

LORENZO MANUEL, PLAINTIFF AND APPELLEE, VS. REMEDIOS TIONG VDA. DE NAOE, ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. L-12737. May 26, 1959*

Ponente: BAUTISTA ANGELO, J.

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On October 18, 1948, Remedios Tiong Naoe sold with right to repurchase to Lorenzo Manuel her one-half share of certain conjugal property situated in Manaoag, Pangasinan, on condition that she may repurchase the same within one year from said date. As Remedios failed to redeem the land notwithstanding the opportunities given her to do so even beyond the period agreed upon, Manuel filed in November, 1953, a petition for consolidation of ownership before the Court of First Instance of Pangasinan, copy of which was duly furnished Remedios Tiong Naoe (Civil Case No. 12770).

After due hearing, the petition was granted and so Manuel consolidated his ownership over the property as required by Article 1607 of the new Civil Code. He then demanded from the other co-owners the extrajudicial partition of the property since he wanted to segregate the portion that had been sold to him, and as they refused, he filed on April 5, 1954, an action for partition before the same court against Remedios Tiong Naoe and Ceferino Naoe. Upon motion of counsel for defendants, the complaint was amended in order that the other heirs of the property may be included as party defendants. The amendment was done on June 17, 1954 and in due time defendants put in their answer. For two times the trial of the case was postponed upon motion of defendants on the ground that some of them were absent. Finally, the case was set for hearing on February 18, 1955,

When this date came, sensing that the court may not grant another postponement of the hearing, counsel for defendants suggested to the court that steps be taken for the amicable settlement of the case. The trial court then suggested that the case be amicably settled and although appellee at first objected to the suggestion because he was then ready to proceed with the trial, he however acceded to it and then and there a written compromise was entered into which was signed by both parties assisted by their respective counsel. The terms of the agreement are that defendants are allowed to repurchase the property that was originally sold to plaintiff for the sum of P750.00 in two installments, one on May 15, 1955 and the other on December 31, 1955 on condition that upon failure to pay either or both installments defendants would forever quit claim any right they might have to the property, whereas if the two installments are paid, plaintiff would execute a deed of resale in their favor. This agreement was approved by the court and judgment was rendered in accordance with its tenor on February 21, 1955. As defendants failed to pay the first installment as agreed upon, plaintiff filed on May 24, 1955 a motion for execution of the judgment which was granted without opposition on the part of defendants. On June 24, 1955, the sheriff executed the judgment by placing plaintiff in possession of one-half of the western portion of the land in litigation.

On August 8, 1955, almost six months after the rendition of the decision on February 21, 1955, two of the defendants, namely, Felicidad Naoe and Florencia Naoe, filed a petition for relief under Rule 38 of the Rules of Court praying that said decision be set aside for the reason that the agreement that was entered into between

plaintiff and their co-defendant Remedios Tiong Naoe, their mother, has no binding effect upon them since it was entered into without their consent or authority. They claimed that if they were given an opportunity to be heard, they could prove that the contract entered into originally between their mother Remedios and plaintiff was not one of sale with right to repurchase but merely an equitable mortgage. The motion was denied by the court for it was found that it was filed beyond the 60-day period prescribed by said rule. And when their motion for reconsideration was denied, they interposed an appeal to the Court of Appeals. The case was later certified to us on the ground that only questions of law were involved.

The order of the trial court denying the motion for relief by defendants reads as follows:

"Considering the petition for relief from judgment under Rule 38 of the Rules of Court filed by Attys. Cendaña & Cendaña, Jr., for the defendants, dated August 11, 1955, with the attached affidavit of merits, together with the answer of the plaintiff, dated September 15, 1955, with counteraffidavits, in relation to the last pleading of the defendants of November 23, 1955; it appearing that the agreement of the parties, dated February 18, 1955, upon which the decision of this Court of February 21, 1955, was based, has already been executed, having become final and executory, and that a certificate of possession, dated June 24, 1955, has been issued by the sheriff of this Court, placing the plaintiff, Lorenzo Manuel, in possession of the land; it appearing, likewise, that the decision of this Court, dated February 21, 1955, based on the compromise-agreement of the parties with the assistance of counsel, was known to the defendants as early as February 18, 1950, and that the notice to their attorneys of record is notice to the parties, so that the petition for relief from judgment was filed out of time, as a period of more than two months or more than sixty days had already elapsed;

"The Court, finding the reason set forth in said petition to be not well taken, hereby denies the same."

It would appear that the decision which appellants seek to set aside was rendered on February 21, 1955, copy of which was duly furnished them thru their counsel by registered mail several days thereafter. Because of the failure of appellants to comply with the terms of the agreement, the decision became final and executory and so a writ of execution was issued upon petition filed by appellee on May 24, 1955. The execution was carried out by the sheriff on June 24, 1955 by placing appellee in possession of one-half of the western portion of the property in litigation. And only on August 8, 1955, almost six months after the rendition of the decision, appellants filed their motion for relief. It is evident that said motion was filed out of time, and hence the trial court acted properly in denying it.

It is true that appellants now claim that they have never received copy of the decision of the trial court, nor have they been notified thereof, and only came to know of the decision when on June 24, 1955, the sheriff came around in order to place plaintiff in possession of the land, but such pretense cannot be entertained considering that their counsel of record had been duly notified of said decision in due time which notification is binding upon them. It moreover appears that appellants were living in the same house with their mother Remedios Tiong Naoe who was also notified of the decision and who apparently has always acted in the case in their behalf. In fact, the trial court has found this as a fact when it stated in its order the following: "it appearing, likewise, that the decision of this Court, dated February 21, 1955, based on the compromise-agreement of the parties with the assistance of counsel, was known to the defendant as early as February 18, 1955, and, that the notice to their attorneys of record is notice to the parties." (*Italics supplied*). This is a question of fact which this Court cannot now look into.

Another factor that should be considered in connection with the motion for relief is the special defense that the movants might invoke if the motion be granted and they were given a chance to be heard, which special defense is required by the rule to be stated in the motion. In the instant case, the defense which appellants expect to prove if given their day in court is, as stated in their motion for relief, "that the Pacto de Retro Sale supposed to have been executed by their mother, Remedios Tiong Naoe, with the plaintiff is annulable as in truth and in fact the

intention of the parties was to draw an equitable mortgage, while granting *arguendo* that the said Pacto de Retro Sale is valid and enforceable the plaintiff could not get legally the western portion of the land described in the complaint because it is still undivided and not yet partitioned", which defense is now too late for them to invoke, since this matter has already been passed upon in Civil Case No. 12770, wherein the transaction was declared as one of sale with right to repurchase, and the ownership of appellee was consolidated over one-half of the undivided western portion of the land. This question is therefore now *res judicata*.

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

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A. Labrador, Concepcion, and Endencia, JJ., concur.

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