

SEVERINO ALBERTO, PLAINTIFF AND APPELLANT, VS. M. DE LOS SANTOS, ETC., ET AL., DEFENDANTS AND APPELLEES.

CA-No. 17. May 24, 1948

Ponente: FERIA, J.

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FERIA, J.:

This Is an appeal from an order of the Court of First Instance of Bulacan which dismissed the complaint of the appellant upon motion of the appellees, on the ground that the complaint does not state a cause of action.

The plaintiff's action is to compel the defendants to accept the sum of money offered by the former for the redemption of a parcel of land which, according to the allegations in the complaint, was sold on execution sale by one of the defendants, as sheriff of Bulacan, to the other defendants on March 1941. In the complaint it is averred that "the period of redemption of said property sold at public auction should have expired on March 22, 1942, according to the certificate of sale, but because of the war declared on December 8, 1941 by the Japanese Empire against the United States of America, and the Commonwealth Government of the Philippines was under the sovereignty of the latter, the period of redemption was extended or interrupted."

The lower court did not err in dismissing the plaintiff's action, for the plaintiff's contention that the period of redemption of his property sold on execution was suspended or interrupted by the war is untenable. The period within which a property sold on execution may be redeemed is not a limitation of action. But even if it be so considered, the ruling of this Court in the case of *España vs. Lucido* (8 Phil., 419) can not be applied to the present case. Because, as we have said in *Rivero vs. Rivero*[1] (G. R. No. L-578, April 30, 1948) promulgated recently, "the fundamental reason underlying statutes providing for suspension or extension of period of limitation is the legal or physical impossibility for the interested party to enforce or exercise in time his right of action"; and the war did not make it impossible for the herein plaintiff to exercise his right of redemption.

In the said case of *Rivero vs. Rivero, et al.*, applicable a fortiori to the present case, this Court held the following:

"* * * Assuming as true the appellant's allegation that the 'defendant-appellee was a 'guerrillero' and hence it was difficult to contact him', such fact did not prevent the plaintiff-appellant from exercising his right during the period of redemption. Because a vendor who decide to redeem or repurchase a property-sold with pacto de retro stands as the debtor and the vendee as the creditor of the repurchase price. And the plaintiff-appellant could and should have exercised his right of redemption against the defendant-appellee, if the latter was absent, by filing a suit against him and making a consignment with the court of the amount due for the redemption, under the provisions of article 1176 of the Civil Code which provides:

'ART. 1176. If a creditor to whom tender of payment has been made should refuse without reason to accept it, the debtor may relieve himself of liability by the consignment of the thing due.

'The same effect shall be produced by consignment alone when made in the absence of the creditor, or if the latter should be incapacitated to accept the payment when it is due, or when several persons claim to be entitled to receive it, or when the muniments of the obligation have been lost or mislaid.'

* * * * *

"The 'dictum,' in the case of *España vs. Lucido* (8 Phil., 419) cited by the appellant, to the effect that the statute of limitation is suspended by war, rebellion, or insurrection when the regular course of justice is interrupted to such extent that the courts can not be kept open." even if such suspension were applicable to the period within which to redeem a thing sold under pacto de retro, has no application to the present case because, as above stated, the courts of justice in the province of Camarines Sur were open and transacting business since October, 1942.

In view of all the foregoing, the appealed order is affirmed, with costs against the appellant. So ordered.

Parás, Actg. C.J., Perfecto, Bengzon, and Tuason, JJ., concur.

[1] 80 Phil., 802.

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