

CHERIE PALILEO, PLAINTIFF AND APPELLEE, VS. BEATRIZ COSIO, DEFENDANT AND APPELLANT.*G.R. No. L-7667. November 28, 1955*

Ponente: BAUTISTA ANGELO, J.

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Plaintiff filed a complaint against defendant in the Court of First Instance of Manila praying that (1) the transaction entered into between them on December 18, 1951 be declared as one of loan, and the document executed covering the transaction as one of equitable mortgage to secure the payment of said loan; (2) the defendant be ordered to credit to the plaintiff with the necessary amount from the sum received by the defendant from the Associated Insurance & Surety Co., Inc. and to apply the same to the payment of plaintiff's obligation thus considering it as fully paid; and (3) the defendant be ordered to pay to plaintiff the difference between the alleged indebtedness of plaintiff and the sum received by defendant from the aforementioned insurance company, plus the sum allegedly paid to defendant as interest on the alleged indebtedness.

On December 19, 1952, defendant filed her answer setting up as special defense that the transaction entered into between the plaintiff and defendant is one of sale with option to repurchase but that the period for repurchase had expired without plaintiff having returned the price agreed upon as a result of which the ownership of the property had become consolidated in the defendant. Defendant also set up certain counterclaims which involve a total amount of P4,900.

On April 7, 1953, the case was set for trial on the merits, but because of several postponements asked by the parties, the same has to be set anew for trial on January 12, 1954. On this date, neither the defendant nor her counsel appeared, even if the latter had been notified of the postponement almost a month earlier, and so the court received the evidence of the plaintiff. On January 18, 1954, the court, having in view the evidence presented, rendered judgment granting the relief prayed for in the complaint.

On February 2, 1954, the original counsel for the defendant was substituted and the new counsel immediately moved that the judgment be set aside on the ground that, due to mistake or excusable negligence, defendant was unable to present her evidence and the decision was contrary to law, and this motion having been denied, defendant took the present appeal.

The important issue to be determined in this appeal is whether the lower court committed a grave abuse of discretion in not reopening the case to give defendant an opportunity to present her evidence considering that the failure of her original counsel to appear was due to mistake or excusable negligence which ordinary prudence could not have guarded against.

The original counsel of defendant was Atty. Leon Ma. Guerrero. As early as February 11, 1953, said counsel showed interest in the early disposal of this case by moving the court to have it set for trial. The first date set was April 7, 1953, but no hearing was had on that date because plaintiff had moved to postpone it. The case was next set for hearing on April 28, 1953, but on motion again of plaintiff, the hearing was transferred to November 6,

1953. Then, upon petition of defendant, the trial had to be moved to December 15, 1953, and because Atty. Guerrero could not appear on said date because of a case he had in Cebu City, the hearing was postponed to January 18, 1954.

And on January 4, 1954, or nineteen days after receiving the notice of hearing, Atty. Guerrero was appointed Undersecretary of Foreign Affairs. It is now contended that the appointment was so sudden and unexpected that Atty. Guerrero, after taking his oath, was unable to wind up his private cases or make any preparation at all. It is averred that "The days that followed his appointment were very busy days for defendant's former counsel. There was an immediate need for clearing the backlog of official business, including the reorganization of the Department of Foreign Affairs and our Foreign Service, and more importantly, he had to assist the Secretary of Foreign Affairs in negotiations of national importance like the Japanese reparations, and the revision of the trade agreement with the United States, that, Atty. Guerrero had to work as much as fourteen hours daily. * * * Because of all these unavoidable confusion that followed in the wake of Atty. Guerrero's sudden and unexpected appointment, the trial of this case scheduled for January 18, 1954 escaped his memory, and consequently, Atty. Guerrero and the defendant were unable to appear when the case was called for trial." These reasons,—it is intimated,—constitute excusable negligence which ordinary prudence could not have guarded against and should have been considered by the trial court as sufficient justification to grant the petition of defendant for a rehearing.

It is a well-settled rule that the granting of a motion to set aside a judgment or order on the ground of mistake or excusable negligence is addressed to the sound discretion of the court (See *Coombs vs. Santos*, 24 Phil., 446; *Daipan vs. Sigabu*, 25 Phil., 184). And an order issued in the exercise of such discretion is ordinarily not to be disturbed unless it is shown that the court has gravely abused such discretion. (See *Tell vs. Tell*, 48 Phil., 70; *Macke vs. Camps*, 5 Phil., 185; *Calvo vs. De Gutierrez*, 4 Phil., 203; *Manzanares vs. Moreta*, 38 Phil., 821; *Salva vs. Palacio and Leuterio*, 90 Phil., 731.) In denying the motion for reopening the trial court said: "After going over the same arguments, this Court is of the opinion, and so holds that the decision of this Court of January 18, 1954 should not be disturbed." Considering the stature, ability and experience of counsel Leon Ma. Guerrero, and the fact that he was given almost one month notice before the date set for trial, we are persuaded to conclude that the trial court did not abuse its discretion in refusing to reconsider its decision.

Coming now to the merits of the case, we note that the lower court made the following findings: On December 18, 1951, plaintiff obtained from defendant a loan in the sum of P12,000 subject to the following conditions: (a) that plaintiff shall pay to defendant an interest in the amount of P250 a month; (b) that defendant shall deduct from the loan certain obligations of plaintiff to third persons amounting to P4,550, plus the sum of P250 as interest for the first month; and (c) that after making the above deductions, defendant shall deliver to plaintiff only the balance of the loan of P12,000.

Pursuant to their agreement, plaintiff paid to defendant as interest on the loan a total of P2,250.00 corresponding to nine months from December 18, 1951, on the basis of P250.00 a month, which is more than the maximum interest authorized by law. To secure the payment of the aforesaid loan, defendant required plaintiff to sign a document known as "Conditional Sale of Residential Building", purporting to convey to defendant, with right to repurchase, a two-story building of strong materials belonging to plaintiff. This document did not express the true intention of the parties which was merely to place said property as security for the payment of the loan.

After the execution of the aforesaid document, defendant insured the building against fire with the Associated Insurance & Surety Co., Inc. for the sum of P15,000, the insurance policy having been issued in the name of defendant. The building was partly destroyed by fire and, after proper demand, defendant collected from the insurance company an indemnity of P13,107.00. Plaintiff demanded from defendant that she be credited with the necessary amount to pay her obligation out of the insurance proceeds but defendant refused to do so. And on the

strength of these facts, the court rendered decision the dispositive part of which reads as follows:

"Wherefore, judgment is hereby rendered declaring the transaction had between plaintiff and defendant, as shown in Exhibit A, an equitable mortgage to secure the payment of the sum of P12,000 loaned by the defendant to plaintiff; ordering the defendant to credit the sum of P13,107 received by the defendant from the Associated Insurance & Surety Co., Inc. to the payment of plaintiff's obligation in the sum of P12,000.00 as stated in the complaint, thus considering the agreement of December 18, 1951 between the herein plaintiff and defendant completely paid and leaving still a balance in the sum of P1,107 from the insurance collected by defendant; that as plaintiff had paid to the defendant the sum of P2,250.00 for nine months as interest on the sum of P12,000 loaned to plaintiff and the legal interest allowed by law in this transaction does not exceed 12 per cent per annum, or the sum of P1,440 for one year, so the herein plaintiff and overpaid the sum of P810 to the defendant, which this Court hereby likewise orders the said defendant to refund to herein plaintiff, plus the balance of P1,107 representing the difference of the sum loan of P12,000 and the collected insurance of P13,107 from the insurance company above mentioned to which the herein plaintiff is entitled to receive, and to pay the costs."

The question that now arises is: Is the trial court justified in considering the obligation of plaintiff fully compensated by the insurance amount and in ordering defendant to refund to plaintiff the sum of P1,107 representing the difference of the loan of P12,000 and the sum of P13,107 collected by said defendant from the insurance company notwithstanding the fact that it was not proven that the insurance was taken for the benefit of the mortgagor?

It is our opinion that on this score the court is in error for its ruling runs counter to the rule governing an insurance taken by a mortgagee independently of the mortgagor. The rule is that "where a mortgagee, independently of the mortgagor, insures the mortgaged property in his own name and for his own interest, he is entitled to the insurance proceeds in case of loss, but in such case, he is not allowed to retain his claim against the mortgagor, but is passed by subrogation to the insurer to the extent of the money paid." (Vance on Insurance, 2d ed., p. 654) Or, stated in another way, "the mortgagee may insure his interest in the property independently of the mortgagor. Iii that event, upon the destruction of the property the insurance money paid to the mortgagee will not inure to the benefit of the mortgagor, and the amount due under the mortgage debt remains unchanged. The mortgagee, however, is not allowed to retain his claim against the mortgagor, but it passes by subrogation to the insurer, to the extent of the insurance money paid." (Vance on Insurance, 3rd ed., pp. 772-773) This is the same rule upheld by this Court in a case that arose in this jurisdiction. In the case mentioned, an insurance contract was taken out by the mortgagee upon his own interest, it being stipulated that the proceeds would be paid to him only and when the case came up for decision, this Court held that the mortgagee, in case of loss, may only recover upon the policy to the extent of his credit at the time of the loss. It was declared that the mortgaged had no right of action against the mortgagee on the policy. (San Miguel Brewery vs. Law Union, 40 Phil., 674.)

It is true that there are authorities which hold that "if a mortgagee procures insurance on his separate interest at his own expense and for his own benefit, without any agreement with the mortgagor with respect thereto, the mortgagor has no interest in the policy, and is not entitled to have the insurance proceeds applied in reduction of the mortgage debt" (19 R. C. L., p. 405), and that, furthermore, the mortgagee "has still a right to recover his whole debt of the mortgagor." (King vs. State Mut. F. Ins. Co., 7 Cush. 1; Suffolk F. Ins. Co. vs. Boyden, 9 Allen, 123; See also Loomis vs. Eagle Life & Health Ins. Co., 6 Gray, 396; Washington Mills Emery Mfg. Co. vs. Weymouth & B. Mut. F. Ins. Co., 135 Mass. 506; Foster vs. Equitable Mut. F. Ins. Co., 2 Gray 216.) But these authorities merely represent the minority view (See case note, 3 Lawyers' Report Annotated, new series, p. 79). "The general rule and the weight of authority is, that the insurer is thereupon subrogated to the rights of the mortgagee under the mortgage. This is put upon the analogy of the situation of the insurer to that of a surety."

(Jones on Mortgages, Vol. I, pp. 671-672.)

Considering the foregoing rules, it would appear that the lower court erred in declaring that the proceeds of the insurance taken out by the defendant on the property mortgaged inured to the benefit of the plaintiff and in ordering said defendant to deliver to the plaintiff the difference between her indebtedness and the amount of insurance received by the defendant, for, in the light of the majority rule we have above enunciated, the correct solution should be that the proceeds of the insurance should be delivered to the defendant but that her claim against the plaintiff should be considered assigned to the insurance company who is deemed subrogated to the rights of the defendant to the extent of the money paid as indemnity.

Consistent with the foregoing pronouncement, we therefore modify the judgment of the lower court as follows: (1) the transaction had between the plaintiff and defendant as shown in Exhibit A is merely an equitable mortgage intended to secure the payment of the loan of P12,000; (2) that the proceeds of the insurance amounting to P13,107.00 was properly collected by defendant who is not required to account for it to the plaintiff; (3) that the collection of said insurance proceeds shall not be deemed to have compensated the obligation of the plaintiff to the defendant, but bars the latter from claiming its payment from the former; and (4) defendant shall pay to the plaintiff the sum of P810.00 representing the overpayment made by plaintiff by way of interest on the loan. No pronouncement as to costs.

Bengzon, Montemayor, Reyes, A., Jugo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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