

ERNESTO VELUZ, PLAINTIFF-APPELLANT, VS. SOCORRO VELUZ, ET AL., DEFENDANTS-APPELLEES.

G.R. No. L-23261. July 31, 1968

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

Appeal from the order of the Court of First Instance of Quezon, in its Civil Case No. 6103, dis-missing plaintiff's complaint.

There was no trial in this case. Instead of an answer, the defendants filed a motion to dismiss upon the grounds of prescription and want of cause of action. The facts as alleged in the complaint must, therefore, be considered hypothetically admit-ted.

Original plaintiff Ernesto Veluz[1] filed a complaint before the Court of First Instance of Quezon on July 30,1958. On a motion for bill of particulars by defendants, the court ordered plaintiff to file an amended complaint, which plaintiff did. In the amended complaint plaintiff alleged that on January 2, 1953 he asked defendants for a loan of five thousand pesos, to secure the payment of which he proposed to mortgage his share on a parcel of land covered by TCT No. 27247 of the Registry of Deeds of Quezon; that the defendants -agreed and caused forthwith the preparation of a deed, a copy of which is attached to the complaint as Annex A; that when defendants asked plaintiff to sign the deed as prepared, the latter noticed that the deed was an absolute sale instead of a mortgage, and so he asked defendants why the document was couched that way, to which query defendants answered that it had to be so in order-that defendants could take possession and enjoy the fruits of the land and that plaintiff had nothing to worry about the document as defendants, being his brothers and sisters, would not take advantage of the deed of sale, and that plaintiff could redeem the property anytime; that because of the assurance of his brothers and sisters plaintiff affixed his signature on the document; that said document did not express the real intention of the parties; that in May 1956 plain-tiff wanted to redeem the property but the defendants refused, claiming that what plaintiff had executed was a deed of sale; that several days later, plaintiff came to know that the property had been registered already in defendants' name; that the value of the land with its improvements would be no less than P80,000.00 yielding a monthly produce valued at no less than P1,000, 00. Plaintiff prayed that judgment be issued "ordering the reformation of the deed of sale attached hereto as Annex 'A' to express the true intention of the parties, to wit: the same be made as a deed of mortgage" and that defendants be ordered to pay actual and moral damages and attorney's fees.

Defendants moved for the dismissal of the com-plaint upon the grounds that the cause of action has prescribed and that the complaint states no cause of action, to which motion plaintiff filed his opposition.

The trial court issued its order, dated June 28, 1960, dismissing the complaint, upon the ground that plaintiff's action was for annulment of contract based on fraud (although ultimately it was for recovery of title and possession), which under Article 1391 had to be brought within four years from the discovery of the fraud; that from January 2, 1953 when the fraud was discovered to the date of institution of the act-ion on July 30, 1958,

more than four years had elapsed. Plaintiff moved for the reconsideration of the order of dismissal, but the motion was denied. Hence this appeal.

The plaintiff having died in the meantime, the trial court ordered the substitution of plaintiff by his wife Encarnacion Veluz; and by his children: Sonia Veluz, wife of Antonio Villador; Julia Veluz, wife of Antonio Peleño, and Ramon Veluz.

In their appeal brief the appellants made a lone assignment of error, to wit: that the trial court erred in finding that the cause of action had already prescribed. In support thereof appellants argue that the allegations, as well as the relief sought, in the complaint, clearly show that the action is for reform-ation of instrument: under Articles 1365 and 1605 of the Civil Code, which action prescribes in ten years[2] and not for annulment of contract which prescribes in four years; that assuming that the action was for an-nulment, it could be said that original plaintiff Ernesto Veluz discovered the fraud only in 1953 when his brothers and sisters, taking advantage of the deed of sale, refused to allow him to redeem the property.

The defendants-appellees rely principally on Article 1391 of the Civil Code which provides that the action for the annulment of a contract on the ground of fraud must be brought within four years from the date of the discovery of the fraud. The appellees urge that the four-year period of prescription of the action began on January 2, 1953 when the deed in question was signed by original plaintiff Ernesto Veluz who already knew of the fraud. The appellees cite the cases of Rone, et al., vs. Claro and Baquiring[3] and Heirs of Cariota vs. Benares,[4] to support their stand.

We find merit in this appeal.

The purpose of an action and the law that should govern it, including the period of prescription, should be determined by the complaint itself - its al-legations and prayer for relief.[5] The complaint in the instant case alleges that the agreement of the parties was that the land of plaintiff Ernesto Veluz was to be mortgaged, but the defendants caused to be prepared a deed of absolute sale and assured said plaintiff that he had nothing to fear and worry about the document because he could redeem the property any time. The complaint specifically alleges that the instrument does not express the true intention of the parties. The complaint prayed, among others, that judgment be issued:

"(b) ordering the reformation of the deed of sale attached hereto as Annex 'A' to express the true intention of the part-ies, to wit: the same to be made as a deed of Mortgage executed by the plaintiff in favor of the defendants for and in con-sideration of Five Thousand Pesos (P5,000. 00) which plaintiff may redeem at any time he desires or to such period as this Court may fix and that if this Honorable Court should fix a period to order in the mean-time the return of the possession of the premises in question to the plaintiff." (Underscoring, supplied).

It is our considered view, based upon the allega-tions, and the relief prayed for, in the complaint, that the action is clearly one for the reformation of an instrument as contemplated in Articles 1359 and 1365 of the Civil Code of the Philippines.

In the order appealed from the lower court starts with the statement "This is an action for reformation of contract with damages...", but later declared "that the plaintiff's action in the case at bar is annulment of contract based on fraud (although ultimately it is for recovery of title and possession) which, under Article 1391 of the new Civil Code shall be brought within four years from the discovery of the fraud." [6]

The lower court is in error. The action for reformation of instrument should not be confused with the action for annulment of contract. Reform-ation of instrument: presupposes a valid existing contract, in which there had been

a meeting of the minds of the parties but the instrument drawn up and signed by them does not correctly express the terms of their agreement. Annulment of a contract, on the other hand, presupposes a defective contract in which the minds of the parties did not meet, or the consent of one was vitiated. The equity of reformation is ordinarily limited to written agree-ments, and its purpose is to establish and perpet-uate the true agreement; annulment, on the other hand, is, intended to declare the inefficiency which the contract already carries in itself and to render the contract inefficacious.

The legal question to be resolved in the instant case, therefore, is: When does an action for the reformation of instrument prescribed? Chapter 4, Title IT of Book IV of the Civil Code, which treats of "Reformation of Instruments" carries no provision regarding the period when the action for reformation of instrument shall be brought. In two decisions of this Court we find conflicting, pronouncements. In the case of Heirs of Carlota vs. Benares, G. R. No. L-6438, June 30, 1955, relied upon by the trial court, this Court said that the action prescribes in four years, and we quote:

"The fact that Benares, through fraud and deceit, made them sign ab-solute sales instead, does not render the sales absolutely void, but merely voidable; and the remedy of plaintiffs is either annulment on the ground of fraud, or reformation of the contracts to make them express the parties' true intention and agreement. In either case, the action should be filed within four years from the time the cause of action accrues, i.e. from the discovery of the fraud."

However, in the subsequent case of Conde, et al., vs. Cuenca and Malaga, G. R. No. L-9405, July 31, 1956, relied upon by the appellants, wherein the action was precisely for the reformation of the instrument of sale to make it conform with the intention of the parties to execute a deed of mortgage, under Article 1365 of the Civil Code, this Court applied Article 1144 of the Civil Code and held that plaintiff had a period of 10 years within which to bring the action. We quote:

"As defendants themselves allege in their motion, plaintiff's remedy is one for the reformation of an instrument under article 165 of the new Civil Code. That article reads:

'ART. 1365. If two parties agree upon the mortgage or pledge of real or personal property, but the instrument states that the property is sold absolutely or with a right of repurchase, reformation of the instrument is proper.'

Plaintiff's case comes squarely under the article, and it is precisely the remedy therein prescribed that he wants when in his complaint: he prays for judgment declaring the deed of sale Annex 'A' null and void ab initio but one of mortgage. Stated more explicitly, the prayer is to have the deed declared void as a sale and construed or given the effect of a mere mort-gage so as to make it conform to the real intention of the parties. In other words, what is sought is 'reform-ation', which is defined as that remedy in equity by means of which a written instrument is made or construed so as to express or conform to the real intention of the parties when some error or mistake has been committed. (53 C. 3. 906, cited in Padilla's Civil Code. Annotated, Vol. II, p. 431.) More-over, the complaint also prays for such remedy as in justice and equity plain-tiff may be entitled to in the premises, and it is clear that upon the facts pleaded reformation is proper in accord-ance with article 1365 of the new Civil Code.

"As an action for reformation, plaintiff had 10 years within which to bring it from the time the right of action accrued. (Art. 1144, new Civil Code.)...."

We believe that the decision in the Conde case should prevail, not only because it is of a later date but also because the issue decided therein refers to the period of prescription in an action for reform-ation of instruments; whereas, in the Carlota case, the issue decided refers to the annulment of contracts. The ruling the Conde case is squarely applicable to the case now before us because, as in the Conde case, the question involved is the reformation of an instrument which appears to be a deed of absolute sale when the real intention of the parties was

to execute a deed of mortgage.

Hence, in the case at bar, even if the ten-year period of prescription be computed from the date of the execution of the instrument on January 2, 1953, or from May, 1958 when defendants refused to allow re-demption - evincing thus their intent not to live up to the true agreement and thereby giving rise to the right of action,[7] until July 30, 1958 when the instant case was commenced, the ten-year period for prescription of the action had not yet elapsed.

IN VIEW OF THE FOREGOING, the appealed order of the lower court, dated June 28, 1960, dismissing plaintiff's complaint, should be, as it is hereby, set aside; and this case is remanded to the court a quo for further proceedings. Costs against defendants-appellees

IT IS SO ORDERED.

Concepcion, (CJ)., Reyes, JBL, Dizon,, Makalintal, Sanchez, Angeles, and Fernando, JJ., concur.
Ruiz Castro, J., took no part.

[1] Original plaintiff died after this case was decided by the lower court, and he was substituted by his wife and children.

[2] Conde et al., vs. Cuenca, et al., G. R.No. L-9405, July 21, 1956.

[3] 91 Phil. 250.

[4] G.R. No. L-6438, June 30, 1955.

[5] Rone, et al., vs. Clara, et al., supra.

[6] Record or. Appeal, pp. 65-66.

[7] Tormon vs. Cutanda, G. R. No. L-18785, Decem-ber 23, 1963.

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