

IGNACIO ARZAGA, PLAINTIFF AND APPELLEE, VS. EMILIO RUMBAOA, PLATON DAMO, ESTEBAN ASENCION, ANTONIO ASENCION, DIONISIO BATANGAN, AND MARCIANO PASCUA, DEFENDANTS AND APPELLANTS.

G.R. No. L-3839. June 26, 1952

Ponente: LABRADOR, J.

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LABRADOR, J.:

This appeal involves the question whether a deposit in court of the amount required to be paid to the adverse party to secure a reconveyance is a sufficient compliance with the judgment of this Court requiring payment, or whether payment must be made directly to the adverse party with the formalities of a consignation, in accordance with Articles 1176-1177 of the Spanish Civil Code.

The judgment of this Court reads as follows:

"The judgment of the Court of Appeals is modified so that the appellants shall reconvey to the appellee the land described in the pleadings, on payment by the latter, within 30 days from the date of final entry of this judgment, * * *. Failure by the plaintiff to pay any of these amounts within the period herein stated will work as forfeiture of his right to repurchase the hereinabove-mentioned land. * * *." (Exhibit 1; italics ours.)

The decision of the Court of Appeals, which it modified, provided:

"* * * that within 30 days from the date on which this decision shall have become final, the appellee shall deposit in court or pay to the appellants the * * *." (Italics ours.)

Complying with the above judgments, counsel for plaintiff-appellee deposited with the Clerk of the Court of First Instance of Ilocos Norte the necessary amount on December 10, 1949, and gave notice of such deposit to each and every one of the defendants-appellants and their lawyer by letter dated January 24, 1950 (date for payment extended to January 31, 1950). (See Annexes D-1, D-2, D-3, D-4, D-5, D-6, D-7.) And on January 31, 1950, said counsel filed a petition with the court asking that the amounts deposited be considered as full payment, and that the defendants be notified to receive said amount and be compelled to execute the corresponding document of conveyance in accordance with the decision. Opposition to the petition was presented based on many grounds, among which is the failure of plaintiff-appellee to deliver, or offer to deliver, the amount to the defendants, and his failure to make consignation in accordance with Articles 1176 and 1177 of the Spanish Civil Code. The Court of First Instance held that the deposit with the clerk of court "had the character and effect of actual payment in accordance with the decision of the Court of Appeals"; that Articles 1176 and 1177 of the Spanish Civil Code are not applicable; and that the amount ordered to be paid was not a debt which must be paid in accordance with the provisions of the Civil Code.

It is contended on this appeal that in order that payment of the amount adjudged may be considered as having been validly made, it should have been made directly, or the sum delivered, to the appellants, and upon failure of

the latter to receive it, the sum to be paid, consigned in the manner provided by law and the decisions on consignation. There is no basis for the claim that payment was not made or offered to defendants. It was actually made to them through the medium of the court, because after deposit plaintiff expressly petitioned the court that the defendants "be notified * * * to receive * * * the tender of payment." (Record on Appeal, p. 4.) The deposit, by itself alone, may not have been sufficient, but with the express terms of the petition, there was full and complete offer of payment made directly to defendants-appellants. The first error assigned in the appeal is, therefore, without any merit.

It is also contended that the date of the deposit should not be taken as the date of actual payment. In answer it may be stated that even assuming that the fact of deposit did not constitute payment, it appears that on January 31, 1950, the last day fixed therefor, plaintiff-appellee's counsel filed his petition to require defendants-appellants to receive the amount deposited. This petition made the amount previously deposited available for payment and should be considered as actual payment.

The most important legal issue raised by the appellants is their claim that a deposit in court can only be considered as payment when such deposit is made in accordance with the requisites of consignation as provided in Articles 1176 and 1177 of the Spanish Civil Code. This claim has already been rejected by this Court on the ground that "tender of payment of judgment is not the same as tender of payment of a contractual debt and consignation of the money due from a debtor to a creditor."

"With respect to the second assignment of error, it is obvious that tender of payment of judgment into court is not the same as tender of payment of a contractual debt and consignation of the money due from a debtor to a creditor, and therefore the requirements of articles 1176 and 1177 of the Civil Code are not applicable, 'in case of a refusal of a tender of the amount due on a judgment, the court may direct the money to be paid into court, and when this is done, order satisfaction of the judgment to be entered.' (31 American Jurisprudence, p. 362). The fact that the money deposited belonged to Ponciano Ong, who succeeded by purchase into the rights and obligations of two of the six judgment debtors, did not make the payment unacceptable or insufficient to satisfy the judgment, for a voluntary payment into court of money due under a judgment by one of several obligors is a bar to an action against the others for the same debt or obligation." (Ditto ditto.) (Antonio del Rosario, et al vs. Carlos Sandico, et al., 85 Phil., 170; 47 Off. Gaz., No. 6, pp. 2866, 2872.)

We find the order appealed from to be justified by the evidence and the law, and the same is hereby affirmed, with costs against the appellants.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Bautista Angelo, JJ., concur.

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