

94 Phil. 922

[ G.R. No. L-6220. May 07, 1954 ]

**MARTINA QUIZANA, PLAINTIFF AND APPELLEE, VS. GAUDENCIO REDUGERIO AND JOSEFA POSTRADO, DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**LABRADOR, J.:**

This is an appeal to this Court from a decision rendered by the Court of First Instance of Marinduque, wherein the defendants-appellants are ordered to pay the plaintiff-appellee the sum of P550, with interest from the time of the filing of the complaint, and from an order of the same court denying a motion of the defendants-appellants for the reconsideration of the judgment on the ground that they were deprived of their day in court.

The action was originally instituted in the justice of the peace court of Sta. Cruz, Marinduque, and the same is based on an actionable document attached to the complaint, signed by the defendants-appellants on October 4, 1948, and containing the following pertinent provisions:

“Na alang-alang sa aming mahigpit na pangangailangan ay kaming magasawa ay lumapit kay Ginang Martina Quizana, balo, at naninirahan sa Hupi, Sta. Cruz, Marinduque, at kami ay urautang sa kanya ng halagang Limang Daan at Limang Pung Piso (P550.00), Salaping umiiral dito sa Filipinas na aming tinanggap na husto at walang kulang sa kanya sa condicion na ang halagang aming inutang ay ibabalik o babayaran namin sa kanya sa katapusan ng buwan ng Enero, taong 1949.

“Pinagkasunduan  
din naming magasawa sa sakaling hindi kami makabayad sa taning na

panahon ay aming ipifrenda o isasangla sa kanya ang isa naming palagay na niogan sa lugar nang Cororocho, barrio ng Balogo, municipio ng Santa Cruz, lalawigan ng MaYinduque, Kapuluang Filipinas at ito ay nalilibot ng mga kahanganang sumusunod:

“Sa Norte, Dalmacio Constantino;  
sa este, Catalina Reforma; sa sur, Dionisio Ariola; at sa Oeste,  
Reodoro Ricamora. na natatala sa gobierno sa ilalim ng Declaration  
No..... na nasa pangalan ko, Josefa Postrado.”

The defendants-appellants admit the execution of the document, but claim, as special defense, that since the 31st of January, 1949, they offered to pledge the land specified in the agreement and transfer possession thereof to the plaintiff-appellee, but that the latter refused said offer. Judgment having been rendered by the justice of the peace court of Sta. Cruz, the defendants-appellants appealed to the Court of First Instance. In that court they reiterated the defenses that they presented in the justice of the peace court. The case was set for hearing in the Court of First Instance on August 16, 1951. As early as July 30 counsel for the defendants-appellants presented an “Urgent Motion for Continuance,” alleging that on the day set for the hearing (August 16, 1951), they would appear in the hearing of two criminal cases previously set for trial before they received notice of the hearing on the aforesaid date. The motion was submitted on August 2, and was set for hearing on August 4. This motion was not acted upon until the day of the trial. On the date of the trial the court denied the defendants-appellants’ motion for continuance, and after hearing the evidence for the plaintiff, in the absence of the defendants-appellants and their counsel, rendered the decision appealed from. Defendants-appellants, upon receiving copy of the decision, filed a motion for reconsideration, praying that the decision be set aside on the ground that sufficient time in advance was given to the court to pass upon their motion for continuance, but that the same was not passed upon. This motion for reconsideration was denied.

The main question raised in this appeal is the nature and effect of

the actionable document mentioned above. The trial court evidently ignored the second part of defendants-appellants' written obligation, and enforced its last first part, which fixed payment on January 31, 1949. The plaintiff-appellee, for his part, claims that this part of the written obligation is not binding upon him for the reason that he did not sign the agreement, and that even if it were so, the defendants-appellants did not execute the document as agreed upon, but, according to their answer, demanded the plaintiff-appellee to do so. This last contention of the plaintiff-appellee is due to a loose language in the answer filed with the Court of First Instance. But upon careful scrutiny, it will be seen that what the defendants-appellants wanted to allege is that they themselves had offered to execute the document of mortgage and deliver the same to the plaintiff-appellee, but that the latter refused to have it executed unless, an additional security was furnished. Thus the answer reads:

5. That immediately after the due date of the loan Annex "A" of the complaint, *the defendants made efforts to execute the necessary documents of mortgage and to deliver the same to the plaintiff, in compliance with the terms and conditions thereof, but the plaintiff refused to execute the proper documents and insisted on another portion of defendants' as additional security for the said loan; (Italics ours.)*

In our opinion it is not true that defendants-appellants had not offered to execute the deed of mortgage.

The other reasons adduced by the plaintiff-appellee for claiming that the agreement was not binding upon him also deserves scant consideration. When plaintiff-appellee received the document, without any objection on his part to the paragraph thereof in which the obligors offered to deliver a mortgage on a property of theirs in case they failed to pay the debt on the day stipulated, he thereby accepted the said condition of the agreement. The acceptance by him of the written obligation without objection and protest, and the fact that he

kept it and based his action thereon, are concrete and positive proof that he agreed and consented to all its terms, including the paragraph on the constitution of the mortgage.

The decisive question at issue, therefore, is whether the second part of the written obligation, in which the obligors agreed and promised to deliver a mortgage over the parcel of land described therein, upon their failure, to pay the debt on a date specified in the preceding paragraph, is valid and binding and effective upon the plaintiff-appellee, the creditor. This second part of the obligation in question is what is known in law as a facultative obligation, defined in article 1206 of Civil Code of the Philippines, which provides:

ART. 1206. When only one presentation has been agreed upon, but the obligor may render another in substitution, the obligation is called facultative. This is a new provision and is not found in the old Spanish Civil Code, which was the one in force at the time of the execution of the agreement.

There is nothing in the agreement which would argue against its enforcement. It is not contrary to law or public morals or public policy, and notwithstanding the absence of any legal provision at the time it was entered into governing it, as the parties had freely and voluntarily entered into it, there is no ground or reason why it should not be given effect. It is a new right which should be declared effective at once, in consonance with the provisions of article 2253 of the Civil Code of the Philippines, thus:

ART. 2253. \* \* \* But if a right should be declared for the first time in this Code, it shall be effective at once, even though the act or event which gives rise thereto may have been done or may have occurred under the prior legislation, provided said new right does not prejudice or impair any vested or acquired right, of the same origin.

In view of our favorable resolution on the important question raised by the defendants-appellants on this appeal, it becomes unnecessary to consider the other question of procedure raised by them.

For the foregoing considerations, the judgment appealed from is hereby reversed, and in accordance with the provisions of the written obligation, the case is hereby remanded to the Court of First Instance, in which court the defendants-appellants shall present a duly executed deed of mortgage over the property described in the written obligation, with a period of payment to be agreed upon by the parties with the approval of the court. Without costs.

*Paras, C. J., Pablo, Bengzon, Montemayor, Jugo, Bautista Angelo, and Concepcion, JJ., concur.*

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