

**PAULINA SOMBILLA AND DEMETRIO POSITOS,
PLAINTIFFS-APPELLANTS, VS. C.N. HODGES AND SILVINO MOGAR,
DEFENDANTS-APPELLEES.**

G.R. No. L-4660. May 30, 1952

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is an appeal from an order of dismissal issued by the Court of First Instance of Negros Occidental in Civil Case No. 8092.

It is an old case, the order of dismissal being dated July 9, 1941. The appeal was taken to the Court of Appeals where it was pending when the Pacific war case and destroyed the records. It was necessary to have a reconstitution of said records after which, the appeal took its regular course in said appellate court. However, after the briefs were submitted, both parties filed a joint motion requesting that the case be certified to the Supreme Court for the reason that the appeal involved purely a question of law, and acting upon said notion, the Court of Appeals certified the case to us. This statement is made to explain why only now this case pending appeal since 1941 is being considered.

The facts in the case as well as the reasons of the trial court in dismissing it are recited in the order itself which we are quoting in full:

The plaintiffs prayed in their amended complaint dated August 3, 1940, that the deeds of sale marked Exh. "A" and "B" be declared null and void ab initio;

That the sale executed by the defendant, Silvino Mogar be likewise held fraudulent, null and void;

That the two defendants herein be sentenced to pay to the plaintiff jointly and severally P19,670.00 with legal interest thereon from the time they took possession of Lots Nos. 2114 and 2837 of the Cadastral Survey of Bago, Occ. Negros; and

That both defendants be likewise sentenced to pay jointly and severally the cost of this proceeding.

It is likewise prayed in said amended complaint that the defendant Silvino Mogar be ordered to return to the herein plaintiffs the possession and control of Lot No. 772 of the Cadastral Survey of Bago, plus the sum of P1,000.00 by way of damages with legal interest thereon, from the time of the filing of the complaint in this case.

The relevant facts of this case are, briefly stated, as follows:

The spouses Maximo Positos and Paulina Sombilla were the owners of the two lots above mentioned, lots 2114 and 2837, of the Cadastral Survey of Bago, covered by Certificate of title Nos. 6173 and 6105, respectively, which were sold to Vicente Tanpinco with pacto de retro. When the time for the repurchase of said lots was near at hand and the owners thereof were reluctant to lose the same, they executed a power of attorney in favor of their son Demetrio Positos so that the latter could secure a loan in their name, giving as security the above

mentioned two lots. Their attorney-in-fact, Demetrio Positos went to the City of Iloilo and with the assistance of the real estate Broker, Adolfo Abaya, applied for a loan of P2,500.00 from the herein defendant C. N. Hodges, offering as security the above mentioned two lots. The said defendant granted the application on condition that the owners of the land should first sell to him the above mentioned two lots, and thereafter he in turn would resell to them the same lots together with a small parcel of land belonging to said defendant, containing an area of 180 square meters, known as Lot No. 960-C-17 of the Cadastral Survey of Iloilo. Demetrio Positos conferred with his principals regarding the proposed terms of the loan, and the latter, being badly in need of money with which to carry out the repurchase of the above mentioned two lots, accepted said terms and conditions, and accordingly on February 12, 1930, Exhs. "A" and "B" were executed.

Exhibit "A" was a deed of sale executed by Demetrio Positos as attorney-in-fact of his parents of Lots 2114 and 2837 in favor of the defendant, C. N. Hodges for the sum of P2,500.00, and Exhibit "B" was a deed of sale of the same two lots executed by C. N. Hodges in favor of Demetrio Positos together with the small lot above referred to for the sum of P3,500.00. The purchase price agreed upon in exhibit "A", to wit, the sum of P2,500.00, was not however paid in full to Demetrio Positos, for there were deducted therefrom the sum of P420.00, as advance interest for one year on the sum of P3,500.00, and P280.00 for the payment of land taxes in arrears and due on the two first above mentioned lots. On February 9, 1931, C. N. Hodges received as interest on the loan above referred to the sum of P184.44, and on March 31, of the same year, he received again as interest the sum of P220.00, and on August 10, 1932, again he received from Demetrio Positos the sum of P300.00 on account of interest due on the loan. These facts led to the filing of charges by the Provincial Fiscal of Iloilo against C. N. Hodges for usury, and said defendant having been convicted, appealed the case to the Hon. Supreme Court where again he was held guilty, with the finding that both documents exhibits "A" and "B" were illegal because of the fact that they contained transaction prohibited by law and a wellnigh usurious.

The defendant C. N. Hodges, taking advantage of the new Rules of Court, filed a motion thru his attorney Mr. Felipe Ismael to dismiss on the ground that usurious transactions have been declared not to be illegal, except in so far as the usurious interest is concerned, and hence, the plaintiff had the obligation of paying back to the defendant C. N. Hodges the capital of the loan, and no offer to that effect having been made in the complaint filed herein, the same should be dismissed.

Considering the notion to be well taken, but believing that the defendant C. N. Hodges was under the legal obligation of reimbursing the plaintiffs the amounts they have paid in excess of the legal interest, without dismissing the case, required the parties to present evidence as to the amount of usurious interest paid to and received by the defendant C. N. Hodges from the plaintiffs herein.

On the date set of the hearing, to wit, June 27, 1941, the attorney for the defendant C. N. Hodges, submitting a copy of the decision on reconsideration of the Hon. Supreme Court in R. G. No. 44612 in the same case above referred to in which said defendant was found guilty of usury, insisted on his motion to dismiss, on the ground that the decision of the Hon. Supreme Court finding the said defendant guilty of usury and on which the action in this case has been predicated, having been laid aside and new one entered, a copy of which is marked annex "A" to the motion to dismiss in which the said defendant was acquitted altogether from the offense of usury, the complaint filed in this case has become entirely groundless. The trial was to be held for the sole purpose, according to the order of this Court, of finding how much had been paid by the plaintiff to the defendant in excess of the interest allowed by law, on the supposition that recovery was still possible; but inasmuch as the right to recover such usurious interest can only be exercised within four years from the time of the last payment, and the last payment of the usurious interest in this case having been made by the plaintiff on August 10, 1932, it goes without saying that the action of said plaintiff to recover said usurious interest has long prescribed.

IN VIEW OF THE FOREGOING, the Court finding the motion to dismiss based on the last mentioned decision of the Hon. Supreme Court in G. R. No. 44612, entitled "THE PEOPLE OF THE PHILIPPINES, vs. C. N. HODGES", for usury, to be well taken, hereby orders the dismissal of the above entitled case without

making any finding as to costs.

SO ORDERED.

Bacolod, Occ. Negros, July 9, 1941.

(SGD.) SOTERO RODAS

Judge

From a reading of the above quotation, the case would seem to be a little complicated. For the purpose of simplifying and reducing it to its essentials, we make the following observations based on the record of the case. It would seem that in the first decision of the Supreme Court finding defendant C. N. Hodges guilty of usury, this Tribunal had occasion to declare Exhibits "A" and "B" fictitious. Apparently, on the basis of said decision the complaint was filed in this case seeking the annulment of said document. In his motion for dismissal, counsel for Hodges presented the second decision of the Supreme Court declaring that the criminal action against Hodges had prescribed and acquitting him. Mr. Justice Imperial who penned the decision of acquittal says that "the proven facts are not altered" and reviewed and re-narrated them in the decision. It would appear that the facts stated in the order of dismissal are based on and copied almost verbatim from this narration of facts by the Supreme Court, we note one difference, however. While in the order of dismissal, the trial court says that Demetrio Positos conferred with his principals (his parents) regarding the proposition of Hodges and because said parents were badly in need of money with which to carry out the repurchase of the two lots, accepted said terms and conditions and so executed Exhibits "A" and "B", the Supreme Court decision says that the power of attorney, Exhibit "C", executed by the Positos spouses did not include the transaction proposed by Hodges, and that Demetrio was not otherwise authorized to agree to it.

If the transactions involved herein and covered by Exhibits "A" and "B" including the alleged sale in favor of defendant Silvino Mogar merely involved loans affected with usury, and that plaintiffs were only seeking the recovery of the usurious interests they had paid to defendant Hodges, the order of dismissal might be justified because the action, criminal or civil, to recover said usurious interests has prescribed. However, said transactions involved conveyances of land which the plaintiffs want to avoid. There are indications and there is reason to believe that as the Supreme Court found in the criminal case, these conveyances were either fictitious or were resorted to hide and cover usury. Moreover, a rough computation of the amounts received and paid by the plaintiffs from and to defendant Hodges will show that the two lots belonging to the plaintiffs originally assessed for taxation purposes at P6,370.00, were supposedly acquired by defendant Hodges for only about P1,800.00. Furthermore, the two lots belonging to the parents of Demetrio, supposedly sold thru him to Hodges under Exh. "A" were said to have been resold to Demetrio and not to the original owners and vendors (his parents) altho the latter were expected to pay the resale price in installments.

It may be true that before plaintiffs could hope to recover these two parcels of land on the basis of the transactions or deeds of sale either being fictitious or illegal, they should offer to return the price or amount they received for them, but the absence of that offer to pay in the complaint should not warrant or justify the outright dismissal of their action, because should the court eventually find that they are entitled to the return of said property, it could impose as a condition that they first return whatever amount defendant Hodges should receive before ordering him to give back the lots.

We realize that the findings of the Supreme Court in the criminal case as to deeds Exhs. "A" and "B" being fictitious or irregular, are not conclusive in this case, at least not against defendant Silvino Mogar who was not a party in the criminal case. That is why we merely said that there are indications or reasons to believe that the transactions herein in question were not regular and entirely above board. That is for the trial court to determine

from the evidence to be submitted at the hearing.

The acquittal of Hodges in the criminal case because of prescription of the crime merely releases him from criminal responsibility and punishment. It does not validate any unlawful, fictitious, illegal or irregular transactions or acts which he has entered into or committed which according to the plaintiffs were highly prejudicial to them and deprived them of their property.

Finding the order of dismissal appealed from to be not unjustified and not in accordance with law, the same is hereby set aside, with costs against defendants-appellees. This case is ordered remanded to the court of origin for further proceedings.

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

Padilla, Reyes and Jugo, JJ., did not take part.

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