

TOMASA AREVALO, PLAINTIFF AND APPELLEE VS. ROBERTO A. BARRETO, DEFENDANT AND APPELLANT.

G. R. No. L-3519. July 31, 1951

Ponente: FERIA, J.

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FERIA, J.:

This is an appeal by defendant-appellant from the decision of the Court of First Instance of Manila.

The facts are the following:

"On January 10, 1945, plaintiff Tomasa Arevalo sold her property described in the complaint (R. A., pp. 2-3) to the herein defendant Roberto Barretto for the sum of P60,000 Japanese war note (mickey mouse) but it was made to appear in the documents of sale that the purchase price was P12,000 Philippine Currency. "On the same date, a contract of lease was executed between the parties whereby the Vendor (Plaintiff Arevalo) was constituted a lessee of the property for and in consideration of the sum of P420 monthly rental but while, under the contract of lease, the period of time for which the contract was executed begun to run, yet, the payments of monthly rentals would not commence until January 1, 1947, all prior rents being condoned in favor of the lessee (R. A., p. 26). On the same contract of lease, the Vendor-lessee was given the right to repurchase the property for the sum of P42,000 Philippine Currency then existing and in circulation at the time of payment, provided that the said right of repurchase shall only commence to run except from January 1, 1947 and shall end on January 10, 1948, and provided further that, if the Vendor-lessee should, prior to the time for the exercise of the option to repurchase, discharge the prior encumbrance with the property in the amount of P30,000, then the repurchase price would be P12,000 Philippine Currency.

"On January 16, 1945, the Vendor-lessee, (Tomasa Arevalo) in consideration of the sum of P20,000, Japanese military notes, executed a promissory note in favor of the Vendee-lessor in the amount of P40,000, Philippine Currency, payable or after October 31, but not later than December 31, 1946. It is a special condition of said loan of P4,000 that the same shall be paid [Tomasa Arevalo] before she could exercise her right or option to repurchase the property she sold to the defendant in a document dated January 10, 1945.

"On July 26, 1946, Tomasa Arevalo, the herein referred to as Vendor-lessee, discharged the mortgage indebtedness weighing over the property by paying it to Pedro Reyes, as evidenced by a deed of cancellation executed by the latter."

The plaintiff Tomasa Arevalo filed on April 11, 1947, an action against the defendant Roberto A. Barreto praying that the transaction between them be declared a loan secured by a mortgage, and not a sale with pacto de retro, and that she be sentenced to pay to the defendant the amounts due in Philippine currency at the rate of one hundred and fifty Japanese military notes to one peso Philippine currency.

The defendant Roberto A. Barreto, in his answer, admitted some of the facts alleged and denied others, and alleged as a special defense that the contracts between plaintiff and defendant is a sale with pacto de retro. But the defendant did not set up a counter claim for rents of the house bought by him and leased to the plaintiff.

The court after hearing the evidence of the plaintiff, because the attorney for the defendant had failed to appear during the trial, rendered judgment declaring that the transaction between plaintiff and defendant is a sale with pacto de retro, and sentenced the plaintiff to pay the defendant the sum of P516.70 Philippine currency in payment of the repurchase price of P12,000 and the promissory note of P4,000, and the defendant, upon receipt of said amounts, to execute a document of resale of the property to the plaintiff, without costs.

The attorney for the defendant-appellant makes in his brief the following assignments of error:

I

"The lower court erred in denying defendant's motion for reopening of the case.

II

"The lower court erred in evaluating the repurchase price of the property in question and the value of the promissory note at P516.70, and in allowing the plaintiff to recover the said property upon payment of the said sum to the defendant.

III

"The lower court erred in not ordering the plaintiff to pay to the defendant the corresponding amount of rentals due on the premises leased by the former from the latter."

In view of the conclusion we have reached in passing upon the second assignment of error, it is not necessary for us to discuss and pass upon the first assignment. And we can not consider and pass upon the question raised in the last, because no counterclaim having been set up to recover rents in the court below, no such question may be raised here on appeal.

Before proceeding, it may not be amiss to say that the incidental contention of the attorney for the plaintiff-appellee that the appeal in the present case was interposed out of time, because the motion for reopening of the case or new trial filed by the appellant on the ground of fraud, accident, mistake or excusable neglect under section 1, Rule 37, had not interrupted the period for the perfection of the appeal, since no affidavit of merit was filed with the motion, is not well taken.

After a consideration of the question raised in the second assignment of error of the appellant, we are of the opinion, and so hold, that the lower court erred in evaluating the repurchase price of the property sold and the value of the promissory note, at P516.70 Philippine currency. The parties have stipulated or agreed that the right to repurchase the property for P12,000 Philippine currency "shall only commence from January 1, 1947, and shall end on January 10, 1948," and the promissory note for P4,000 Philippine currency "shall be paid on or after October 31, 1946." As the said amounts were to become due after liberation, they shall be paid in Philippine currency according to a long line of decision rendered by this Court. Besides, in the present case, the agreement of the parties was, not only that said amounts be paid after liberation, but they had stipulated that of the 60,000 pesos in Japanese military notes, the vendee shall pay P12,000 in Philippine currency for the repurchase of the property, and of the 20,000 in Japanese Military notes received by the plaintiff from the defendant as a loan, the former shall pay the latter P4,000 in Philippine currency, after liberation.

In the case of Juan de la Cruz, petitioner, vs. Agapito S. del Rosario, et al., G. R. No. L-4859, promulgated July, 1951, substantially similar to the present case, in denying the petitioner's motion for reconsideration we held the following:

"In passing upon the petitioner's first assignment of error which was the only one that deserved consideration and dismissing the petition for certiorari, we have cited in our minute resolution the cases already decided by

this Court as applicable to the present, not because they are similar in fact and law to this case as the attorneys for the petitioner erroneously believe, but because the doctrine laid down in those cases is squarely applicable to the present. That is, if according to the stipulation of the parties, the money to be paid by the debtor to the creditor, or by the vendor with pacto to the creditor to redeem the property mortgage or sold, shall be due and payable after liberation as agreed upon by the parties in the present case, it shall be paid in legal tender or Philippine currency at par value or at the rate of one Philippine peso for each peso in Japanese military notes; but if it shall be due and payable before liberation it shall be paid after the liberation in Philippine currency in accordance with the Ballantyne schedule. Besides, according to the facts found by the Court of Appeals which we can not disturb in the present case, in fixing the amount of P5,000 to be paid by a vendor with pacto de retro to the vendee or by the debtor to his creditor after liberation, the parties had stipulated that the debtor or vendor, who had received P70,000 in Japanese military notes, shall pay the said sum of P5,000 Philippine currency within a certain period after liberation."

Wherefore, the decision of the lower court is reversed and the plaintiff-appellee is sentenced to pay the defendantappellant the sum of P16,000 in Philippine currency, if she wants to repurchase the property sold, and with this amendment, the decision of the lower court is affirmed in other respects, without pronouncement as to costs. So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

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