

ANDREA TORMON, PLAINTIFF AND APPELLEE, VS. DOMINADOR CUTANDA, ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. L-18785. December 26, 1963*

Ponente: REYES, J.B.L., J.

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Andrea Tormon, through counsel, appealed to this Court for a review and reversal of an order of the Court of First Instance of Iloilo, in its Case No. 5602, dismissing her complaint for its being barred by the statute of limitations.

It is not controverted that on November 8, 1960, said Andrea Tormon filed a complaint for reformation of instrument against the spouses Dominador Cutanda and Leodegracia Sara. Her sworn complaint averred she is the owner of a parcel of land designated as Lot No. 3377 of the Cadastral Survey of Cabatuan, Iloilo, with an area of 17,630 square meters, and covered by Original Certificate of Title No. 45305 of Iloilo, with a market value of P1,500; that on October 7, 1949, she borrowed P350 from the spouses Cutanda (apparently without a fixed date of maturity) and, offered her land as security; that while the true agreement was that the property would be deemed mortgaged to defendants, the parties executed a document purporting to be a sale of the land for P350, with right of repurchase (Annex A of Complaint) within seven years, but not earlier than 5 years after the execution of the deed; that the plaintiff has been paying P175 a year as usurious interest up to 1959; that sometime in September, 1960 she offered to redeem the land and have the mort, released; that instead, the defendant spouses, on September 26, 1960, consolidated their title and obtained a new Transfer Certificate No. 31463 in their name. Tormon thereupon prayed that the contract, Annex "A", be declared an equitable mortgage; that defendants be required to execute a release upon payment of the consideration recited, and to repay the usurious interest, plus damages and attorneys' fees and costs.

Defendants answered denying that the true agreement was a mortgage; that it was a real sale a retro, as recited in the document; that no repurchase having been made on time, they had become its absolute owners; that plaintiff's action was barred by laches and prescription. Defendants also counterclaimed for damages.

After filing their answer, defendant spouses asked the Court to pass first on their affirmative defense of prescription conformably to Section 5, Rule 8, of the Rules of Court. After hearing the parties on the question, the Court below, by order dated May 15, 1961, dismissed the complaint on the ground that the ten-year limitation period prescribed by Article 1144 should be counted on October 7, 1949, the date of the execution of the deed of sale, when plaintiff's cause of action accrued, and the prescriptive if term had fully elapsed when she offered to redeem in September of 1960, and when complaint was filed in November of the same year.

Not satisfied with the decision, plaintiff duly appealed to this Court.

The only issue before Us is whether the cause of action of plaintiff accrued immediately upon execution of the instrument eleven years before suit was filed; if it did, it is admittedly prescribed.

The lower Court, in ruling that the action is already barred, relied on Article 1150 of the Civil Code of the

Philippines, reciting as follows;

"The time of proscription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought".

and on the ruling of the Supreme Court of Spain of 8 May 1893, interpreting the corresponding Article (1969) of the Spanish Civil Code of 1889, that—

" 'Desde el instante en que se realiza un acto o se celebra un contrato cualquiera que lesiona derechos de alguien que puede ser inmediatamente reivindicables, nace la accion correspondiente paraconseguirlo, que a este momento hay que atenerse para empezar a contar en su caso el termino de la prescripcion, cuando la ley especialmente no dispone otra cosa.' " (Manresa, cuarta edicion, Vol. 12, page 803; italics supplied).

These authorities do not support the ruling under appeal, since they clearly indicate that the period of prescription starts running from the time that an act or contract that infringes rights become immediately enforceable, i.e., from the time a cause of action accrues. If, as alleged in the complaint (and for the purposes of this proceeding, such allegations must be deemed to be true, Rule 8, sec. 5), the real agreement of the parties was that the property would be considered as mortgaged only, despite the voluntary execution of a written instrument of sale a retro, then the latter was fictitious or simulated contract that in law was void and had no binding effect since no fraud, mistake, or imposition is averred (Phil. Civil Code, Art. 1346), Its execution by common consent of the parties, therefore, conferred no rights on any one, and could not violate those of the appellant. Certainly, the latter could not complain to a court so long as the appellees were willing to abide by the true agreement of mortgage, as the appellant would then have no cause of action.

It follows that appellant's cause of action arose only when the appellees made known their intention, by overt acts, not to abide by the true agreement; and the allegations of the complaint establish that this happened when the appellees executed the affidavit of consolidation of the title alleged acquired by appellees under the fictitious pacto de retro sale. It was then, and only then, that the appellant's cause of action arose to enforce the true contract and have the apparent one reformed or disregarded, and the period of extinctive prescription began to run against her. Since the consolidation affidavit was allegedly made only in September, 1960, and the complaint was filed in Court the following November, 1960, just two months afterwards, the action of appellant had not prescribed.

Whether or not the allegations of the complaint are true must be determined upon a proper trial.

Wherefore, the order dismissing the complaint is set aside, and the case is ordered remanded to the Court of origin for further proceedings in conformity with this opinion.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon and Regala, JJ., concur.

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