

VICTORINO VERZOSA, PLAINTIFF-APPELLEE, VS. PEDRO BUCAG AND BIBIANO BUCAG, DEFENDANTS-APPELLANTS.*G.R. No. L-8031. October 29, 1955*

Ponente: LABRADOR, J.

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VICTORINO VERZOSA, PLAINTIFF-APPELLEE, VS. PEDRO BUCAG AND BIBIANO BUCAG, DEFENDANTS-APPELLANTS

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On November 1, 1926, the defendants herein, Pedro Bucag and Bibiano Bucag, their sister, Irene Bucag, and their mother, Ambrocía Malenab, conveyed a certain parcel of land (unirrigated) situated in Angadanan, Isabela, to the spouses Faustino Andres and Petra Abara, in consideration of an amount of P1,620, which the former had received from the latter by way of indebtedness. The pertinent parts of the deed of conveyance are as follows:

"Declaramos que hemos tomado prestados, ademas, de dichos esposo P140.00, montando con esto, por tanto, todo el dinero recibido de ellos por nosotros incluyendo los P700.00 tomados por el difunto Hermenegildo Bucag a MIL SEIS CIENTOS VIENTO PESOS (P1620.00), y convenimos, coma asi lo habia prometido el difunto Hermenegildo Bucag que nuestro referido terreno quedara en poder de Faustino Andres y Petra Abara para que lo cultivan de tabaco y maiz, o lo manden cultivar, si asi lo desean, sin que ellos tanga que pagarnos conon o alquiler del terreno, en consideracion a que no les pagamos tampoco intereses del dinero que les hemos tomado en prestamo."

"Declaramos tambien que , en cuanto tengamos dinero con que rescatar el referido terreno, o para devolverles en los años venideros a Faustino Andres y Petra Abara los P1620.00 con que hemos hipotecado el terreno, dichos esposos deberan devolvernos el terreno, despues de recibir de nosotros la citada cantidad de P1620.00."

x x x x x

"Prometemos que mientras no hayomos de vuelto la referida cantidad, no podremos caltivarlo ni quitarlo del poder do los mencionados esposos, ni podremos venderlo, a menos de que antes paguemos el dinero mencionado en este documento, con que hepotecamos el arriba mencionado terreno." (Traduccion del Exhibito "A").

According to the stipulation of facts entered into by the parties, the land produces 60 bales of tobacco, 20 measures (tancales) of corn and 40 cavans of peanuts, valued at P8.00 per bale, P8.00 per measure (tancal) and P5.00 per cavan, respectively. According to local custom, one-third of the products is the share of the owner or possessor of land in the produce.

The heirs of Faustino Andres and Petra Abara tranferred the land to Victorino Verzosa, plaintiff herein, in 1948, in consideration of the sum of P1,000, and plaintiff was in possession and enjoyment thereof from then until

November 29, 1950, when the defendants took possession without the consent of the plaintiff and without returning the amount of indebtedness. The defendants are two of the signers of the original deed of conveyance, Exhibit A.

The present action was instituted on January 24, 1951. The plaintiff alleges that he is entitled to the possession of the land by virtue of deeds of conveyance, Exhibit A and Exhibit B. The defendants in answer allege that the deed of conveyance, Exhibit A, by virtue of which plaintiff's predecessors in interest were in possession of the property, is null and void as the contract contained the rein is usurious, and that their (defendants) original indebtedness has been sufficiently paid from the products of the land during the time that it was in the possession of the plaintiff and his predecessors in interest. The parties submitted the case for decision upon a stipulation of facts, the most important of which have been set forth above. The trial court held that the claim of the defendants that the indebtedness has already been paid from the products of the land so as to make the contract one of antichresis is not justified by the evidence, and that neither was the transaction usurious or contrary to good morals or public policy. It further held that defendants could not recover the property without first paying the amount of the indebtedness. The trial court, therefore, ordered the defendants to return the possession of the land to the plaintiff, and for their wrongful possession of the property, the defendants were also ordered to pay to the plaintiff the sum of P200.00 as liquidated damages and P200.00 every year from November 29, 1950 until the possession of the land is returned. Against this decision, an appeal was prosecuted in the Court of Appeals, which, however, certified the case to us on the ground that only questions of law are involved.

The principal contentions of the appellants are: that the contract Exhibit A is usurious and, therefore, void; that the trial court erred in not declaring that the contract (Exhibit A) is antichretic in character, and that the appellants have fully paid the amount of indebtedness and in ordering them to return the possession of the property to the plaintiff and the payment to him of damages.

A careful study of the contract Exhibit A discloses the existence of three provisions which are indicative of the contract as one mortgage and not of antichresis. In the first place, it is agreed that the full amount of the indebtedness of P1,620 must be returned to the lenders before the borrowers could demand the return of the property. This is contrary to an antichretic contract wherein the products of the land should be applied to the interest and then to the principal. In the second place, the contracting parties used the term mortgage (*hipoteca*) in various parts of the contract, thus: (1) "con que hemos hipotecado el terreno," (2) "El terreno que hipotecamos and (3) "con que hipotecamos el arriba mencionado terreno." In the third place, the parties agreed that the lenders are not to pay rentals on the property in consideration of the fact that the borrowers do not pay interest on the land which they obtained as a loan.

A similar case has already been decided by this Court, the case of *Salcedo vs. Celestial*, 66 Phil. 372. In said case the court found that one deed called the agreement "contract of mortgage and another "contract of antichresis"; that it is not stipulated that the net produce of the property shall be first applied to the payment of the interest, if any, and afterwards to that of the principal; that the property is security for the payment of the loan and the fruits thereof, assigned to the lender by way of compensation for their sacrifice in lending money. It was held that the contract was a mortgage because it contains the essential requisites of a mortgage enumerated in Article 1857 of the old Civil Code.

The most important claim of the defendants-appellants in this appeal is that the produce that the plaintiff and his predecessors in interest received exceeded the 6% legal interest fixed by the Usury Law. The appellant makes a mistake in assuming that an interest above the legal interest is usurious. Under the Usury Law, the amount allowable as interest when the property conveyed as security is not registered land is 14% not 6% (Sec. 3, Act No. 2655, as amended by C.A. 399). 14% of P1,620 is P226.80. Under the stipulation of facts, the yearly products of

the land are valued at P645.00 and of this sum the holder of the property or owner thereof receives one-third or P215.00. The contract, therefore, cannot be considered as usurious because the value of the products received does not exceed 14% of the money loaned.

But even if the value of the actual selling price of one-third exceeded the 14% interest provided for by law, the excess the case at bar would not be palpable as to show a corrupt intent to violate and evade the Usury Law. This principle was established by us in the case of *Toquera, et. al., vs. Villegas, et al.*,⁴⁰ O.G. No. 15, p. 10, wherein we said

"In view, however, of the rule that a creditor's return need not be limited to the statutory rate when it is affected by a contingency putting whole of it at hazard, a contract is ordinarily not usurious under which the creditor is to receive, consideration of his loan or forbearance, property or services of uncertain value, even though probable value is greater than lawful interest unless the excess is so palpable as to show a corrupt intent to violate and evade the usury laws, or unless the contract is made for the purpose of such violation or evasion.' (66 C.J., 212)"

'So an agreement that instead, of interest the lender of money would receive the rents and profits of certain land for a term of years, is not usurious where no intention to evade the statute is shown; and the fact that such rents and profits happen to amount to more than lawful interest does not render the contract usurious.' (Webb on Usury, p. 85)."

The judgment appealed from is hereby affirmed in toto, with costs against the defendants-appellants.

Paras, C.J., Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, Concepcion, and Reyes, J.B.L., JJ., concur.

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