

JOSEFA LOPEZ REYES; ASSISTED BY HER HUSBAND, MARTIN P, REYES, PLAINTIFFS AND APPELLANTS, VS. FELIPE NEBRIJA, ET AL., DEFENDANTS AND APPELLEES.

G. R. No, L-8720. March 21, 1956

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

.This is an action brought before the Court of First Instance of La Union to compel defendants to execute in favor of plaintiffs the necessary deed of conveyance of a parcel of land in accordance with the stipulation' agreed upon and to pay damages in the amount of P5,000. Defendants, in their answer, set up as a defense that, the agreement on which plaintiffs base their cause of action is null and void and that the amounts claimed by the plaintiffs represent usurious interests and by way of counterclaim, they asked that plaintiffs be ordered to pay P5,000 as damages and to return the palay and amounts unduly paid by them to said plaintiffs as partial payment of the principal obligation. Plaintiffs submitted a reply traversing the special defenses and counterclaim set up by defendants in their answer.

On December 1, 1954, plaintiffs and defendants, through their counsel, submitted to the court a stipulation of facts wherein they agreed to submit as evidence the pleadings they have respectively filed in the case with their corresponding exhibits and prayed that judgment be rendered on the pleadings and, on the strength of this stipulation, the court rendered decision holding, that the agreement on Which plaintiffs predicated their right to a conveyance of the land in question is null and void it containing a covenant which is known in law as pactum commissorium and as such is contrary to law, morals and public policy. As a consequence, the court dismissed the case with costs against the plaintiffs, "without prejudice to their right to proceed to collect their claim as ordinary mortgage creditors under the provisions of section 7, Rule 87, of the Rules of Court." From this Decision, plaintiffs interposed the present appeal.

The agreement on which the action of the plaintiffs is predicated contains the following covenant:

"That the conditions of this mortgage are that if I Eduvigis Hernandez or any heirs cannot redeem this mortgage in the same amount plus twelve (12%) per cent per annum interest, th this considered as full payment of this parcel of land without further action in Court, within two (2) years from that date of the contract."

Interpreting the above covenant, the lower court concluded that it embodies a pactum commissorium for the reason that it stipulates that in case the mortgagor fails to redeem the mortgage within the period agreed upon, the consideration of the mortgage shall be considered as payment of the land which thereby becomes the property of the mortgagee. To this we agree. This is the only interpretation that can be given to the terms of the covenant especially the phrase that the money taken "shall be considered as full payment of this parcel of land without "further action in court." This means that upon failure or redemption, the land automatically passes to the mortgagee. This is what is condemned by Articles 1859 and 1884 of the old Civil Code, as has been interpreted by this Court in a number of cases. Thus, in *Tan Chun Tic vs. West Coast Life Insurance Co. and Locsin*, 54 Phil.

361, this Court said: "The stipulation in the mortgage that the land covered thereby shall become the property of the mortgagee upon failure to pay the debt within the period agreed upon, constitutes a pactum commissorium, and is therefore null and void." And in a recent case wherein in one of the documents involved it was stipulated that upon failure of a party to exercise his right to redeem title to the land "shall pass to and become vested absolutely, in the party of the second part", this Court hinted ; that if that clause would be construed as giving the mortgagee the right to own the property upon failure of the mortgagor to pay the loan, it would be a pactum commissorium which is unlawful and void (Pedro Guerrero vs. Serapion de Ynigo, 96 Phil., 37).

Appellants, however, try to differentiate the present case from the ones above cited by laying stress on the particular circumstance that in said cases the mortgagor authorized the mortgagee to take over' the property and dispose of it upon failure to pay the debt within the period agreed upon, whereas in the present case there is no such authority no implication in the terms of the covenant in question. This claim is untenable for said covenant clearly stipulates that upon failure to redeem the mortgage the transaction shall automatically become one of sale "without further action in Court." This is a typical case of a pactum commissorium.

The cases of Dalay vs. Aquiatin and Maximo, 47 Phil., 951 and Kasilag vs. Rodriguez, 69 Phil., 217 invoked by appellants are not applicable because the terms of the covenant therein involved were couched in a manner different from those of the present covenant. In the first case, the parties stipulated that if the debtor cannot pay the debt when the date agreed upon comes, "the same shall be paid with the lands given as security" and this Court held that such stipulation does not violate the law (Article 1859 of the old Civil Code) because it "does not authorize the creditor to appropriate the property pledged or mortgaged, nor to dispose thereof, and constitutes only a promise to assign, said property in payment of the obligation if upon its maturity, it is not paid." And in the second cases the agreement "was that if the mortgagor shall fail to redeem the mortgage "she would execute a deed of absolute sale of the property" in favor of the mortgagee which does not give automatic ownership to the latter but rather constitutes a mere promise of assignment of the, property for which reason the Court held that the same is valid and legal. Evidently, these two cases cannot be considered as authority for the interpretation of the covenant in question.

The decision appealed from is affirmed, with costs against appellants.

Parás, C. J., Bengzon, Padilla, Montemayor, Reyes, A , Labrador, Concepcion, Reyes, J. B. L. and Endencia,, JJ, concur.

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