

EUGENIO BRAVO, PLAINTIFF AND APPELLANT VS. CIRIACO BARRERAS, DEFENDANT AND APPELLEE.

G. R. No. L-4872. February 16, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Plaintiff brought this action before the Court of First Instance of Camarines Sur in order to enable him to repurchase from the defendant a parcel of land for the sum of P200. Plaintiff claims that on June 8, 1946, he sold to defendant a parcel of land for P200 with the right to repurchase it within five years from the date of sale; that on two occasions, namely, September 14 and 15, 1950, he attempted to exercise his right of repurchase by tendering to the defendant the payment of the sum of P200 as agreed upon, but said defendant refused to accept the payment without any valid reason; and that in view of said refusal, plaintiff deposited said sum of P200 with the court, and filed the present action as required by the Civil Code.

In his answer, the defendant admits having bought from the plaintiff a parcel of land giving to the latter the right to repurchase it, but, defendant avers, "the trouble between the parties is the fact that the plaintiff wants to get from the defendant a parcel of land distinct from what the said plaintiff delivered to the defendant after the execution of the pacto de retro contract."

After holding a pre-trial, at which both parties were heard, the court rendered an order of the following tenor:

"At today's pre-trial the parties have agreed that the land sought to be repurchased is also the subject-matter of another litigation between the same parties in a case which is now before the Court of Appeals on appeal. The herein defendant does not deny the right of the plaintiff to repurchase the property but maintains that it is now impossible to execute the deed of repurchase because the identity of the property is still undecided and will not be decided until after the Court of Appeals has finally disposed of the case before it.

"Inasmuch as it will take about two more years before said appeal could be decided and the plaintiff, on the other hand, has already made a consignment of the purchase price with the clerk of court which amply protects his rights to repurchase the property, the court hereby orders the dismissal of this case without cost and without prejudice.

So ordered.

Naga City, Philippines, February 22, 1951.

Jose T. Surtida
Judge"

Plaintiff now appeals from this order contending, among other grounds, that the lower court erred in dismissing the complaint upon the single expedient that the identity of the land sought to be repurchased is pending determination in another case between the same parties which is now pending appeal in the Court of Appeals, the court having dismissed the case without prejudice considering that it may take two more years before the appeal

could be decided and the fact that the plaintiff has already made a consignation of the purchase price with the clerk of court.

We find merit in this contention. The ground on which the court on its own accord dismissed this case after hearing the parties on a pre-trial has no legal basis nor justification. Such action is not only contrary to the Rules of Court but it impairs a right which the law grants to the plaintiff in connection with his right to repurchase the property in litigation. Under section 3, Rule 30, of the Rules, an action can only be dismissed upon motion of a defendant, or upon the initiative of the court, (1) when plaintiff fails to appear at the time of trial, (2) when plaintiff fails to prosecute his action for an unreasonable length of time, and (3) when he fails to comply with any rule or order of the court. In other cases, the case can only be dismissed upon petition of the plaintiff (section 1, Rule 30). The ground given by the court in its order of dismissal is not one of those recognized by the Rules of Court.

Another reason why the dismissal of this case cannot be ordered at this stage lies in the very nature and purpose behind the presentation of the present action which is to give effect and validity to the consignation made by the plaintiff under the Civil Code (article 117, old, and article 1258, new Civil Code). Said articles postulate that the consignation shall be made by depositing the money at the disposal of the court "in a proper case," and this consignation shall be ineffectual if the case wherein the deposit was made is to be dismissed.

The most that the court should have done is to order the suspension of the trial pending final determination of the case which is now pending before the Court of Appeals, even if it may take several years, for with the preservation of the case the right of the plaintiff to the deposit in so far as its legal effect is concerned will not be impaired nor affected by the lapse of time. If the case is dismissed, the consignation will be rendered ineffectual.

Wherefore, the order appealed from is hereby set aside, and this case is ordered remanded to the lower court for further proceedings, with costs against the appellee.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Labrador, JJ., concur.

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