

DALMACIO FALCASANTOS, PLAINTIFF AND APPELLEE, VS. HOW SUY CHING, ETC., DEFENDANT AND APPELLANT.*G.R. No. L-4229. May 29, 1952*

Ponente: PARAS, C.J.

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This is an action for legal redemption instituted in the Court of First Instance of Zamboanga by Dalmacio Falcasantos against How Suy Ching, as administratrix of the estate of the deceased Tan Kiok. The parties, without adducing any evidence, submitted the case on the pleadings. The court rendered judgment in favor of the plaintiff, ordering the defendant to convey to the plaintiff all the rights of the deceased Tan Kiok in Lots Nos. 154 and 52 mentioned in the complaint upon payment of the sum of P420. From this judgment the defendant has appealed.

The complaint alleges that Lots Nos. 154 and 52, with their improvements, located in the City of Zamboanga and described in Original Certificates of Title Nos. 7642 and 7291, respectively, of the Office of the Register of Deeds of Zamboanga, are the undivided property in equal shares of Leonarda Falcasantos, Dalmacio Falcasantos and Josefa Falcasantos; that on December 1, 1934, and for the sum of P420, Leonarda Falcasantos sold all her rights to Tan Kiok, although the sale has not as yet been registered; that the plaintiff has offered to redeem the property from the defendant by paying to the latter the sum of P420 which Tan Kiok paid to Leonarda Falcasantos; that the defendant has refused to re-sell the property.

The defendant in her answer admits all the allegations of the complaint but sets up the defense that plaintiff's right of legal redemption is now barred by article 1524 of the old Civil Code, because "the plaintiff has had knowledge of the sale since long before nine days prior to the filing of the complaint."

The lower court, in giving judgment for the plaintiff, relied on the fact that "the deed of sale stated above was never and is not as yet registered in the office of the Register of Deeds, and there is nothing in the record to show that the plaintiff had any knowledge of the sale since certain date." Its conclusion is that "there is no doubt therefore that the period for the exercise of the right of legal redemption by the plaintiff has not as yet expired as it has already been stated the deed of sale was never nor has as been registered in the office of the Register of Deeds."

It is already a rule in this jurisdiction that one who prays for judgment on the pleadings without offering proof as to the truth of his own allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on those allegations taken together with such of his own as are admitted in the pleadings. (Evangelista vs. De la Rosa,[1] 42 Off. Gaz., 2100; Aquino vs. Blanco,[2] 45 Off. Gaz., 2080; Bauermann vs. Casas, 10 Phil., 386.) As the parties had submitted the case at bar on the pleadings without introducing any evidence, the plaintiff must be considered as having admitted the material allegation in the answer that he had known of the sale in question long before nine days prior to the filing of the complaint. It may be argued that, under section 1 of Rule 11 of the Rules of Court, if the plaintiff fails to make a reply, as in the case at bar, all the

new matters alleged in the answer are deemed controverted; but we are of the opinion that said provision is not applicable to cases submitted on the pleadings. The reason is obvious. Where the parties pursue the course of a regular trial, the plaintiff may disprove by competent evidence any new matter alleged in the answer, while the defendant may establish also by competent evidence his own allegation. In other words, the opportunity is mutual for each party to prove or disprove any new fact deemed to be controverted by the failure of the plaintiff to file a reply to an answer.

Article 1524 of the old Civil Code provides that "the right of legal redemption may not be exercised except within nine days, counted from the inscription in the Registry, and, in the absence thereof, from the time the redemptioner shall have had knowledge of the sale."

In *Villasor vs. Medel et al.*,[*] 46 Off. Gaz., Supp. No. 1, pp. 344, 343, citing *Sempio vs. Del Rosario*, 44 Phil., 1, we already had occasion to observe that: "The provision of this article which fixes the period of nine days within which the right of legal redemption may be exercised has not been repealed or modified by the Code of Civil Procedure or the Rules of Court. The right of legal redemption and the right to commence actions are entirely of different nature. The first is a substantive right which, in the absence of the article, would never exist; the second restricts the period in which the cause of action may be asserted." In the same case, we held that the starting point of the 9-day period is registration or, in the absence of registration, knowledge of the conveyance by the co-owners. It cannot be contended that the period starts from registration only in respect of real property, because the article does not make any distinction. Indeed, in commenting on the provision, Manresa states that absence of registration refers not only to the case where the purchaser fails to register the conveyance, but also to the case where registration is not possible because the thing sold is personal property.

"Por estas razones, elCodigo dice, refiriendose a la inscripcion, que, en su defecto, el plazo se contara desde que el retrayente hubiera tenido conocimiento de la venta. Las palabras 'en su defecto' que hemos subrayado, entendemos que tienen la plenitud de su sentido; es decir, que igualmente aluden al caso de que la inscripción no exista por no haberla solicitado el comprador, que a aquel otro en que la inscripción no es posible por la naturaleza mueble de la cosa vendida." (Manresa, *Codigo Civil*, 4th Ed., Vol. 10, p. 337.)

In view of our conclusion that the plaintiff must be held to have had knowledge of the sale in question long before nine days prior to the filing of the complaint herein, his right of legal redemption has been lost.

Even if it be assumed that a mere offer to redeem is sufficient under Article 1524, the complaint is fatally defective and should be dismissed, because it contains no allegation that the offer to redeem was made within nine days from registration/or the date the plaintiff had knowledge of the sale in question.

The insinuation of the plaintiff that Tan Kiok could not validly purchase because he was not a Filipino citizen—which involves a constitutional question not even raised in the trial,—deserves no serious consideration, because the sale took place before the enforcement of the limitation provided in the Constitution which does not have any retroactive effect. (*El Banco Nacional Filipino contra Sing*, 69 Phil., 611.)

Wherefore, the decision appealed from is hereby reversed and the complaint dismissed, with costs against the plaintiff-appellee. So ordered.

Pablo, Bengzon, Tuason, Bautista Angelo, and Labrador, JJ., concur.

* 81 Phil. 546.

[1] 76 Phil. 115.

[2] 79 Phil. 647.

DISSENTING

FERIA, J.:

I am sorry to dissent from the decision of the majority.

The plaintiff filed a complaint against the defendant-appellant to compel the latter, as administratrix of the deceased Tan Kiok, to resell to the former the share of Leonarda Falcasantos, sold by said Leonarda to Tan Kiok in the undivided property in equal shares of Leonarda Falcasantos, Jose Falcasantos and the plaintiff Dalmacio Falcasantos in lots No. 154 and 52 with their improvements, which is located in the city of Zamboanga and described in Original Certificates of Title No. 7642 and 7291, respectively, of the Office of the Raster of Deeds of Zamboanga.

The sale has not been registered In the Registry of Deeds for failure on the part of the vendee to do so, and the question involved in this appeal is whether or not the plaintiff as a co-owner of the above-mentioned lot has exercised his right of legal redemption by tendering the payment of the redemption price to the purchaser within 9 days counted from the time he had become aware of the sale, and not prior to the filing of the plaintiff's complaint. Because "the right of legal redemption and the right to commence action are entirely of different nature. The first is a substantive right which, in the absence of Article 1524 of the old Civil Code, would never exist; the second restricts the period in which the cause of action may be asserted." (Villasor vs. Medel et al.,[*] 46 Off. Gaz., Supp. No. 1, pp. 344, 348, citing Sempio vs. Del Rosario, 44 Phil., 1.)

In the present case the complaint alleges that the plaintiff has offered to redeem the property in question from the purchaser Tan Kiok by offering the sum of P420 which Tan Kiok paid to Leonarda Falcasantos for it, and that the latter refused to resell the property to the plaintiff. The plaintiff did not allege that he made the offer within the period of nine days from the time the plaintiff has had knowledge of the sale, because according to the plaintiff's theory In the court below as well as in this Court, in case of sale of real property as in the present case, the provision of Article 1524 to the effect that "in the absence of such registration the period of nine days shall be counted from the time the redemptioner shall have knowledge of the sale," refers only to sale of personal property, which cannot be registered or does not require registration.

The defendant How Suy Ching, administratrix of the estate of Tan Kiok, in her answer admits that and all other allegations of the complaint, but sets up as special defense that plaintiff's right of legal redemption is now barred by Article 1524 of the old Civil Code, because "the plaintiff has had knowledge of the sale long before nine days prior to the filing of the complaint." The defendant alleges that the plaintiff has had knowledge of the sale before the period of nine (9) days prior to the filing of the plaintiff's complaint and not prior to the time the plaintiff has had knowledge of the sale, erroneously confusing or considering the date of the filing of the plaintiff's complaint as the date of the sale, in view of the decision of this Court in the case of Viola and Roura vs. Tecson, 49 Phil. 808-810, quoted and misconstrued by the appellant in his brief.

Although the allegations of the complaint admitted by the defendant does not allege or aver that the plaintiff has offered to redeem the property from Tan Kiok by tendering to him the repurchase price of P420, within the period of nine days from the time the plaintiff has had knowledge of the sale, the lower court, upon motion of both parties to render judgment on the pleadings, rendered judgment in favor of the plaintiff compelling the defendant to resell the property to the plaintiff.

Defendant appealed from the decision of the lower court and now contends that plaintiff's right to redeem is barred by Article 1524, because the plaintiff, by submitting the case to the lower court for judgment on the pleadings, admitted the new matter alleged by the defendant in her answer to the effect that "the plaintiff has had knowledge of the sale long before nine (9) days prior to the filing of the complaint."

This contention of the defendant-appellant upheld by Chief Justice Paras in his decision is not well taken. Said new matter alleged by the defendant in her answer cannot be considered as admitted by the plaintiff-appellee by praying for judgment on the pleading. It is true that according to the ruling laid down by this Supreme Court in the cases of *Bauermann vs. Casa*, 10 Phil. 386; *Evangelista vs. De la Rosa*, 42 Off. Gaz., 2100, and *Aquino vs. Blanco*, 45 Off. Gaz., 2080, a party who prays for judgment on the pleadings without giving the opposing party an opportunity to introduce evidence to prove his material allegation, must be understood to admit the truth of the material and relevant allegation of the opposing party. But the above-quoted allegation in the appellant's answer is not relevant to the fact in issue.

Article 1524 on which the appellant bases his contention or theory reads as follows:

"ART. 1524. The right of legal redemption can be exercised only within 9 days, counted from the date of the record of the transfer in the Registry of Deeds, or in default thereof, from the time the redemptioner may have had knowledge of the sale."

The fact in issue is, whether or not the plaintiff has exercised his right of legal redemption or made the offer to redeem within the nine day period prior to the time he has had knowledge of the sale; and the defendant's allegation in his answer that "the plaintiff has had knowledge of the sale long before nine days prior to the filing of the complaint" is not relevant to the fact in issue. Because Stephan defines the word "relevant" as meaning "that any two facts to which it is applied are so related to each other that, according to the common course of events, one, either taken by itself or in connection with other facts, proves or renders probable the past, present or future existence or non-existence of the other." (Steph. Dig. Ev. art. 1); and according to Elliott, evidence is relevant when it has a tendency in reason to establish the probability or improbability of a fact in issue. (1 Elliott on Evidence, p. 197) And the defendant's allegation above-quoted does not render probable or improbable or tend in reason to establish the probability or improbability of the truth or existence of the fact in issue.

The defendant-appellant's allegation, if admitted, would not tend in reason to establish the probability or improbability of the truth or existence of the fact in issue for the simple reason that, according to the well established ruling of this Court in the case of *Rosales vs. Reyes and Ordoveza*, 25 Phil., 495, quoted with approval in the decision of this Court in *Paez vs. Magno*,[*] G. R. No. L-793 and promulgated on April 27, 1949, the consignment of the redemption price is not necessary in order that the vendor may compel the vendee to allow the repurchase within the time allowed by law or by contract; a mere tender of payment is enough if made on time as a basis for action against the vendee to compel him to resell. And although there is no express or special provision of law or ruling of this Court on the period of prescription of action of the redemptioner against the vendee to compel the latter to resell or allow the repurchase, offered by the former and refused by the latter within the period of nine days prior to the time of registration or in which he became aware of the sale, such period of prescription cannot, under section 43 of the old Civil Code of Civil Procedure or Act No. 190, be less than four years and may be six or more counted from the time the tender of payment was made when the redemptioner's cause of action accrued to compel the vendee to resell or allow the redemption. Besides, the prescription of plaintiff's action is not in issue and cannot be considered in this case. Therefore, the fact that "the plaintiff had knowledge of the sale long before nine days prior to the filing of the complaint" alleged in the appellant's answer is not relevant, for it does not render probable or improbable that the plaintiff had knowledge of the sale within the period of nine days prior to the time he offered to redeem the property sold to the vendee by tendering to him

the redemption price. Because even if the plaintiff had made the offer or tender of payment refused by the vendee, say two, three or four years before the filing of the complaint in 1941, his substantive right of legal redemption is not barred by article 1524 of the old Civil Code according to the above-quoted ruling in said cases of Rosales vs. Reyes and Ordoveza and Paez vs. Magno.

To hold, as Chief Justice Paras does, that the allegation that "the plaintiff has had knowledge of the sale since long before nine days prior to the filing of the complaint" is the same as that he had knowledge of the sale long before nine days prior to the exercise of his right of legal redemption, is tantamount to hold that to exercise the right of legal redemption and to commence action to enforce said right are not different but one and the same thing. Such conclusion is contrary to the ruling of this Court in Villazor vs. Medel et al. 46 Off. Gaz., Supp. No. 1, pp. 344, 348, citing Sempio vs. Del Rosario, 44 Phil., 1. In said cases we held that "the right of legal redemption and the right to commence actions are entirely of different nature. The first is a substantive right which, in the absence of the article, would never exist; the second restricts the period in which the cause of action may be asserted."

On the other hand we cannot affirm the judgment of the lower court in favor of the plaintiff on the ground that as, according to the allegations in the plaintiff's complaint admitted in the defendant's answer, the sale in question has not been registered in the Registry of Deeds and there is nothing in the record to show that the plaintiff had any knowledge of the sale since certain date, "the exercise of the right of legal redemption by the plaintiff has not yet expired." Because the complaint contains the allegation that the plaintiff has offered to redeem the property sold from the defendant by tendering to him the payment of the redemption price, which must have been prior to the filing of the complaint, although the date when the offer was made is not stated or averred in the complaint. And in Villazor vs. Medel and Sempio vs. Del Rosario above-quoted we have already held that the starting point of the nine day period of redemption, is the registration of the sale in the Office of the Register of Deeds or, in the absence of registration, the actual knowledge of the conveyance by the co-owners. As Manresa well says, the provisions of Article 1524 of the old Civil Code are applicable to real as well as personal property, and the words "in the absence of registration" refer, not only to the case where the purchaser of real property fails to register the conveyance, but also to the case where registration is not possible because the thing sold is personal property". Therefore, there being no allegation in the complaint admitted by the defendant to the effect that the plaintiff has exercised his right or made his offer to redeem the property sold within the nine day period prior to the time he had acquired knowledge of the sale, we cannot affirm the lower court's judgment for the plaintiff.

But this insufficiency in the facts, as alleged in the complaint, does not justify the dismissal of the plaintiff's action because no motion to that effect has ever been filed by the defendant either in this Court or in the court below. If such a motion has been filed, the court may, according to Section 3, Rule 8 of the Rules of Court, either grant the motion, or allow the amendment of the pleading if the defect of the pleading is curable, as in this present case. Under no circumstance may the court render judgment on the merits, as Chief Justice Paras contends, dismissing the plaintiff's action on the ground that the plaintiff had not exercised his right or made his offer to redeem the property in question within nine days prior to the time he had actual knowledge of the sale of said property. There is absolutely no ground for inferring from the allegations in the pleading that the plaintiff had personal knowledge of the sale of the property before the period of nine days prior to the time he made the offer to redeem it. The mere fact that the sale took place in 1934 and the complaint in this case was filed in 1948 cannot give rise to such inference, because there is nothing in the pleadings to show that the vendee has occupied and cultivated the land as owner immediately or some time after the sale, for the same reason that he did not register the deed of sale in the Registry of Deeds, he might not have openly occupied and cultivated himself the land in question in order to avoid the sale from being known by the redemptioner or plaintiff.

Under no circumstance may the present case be dismissed on the merits, as the majority does. This Supreme

Court, in the civil case entitled U.S. vs. Master of S.S. TEAN, 28 Phil. 138, held that when the defendant files a motion for judgment on the pleadings, admitting the facts as alleged in the complaint, and the court finds insufficiency in the facts alleged, it may, on equitable grounds, allow an amendment of the complaint instead of rendering judgment against the plaintiff.

"Defects in Pleadings.—A judgment rendered on the ground of formal defects in the pleadings does not touch the merits of the controversy and therefore is no bar to a second suit on the same cause of action, nor is a dismissal of an action for failure of the complaint to state a cause of action a bar to a new action on a good complaint. (34 C. J., pp. 794.)

"Judgment on the Pleadings.—* * * On the other hand it has been held that a judgment for defendant on the pleadings for failure of the complaint to allege a material fact is in effect a dismissal for failure to state a cause of action, and does not bar a future action." (34 C. J., pp 801.)

In view of the foregoing, as the present case could not have been submitted to the court for judgment on the pleadings, and decided on the merits, since whether or not the plaintiff has exercised his right of legal redemption in time by making tender of payment of the repurchase price within nine days from the time that he had knowledge of the sale, were not alleged in the pleadings and admitted or denied by the parties, the record of this case should be, and is hereby, remanded to the lower court for further proceedings so that both the plaintiff and defendant may properly amend their respective pleadings, without pronouncement as to costs.

After this dissenting opinion has been written, the majority's decision was amended by adding on page 5 thereof, after the conclusion—"In view of our conclusion that the plaintiff must be held to have had knowledge of the sale in question before nine days prior to the filing of the complaint herein, his right of legal redemption has been lost," and before the judgment—"Wherefore, the decision appealed from is hereby reversed and the complaint dismissed with costs against the plaintiff-appellee," the following paragraph:

"Even if it be assumed that a mere offer to redeem is sufficient under Article 1524, the complaint is fatally defective and should be dismissed, because it contains no allegation that the offer to redeem was made within nine days from registration or the date the plaintiff had knowledge of the sale in question."

The majority's decision as amended becomes ambiguous, because nobody can now tell whether the reversal of the decision appealed from and dismissal of the plaintiff's complaint is based on the ground that the "plaintiff must be held to have had knowledge of the sale in question long before nine days prior to the filing of the complaint," which is the same as prior to the time he had knowledge of the sale, according to the majority, or on the ground that the plaintiff's complaint is fatally defective because "it contains no allegation that the offer to redeem was made within nine days from the registration or the date the plaintiff had knowledge of the sale in question." In the first case the dismissal is on the merit and a bar to another action; but in the second case the dismissal is not on the merit and it is not, as above stated, a bar to a new action on a good complaint as above shown.

Montemayor, J., concurs with opinion.

* 81 Phil. 546.

* 83 Phil., 403.

CONCURRING

MONTEMAYOR, J.:

There seems to have been confusion on the part of both parties, plaintiff and defendant, as to the issue and the decisive point involved in this case, namely, whether or not the offer to repurchase was made within nine (9) days after plaintiff had knowledge of the conveyance of the property which he now seeks to redeem, and not whether the complaint was filed within the said nine (9) days. I agree with Mr. Justice Feria that on equitable grounds the record of this case should be remanded to the lower court for further proceedings so that both parties may amend their respective pleadings and if necessary, adduce evidence in support thereof so that the case may be decided on its merits and not on technicalities and the mistaken view of the parties as to the real issue involved.

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