

ARSENIO GERARDINO, SR., VIRGINIA GERARDINO SY, ANGELINA GERARDINO GUMBA, AND CORAZON GERARDINO LEGAYADA, PETITIONERS, VS. THE HONORABLE JUDGE, COURT OF FIRST INSTANCE (BR. III),...

G.R. No. L-32670. December 29, 1977

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition for certiorari to review the decision of the Court of First Instance of Capiz in Civil Case No. M-79 entitled "Jovito Gloria versus Arsenio Gerardino Sr., et al.", the dispositive part of which reads:

"WHEREFORE, judgment is rendered in favor of the plaintiff and against the defendants, ordering, as it hereby, orders the consolidation of the title and/or ownership over the property in question in favor of the former, without pronouncement as to costs.

SO ORDERED.

Mambusao, Capiz, December 26, 1969.

(SGD) SILVESTRE Br. BELLO

J u d g e"[1]

On July 12, 1966, Jovito Gloria, private respondent herein, instituted against Rosario Artuz Civil Case No. M-79 in the Court of First Instance of Capiz for consolidation of ownership of a parcel of land.

The complaint stated that on October 10, 1964 Rosario Artuz executed in favor of Jovito Gloria a deed of sale with right to repurchase within a period of one (1) year of a parcel of residential land located in Poblacion, Tapaz, Capiz, containing an area of 750 square meters and embraced in Tax Declaration No. 3516 for a consideration of P2,025.00; that the defendant allegedly failed to exercise her right to repurchase within the stipulated period; that the plaintiff had been in possession of the property immediately after the execution of the document; and that said plaintiff had been paying the taxes thereon.[2]

In her answer the defendant Rosario Artuz admitted the existence of the deed of sale with right to repurchase but denied the legality and genuineness thereof and alleged as affirmative defenses that the document in question was an equitable mortgage, the real intention of the parties being merely to secure the payment of a loan in the amount of P2,025.00; that the defendant, who was then deaf, totally blind and senile, did not understand English and was made to affix her thumbmark on the alleged deed of sale with right to repurchase upon representation of the plaintiff that the same was a mere equitable mortgage; that the defendant had remained in possession of the property in question and had been paying the taxes thereon; that a tender of payment was made by defendant to the plaintiff on or before October 10, 1965 to repurchase the property but plaintiff refused to accept the amount of P2,025.00 because he was asking for a much bigger amount of P6,000.00; that by reason of such refusal, the

defendant consigned the amount of P2,025.00 with the court; and that the actual amount of the loan received by the defendant from the plaintiff was only P1,525.00 inasmuch as the amount of P500.00 was retained by plaintiff as interest on the transaction.[3]

The original defendant Rosario Artuz died. Hence the complaint was amended to substitute the deceased de-fendant with her surviving heirs, namely, Arsenio Gerardino, Sr., Virginia Gerardino Sy, Angelina Gerardino Gumba, and Corazon Gerardino Legayada.

In an order rendered on February 17, 1969, the lower court set the pre-trial of the case on March 15, 1969.

On motion of counsel for the defendants, the pretrial was reset to March 28, 1969.

Inasmuch as the counsel for the defendants failed to appear on March 28, 1969, the lower court reset the pre-trial of the case, for the last time, on April 29, 1969.

In an order issued by the lower court on April 29, 1969, the defendants were given 15 days within which to file a memorandum sustaining their view that they can still repurchase the property.

On June 17, 1969, the counsel of the plaintiff filed a motion for judgment on the pleadings and/or upon confession, which was set for hearing on June 30, 1969. The lower court denied said motion and ordered the pre-trial of the case to be held on September 19, 1969.

The parties manifested on September 19, 1969 that there was a strong possibility of an amicable settlement. They waived the pre-trial in order to save time and asked the court to set the date of the trial on the merits. The lower court set the case for trial on October 17, 1969.

On October 17, 1969 a telegraphic motion for postponement sent by the counsel of the defendants was denied and the plaintiff was allowed to present evidence in the absence of the defendants and their counsel.

The defendants, petitioners herein, filed on November 14, 1969 a motion for relief from the order allowing the plaintiff, private respondent herein, to present evidence. The motion was denied on December 18, 1969 on the ground that " x x x the failure of defendants and their counsel to appear on the date set for hearing, on October 17, 1969, was not due to accident, mistake or excusable negligence, but due to the unexcusable negligence of the counsel for the defendants, the consequence of which, must be suffered by his clients." [4]

In its decision dated December 26, 1969, the lower court ordered the consolidation of the title and/or ownership over the property in question in the name of the plaintiff because:

"From the evidence of the plaintiff, it appears that he bought the property in question from the original defendant, namely, the deceased Rosario Artuz, on October 10, 1964, for a purchase price of P2,025.00, with said vendor-a-retro reserving the right to repurchase within a period of one (1) year from the date thereof, i. e., under a 'Deed of Sale with Right of Repurchase' (see Exh. 'A'), which the vendee-a-retro registered in the Office of the Register of Deeds of Capiz; that immediately upon the execution of the document of sale, the plaintiff, as vendee-a-retro, took actual and material pos-session of the property bought and constructed a nipa house thereon, which is presently occupied by his son, the picture of which nipa house, is Exhibit 'B'; that since the time said plaintiff took actual and physical possession of said property, nobody prevented him from doing so, much less has his possession of the same been disturbed by anybody up to the present time; that when plaintiff took possession of the property in question, there were three (3) coconut, two (2) orange and three (3) mango trees already standing thereon, the former are now fruit bearing which said plaintiff had enjoyed and/or perceived and as to the mango trees, it is only this year that they are bearing fruits as the plaintiff was smoking them; that the property bought is covered by Tax Declaration No. 3516, still in the name of the vendor-a-retro, the original defendant (Exh. 'C') which has not yet been declared in his name because at the time he bought

said property, the same was delinquent in real estate taxes since the year 1953, that when he paid the delinquent real estate taxes on June 20, 1966 (Exh. 'D'), he was not able to pay all the delinquent taxes and besides, the land was then involved in the instant case, which was filed by said plaintiff on July 2, 1966, and that said property in question was not redeemed and/or repurchased by anybody on or before the expiration of the date of re-purchase on October 10, 1965.

For what has been said, above, there can be no more dispute that the plaintiff bought the property in litigation from the deceased original defendant, Rosario Artuz, for the sum of P2,025.00, on October 10, 1964, with right of repurchase within a period of one (1) year. The period of one (1) year within which to repurchase having expired without the vendor-a-retro having exercised her right to repurchase the property sold, it follows as a consequence thereof, that the plaintiff, is entitled to consolidation of his ownership. Indeed, the fact that the original defendant, Rosario Artuz, as vendor-a-retro deposited the repurchase price of P2,025.00, with the court on August 30, 1966, under Official Receipt No. 595356, issued by the Clerk of Court Leopoldo B. Dorado, with which counsel for the substituted defendants wanted to be transferred with the Philippine National Bank, Roxas City Branch, in his urgent motion filed on October 8, 1968 (see pp. 53-55, record), is not only the best reflection and healthiest index that she knew that what she had executed in favor of the plaintiff was a sale with right of repurchase (Exh. 'A'), the same deposit having been made by her on August 30, 1966, before she died on February 11, 1968, and after the expiration of the period of repurchase but also an abandonment and/or waiver of what she had alleged in the answer that the real intention of the parties, i. e., the vendee-a-retro and vendor-a-retro, in the Deed of Sale with Right of Repurchase (Exh. 'A') was only an 'Equitable Mortgage.'[5]

On March 2, 1970, the defendants, petitioners herein, filed a motion for new trial based on the grounds provided in Section 1 (a) and (c), Rule 37, Revised Rules of Court. The motion was denied in an order of March 30, 1970.[6]

The defendants appealed to this Court assigning the following errors:

"I

THE LOWER COURT ERRED IN HOLDING AND DECLARING THAT THE CONTRACT IN QUESTION IS A TRUE SALE WITH RIGHT OF REPURCHASE AND NOT AN EQUITABLE MORTGAGE.

II

THE LOWER COURT ERRED IN NOT PRONOUNCING CATEGORICALLY (GRANTING ARGUENDO, THAT THE CONTRACT IS A SALE WITH RIGHT OF REPURCHASE) WHETHER OR NOT ARTICLE 1606, THE LAST PARAGRAPH THEREOF, OF THE NEW CIVIL CODE OF THE PHILIPPINES IS APPLICABLE OR AVAILABLE TO DEFENDANTS.

III

THE LOWER COURT ERRED IN HOLDING AND DECLARING THAT DEFENDANTS WERE IN DEFAULT AND DENYING THEM THE REMEDY PRAYED FOR IN THEIR MOTION FOR RELIEF FROM SAID ORDER OF DEFAULT.

IV

THE LOWER COURT ERRED IN HOLDING AND DECLARING THAT DEFENDANTS' MOTION FOR NEW TRIAL WITHOUT MERIT AND DENYING THEM THE REMEDY PRAYED FOR THEREIN."[7]

This appeal is meritorious.

While the record discloses that the defendants and their counsel have been lackadaisical in attending to the case, substantial justice demands that petitioners be given their day in court. It appears from the answer that the vendor-a-retro, Rosario Artuz, who died on February 11, 1968, was deaf and blind and was senile when she was made to thumbmark the alleged deed of sale with right to repurchase. The document is written in English which was not understood by Rosario Artuz. The answer alleged that the intention of the parties was only to execute a deed of equitable mortgage to secure the loan of P2,025.00; and that Rosario Artuz actually received only the amount of P1,525.00 because the private respondent retained the amount of P500.00 as interest. It is clear that the defendants have a meritorious defense. Their motion for new trial should have been granted.

The nature of the document in question was squarely placed in issue. The defendants contend that the document was only an equitable mortgage. The third paragraph of Article 1606 of the Civil Code of the Philippines provides that "the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase." Hence even if after a new trial it is found that the document in question is a true sale with right of repurchase, the defendants may still exercise the right to repurchase the land in question within thirty days from the time final judgment is rendered.[8]

In view of the foregoing, it is no longer necessary to remand this case to the lower court for a new trial.

The lower court erred in not allowing the defendants, as successors-in-interest of Rosario Artuz, to repurchase the land within thirty days from the date the decision had become final. Since the petitioners had duly consigned the re-purchase price, their consignment of the amount of P2,025.00 validly effected redemption.

WHEREFORE, the decision appealed from is hereby set aside and the private respondent's complaint for consolidation of ownership is dismissed. The petitioners are declared en-titled to the ownership and possession of the property in question and the private respondent is ordered to deliver to petitioners the said property or any part thereof in his possession. Without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, Martin, and Guerrero, JJ., concur.

[1] Rollo, p. 38.

[2] Brief for Petitioners, pp. 3-4, Rollo, p. 55.

[3] Ibid., pp. 4-5, Rollo, p. 55.

[4] Petition, p. 6, Rollo, p. 23.

[5] Decision, Rollo, pp. 36-38.

[6] Petition, Rollo, p. 24.

[7] Brief for Petitioners, pp. 1-2, Rollo, p. 55.

[8] Gonzales, et al. vs. De Leon, et al., G.R. No. L-17250, January 31, 1962, 4 SCRA 332.

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