

REYNALDO T. SANTOS, PLAINTIFF AND APPELLEE, VS. EMILIANO ACUÑA, ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. L-8881. October 31, 1956*

Ponente: REYES, J.B.L., J.

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On May 2, 1951, Reynaldo T. Santos instituted an action in the Court of First Instance of Rizal to foreclose the mortgage on two parcels of land with the building and improvements thereon, belonging to defendants Emiliano Acuna and Nieves B. Acuna. Based on an "Agreement" of the parties, the Court, on August 1, 1951, rendered judgment for the plaintiff, and a writ of execution was issued on December 20, 1951. Pursuant to the writ, the Provincial Sheriff sold the properties to plaintiff as the highest bidder, and on March 10, 1952, the certificate of sale was approved and confirmed by the Court. The sale was duly recorded in the office of the Register of Deeds of Rizal and T. C. T. No. 25996 covering the two lots and improvements thereon sold was issued to plaintiff Santos.

Because of the defendant's refusal to surrender possession of the properties in question to plaintiff, the latter, applied for a writ of possession, which the Court issued on May 15, 1952. On June 13, 1952, the special deputy sheriff of Rizal made a return of the writ with the statement that he had delivered possession of the properties in question to a representative of the plaintiff, and that he had given the defendants 15 days within which to vacate peacefully the premises. One day prior to the lapse of the 15 days period aforesaid, defendants filed in Court an urgent motion for extension of the time to vacate the premises, which the Court denied for the reason that its decision having become final and executory, it had no more jurisdiction over the same. On August 17, 1952, the Sheriff filed a motion manifesting that, the 15-day period given by him to defendants to vacate the premises as well as an additional period up to July 25, 1952, given by plaintiff, had already expired, and praying that he be given authority to get police or Constabulary protection to take possession of the properties in question. Plaintiff likewise moved to declare defendants in contempt of court for their failure to surrender the possession of the premises. The defendants prayed for ten days more within which to vacate, and with the conformity of plaintiff, the Court gave them the period they pray for.

The ten days given to defendants to vacate lapsed and still defendants did not leave the premises; wherefore, upon plaintiff's petition, the lower court authorized the deputy sheriff to solicit the aid of the local authorities to enforce its writ of possession. Plaintiff called the attention of the Court that the writ of possession had already expired, and so, on October 14, 1952, an alias writ of possession was issued. The enforcement of the alias writ was, however, held in abeyance because on October 29, 1952, the parties reached an agreement whereby the defendants were given by plaintiff the right to repurchase the properties in question for P45,000 payable as follows:

P1,000 on October 31, 1952

4,000 on November 15, 1952

5,000 on November 30, 1952

35,000 on January 31, 1953

subject to the express conditions that upon failure of defendants to pay any of the installments on the dates due, the agreement would immediately and automatically become null and void, and that any payments already made would be applied to the deficiency judgment and the excess, if any, to the use and occupation of the premises at P500 a month. Defendants paid the first installment of P1,000 but failed to pay the second of the date it fell due. For this reasons, plaintiff sought a second alias writ of execution.

On November 19, 1952, the Sheriff again advised defendants to vacate the premises on or before November 21, 1952, or he would eject them forcibly therefrom. On December 2, 1952, defendants manifested in Court that they were ready to pay or deposit in court any amounts already due on their agreement with plaintiff, provided that plaintiff would execute the corresponding deed of sale in their favor; and prayed that if plaintiff would refuse to execute the said deed, they be allowed to pay or deposit in court the entire balance of the purchase price on January 31, 1953. Plaintiff opposed the motion on the ground that his agreement with defendants had already become null and void, but the court, in its desire to give defendants another chance to buy the premises, gave them up to December 26, 1952, to deposit in court the amount of P9,000 corresponding to the second and third installment.

Again defendants failed to comply with the above order of the Court, so that on December 18, 1952, a third alias writ of possession was issued and on December 29, 1952, the defendants were notified anew by the sheriff that they would be ejected from the premises with the use of force, if necessary. Defendants again came to court and prayed for a "last extension to peacefully vacate the premises and deliver possession thereof to plaintiff up to January 31, 1953", which motion the Court denied. Then on January 12, 1953, the Court ordered the sheriff to execute the third alias writ of execution, warning that "this Court would brook no delays in the enforcement of its lawful orders and processes. The defendants again moved for further extension of time to vacate, and upon agreement of plaintiff, were given a final extension up to January 31, 1953. As defendants likewise failed to comply with this last extension, the lower Court, on June 2, 1953, issued a fourth alias writ of possession.

On June 9, 1953, the parties submitted to the Court an agreement and petition superseding all previous agreements between them, whereby it was agreed that defendants could purchase the properties in question for the price of P40,000 on or before December 31, 1953; subject to the conditions that defendants would pay the amount of P500 a month for the use and occupation of the premises; that all amounts that had already been previously paid to plaintiff were forfeited; and that the agreement was not a waiver of plaintiff's rights under his judgment, and "shall not be treated and considered as a contract of lease and shall be without prejudice to the right of the plaintiff to enforce the writ of possession issued in this case "upon default of defendants to pay any of the monthly rentals or the purchase price as agreed. The agreement was approved by the court and the enforcement of the fourth alias writ of possession held in abeyance.

Defendants again failed to comply with their obligations under agreement with plaintiff of June 9, 1953. Consequently, the Court issued a fifth alias writ of possession, authorizing the provincial sheriff to get the assistance of Constabulary soldiers in enforcing the same. To resist the execution, defendants moved to quash the alias writ on the ground that the agreement of the parties of June 9, 1953 satisfied or novated the judgment, and that therefore, the lower court had no more jurisdiction to further act in the case. On July 8, 1954, the Court below issued an order denying the motion to quash; hence this appeal by defendants.

Defendants-appellants submit two arguments in support of this appeal, namely:

(1) That the judgment of the Court below of August 1, 1951, had been satisfied on June 13, 1952 when the provincial sheriff made a return of the writ of execution with the statement that he had delivered possession of the properties in question to a representative of the plaintiff; and

(2) That the lower Court's decision of August 1, 1951 had been novated by the agreement of the parties of October 29, 1952 and June 9, 1953 which changed their relation of judgment creditor and debtor, to lessor-vendor and lessee-vendee.

The claim that the judgment of the Court below of August 1, 1951 had been fully satisfied by the return of the sheriff of June 13, 1951 because he stated therein that he had delivered possession of the properties in question to representative of the plaintiff, is more apparent than real. In the same return of June 13, 1952, the sheriff also stated that he "gave defendants fifteen (15) days period from June 13, 1952 within which to vacate peacefully the said premises," (Rec. App., p. 23), showing that he had not, at the time he return the writ on June 13, 1951, delivered actual possession of the premises to plaintiff. As for the argument that legal possession on the part of plaintiff is not incompatible with defendants' failure to vacate the premises, it can not be seriously denied that the provincial sheriff had never placed plaintiff in actual or real possession or control of said properties, for the appellants had, up to the signing of the agreement of July 9, 1953, always resisted all attempts on the sheriff's part to enforce the writ of possession, either by outright refusals to leave the premises, or by motions filed in court for the extensions of the time to vacate.

There is likewise no merit in the argument that both the lower Court, in its order of July 2, 1952, and plaintiff in his pleading of May 4, 1952, admitted that the Court below had no longer jurisdiction over the case. What the lower Court and plaintiff meant in the order and pleading cited was that the Court no longer had jurisdiction to amend or modify its judgment, since it had already become final and executory, and so it could not give any extensions of time to appellants to deliver possession of the premises to plaintiff without the latter's conformity or consent. Jurisdiction of the court over its judgment, to amend, modify, or alter the same, should be distinguished from jurisdiction to enforce said judgment. "The former terminated when the judgment becomes final; the latter continues even after the judgment has become final for the purpose of execution and enforcement of the judgment." (Miranda vs. Tiangco, 96 Phil., 526).

With respect to appellants' theory that the lower Court's decision of August 1, 1951 was allegedly novated by the subsequent agreements of the parties of October 29, 1952 and June 9, 1953, we note that the voluminous record of the protracted proceedings in the lower Court (due to appellants' varied and repeated attempts to secure deferment of the execution of the judgment against them) clearly shows that the plaintiff had always insisted in the execution of the decision. If he agreed twice to give appellants the chance to repurchase the properties in question and accept reasonable compensation for their use by appellants pending the repurchase, it was always subject to the right to have the judgment enforced in case the appellants failed to comply with their end of the bargain. In fact, the last agreement of June 9, 1953, with which appellants again did not comply, expressly stipulated that:

"it should not be treated and considered as a contract of lease and shall be without prejudice to the right of plaintiff to enforce the writ of possession issued in these case * * * and it is likewise expressly agreed that this agreement shall not be tantamount to a waiver of the plaintiff's right under the judgment in this case." (R. A., p. 57)

Appellants understood and expressly agreed to be bound by this condition, when they stipulated that "they will voluntarily deliver and surrender possession of the premises to the plaintiff in such event" (Rec. on appeal, p. 57, supra). Hence, it is plain that in no case were the subsequent arrangements entered into with any unqualified intention to discard or replace the judgment in favor of the plaintiff-appellee; and without such intent or animus novandi, no substitution of obligations could possibly take place.

Appellants themselves know that, notwithstanding the opportunities granted them to purchase the property, the judgment remained in force until their obligations had been fully performed. This is shown by their reiterate petitions for additional time to vacate, and promises of faithful performance upon which the appellee and the Court relied, but which apparently the appellants never intended to perform.

The case falls squarely within the doctrine laid down by this Court in *Zapanta vs. De Ratache*, 21 Phil. 154, 159:

"A final judgment is one of the most solemn obligations incurred by parties known to the law. The Civil Code, in article 1156, provides the method by which all civil obligations may be extinguished. One of the methods recognized by said code for the extinguishment of obligations is that by novation. (Civil Code, Articles 1156, 1203 to 1213.) In order, however, that an obligation shall be extinguished by another obligation (by novation) which substitutes it, the law requires that the novation or extinguishment shall be expressly declared or that the old and new obligations shall be absolutely incompatible. (Civil Code, Article 1204.) In the present case, the contract referred to does not expressly extinguish the obligations existing in said judgment. Upon the contrary it expressly recognizes the obligations existing between the parties in said judgment and expressly provides a method by which the same shall be extinguished, which method is, as it expressly indicated in said contract, by monthly payments. The contract, instead of containing provisions "absolutely incompatible" with the obligations of the judgment, expressly ratifies such obligations and contains provisions for satisfying them. The said agreement simply gave the plaintiff a method and more time for the satisfaction of said judgment. It did not extinguish the obligations contained in the judgment, until the terms of said contract had been fully complied with. Had the plaintiff continued to comply with the conditions of said contract, he might have successfully invoked its provisions against the issuance of an execution upon the said judgment. The contract and the punctual compliance with its terms only delayed the right of the defendant to an execution upon the judgment. The judgment was not satisfied and the obligations existing thereunder still subsisted until the terms of the agreement had been fully complied with. The plaintiff was bound to perform the conditions mentioned in said contract punctually and fully, in default of which the defendant was remitted to the original rights under his judgments."

Appellant claim that the agreement of July 9, 1953, in so far as it stipulates that it should not be considered as a contract of lease is void as against the law. We see no merit in this contention. Lease is essentially a consensual contract, and its existence depends upon agreement of the parties. And there is no law prohibiting stipulations that contracts, although similar to leases, should not be regarded as such between the parties. The standard contracts delineated in the law may be varied by the parties as will in the absence of legal prohibition, or conflict with morals, good customs, public order or public policy. That is precisely why the new Civil Code expressly recognizes (Article 1307) the so called innominate contracts that do not strictly conform to the standard contracts, and the existence of which had been acknowledged also under the preceding Code (*Alcantara vs. Alinea*, 8 Phil. 111).

At any rate the plaintiff appellee having the right to enforce the judgment in his favor within five years, upon proper motion, he had the legal right to defer its execution only upon compliance of the conditions that he and appellant agreed upon. Having voluntarily refused to fulfil these condition, appellants can not complain against the judgment being executed.

Neither *Fun Can Lu vs. Yap Fauco*, 74, Phil. 287, nor *Dimayuga vs. Raymundo*, 76 Phil 143, control the case at bar, since in those cases there was no express reservation of the right to enforce judgment in case of non-compliance of the subsequent agreement.

Wherefore, the order appealed from is affirmed, with costs against appellants Acuna. So ordered.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Felix, JJ., concur.

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