

LOURDES G. SUNTAY, PLAINTIFF-APPELLANT, VS. HEROICO M. AGUILUZ, ET AL., DEFENDANTS-APPELLEES.

G.R. No. L-28883. June 03, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is an appeal on a pure question of law, from the Orders of 7 January 1967 and 26 September 1967 of Branch IX (Quezon City) of the then Court of First Instance (now Regional Trial Court) of Rizal in Civil Case No. Q-10343 which respectively dismissed said case on the ground of pendency of another action, Civil Case No. Q-10313, entitled Heroico M. Aguiluz, et al. vs. Lourdes G. Suntay, and denied the motion for its reconsideration.

The antecedent facts are not disputed.

On 9 June 1966, plaintiff and defendants executed a Deed of Sale with Real Estate Mortgage under which the former sold to the latter Lot 12, Block S-38 of the Diliman Estate Subdivision located in the District of Diliman, Quezon City, containing an area of 441 square meters, and more particularly described in Transfer Certificate of Title No. 82529 of the Registry of Deeds of Quezon City, subject to the following conditions:

"WHEREFORE, for and in consideration of the sum of SIXTY THOUSAND (P60,000.00) PESOS, Philippine Currency, the VENDOR-MORTGAGEE hereby transfers, sells and conveys to the VENDEE-MORTGAGOR the above-described parcel of land together with all the improvements existing thereon subject to the following terms and conditions:

1. That the VENDOR-MORTGAGEE acknowledges having receipt (sic) the sum of TWENTY THOUSAND (P20,000.00) PESOS as partial payment and the VENDEE-MORTGAGOR hereby binds himself to pay the balance of FORTY THOUSAND (P40,000.00) PESOS on or before August 6, 1966, without need of any demand;
2. That failure on the part of the VENDEE-MORTGAGOR to pay the balance of the purchase price in the sum of FORTY THOUSAND (P40,000.00) PESOS in full on the agreed date, the VENDEE-MORTGAGOR shall pay to the VENDOR-MORTGAGEE the sum of TEN THOUSAND (P10,000.00) PESOS as liquidated damages.

And to secure unto the VENDOR-MORTGAGEE the due and punctual payment of the balance of the purchase price of FORTY THOUSAND (P40,000.00) PESOS in accordance with the terms herein agreed upon, the VENDEE-MORTGAGOR hereby constitutes in favor of the said VENDOR MORTGAGEE a valid and voluntary first mortgage upon the property subject of this Deed of Sale with Real Estate mortgage;

And the conditions of this mortgage is (sic) such that if the VENDEE-MORTGAGOR, his heirs, successors and assigns shall faithfully comply with the terms agreed upon by the parties as contained in this instrument, then this mortgage shall have no further force or effect; otherwise, the said mortgage shall remain binding;

That if at any time the VENDEE-MORTGAGOR fail (sic) to comply with the terms and conditions herein stipulated, the VENDOR-MORTGAGEE may at her discretion declare the mortgage defaulted and immediately foreclose this mortgage judicially or extra-judicially under Act No. 3135, as amended by Act No.

4119, and in case of foreclosure, the VENDOR-MORTGAGEE on filing the corresponding petition shall be appointed receiver without any bond, and the said VENDOR-MORTGAGEE shall at once take charge of the mortgaged property and to (sic) hold possession of the same, and the rents and profits derived from the mortgaged property before the sale, less the costs of expenses of the receivership, the expenses of collection and attorney's fees, which shall be TWENTY FIVE (25%) PER CENT of the total indebtedness, but which shall not be less than FIVE THOUSAND (P5,000.00) PESOS exclusive of all costs and fees allowed by law, shall be applied first to the payment of interests and then to the capital of the indebtedness secured herein and such rents and profits that may be obtained after the sale will belong to the bidder to whom the property shall have been adjudicated;

That all the expenses in connection with the registration of this instrument, attorney's fee for the preparation of this document and all other expenses to effect the transfer of the above-mentioned Transfer Certificate of Title to the VENDEE-MORTGAGOR shall be for his exclusive account.

That during the existence of this mortgage the VENDEE-MORTGAGOR shall insure the building in the abovementioned parcel of land in the amount of FORTY THOUSAND (P40,000.00) PESOS against all insurable risks with a reputable insurance Company to be chosen by the VENDOR-MORTGAGEE and the policy shall be endorsed to the VENDOR-MORTGAGEE;"[1]

Defendants failed to pay the P40,000.00 on due date, 6 August 1966. Plaintiff demanded payment and threatened to foreclose the mortgage.

On 9 August 1966, defendants filed a complaint against herein plaintiff for specific performance with preliminary mandatory and prohibitory injunction with the then Court of First Instance of Rizal, which was docketed as Civil Case No. Q-10313. They allege therein that upon the execution of the contract, the parties agreed that herein plaintiff would simultaneously deliver to the defendants the certificate of title and the tax declaration of the lot, the latest realty tax receipt, lot plan and vicinity map and building permit for the existing building; the defendants repeatedly made it known to the plaintiff that in order to fully pay the balance of the purchase price, the former needed to obtain a loan from the Social Security System (SSS) or any other lending institution, thus necessitating the transfer of the property in their names; for no justifiable reason and despite repeated demands, plaintiff refused to turn over to them the above documents, resulting in the delay in the filing of an application for a housing loan with the SSS; even if the application had been processed, however, the proceeds of the loan cannot be released until the certificate of title is surrendered to them and a new certificate of title is issued to them; plaintiff has threatened to foreclose the mortgage, immediately take possession of the property as receiver and enforce the penalty clause of the contract, which would cause them irreparable injury; if the foreclosure and/or receivership proceedings are initiated by herein plaintiff, their loan application would be disapproved by the SSS; and that it is essential that the court fix a reasonable period, to commence on the date the certificate of title is delivered to them within which they may comply with their obligation to pay the unpaid balance of P40,000.00 of the purchase price. They pray that: (a) a writ of preliminary mandatory and prohibitory injunction be issued ordering the plaintiff to surrender the certificate of title and enjoining her or her representative from inter alia, proceeding with the threatened foreclosure of the mortgage, respectively; and (b) after trial, judgment be rendered making the injunction permanent, fixing a reasonable period, from the date of delivery of the certificate of title, within which they may comply with their above obligation and awarding to them attorney's fees, exemplary damages and costs.[2]

On the day the above complaint was filed, the court[3] issued an Order setting the hearing for the application for injunction on 20 August 1966, and directing the parties to maintain the status quo in the meantime.

On 18 August 1966, before being served with summons, a copy of the complaint in Civil Case No. Q-10313 and a copy of the above Order, herein plaintiff filed with the same court a complaint for recovery of the unpaid balance

of the purchase price, the penalty provided for in the contract and foreclosure of the mortgage. The complaint was docketed as Civil Case No. Q-10343 and was raffled to another branch of the court. In said complaint, plaintiff prays for: (a) judgment ordering the defendants to pay her the amount of P50,000.00 (P40,000.00 representing the unpaid balance and P10,000.00 representing the liquidated damages) with legal interest from the date of the filing of the complaint until the same is fully paid and a sum equivalent to 25% thereof as attorney's fees, plus certain sums as attorney's fees for the preparation of the document, documentary stamps and registration fees, and decreeing the foreclosure of the mortgage and sale of the property in a public auction; and (b) an Order appointing her, during the pendency of the action, as receiver of the property.[4]

Plaintiff subsequently received the summons and a copy of the complaint in Civil Case No. Q-10313 on 20 August 1966.[5]

On 2 September 1966, defendants filed a motion to dismiss plaintiff's Civil Case No. Q-10343 on the following grounds:

- "1. That there is another action pending between the same parties for the same cause;
2. That the complaint states no cause of action."

The other action referred to is Civil Case No. Q-10313.

On 13 September 1966, defendants filed a Supplemental Complaint.[7]

On 17 September 1966, plaintiff filed an Opposition to the motion to dismiss[8] alleging therein that the two (2) complaints are not for the same cause of action. While Civil Case No. Q-10313 prays for: (a) the issuance of a mandatory and prohibitory injunction to compel her to deliver the certificate of title and to prevent her from foreclosing the mortgage, and (b) the fixing of a period within which herein defendants will pay the balance of the purchase price of the property, Civil Case No. Q-10343 is an action for foreclosure of mortgage. She further alleges that her complaint states a valid cause of action as defendants failed to pay the balance of the purchase price on due date.

On 7 January 1967, the trial court issued an Order dismissing Civil Case No. Q-10343 on the ground of pendency of another action "between the same parties for specific performance of the very contract subject of this suit for foreclosure and it appearing that the issue raised in this present action can well and should be litigated in the suit for specific performance." [9]

Her motion for reconsideration[10] having been denied by the trial court in its Order of 26 September 1967,[11] plaintiff filed her notice of appeal on 21 October 1967,[12] deposited a case appeal bond[13] and filed a record on appeal which was approved on 12 March 1968.

In her Brief, plaintiff makes the following assignment of errors:

"I

The lower court erred in holding that there is pending an action between the same parties for specific performance of the very contract subject of this suit for foreclosure, and it appearing further that the issues raised in this present action can well and should be litigated in the suit for specific performance.

II

The lower court erred in dismissing the complaint."

Defendants did not file their Appellee's Brief despite three (3) extensions of time granted by this Court.[14] Hence, this Court considered this case submitted for decision without the Appellee's Brief.[15]

The appeal is meritorious.

As could be gathered from the body of the complaint, Civil Case No. Q-10313 is an action for injunction filed in anticipation of the foreclosure of the mortgage which plaintiff had threatened to pursue if defendants failed to pay the unpaid balance of P40,000.00 on due date. The contract explicitly provides that said balance shall be paid "on or before August 6, 1966 without need of any demand." Defendants' self-serving characterization thereof as an action for "specific performance" is calculated to obfuscate the issues and mislead the trial court. As this Court sees it, defendants herein merely tried to beat the plaintiff to the draw[16] and pre-empt the latter's legal moves.

The other causes of action in Civil Case No. Q-10313 are but mere embellishments to give a semblance of viability to the alleged grievance of herein defendants. The contract fails to indicate that (a) it was the intention of the parties to consider the delivery of the certificate of title and the other documents mentioned therein as a condition precedent before the balance of P40,000.00 would be paid or (b) such delivery constitutes a suspensive condition the non-fulfillment of which prevents the obligation of defendants to pay said balance from arising.[17] On the contrary, as earlier alluded to defendants unqualifiedly bound themselves to pay the balance on or before 6 August 1966 without need of any demand. Besides, since under the contract the property was mortgaged to the plaintiff as security for the payment of the unpaid balance of P40,000.00, plaintiff, as mortgagee was entitled to possession of the certificate of title. The filing then of Civil Case No. Q-10313 was a clever ruse to avoid compliance with defendants' obligation. Even if it were not so, *lis pendens* does not apply in this case. The requisites of *lis pendens* as a ground for dismissal of a complaint are: (1) there must be the same parties or at least such as to represent the same interest; (2) there must be the same rights asserted and the same relief prayed for, which relief must be founded on the same facts and the title or essential basis of the relief sought must be the same; (3) the identity in these particulars should be such that if the pending case had already been disposed of, it would be pleaded in bar as a former adjudication of the same matter between the same parties.[18]

While concededly, the first requisite obtains in this case, the last two are conspicuously absent. As earlier discussed, Civil Case No. Q-10313, although cleverly denominated as one for specific performance with mandatory and prohibitory injunction, is in reality principally one for injunction to prevent the foreclosure of the mortgage and to fix a new period to pay the remaining unpaid balance of P40,000.00 which was to be paid on or before 6 August 1966 without any need for a demand. Upon the other hand, Civil Case No. Q-10343 is a suit for specific performance which asks for the payment of the balance and the liquidated damages and foreclosure of the mortgage. The causes of action and the reliefs sought are entirely different. A decision in the first will not amount to *res judicata* against the second case for whether or not defendants prevail in the former, petitioner's right to the unpaid balance and the foreclosure of the mortgage would still be litigable.

To the mind of this Court, if any case should be dismissed at all, it should be Civil Case No. Q-10313. That this case was filed ahead of the other is of no moment for as this Court held in *Teodoro vs. Mirasol*:[19]

"It is to be noted that the Rules do not require as a ground for dismissal of a complaint that there is a prior pending action. They provide that there is a pending action not a pending prior action. The fact that the unlawful detainer suit was of a later date is no bar to the dismissal of the present action."

Plaintiff then had all the right to file the motion to dismiss Civil Case No. Q-10313. Unfortunately, however,

while she actually filed such a motion, she failed to invoke lis pendens; she merely raised: (a) unenforceability of the demands under the statute of frauds and (b) lack of cause of action[20] as grounds for the motion. Thus, the same was denied by the trial court on 7 December 1966.[21]

The trial court, therefore, committed an error in dismissing Civil Case No. Q-10343. What it should have done was to order its consolidation, for joint hearing and trial, with Civil Case No. Q-10313 pursuant to Section 1, Rule 31 of the Rules of Court. As ruled by this Court in *Ramos vs. Ebarle*:[22]

"x x x And, whatever difficulties or inconvenience may be entailed if both causes of action are pursued on separate remedies, the proper solution is not the dismissal order of the trial court. The possible consolidation of said cases as well as stipulations and appropriate modes of discovery, may well be considered by the court below to subserve not only procedural expedience but more important, the ends of justice."

WHEREFORE, judgment is hereby rendered REVERSING and SETTING ASIDE the challenged Orders of 7 January 1967 and 26 September 1967 in Civil Case No. Q-10343; REINSTATING said case; and ORDERING that it be jointly heard and tried with Civil Case No. Q-10313, if that would still be feasible.

Costs against defendants-appellees.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Record on Appeal, 10-13.

[2] Record on Appeal, 25-34.

[3] Per Judge Walfrido delos Angeles.

[4] Record on Appeal, 1-15.

[5] Appellant's Brief, 3.

[6] Record on Appeal, op. cit., 15.

[7] Id., 62-73

[8] Id., 36-43.

[9] Record on Appeal, 43-44.

[10] Id., 44-61.

[11] Id., 143-144.

[12] Id., 144.

[13] Id., 145.

[14] Rollo, 11, 14 and 15.

[15] Id., 19.

[16] This is an expression used by this Court to condemn petitions for consignment of rentals filed by tenants who foresaw and anticipated the legal steps lessor would take in view of their adamant refusal to vacate the premises

or to pay the new rentals fixed and demanded of them (*Ching Pue vs. Gonzales*, 87 Phil. 81 [1950]).

[17] Article 1181, Civil Code.

[18] *Hongkong & Shanghai Bank vs. Aldecoa*, 30 Phil. 255 [1915], citing *Watson vs. Jones*, 13 Wall., 679, 715; 20 L. ed., 666. See also *Santos vs. Geronimo*, 89 Phil. 715 [1951]; *Diana vs. Batangas Transportation Co.*, 93 Phil. 391 [1953]; *Pampanga Bus Co., Inc. vs. Ocfemia*, 18 SCRA 407 [1966]; *Ramos vs. Ebarle*, 182 SCRA 245 [1990].

[19] 99 Phil. 150 [1956].

[20] Record on Appeal, 110-123.

[21] *Id.*, 93.

[22] *Supra.*, footnote no. 18.

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