

ROMAN YAP, PLAINTIFF AND APPELLANT, VS. FORTUNATA TINGIN, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. L-18943. May 31, 1963

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

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

Appeal from an order of the Court of First Instance of Pampanga but certified to us by the Court of Appeals on a question of law.

Civil Case No. 991 of the court of origin was an action for partition of a 138.60 square meter lot with a house in Guagua, Pampanga, owned in common by the parties in the proportion of 5/6 to plaintiff and 1/6 to defendants. In view of the impracticability of a physical division, the court, after due trial, rendered on 18 March 1957 a decision, the dispositive portion of which reads:

"WHEREFORE, the court hereby renders judgment, fixing the price of the land, referred to and described in the amended complaint, at P65.00 per square meter, while that of the house erected thereon at P1,600.00. The defendants[1] are hereby given a period of five (5) days from notice hereof within which to repurchase the plaintiff's shares on, interest in, and right to, the aforesaid land at a price of P65.00 a square meter, by depositing with the clerk of court the purchase price. If, at the expiration of this period, said defendants fail to repurchase the plaintiff's shares as stated above, then the plaintiff is hereby given a similar period from the expiration of the period granted the defendants, within which to purchase the latter's shares on the same land and the house erected thereon at the prices, referred to in the report submitted by Messrs. Yuson and Galera, by depositing them with the Clerk of Court.

"SO ORDERED."

On 23 March 1957, the plaintiff, Roman Yap, moved for the reimbursement to him of expenses incurred for the commissioners of partition, alleging that-

"during the reception of evidence by the commissioners, the plaintiff spent the amount of P525.00 which corresponds to the 5/6 undivided share of the land in dispute and the defendants spent the sum of P105.00 corresponding to the remaining 1/6 undivided share of the same lot" * * *;

and that unless reimbursement of such expenses were ordered,

"the party whose share in the land will be sold to the other will stand to lose the amount incurred by him for fees of the commissioners."

Wherefore, plaintiff prayed that-

"in the event the defendants will repurchase the 5/6 undivided share belonging to plaintiff, they be ordered to pay the amount of P525.00 to the latter which he paid for the commissioners, otherwise, said plaintiff is willing to pay the sum of P105.00 to the defendants which they also spent for the commissioners."

The foregoing motion was set for hearing on 28 March 1957, on which date the court, in open court, gave the

defendants five (5) days therefrom within which to file their answer to the motion, and upon submission of such answer, the motion was to be deemed submitted for resolution.

There is no evidence on record when the defendants or their counsel received notice of the decision of 18 March; but on 1 June 1957, plaintiff Yap filed a "Manifestation Ex-Parte", stating that-

"pending the resolution of said motion (of plaintiff on 28 March 1957) to order reimbursement, the defendants failed to make the necessary deposit to the Clerk of Court within the period of five (5) days from notice, and after the expiration of the period granted them, the plaintiff, on April 6, 1957, and within the period granted him, deposited with the Clerk of Court the amount of Three Thousand One Hundred Six Pesos and Fifty Centavos (P3,106.50) as per Official Receipt No. A-4502356 which is hereto attached and made an integral part hereof as Annex 'A',

and praying that-

"an order be entered declaring the defendants' right to repurchase the 5/6 undivided shares of the plaintiff on the land in question forever forfeited."

On 19 November 1957, the court considering the plaintiff's "Manifestation Ex-Parte" as a motion, overruled it, and amended the dispositive part of the decision so as to read as follows:

"WHEREFORE, the court hereby renders judgment, fixing the price of the land, referred to and described in the amended complaint, at P65.00 per square meter, while that of the house erected thereon at P1,600.00. The defendants are hereby given a period of five (5) days from notice hereof within which to repurchase the plaintiff's shares on, interest in, and right to, the aforesaid land at a price of P65.00 a square meter, by depositing with the clerk of court the purchase price, including the sum of P525.00, representing the plaintiff's share on the compensation of the commissioners paid by the latter. If, at the expiration of this period, said defendants fail to repurchase the plaintiff's shares, as stated above, then the plaintiff is hereby given a similar period from the expiration of the period granted the defendants, within which to purchase the latter's shares on the same land and the house erected thereon at the prices, referred to in the report submitted by Messers. Yusoh and Galura, by depositing them with the clerk of court, together with the sum of P105.00, the defendants share on the compensation of the commissioners."

On 11 December 1957, the plaintiff filed a motion for reconsideration of the above order; the motion was set for hearing on 18 December 1957, but on motion by the defendants it was postponed to 27 December 1957. Meanwhile, On 20 December 1957, the defendants, Tingin, et al., filed a verified opposition to the plaintiff's motion for reconsideration, alleging that since 28 March 1957 they had already deposited the amount of P7,507.50 with the clerk of court, as shown by a receipt which reads:

"Received from Mrs. Florencia Naco de Limson the sum of Seven Thousand Five Hundred and Ten (P7,510.00) Pesos, for safe-keeping preparatory to consignment thereof this 28th day of March, 1957 at San Fernando, Pampanga (Sgd.) Amadeo Yuson",

and reasoning out that a regular receipt was not issued on 28 March 1957 because the regular cash officer, Mr. Sixto Puno, was absent, and it was only 8 April 1957 that he issued the corresponding official receipt.

On 27 December 1957, the plaintiff filed a reply, attaching thereto a certificate issued by Clerk of Court Amadeo Yuson showing that Sixto Puno was in his office from 8:00 to 9:50 in the morning, and from 1:00 to 4:00 in the afternoon, of 28 March 1957.

On 12 February 1958, the court overruled the plaintiff's motion for reconsideration.

The plaintiff appealed to the Court of Appeals, but the said court certified the case to us as one involving the pure

Question of law as to-

"whether or not the plaintiff's Manifestation ex parte dated June 11, 1957 and plaintiff's motion for reconsideration dated December 10, 1957 were properly denied or overruled in the aforesaid Order of November 19, 1957 and Order of February 12, 1957, respectively."

The gist of the appeal lies in the contention of plaintiff-appellant that the deposit of the purchase price (P7,510.00) made by the other party should be deemed (legally effective only on the date of the cash officer's receipt, 8 April 1957, and, therefore, made outside of the period of "5 days from notice" fixed by the trial court's decision, even though the sum deposited was actually delivered to the Clerk of Court, Amadeo Yuson, on 28 March, 1957, as evidenced by his receipt. We think this view is too technical and narrow to deserve consideration. The decision of the court below gave defendants (now appellees) "a period of five (5) days from notice hereof * * * by depositing with the Clerk of Court the purchase price", and this is precisely what the defendants have done. That the Clerk of Court should have issued only a temporary receipt, evidently in order to safeguard his own accountability, does not alter the fact that the defendants-appellees substantially complied with the court's order, and carried out all the steps required on their part.

Much is made by appellant of the Clerk's certification that the cash officer, Sixto Puno, was present in his office between 8 to 9:50 a.m. and between 1:00 and 4:00 o'clock. p.m. of 28 March when appellees paid the amount required of them to the Clerk of Court. This certification, however, does not show that the cash officer was actually at his desk at the moment when appellees or their counsels arrived to make the deposit; nor is it logical to assume that Clerk of Court Yuson would have accepted; it is if the cash officer had been around at the precise time it was paid. No claim was made in the court below that the Clerk's receipt was antedated, forged, or altered.

Another point against appellant is that his motion of 23 March 1957, filed within 30 days after the decision, and praying that the defendants-appellees be further ordered to reimburse him the P525.00 that he paid to the partition commissioners, was, in effect, a motion for reconsideration and amendment of the original decision, and, in effect, suspended its finality. This motion was not acted upon by the court until 19 November 1957, when it was granted by order of that date, by amending the dispositive part of the original decision precisely as prayed for by appellant herein. Hence, when the deposit was made, whether it be considered done on 28 March or 8 April 1957, it was done on time, since the decision ordering such deposit had not yet become final.

The contention that it did not interrupt the period for appeal, because appellees expressed willingness to pay the commissioners' fees, is of no weight. The fact is that appellant's motion expressly asked for something not included in the original decision, thus appellant virtually prayed for a reconsideration and amendment of the original decision, and the record was not complete, nor did the judgment become final, before appellant's motion was granted, or denied, by the court.

WHEREFORE, the judgment appealed from is affirmed. Costs against appellant Roman Yap.

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

[1] Fortunata Tingin, et al., appellees herein.

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