

ROQUE S. MONFORT, PETITIONER, VS. EMILIO AGUINALDO, FELICIDAD AGUINALDO, AND THE COURT OF APPEALS, RESPONDENTS.

G.R., No. L-4104. May 02, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal by certiorari from a resolution of the Court of Appeals dated January 31, 1950, which modifies a previous resolution of that court in the sense of ordering the defendants, now respondents, to pay to plaintiff, now petitioner, the sum of P52.33, with interest thereon at the rate of 7% per annum, from February 18, 1936, until its full payment, plus 10% thereof as attorney's fees, with the understanding that if said amounts are not paid within ninety (90) days from the date the decision has become final, the properties mortgaged will be sold at public auction to satisfy the amount of the judgment in accordance with law.

The background of this case is as follows: Roque S. Monfort filed a complaint against Emilio Aguinaldo and Felicidad Aguinaldo for foreclosure of mortgage in the Court of First Instance of Rizal. Decision was entered in favor of the plaintiff, on appeal to the Court of Appeals, the decision was affirmed. This was on August 19, 1942. On September 29, 1942, defendants, now respondents, filed an ex parte motion for reconsideration, and, without giving the opposing party an opportunity to be heard, the Court of Appeals, on May 31, 1943, issued a resolution reversing its former decision of August 19, 1942. The case having been taken by certiorari to the Supreme Court, the latter revoked the resolution of May 31, 1943 of the Court of Appeals granting to petitioner fifteen days within which to answer the ex parte motion for reconsideration. After the case had been remanded to the Court of Appeals, the latter promulgated its resolution of January 31, 1950, which is practically a reiteration of its former decision of May 31, 1943, with a minor modification in the dispositive part. Hence this petition for review.

We have carefully perused and considered the reasons and arguments advanced by counsel for petitioner in support of the questions of law he is raising in the present petition for review as well as the reasons and arguments advanced by counsel for respondents in opposition thereto, and we have reached the conclusion that in the last analysis the issues now presented before this Court for determination merely hinge on questions of facts which have already been passed upon by the Court of Appeals, and, therefore, are not for this Court to determine.

Take, for instance, the following points of law which, according to petitioner, were disregarded by the respondent court: (a) that obligation having been proven upon debtor rests the proof of payment; (b) that the best evidence for proving payment is by the evidence of receipts showing the same; (c) that evidence to be believed must be credible; (d) that self-serving evidence is inadmissible; and (e) that a liquidation presupposes a settlement and adjustment of all accounts had between the parties prior thereto.

There is no dispute as to the first principle, this is admitted. What is denied by respondents is that they have failed to prove that they have settled their obligation. They contend that they have presented enough evidence to discharge their obligation, and this evidence was found by the Court of Appeals to be satisfactory. This is a

finding which we cannot now look into for it has to do with credibility of witnesses.

That the best evidence for proving payment is by the evidence of receipts showing the same is also admitted. What respondents claim is that there is no rule which provides that payment can only be proved by receipts. While receipts are deemed, to be the best evidence, they are not exclusive. Other evidence may be presented in lieu thereof if they are not available, as in case of loss, destruction or disappearance. The fact of payment may be established not only by documentary evidence, but also by parol evidence (48 C.J. 727; Greenleaf, Law of Evidence, Vol. II, p. 486; Jones on Evidence (1913) Vol. II, p. 193), specially in civil cases where preponderance of evidence is the rule. Here respondents presented documentary as well as oral evidence which the Court of Appeals found to be sufficient, and this finding is final.

That evidence to be believed must be or edible is also correct. This is not likewise disputed. Here we find that the Court of Appeals gave credence to the testimony of General Aguinaldo. This is another finding of fact.

And as regards the admissibility of Exhibit "25", the book of accounts of General Aguinaldo, suffice it to say that, while this kind of evidence is self-serving, it may be admitted if proven to have been prepared in the ordinary course of business. Here, respondent Emilio Aguinaldo pointed out that said exhibit was prepared by him in accordance with his practice to make entries of every payment he makes to satisfy his obligation, and this is borne out by a cursory examination of the appearance of each page as well as the color of the writings appearing therein which give the impression that they have been made in due course. This testimony of respondent Aguinaldo has not been disputed, nor the authenticity, correctness and genuineness of said exhibit, which factors led to the admission of the exhibit by the respondent court. This finding cannot also be looked into.

Finally, the rule that a liquidation presupposes a settlement of a previous account between the same parties is not also disputed, the only contention of respondents being that they have presented sufficient evidence to show that an error or oversight has been committed in the liquidation as regards the value of a Packard automobile. This is also a question of fact.

The only remaining question to be determined refers to the complaint of petitioner against the attitude of the Court of appeals in affirming its former resolution of May 31, 1943, instead of setting it aside in view of the resolution of this court rendered in G.R. No. 49059, which attitude, petitioner contends, is tantamount to a defiance of the order of this Court.

There is nothing in the above resolution which may be considered as a directive to decide the case in line with the previous decision of the Court of Appeals. The resolution of the respondent Court was revoked merely on a procedural ground, leaving the decision on the merits entirely to the discretion of said court. The fact that the responds court, after meeting the procedural objection, chose to reaffirm its resolution of May 31, 1943, cannot be considered as a defiance of the resolution of this Court. The directive off this Court was complied with when the respondent court allowed the opposing party to reply to the ex parte motion for reconsideration filed by the defendants.

All things considered, we are of the opinion that the errors attributed by petitioner's counsel to the Court of Appeals are not well taken.

Wherefore, the petition is dismissed, with costs against petitioner.

Paras, Feria, Pablo, Reyes, and Labrador, JJ., concur.

Montemayor, J., took no part.

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