95 Phil. 444

[G.R. No. L-6671. July 27, 1954]

ESTANISLAO DE LA CRUZ, PLAINTIFF AND APPELLEE, VS. APOLINARIO DEL PILAR, DEFENDANT. LUZON SURETY CO., INC. MOVANT AND APPELLANT.

D E C I S I O N

LABRADOR, J.:

Plaintiff-appellee in this case brought the original action, which is an unlawful detainer, in the justice of the peace court of Tacloban, Leyte. The Justice of the Peace Court issued an order for the issuance of a writ of attachment, and to secure its dissolution, defendant Apolinario del Pilar and the Luzon Surety Co., Inc., executed a bond, which is as follows:

Civil Case No. 211
Defendant's counter-bond for lifting
Writ of Attachment

ESTANISLAO DE LA. CRUZ, plaintiff *vs.* APOLINARIO DEL PILAR, defendant

Whereas, the above-named plaintiff has filed an action in the Justice of the Peace Court with an Order of writ of attachment against the above-named defendant Apolinario del Pilar and prayed for an order of attachment, and the Court has ordered that a writ of attachment be issued upon filing of a bond in the sum of P1 ,000 Philippine currency.

Wherefore, we Apolinario del Pilar as principal, and Luzon Surety Company, Incorporated, a corporation

duly organized and existing under and by virtue of the laws of the Philippines as surety in consideration of the above and of the lifting of said attachment, hereby jointly and severally bind ourselves in the sum of Pl,000 Philippine currency, under the condition that we and the plaintiff will pay all the costs which may be adjudged to the defendant all damages which he may sustain by reason of the attachment, if the same shall finally be adjudged to have been issued wrong- fully or without sufficient cause.

LUZON SURETY CO., INC.,
By (Sgd.) PELAGIO T. TAYAO
Manager (Surety)

(Sgd.) APOLINARIO DEL PILAR
Principal

Approved:

(Sgd.) EUGENIO N. BRILLO
Judge

Upon the filing of the bond, the writ of attachment was dissolved. After trial, the justice of the peace sentenced the defendant to pay Pl,521 to the plaintiff, with interest and costs. When the judgment became final, said court issued an order for its execution against the defendant and against the Luzon Surety Co., Inc. Thereupon, the latter filed a motion, dated June 22, 1951, praying that the writ of execution issued against it be quashed, on the ground that there was nothing in the language or terms of the bond that it had executed under which it could be held responsible for the amount of the judgment. The court denied this motion, and appeal was made to the Court of First Instance, which affirmed the order of the justice of the peace court. This judgment of affirmance is the subject of the present appeal.

The Luzon Surety Co,, Inc., contends that from words of the bond that it had filed, it and the plaintiff would pay all the costs which may be adjudged “to the defendant.” It is further argued that the plaintiff did not contest the words of the bond, but remained silent with respect thereto at the time of its presentation,, and is therefore, guilty of inexcusable neglect in allowing the approval of the bond arid discharge of the attachment, being estopped to assert any right under the bond and with no right to profit by his own neglect.

It must be noted that the title of the bond expresses clearly that the same was for the purpose of lifting the writ of attachment. Upon filling this bond, the writ of attachment issued by the justice of the peace court was dissolved. Evidently, the proceedings that were followed are those set forth in section 12, Rule 59, of the Rules of Court. It does not appear from the record that any evidence was submitted by either party, plaintiff or defendant surety either in the justice of the peace court or in the Court of First Instance, why the bond submitted was defective in its terms. As good faith is presumed, we assume that the plaintiff must have failed to note the language or terms in the body of the bond, or its faulty language as the surety’s responsibility. We must also assume that the defendant surety also acted in good faith, and therefore, was unaware of the flaw or defect in the bond. The bond must, therefore, have been presented in the mistaken belief that its terms and language correctly reflected the title of the bond and the purpose for which it was being filed. The mistake that both of the parties have fallen into is what is known in law as mutual mistake, which authorizes the reformation of the instrument under the provisions of section 22, Rule 123, of the Rules of Court. (Government of the P.I. *vs.* Philippine Sugar States Development Co., 247, U.S. 385, 62 L. ed. 1177particle 1881, Civil Code of the Philippines.) In any case, the surety is estopped from denying that the purpose and intent of the bond was for the lifting of the attachment; that would be allowing, it to enrich itself by its own bad faith.

Having come to the conclusion that the title and purpose for which the bond was issued, and not its mistaken language, should govern the

responsibilities of the parties thereto, We will now determine whether the writ of execution could issue against the defendant surety. The bond was filed evidently under the provisions of section 12 of Rule 59 of the Rules of Court, because it was filed by the defendant to secure the lifting or discharge of the writ of attachment. Mutual mistake and good faith having attended the drafting of the body of the bond, the terms thereof should be declared, as we hereby declare the same to be that the defendant and surety are jointly and severally liable for the amount of the judgment, in accordance with the provisions of section 17 of Rule 59. With this modification of the bond declared and ordered, the validity of the writ of execution ordered against the surety becomes evident.

The appeal is, therefore, hereby dismissed, and the judgment appealed from affirmed, with costs against the appellant.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion and *Reyes. J. B. L., JJ.,* concur.

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