

EMILIO RUMBAOA, PLATON DAMO, ESTEBAN ASUNCION, ANTONIO ASUNCION, DIONISIO BATANGAN AND MARCIANO PASCUA, PETITIONERS, VS. IGNACIO ARZAGA AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-1454. October 31, 1949

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal by certiorari from the Court of Appeals which affirmed with some modifications the judgment of the Court of First Instance of Ilocos Norte in a case between Ignacio Arzaga as plaintiff and Emilie Rumbaoa and five others as defendants, regarding the sale of a piece of land.

There is little or no serious controversy as to these facts: Ignacio Arzaga owned a parcel of land divided into 13 atares. He sold one atare to each of the six defendants for a combined sum of P6,000, with a provision for repurchase without term. The deed was not presented and the date is not revealed. After that sale Arzaga encumbered the entire 13-atare lot in favor of Becha Lumber Co., Inc., to secure the faithful performance by one Walter G. Jensen, an employee of Becha Lumber Co., of his obligations. Jensen subsequently misappropriated funds or property of his employer, as a result of which Becha Lumber Co. instituted an action against Jensen, Arzaga, and one Mariano N. Giron, who was presumably another surety for Jensen. Neither the pleadings nor the decisions show the nature of the suit brought by Becha Lumber Co., whether it was a personal action or a foreclosure of mortgage. Nor does it appear whether the undertaking executed by Jensen and his sureties was a mortgage; the contract of suretyship was not introduced.

On October 20, 1937, the Sheriff, after proper levy on the property in question, sold it to Becha Lumber Co. as the highest bidder for P2,053, the amount due on the judgment to the execution creditor, and delivered to the purchaser the required deed of sale. Thereupon, or shortly thereafter, Becha Lumber Co. granted Arzaga 35 days to repurchase the land for the same amount it had paid for it and expenses.

On November 9, 1937, Arzaga and the defendants, the previous purchasers of six atares of Arzaga's land under pacto de retro, executed a written agreement (Exhibit A or 1) whereby Rumbaoa and his associates undertook to repurchase from Becha Lumber Co. the whole parcel of 13 atares and promised to sell the same to Arzaga within the "plazo legal" on payment to them of the amount they would have paid Becha Lumber Co., plus lawful interest on that amount, plus expenses to be incurred in the repurchase by them, plus the P6,000 paid by them previously for six atares to Arzaga, and plus P60 they handed Arzaga on that occasion as travelling expenses to Manila.

On November 20, 1937, Rumbaoa et al., acting in accordance with the above agreement, redeemed the whole parcel from Becha Lumber Co. for P2,090, and Becha Lumber Co. on November 29 in turn executed a quitclaim deed in favor of Rumbaoa and his fellow purchasers.

On November 8, 1941, the present action was brought "to allow plaintiff to exercise his right to repurchase from

the defendants the above described property and to recover damages." It was alleged that on or before that date and before the expiration of the period within which the plaintiff was entitled "to exercise his right of repurchase as provided for in the deed of sale with right of repurchase" mentioned in paragraph III of the complaint, the said plaintiff was ready to pay unto the said defendants the sum of P6,000 and the sum of P2,090 which the defendants had paid Becha Lumber Co., or a total of P8,090; but that each and every one of the defendants refused to accept plaintiff's tender of payment, denying the plaintiff's right of repurchase. The complaint further alleged that the plaintiff deposited with the clerk of court P2,090 and that "the balance of the plaintiff's account with the defendant would be paid at anytime upon order of the court or any time desired by the said defendants."

On July 28, 1944, upon the conclusion of the trial, which commenced on June 21, 1944, the plaintiff's counsel verbally informed the court that his client was "now depositing in toto the balance of the amount of repurchase as stated in the contract Exhibit A of the plaintiff and Exhibit 1 of the defendants." The amount was P6,060 in Japanese war notes. The court made no comment on the proposed additional deposit.

The judgment of the trial court ordered the defendants to deliver to the plaintiff the land in litigation and execute the necessary deed of resale in his favor, after which they could receive from the clerk of court the sum of P8,090 deposited by the plaintiff (P2,090 in Commonwealth money and P6,060 in Japanese Military Notes), without special finding as to costs. The modificatory judgment of the Court of Appeals was that "the sum of P6,060 deposited in court by appellee on July 28, 1944, shall be applied to the payment of the amount collectible by the appellants, subject to such action as may subsequently be taken by proper legislative enactment; that the sum of P2,090 paid by appellants to Becha Lumber Co., Inc., shall bear interest at the rate of 6 per cent per annum from November 22, 1937; that the appellee shall, also, refund to appellants the sums of P60 and P306.34 disbursed by the latter; and that, within 30 days from the date on which this decision shall have become final, the appellee shall deposit in court or pay to the appellants the difference between the amount payable to the latter and the aggregate sum of P8,150 already deposited by the herein appellee," also without special finding as to costs.

In their brief filed with this Court, the petitioners-appellants make the following assignments of error:

"1. Al sostener, apesar de los hechos relatados en la exposicion de hechos, los cuales se desprenden de la decision y de los autos del expediente de esta causa, que el 'plazo legal' fijado en el Exhibit A, que es al mismo tiempo Exhibit 1, dentro del cual Arzaga podia redimir, era de 4 años contados desde la fecha de dicho Exhibit A, 9 de Nov. de 1937, y no 12 meses contados desde la fecha de la subasta, 20 de Octubre de 1937.

"2. Al concluir que hubo of recimiento de rescate, apesar de los hechos relatados en la exposicion de hechos, los cuales se desprenden de su decision y de los autos del expediente de esta causa.

"3. Al sentenciar en 16 de Abril de 1947, tiempo de la Republica que los recurrentes deben de dar de rescatar los 13 atares y recibir a cuenta del rescate los P6, 060 en dinero japones, que el recurrido deposito a motu proprio varios años despues de haber expirado, segun su propio computo, su plazo para rescatar."

The question raised in the first assignment of error hinges on the scope of the phrase "plazo legal", in Exhibit A and 1, within which Arzaga could repurchase the land from Rumbaoa and his associates. These contend that the above term means the period of 12 months prescribed in section 465 of the Code of Civil Procedure for the redemption of property sold to satisfy judgment in ordinary civil cases, and that such one-year period in this case ended on October 20, 1938, the sale in favor of Becha Lumber Co. having taken place on October 20 of the previous year. Accordingly, they conclude, Arzaga's alleged attempt to repurchase on November 9, 1942, was out of time. The plaintiff contends on the other hand that by "plazo legal" was meant the period to repurchase in pacto retro sales provided in the Civil Code, which is, in the absence of an express agreement, four years.

The issue involves mainly the intention of the parties. The Court of First Instance and the Court of Appeals

sustained the latter theory and based their conclusions on the conduct of the parties, on statements in the various documents offered in evidence, and other circumstances of the transactions. These conclusions being of fact, we are not at liberty to interfere with them. The Court of Appeals properly probed into the nature of Becha Lumber Company's action as a way of arriving at said conclusions.

The second assignment of error is, even more than the first, a question of fact, resting solely on the relative credibility of the witnesses. Both courts found from the testimony of the witnesses that there was such an offer to repurchase as tags plaintiff claims, at the time mentioned by him and his attorney, namely, October or early November, 1941. This finding is also conclusive regardless of our own appraisal of the evidence.

But the third assignment of error has merits as to the deposit of Japanese Military notes. Assuming that Arzaga, as the two courts found, had four years within which to repurchase the property from the defendants, that period expired in November, 1941. Consequent with his allegations that he offered to make the repurchase in October or early part of November, 1941, and that he had cash in the necessary amount ready, the plaintiff should have deposited the full amount in court, not one-fourth or less; not that deposit or consignment was legally essential to preserve his reserved right of redemption or repurchase, but because the full amount was ready due and payable to his creditors. Under the circumstances, he should be regarded as having done that which he said he wanted to do, or should have done, to fulfill his obligation and to terminate the rights of the defendants over the property.

The fact that it was enough for him to make a tender of payment to keep alive his option to repurchase did not carry with it the right to pay with a different currency three years later, a currency not even imagined in the agreement. Stated otherwise, the plaintiff occupied the position of depository of the Balance of the repurchase price, which, in the normal course of events, to should have deposited with the court, did the initial P2,090, to await the final outcome of the case. If instead of depositing the balance he kept it, he should be considered as its receiver for the benefit of the defendants, placing upon himself the risk for its loss. From this point of view, the amount ceased to be a debt and became a deposit from the time it was tendered and the period of repurchase lapsed. Being a depository, he would be relieved from responsibility for the loss of the money only if the loss occurred through fortuitous event and no fault was imputable to him. Here, there is not so much as a claim that the money was lost. Of course the defendant should shoulder any loss occasioned by the depreciation of the thing or money on deposit, but in the case at bar, depreciation is not involved. What the plaintiff did or wants to do is completely to substitute the genuine money he promised to hold awaiting the court's order or defendants' acceptance of it, with different and depreciated military notes.

It is important to remember that the P6,060 Japanese war notes were deposited in court by the plaintiff of his own accord before judgment was rendered and without any express court sanction. For this reason, it did not acquire any juridical standing and remained under his control and discretion to withdraw. As far as the defendants were concerned, the notes might just as well have remained in plaintiff's possession or been deposited in a bank. If he had done that, there could not be any pretense that the defendants were bound to receive Japanese notes; as there is no pretense that the defendants are bound, now, to accept such notes in payment of the difference between P8,150 and the amount found by the Court of Appeals to be due.

There is another reason why the deposit in July, 1944, could not carry any local effect unless it was made in the same legal tender prevailing in November, 1941. Deposit of the balance in that legal tender would have been in pursuance of the plaintiff's manifestation in his complaint—that he was holding the said balance to "be paid at any time upon order of the court or at any time desired by the said defendants"—and would be considered as part of the initial deposit and relate back to the date the action was commenced. But the deposit in a new currency, never contemplated by the parties, operated as a new deposit detached from and unrelated to the attempted payment before the expiration of the plaintiff's right of repurchase. Thus viewed, the second deposit was out of time. This

is all the more so because, as has been seen, the deposit was a departure from the plaintiff's above-quoted pledge in his complaint. As has been pointed out, there was no court order requiring a deposit to be made.

Even if there had been such order, the effect of it would have been held in abeyance pending final judgment by the court of last resort. That is the case with regard to the effect of the trial court's decision, recognizing the second deposit as valid part payment.

The premise here laid down, that the plaintiff is a depositary of the balance of the amount in Philippine legitimate money he offered to pay in November, 1941, may be a fiction. If it is, the assumption is necessary and justified for purposes of justice. Points may be strained and equitable maxims summoned, if necessary, to prevent injustice. Equity in this case is decidedly on the side of the defendants. There are factors that compel the application, if need be, more of the precepts of justice and fair dealing and less of positive law. In the first place, the land, including the 6 atares sold to the defendants, was mortgaged to Becha Lumber Co. by the plaintiff apparently without the defendants' knowledge or consent. In the second place, the plaintiff had only 30 days' option, gratuitously granted him by Becha Lumber Co., to repurchase the property from the buyer at the execution sale, and Arzaga, it would seem, was not in a position to make the repurchase within what remained of that period after the execution of Exhibit A and Exhibit 1, the second agreement between the parties. Had not the defendants come to his rescue, Becha Lumber Co. would have become the absolute owner of the property in a few days and the plaintiff would have had to account for his unauthorized alienation of the defendants' portion of the land. It was as much to protect his interest as to protect their own that the defendants were forced to repurchase the land from Becha Lumber Co. Paragraph 4 of Exhibits A and 1 distinctly says this:

"Que, los aqui otorgantes de la segunda parte de este contrato, deseando salvar la fama, honra y reputacion del Sr. D. Ignacio Arzaga, de la primera parte, asi como nuestros respectivos derechos e intereses, nosotros los de la segunda parte, sobre el referido terreno embargado y vendido en publica subasta, por la presente nos comprometemos a arbitrar la cantidad o cantidades de dinero necesarias para cubrir el precio de recomprar de la Comañia ejecutante y compradora, etc."

This decision should not be confused with cases in which when deposit or consignment was effected in Japanese money the obligation of the payee or creditor to receive payment had not yet lapsed or been extinguished. As to such cases we express no opinion.

The appellants call attention to the fact that the plaintiff, upon his own showing deposited less than what he had to pay as the price of repurchase. This is true, and if the plaintiff's failure to deposit the entire amount were deliberate and in bad faith, the appellant's point would be well taken. But there is no evidence or finding that such was the case. The shortage, the amount which the plaintiff failed to offer to the defendants or deposit, covers unliquidated interest, expenses and taxes.

The judgment of the Court of Appeals is modified so that the appellants shall reconvey to the appellee the land described in the pleadings, on payment by the latter, within 30 days from the date of final entry of this judgment, (a) P6,060 in Republic currency in lieu of the Japanese war notes deposited by him on July 28, 1944 this, in addition to the sum of P2,090 in genuine currency deposited upon the filing of the complaint; (b) interest on the latter amount at the rate of 6 per cent per annum from the date of redemption from Becha Lumber Co. to idle date of the filing of the present action; and (c) the sums of P60 and P306.34 disbursed by the defendants for plaintiff's expenses and for taxes. Failure by the plaintiff to pay any of these amounts within the period herein stated will work as a forfeiture of his right to repurchase the herein-mentioned land. Costs will be charged against the plaintiff-appellee.

Moran, C.J., Ozaeta, Paras, Feria, Bengzon, Padilla, Reyes, and Torres, JJ., concur.

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