendant for the recovery of the loan does not prescribe until after ten years. It is unjust to hold that the action of the plaintiffs for the recovery of the thing pledged, after the payment of the loan, has already prescribed while the action of the defendant for the recovery of the loan has not yet prescribed. The result of this would be that the defendant might have collected the loan and at the same time kept the thing pledged.

The motion for reconsideration is denied.

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

CONCURRING

STREET, *J.,*

I agree. Prescription cannot become effective against the right of the pledgor to redeem so long as the written contract evidencing the debt remains in the hands of the pledgee as evidence of a valid and unbarred debt. The pledgor may always claim at least as long a period within which to redeem as is allowed to the creditor to enforce his debt. (Gilmer vs. Morris, 80 Ala., 78; 60 Am. Rep., 85, 89.)

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