

MIGUEL GERMANO, ET AL., PLAINTIFFS AND APPELLANTS, VS. ERENEO SURITA AND CANDIDA JUNDIS, DEFENDANTS AND APPELLEES.

G.R. No. L-20159. April 29, 1966

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal from the order of the Court of First Instance of Leyte (in Civil Case No. R-464-0), dismissing the complaint filed therein on the ground of prescription of cause of action.

On February 24, 1961, Miguel Germano, et al., sought to cover from defendants Candida Jundis and Ereneo Surita, a one-third portion of a parcel of land situated in Lunang, Hiloñgos, Leyte, covered by Tax Declaration No. 11092 in the name of Serapion Zarco, allegedly belonging to their deceased mother, Silvestra Zarco, and possession of which was delivered by the latter to Teodoro Jundis sometime in 1939, to secure an indebtedness in the sum of P60.00. It was further averred in the complaint that after World War, plaintiffs tendered payment of the indebtedness to the five heirs of Jundis, two of whom received the amount of P24.00, but the defendants (who were in possession of the property) refused to accept their share.

In August 1959, plaintiffs deposited the sum of P36.00 in the Justice of the Peace Court of Hiloñgos, Leyte. As defendants still refused to deliver possession of the land, plaintiffs-appellants filed the present action for recovery of the property, on the ground that their obligation had already been extinguished, and, therefore, were entitled to the return and possession of the lot given as security.

Defendants set up the defense of lack of cause of action, alleging that the transaction between plaintiffs' mother and their predecessor-in-interest was one of sale and not mortgage; of prescription of cause of action and laches, the defendants having been in continuous, open, peaceful possession of the land in the concept of owners, by themselves and through their predecessors, since 1939.

When the case came up for hearing, the same was submitted for decision without the parties presenting any evidence, testimonial or documentary. Whereupon, the trial court entered the following:

"ORDER

"When this case was called for hearing, the defendants reiterated their special and affirmative defenses to the effect that on the basis of the allegations in the complaint, the action filed by the plaintiffs has already prescribed.

"Paragraphs 4, 5, 6 and 7 of plaintiffs' complaint reads as follows:

'4. That sometime in 1939 the possession of the aforesaid property was delivered by Silvestra Zarco to the late Theodore Jundis as a security of an indebtedness in the amount of Sixty Pesos (P60.00); that the said property shall continue to be in the possession of creditor Teodoro Jundis until the said indebtedness shall have been fully paid.

'5. After the World War II, several tender of payments were made by the plaintiffs to the five heirs of Teodoro Jundis, two of whom received the amount of P24.00; but the defendants herein refused to accept the said tendered payments and continued to possess the land in question.

'6. In August, 1959 the plaintiffs through their aunt Encarnacion Zarco, tendered payments in the amount of Thirty Six Pesos (P36.00) in the Justice of the Peace Court of Hilongos, Leyte which was duly acknowledged by the Honorable Justice of the Peace of Hilongos for the purpose of extinguishing their obligation or indebtedness to the said defendants herein, but defendants continued to refuse to accept said tendered payments. The amount of Thirty Six Pesos (P36.00) is now in the Justice of the Peace Court of Hilongos, Leyte.

'7. On January 24, 1961, the plaintiffs came to Hiloños, Leyte and demanded for the return of the possession of the land now in question, but defendants refused and still refuse to deliver the possession of the land unless the plaintiffs could pay the said defendants the sum of Three Hundred Pesos (P300.00), in lieu of the P60.00, the original indebtedness.'

"Since 1939 up to February 24, 1961, date of the filing of the complaint, and up to the present time, the defendants have been in the quiet, peaceful and continuous possession of the said parcel of land described under tax declaration No. 11092 in the name of Serapio Zarco which is situated at Lunang, Hiloños, Leyte valued at P40.00.

"The mere fact that there was a tender of payment made by the plaintiffs to the defendants which was not accepted sometime during World War II will not stop the running of the prescriptive period especially taking into account the fact that the tender of payment was not accepted by the defendants.

"Although there was a consignment in the Justice of the Peace of Hiloños, Leyte sometime in 1959, it is apparent that the said consignment and tender of payment, twenty years after the transaction occurred, does not revive the period of prescription provided by both article 1132 and 1134 of the New Civil Code and also by the provisions of the Old Code of Civil Procedure.

"In the argument by counsel for the plaintiffs, it was averred that the late filing of this action was due to the fact that the debtors plaintiffs were living in Cotabato and only the heirs were in the province of Leyte. The residence of any party cannot be a ground for extending the period of prescription.

"WHEREFORE, finding that the cause of action of the plaintiffs has already prescribed and that the defendants have been in continuous, open and exclusive possession of the land per allegation in the complaint, this case is hereby dismissed without pronouncement as to costs, with notice to Attorneys Potot and Mendaza in open court."

In due time, plaintiffs filed a motion for reconsideration, contending that Articles 1134 and 1142 of the Civil Code cited by the trial judge are not applicable, as the possession of defendants as mortgagees is not in the concept of owner, and the action is not a mortgage action by the mortgagee, but a suit by the mortgagor to recover possession of the property given to secure a loan. Plaintiffs also prayed that the case be tried on the merits to enable the parties to present their evidence and also to aid the court in the appreciation of the facts of the case in the interest of justice. This motion was denied by the court a quo.

From this order, as well as the order of dismissal, plaintiffs instituted this appeal, claiming that the lower court erred in applying the prescriptive period provided in Article 1132 (Art. 1142) and 1134 of the new Civil Code, although defendants' possession was not in the concept of owner but only as mortgagees.

A review of the Record on Appeal discloses that on the date of the hearing the case was in effect submitted for

decision on the pleadings, the parties desisting from presenting any evidence whatsoever. But the complaint and the answer pose a question of fact, that is, whether the transaction had between the respective predecessors of the parties was an equitable mortgage or a sale. Upon the determination of this factual issue depends the respective rights of the parties. The motion for reconsideration filed by the plaintiffs praying that the case be reset for hearing on the merits to enable the parties to present evidence in support of their respective contentions should have been granted in the interest of justice.

Under the circumstances, we rule that the order of dismissal appealed from be set aside and the case remanded to the court a quo for further appropriate proceedings. No costs.

SO ORDERED.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., and Sanchez, JJ., concur.

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