

PILAR ARAULLO MACOY, ON HER BEHALF AND AS JUDICIAL ADMINISTRATRIX OF THE INTESTATE ESTATE OF THE LATE GREGORIA ARAULLO, ASSISTED BY HER HUSBAND, JOSE MACOY, PLAINTIFFS AND APPEL...

G.R. No. L-6461. May 31, 1954

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This action was instituted by Pilar Araullo Macoy—in her own behalf and as judicial administratrix of the intestate estate of the late Gregorio Araullo—for the purpose of compelling defendants Carmen Vasquez Trinidad, Zacarias Jamelo and Jose Jamelo, to interplead and litigate among themselves upon their conflicting claims on a given obligation which plaintiff is willing to satisfy, but which, owing to said conflicting claims, she does not know whom to pay. Plaintiff is assisted by her husband Jose Macoy, whereas defendant Carmen Vasquez Trinidad is assisted by her husband Pedro Trinidad. During the pendency of the case, Gertrudis A. Martir was authorized to file a complaint in intervention, in her capacity as administratrix of the intestate estate of her deceased husband, Hermogenes Martir. Said defendants—with the exception of Jose Jamelo—filed their respective answer to plaintiff's complaint, as well as to the complaint in intervention. In due course, the Court of First Instance of Negros Occidental, thereafter, rendered a decision the dispositive part of which reads as follows:

"POR LO EXPUESTO, el Juzgado falla esta causa ordenando a la demandante a pagar a la tercerista en su capacidad de administradora del Intestado del finado Hermogenes Martir, dentro del plazo de noventa (90) dias a contar desde la fecha en que sea notificada de esta decision, el saldo del importe del credito hipotecario a favor del finado Hermogenes Martir, con sus intereses de 12 por ciento anual desde el 27 de Octubre de 1937 hasta el 30 de Mayo de 1940, y 8 por ciento anual desde el 31 de Mayo de 1940 hasta su completo pago. Transcurrido dicho plaso, y en caso de incumplimiento de dicho pago, el Sheriff Provincial vendera en publica subasta los bienes objetos de la hipoteca, debiendo aplicarse el producto de la venta al pago del credito hipotecario tantas veces mencionado y al pago de los interes vencidos.

"Una vez satisfecho el saldo del importe del credito hipotecario, y tan pronto como quede firme y ejecutoria esta decision, la tercerista otorgara la correspondiente escritura de traspaso de los Lotes Nos. 1200-B y 1200-C, ambas del Catastro de Bacolod, con sus mejoras, y a favor del Intestado de la finado Gregoria Araullo y Pilar Araullo, respectivamente.

"Se ordena a los demandados Carmen Vasquez y Zacarias Jamelo para que paguen a la tercerista en su referida capacidad las cantidades que respectivamente recibieron erroneamente de la demandante, con sus intereses legales desde la fecha de la presentacion de la demanda en esta causa hasta su completo pago.

"Se sobreseen la contrademanda interpuesta por Zacarias Jamelo en su escrito de contestaci6n, asi como la reconvenccion de la demandada Carmen Vasquez, y la demanda de terceria en cuanto la misma se refiere a la demandante.

"Las costas seran tasadas en contra de los demandados en la demanda de interpleading." (Record on Appeal,

pp. 108-109.)

Defendant Carmen Vasquez y Trinidad has appealed from this decision and she now maintains:

I

"That the trial court erred in holding that the transaction between Hermogenes Martir on the one hand and Pilar Araullo and her deceased sister on the other, relating to Lots Nos. 1200-B and 1200-C of the Bacolod Cadastre, in so far as it affects the appellant, Carmen Vasquez, was one of mortgage.

II

"That the trial court erred in holding that the contract between Hermogenes Martir and Carmen Vasquez dated May 23, 1940, was a mortgage and not a sale with right of repurchase.

III

"That the trial court erred in not ordering Zacarias Jamelo to pay to Carmen Vasquez the sum of P825.00 which the former received from the plaintiff.

IV

"That the trial court erred in holding that, as between the intervenor and Carmen Vasquez, the former has the better right to receive payment of the alleged mortgage debt. Consequently it erred in ordering Carmen Vasquez to pay to the intervenor the amount the former has received from the plaintiff with legal interest from the date of the complaint.

V

"That the trial court erred in not rendering judgment in favor of the appellant Carmen Vasquez." (Appellant's brief, pp. A-C.)

This case was submitted to the lower court for decision upon the following stipulation of facts:

"Comes now the parties in the above-entitled case assisted by their respective counsel and to this Hon. Court respectfully submit the following stipulation of facts, to wit:

"1. That the facts herein below agreed and stipulated upon between the parties are in addition to such other facts as are admitted by the parties in their respective pleadings.

"2. That the properties in question are presently registered in the name of Hermogenes Martir, as single, and covered by Transfer Certificates of Title Nos. RT-(506-T-25701) and RT-958 (507-T- 25702) for Lots Nos. 1200-B and 1200-C, respectively. Henceforth, any reference to certificates of title means the certificates of title above mentioned unless otherwise specifically stated.

"3. That the aforementioned lots, more particularly described in the certificates of title covering them respectively, were originally and previously registered in the names of Gregoria Araullo and Pilar Araullo, the latter being the plaintiff herein in her own behalf and in her capacity as Administratrix of the intestate Estate of her sister Gregoria Araullo, who died on or about March 3, 1945, and whose estate is the subject of Administration proceedings, known as Special Proceedings No. 263 of this Hon. Court. That, for purposes of assessment, said properties are in the names of Gregoria Araullo and Pilar Araullo as evidenced by the tax declarations herewith attached as Exhibits 'A', and 'A-2'.

"4. That on October 27, 1937, Pilar Araullo Macoy and the late Gregoria Araullo sold the above-mentioned properties with all the improvements thereon to Hermogenes Martir, then single, for P6,000, by virtue of which

sale titles to the same were issued in his name, and which continue to be in his name as stated in paragraph 1 hereof. Copy of said document of sale is herewith attached as Exhibit 'B'.

"5. That on the same date, that is, on October 27, 1937, the vendee, Hermogenes Martir, executed a contract granting the vendors, Pilar Araullo Macoy and Gregoria Araullo, an option to repurchase the said properties within eight (8) years from said date, for the amount of P6,000 plus interests at the rate of 12 per cent per annum. This option to repurchase, a copy of which is herewith attached as Exhibit 'C', was duly registered on December 22, 1939, and appears on the back of the titles covering the properties in question and identified as Entry No. 79,0.

"6. That on November 11, 1937, the then registered owner, Hermogenes Martir, mortgaged the said properties to one Luis F. de Castro for P15,000 at 12 per cent interest,; subject to the other conditions in the deed of mortgage, the debt to be paid within one (1) year. This deed of mortgage was duly registered on November 11, 1937, and appears in the titles covering the properties in question as Entry No. 57822.

"7. That on June 6, 1939, the Provincial Sheriff of Negros Occidental executed a Certificate of Sale in favor of Luis F. de Castro, pursuant to Civil Case No. 3135 (Execution of Mortgage) entitled 'Luis F. de Castro vs. Hermogenes Martir.' This certificate was duly registered and appears in the titles covering the properties in question as Entry No. 406,

"8. That on May 23, 1940, before Pilar Araullo Macoy and her sister Gregoria Araullo could exercise their option to repurchase mentioned in paragraph 5 of this stipulation and before the period of redemption granted by law to the mortgagor, Hermogenes Martir, to repurchase the properties sold at public auction had expired, the said Hermogenes Martir executed a contract entitled 'Sale with right of repurchase' in favor of Carmen Vasquez affecting all his rights and interests in the said properties, the period of repurchase being for one (1) year from the date of the instrument and for the sum of P4,000. This instrument, copy of which is hereto attached as Exhibit 'D', was duly registered on May 24, 1940, and appears on the back of the titles covering the said properties as Entry No. 1128.

"9. That Hermogenes Martir, the mortgagor and judgment debtor, exercised his right of redemption granted by law on May 24, 1940, and on said date Luis F. de Castro, the judgment creditor, through his attorney in fact, Santiago Ochoa, executed a deed of redemption over the same properties in favor of Hermogenes Martir, which deed of redemption was duly registered on the back of the certificates of title covering the properties in question, and is known as Entry No. 1127, Exhibit 'E'

"10. That on May 31, 1940, before the option referred to in paragraph 5 above had expired, Pilar Araullo Macoy and Gregoria Araullo executed a mortgage of the lots in question and all the improvements thereon in favor of Hermogenes Martir, for the amount of P7,300 for six (6) years at an annual interest of 8 per cent, which instrument, copy of which is herewith attached as Exhibit 'F', was duly registered on June 23, 1948, and is identified as Entry No. 2087 appearing on the back of the titles covering the said properties.

"11. That on May 15, 1941, Hermogenes Martir sold all his rights and interest in the properties in question to Jose Jamelo for P2,500, with a right to repurchase the same within one (1) year from May 21, 1941, which deed Zacarias Jamelo admits to be one of mortgage. This document was duly registered on May 26, 1941 and appears as Entry No. 2537 on the back of the titles to the properties in question, and copy of which is herewith attached as Exhibit 'G'.

"12. That on May 19, 1941, Carmen Vasquez and Pedro Trinidad wrote a letter to Hermogenes Martir extending the period of the latter's right to repurchase the properties in question up to May 23, 1942. Copy of said letter is hereto attached as Exhibit 'H'.

"13. That on July 12, 1944, Jose J. Jamelo assigned to his father, Zacarias Jamelo, one-half interest over the agreement between the said Jose J. Jamelo and Hermogenes Martir, as shown by the corresponding deed, copy

of which is hereto attached as Exhibit T.

"14. That Hermogenes Martir is now dead and his estate is the subject of administration proceedings known as Special Proceeding No. 418 of this Hon. Court and of which his widow the herein intervenor, is the administratrix.

"15. That since 1937 and previous thereto up to the present time, the plaintiff and her sister till her death, and the plaintiff alone since then, had been in the actual, continuous and uninterrupted possession of the said properties.

"16. That Pilar Araullo Macoy, for herself and her sister, the deceased Gregoria Araullo, had delivered certain amounts to Zacarias Jamelo and Carmen Vasquez totalling as follows:

To Carmen Vasquez P1,260.00

To Zacarias Jamelo..... 825.00

"17. That the defendants in interpleader and the intervenor are claiming adverse interests over the properties in question, by virtue of which adverse claims the Plaintiff had been constrained to initiate the present action in interpleader for protection of her own interests and those of the intestate of her sister, Gregoria Araullo.

"18. That Pilar Araullo and Gregoria Araullo had never exercised their option to repurchase the properties in question, which option was given them in an instrument mentioned in paragraph 5 hereof, by virtue of the Exhibit 'F'.

"19. That neither Hermogenes Martir, Zacarias Jamelo, Jose Jamelo, nor any one in their behalf, had exercised the right of repurchase pertaining to Hermogenes Martir in the instrument mentioned in paragraph 8 hereof.

"20. That on June 21, 1944, Jose Jamelo filed a complaint against Carmen Vasquez and her husband Pedro Trinidad, known as Civil Case No. 73, the pendency of which was duly noted on the title to the properties in question on July 25, 1944, in order to exercise the right of redemption of Hermogenes Martir which they have bought, depositing the amount of P4,000; that on January 17, 1945, the plaintiff filed a motion for the withdrawal of said complaint and the withdrawal of the amount deposited. Copies of the motion and the order of the Court for the withdrawal of the same and the amount on deposit are herewith attached as Exhibits 'J' and 'J-1' respectively.

"21. That Jose J. Jamelo has not answered the complaint in interpleader notwithstanding the long lapse of the reglementary period within which to answer the same, summons by publication having been made as to him.

"22. That all the parties hereto agree that Certificates of Titles Nos. RT-957 (506-T-25701) and RT-958 (507-T-25702), which are in the possession of the defendant in interpleader Zacarias Jamelo, be attached herewith as Exhibits 'K' and 'K-1' respectively.

"23. That this stipulation of facts is without prejudice to such evidence as may be presented by the parties in connection with their conflicting claims on which they cannot arrive at a stipulation.

"In witness whereof, the parties hereto, assisted by their respective attorneys, have signed this stipulation of facts on the date and at the place herein-below appearing and hereby agree to submit the case on the same and on the pleadings of the parties." (Record on Appeal, pp. 96-105.)

In connection with the first assignment of error, it is not disputed that, prior to October 27, 1937, plaintiff Pilar Araullo and her sister Gregoria Araullo, now deceased, owned lots Nos. 1200-B and 1200-C of the Cadastral Survey of the new City of Bacolod, with the house of strong materials existing thereon, assessed at P6,000, which properties were covered by Transfer Certificates of Title Nos. 25701 and 25702, in their names. On said date, they executed the document Exhibit B, purporting to be a deed of absolute sale of said properties for P6,000, to

Hermogenes Martir. Exhibit B was acknowledged before Notary Public Gaudencio Occeno and entered in his notarial register, as document No. 118, page 3, book V, series of 1937.

On the same date, Hermogenes Martir and the Araullo sisters executed the deed Exhibit C, whereby the former granted the latter the right to

"* * * repurchase the above described properties for the sum of SIX THOUSAND PESOS (P6,000.00), plus the Interests of this amount at the rate of 12 per cent per annum, in the installments within the period of eight (8) years * * *.

"* * * provided, That every monthly installments of not less than Ninety Pesos (P90.00) which the Second Party must pay the First Party, should be applied first for payment of the interest due per month, and the rest for part payment of the repurchase price in the Sum of Six Thousand Pesos (P6,000) and provided, further that

'1. During the terms of eight years the Second Party shall have possession of the House above described, shall pay the yearly taxes of the land and the house, and continue paying the premium of the Insurance Policy No. 2151 of the House, for the Sum of P5,000, which insurance, in case of payment of the insurance company shall be delivered to the First Party, Hermogenes Martir, to be applied for part payment of the repurchase price of the properties hereof described.' " (Record of Exhibits, p. 8.)

Exhibit C was acknowledged before the same notary public and entered in his notarial register as document No. 119, page 3, Book V, series of 1937.

Again, on the same date, Gregoria F. Araullo executed a document of the following tenor:

"For valuable consideration I hereby assign and convey unto Mr, Hermogenes Martir, of age, single, Filipino, and resident of the Municipality of Bacolod, Province of Negros Occidental, Philippine Islands, my monthly salary of Ninety Pesos (P90.00) from the Government and for which purposely, I hereby authorize the said Hermogenes Martir, his heirs, executors, or assigns, to make the necessary collection of the said amount from the month to month for a period of Ninety-Six Months, from and after this date, November 1, 1937.

"In witness whereof, I have hereunto set my hands this 27th day of October, 1937, at Bacolod, Occidental Negros, Philippine Islands." (Record of Exhibits, p. 6.)

which was acknowledged before Notary Public Occeno and entered in his notarial register as document No. 120, page 3, Book V, series of 1937.

On June 23, 1939, Transfer Certificates of Title Nos. 506 and 507, covering the properties in question, were issued in the name of Hermogenes Martir.

On May 27, 1940, the latter and Carmen Vasquez executed the document Exhibit D, which purports to convey to Carmen Vasquez the right, interest and participation of Hermogenes Martir in and to five (5) parcels of land, including the two (2) involved in the case at bar, for P4,000, subject to redemption within one year, which, by a letter (Exhibit H) of Carmen Vasquez and her husband, Pedro Trinidad, dated May 19, 1941, was extended to May 23, 1942.

Meanwhile, or on May 31, 1940, the Araullo sisters and Hermogenes Martir had executed the document Exhibit F, whereby said sisters acknowledged that they were indebted to Martir in the sum of P7,300, said to have been received from him prior thereto, and constituted, in favor of Hermogenes Martir, a first mortgage on the two lots in question, which was the property of said sisters, according to Exhibit F, to secure payment, not later than July 1, 1946, of said obligation of P7,300, with interest at the rate of 8 per cent per annum.

Upon consideration of these facts, the lower court said, referring to the transaction between Hermogenes Martir

and the Araullo sisters:

"Dados los terminos de la escritura Exhibito 'C', el Juzgado es claramente de opinion que la referida transaction fue una de hipoteca, asi lo dexnuestran los siguientes hechos:

"1.º Que los dos lotes en cuesti6n, con sus mejoras, a pesar de la supuesta escritura de venta Exhibito 'B', permanecieron, y hasta la fecha continuan en poder de la demandante Pilar Araullo y en su finada hermana Gregoria Araullo;

"2.º La estipulacion sobre el tipo de interes que la demandante y su finada hermana debieran pagar durante el plazo de recompra sobre el precio convenido de dicha recompra;

"3.º El reconocimiento expreso que el finado Hermogenes Martir presto" respecto al titulo que como dueiias ejercian la demandante y su finada hermana sobre los lotes en cuestion, reconocimiento que aparece en la escritura de fecha 31 de Mayo de 1940, Exhibito 'F' de la estipulacion; y

"4.º El reconocimiento implicito de la cualidad de deudoras hipotecarias de la demandante y de su finada hermana que los demandados Carmen Vasquez y Zacarias Jamelo han prestado al aceptar ambos las cantidades que en concepto de intereses recibieron de dicha demandante y de su hermano." (Record on Appeal, pp. 105-106.)

It is not denied that as between the Araullo sisters, on the one hand, and Hermogenes Martir, on the other; the former were mortgagors, not vendors, and the latter a mortgagee, not vendee, of the property in litigation. Appellant maintains, however, that, insofar as she is concerned, the nature of the relations between the Araullo sisters and Hermogenes Martir should be determined by the records existing in the office of the register of deeds on May 23, 1940, when Exhibit D was executed in her favor. On that date, Hermogenes Martir was the registered owner of said property, it being covered by Transfer Certificates of Title Nos. 506 and 507 issued in his name. The only limitation to his title, insofar as pertinent to the case at bar, was the memorandum on the back of the aforementioned certificates of title relative to the option of the Araullo sisters to repurchase said properties subject to the terms and conditions stated in Exhibit C. The deed Exhibit F, whereby the Araullo sisters mortgaged the same property to Hermogenes Martir, did not exist until May 31, 1940, or over a week after the execution of the deed of sale, Exhibit D, in favor of Carmen Vasquez, what is more, Exhibit F was not registered until June 23, 1948. Consequently, appellant argues, said Exhibit F can not bind or otherwise affect her and, insofar as she is concerned, Hermogenes Martir must be deemed to be the owner of the property in dispute, subject only to said option of the Araullo sisters.

Appellant's pretense cannot be sustained, for when Exhibit D was executed, on May 23, 1940, appellant had knowledge of facts which were sufficient to inform her of the true nature of the transaction between Hermogenes Martir and said sisters. For instance:

- Hermogenes Martir was not in possession of said property, which had always been, and still is, held by the Araullo sisters. Had the latter really made a sale in favor of Hermogenes Martir, the object of the transaction would have been delivered to him, unless he had leased the property to said sisters, and the records of the Register of Deeds showed, not only that he had not done so, but, also, that he had acknowledged their right to retain possession of said property.

- Moreover, said records showed that, although Exhibit C purported to give the Araullo sisters the right to repurchase the aforementioned property, it, also, (a) provided for the payment of interest, at the rate of 12 per cent per annum, on the alleged redemption price; (b) required them to pay monthly installments, of not less than P90, to be applied first to the satisfaction of the interest due and, the balance, on account of said price; (c) imposed upon said sisters the obligation to pay the taxes on said property, as well as the premium of the insurance policy

on the house therein; and (d) stipulated that the amount of said policy, in case of collection thereof, "shall be applied" to the partial payment of the price above referred to. Appellant must have known that these stipulations are characteristic of a loan guaranteed by a mortgage, not of a conditional sale or an option to purchase. In either of the last two cases, the vendor or grantee of the option may redeem the property or exercise the option or not, in his discretion. Unless and until he has freely chosen to exercise either right, he is under no obligation to pay the amount stipulated or fixed by law. Much less is he obliged to pay interest thereon. Under Exhibit C, however, the Araullo sisters had no such discretion. Pursuant thereto, they were not only bound to pay said amount, with interest thereon, but, also, under obligation to make such payment in installments, of not less than P90.00 a month, immediately after the execution of said deed. In other words, Exhibit C granted the Araullo sisters no rights, but merely imposed upon them said obligations, thus constituting a clear notice to appellant that said sisters were mortgagors, and Hermogenes Martir, a mere mortgagee, of the property in question.

- Appellant must have known that such was the status of the Araullos for they delivered to her and she received from them the aggregate sum of P1,260.00, by way of interests.

- Although the period of eight (8) years stipulated in Exhibit C expired on October 27, 1946, Carmen Vasquez never demanded the delivery of the property in litigation. Under the second assignment of error, it is urged that the contract Exhibit D, between Hermogenes Martir and Carmen Vasquez, dated May 23, 1940, was a pacto de retro sale, contrary to the finding of His Honor, the Trial Judge, who said:

"Con respecto a la escritura otorgada por el finado Hermogenes Martir a favor de la demanda Carmen Vasquez en 23 de Mayo de 1940, que es el Exhibito 'D' de la estipulacion de hechos, las mismas consideraciones anteriores deben tenerse en cuenta para concluir que, si bien dicha escritura se titula 'venta con pacto de retro', la misma no es mas que pura y simplemente una hipoteca, para garantizar el pago de los P4,000 en ella expresados como consideration de su otorgamiento." (Record on Appeal, p. 106.)

We agree with this conclusion of the lower court, for had Carmen Vasquez purchased the property in dispute, by virtue of Exhibit D, she would have demanded delivery of said property upon the execution of the instrument, as well as of the transfer certificates of title in the name of Hermogenes Martir. Yet she did neither. Furthermore, she would have filed an affidavit of consolidation of her title upon the expiration of the period of redemption on May 23, 1942. This, she, likewise, failed to do. She did not even explain the reason for her inaction.

It is next contended, under her third assignment of error, that Zacarias Jamelo should have been sentenced to turn over to appellant, instead of to intervenor Gertrudis A. Martir, the sum of P825.00 paid by the Araullos to Zacarias Jamelo. This pretense would be valid had the contract between appellant and Hermogenes Martir been a sale subject to redemption. But, as above stated, it was merely a loan guaranteed by a mortgage. Accordingly, appellant's contention is based upon an erroneous predicate and can not be sustained.

Likewise, the fourth assignment of error is untenable upon the same ground. The fifth assignment of error is merely a consequence of the errors already disposed of. Further discussion thereof is, therefore, unnecessary.

Recapitulating, it results that the property in question is mortgaged to Hermogenes Martir, to guarantee the payment of the said obligation of the Araullo sisters. The right of Hermogenes Martir on said property, as mortgagee, is, in turn, subject to a first mortgage, in favor of Carmen Vasquez, and a second mortgage, in favor of the Jamelos. We note, however, that although payment of the obligation of the Araullos, and in the event of default therein, foreclosure of the mortgage constituted by them in favor of Hermogenes Martir, is directed in the decision appealed from, nothing is said therein concerning the settlement of the credit of Carmen Vasquez and that of the Jamelos, insofar as the same affect the real rights of Hermogenes Martir over the property in question. In the interest of justice and equity, and considering that the pleadings filed by Carmen Vasquez and Zacarias

Jamelo clearly seek enforcement of their respective rights under Exhibits D, G, and I, and that, whenever possible, multiplicity of litigations should be avoided, we believe that appropriate measures should be taken for the protection of those rights.

Consequently, the amount due to Hermogenes Martir from the Araullos—whether it be paid by the plaintiff or realized by foreclosure sale—should, instead of being delivered directly to the intervenor, be deposited with the lower court, which, after due hearing, shall order the disposition of said amount as follows: (1) it shall direct payment of the credit of Carmen Vasquez; (2) from the balance, if any, it shall direct payment of the credit of the Jamelos; and (3) the balance, if any, shall be turned over to the intervenor.

Thus modified, the decision appealed from is hereby affirmed in all other respects, without special pronouncement as to costs. It is so ordered.

Paras, C. J., Pablo, Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo and Labrador, JJ., concur.

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