

DIEGO BACORDO, PLAINTIFF AND APPELLEE, VS. JACINTO ALCANTARA AND PRESENTACION MACATANGAY, DEFENDANTS AND APPELLANTS.

G.R. No. L-20080. July 30, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Diego Bacordo, the plaintiff-appellee, obtained a loan of P1,600.00 on August 15, 1950 from the spouses Jacinto Alcantara and Presentacion Macatangay, defendants-appellants. For security a real estate mortgage was executed and notarized, covering a parcel of residential land in Rosario, Batangas, 290 square meters in area. Among other things the mortgage agreement provided:

"Ang sanglaan o hiramang ito ay tatagal ng syam (9) na taon, mula sa petsang ito o ngayon at pagkatapos ng taning na ito ay ako ay manunubos ng nasabing lupa sa naulit na mag-asawang Jacinto Alcantara at Presentacion Macatangay, sa halagang aking hiniram na Isang libo at Anim na Daang Peso (P1,600.00) pesos, pilak filipino. Kung ako ay magbabayad o babayaran ang halagang aking hiniram sa aking pinagkakautangan sa taning na naulit, ay itong kasunduang ito ay mawawalan na bisa; at ang possession at pakina bang ng nasabing lupa ay muling mababalik sa akin subalit kong hindi ay tuloy ang bisa nito at maaari ako'y singilin sang ayon sa ipinaguutos ng Batas." (Exh. A)

About five years later, on March 3, 1961, Diego Bacordo received from the Alcantara spouses an additional loan of P150.00. A second notarized deed of mortgage was again executed, covering the same parcel of land, to secure the increased amount of P1,750.00. It was thereunder agreed that;

"Ang hiramang ito ay tatagal ng siyam (9) na taon mula sa petsang ito, o babayaran ko sa nalolooban ng siyam (9) na taon, o hangang ika 3 ng Marzo, 1970, na kong sakali na pabayaran, at akin namang mabayaran ang naulit na halaga na aking hiniram na halagang P1,750.00 ay mawawalan na ng bisa ang kasulatang ito. Ngunit kong hindi ako makatupad ayon sa aming kasunduan o taning na panahon, ay tuloy ang bisang kasulatang ito at maaari akong singilin, at obligado akong magbayad ayon sa ipinaguutos ng batas. Ang posession ng lupang ito ay malilipat sa aking pinagsanglaan, at ang ano mang pakinabang sa naulit na lupa ay siyang magsisilbing wasto at sapat na pakinabang, lumabis man o kumulang man sa por ciento legal na 12% na ipinaguutos ng batas." (Exh. B)

After only two months, however, on May 26, 1961, for a further small sum of P100.00 received from the Alcantara spouses, Diego Bacordo executed the third notarial document of mortgage, over the same parcel of land, to secure the same amount but adding thereto said P100.00 thereby making an aggregate sum of P1,850.00. The stipulation on redemption was this time worded as follows:

"Ang hiramang ito ay tatagal ng siyam (9) na taon mula sa petsa nito, o babayaran ko sa ika 26 Mayo, 1970, o pagkatapos ng siyam (9) na taon Simula ngayon, na kung sakali ng pabayaran, at akin namang mabayaran ang naulit na halaga na aking hiniram na halagang P1,860.00 ay mawawalan na ng bisa ang kasulatang ito, ngunit kung hindi ako makatupad ayon sa aming kasunduan o taning na panahon, ay tuloy ang bisa ng kasulatang ito

at maaari akong singilin, at obligado akong magbayad ayon sa ipinaguutos ng batas. Ang posession ng lupang ito ay malilipat sa aking pinagsanglaan, at ang ano mang pakinabang sa naulit na lupa ay siyang magsisilbing wasto at sapat na pakinabang, lumabis man o kumulang man sa porciento legal na 12% na ipinaguutos ng batas." (Exh. C)

On September 25, 1961 Diego Bacordo filed the present suit against the Alcantara spouses in the Court of First Instance of Batangas. Plaintiff alleged that he and defendant spouses agreed that the property subject of the mortgage can be redeemed any time within the nine-year period stated in the deed of mortgage; that notwithstanding such agreement defendant spouses have refused to receive his tender of payment in the amount of P1,850.00; that he has therefore deposited said amount with the Clerk of Court by way of consignment (See Official receipts, Exhs. E and F). For relief it was prayed that the contract of mortgage be rescinded and defendants be order ed to receive the amount of P1,850.00, deliver possession of the property subject matter of the action to plaintiff, and pay attorney's fees plus costs.

Defendants, answering the complaint on November 14, 1961, averred that the third contract of mortgage is the only subsisting one; that per its terms the mortgagor can redeem the property mortgaged only on or after, not before, May 26, 1970; that, therefore, defendants properly refused plaintiffs tender of payment since the obligation is not yet due and payable. A counterclaim for nominal, moral and exemplary damages, as well as attorney's fees, was interposed in the answer.

Plaintiff answered the counter claim on January 14, 1962.

After trial the Court of First Instance of Batangas rendered judgment on May 30, 1962, its dispositive part reading as follows:

"Wherefore, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants, declaring the rescission of the deed of mortgage Exhibit 'C', dated May 26, 1961, ordering the defendants (1) to receive the amount of P1,850.00 tendered by the plaintiff and deposited with the Clerk of this Court, (2) to deliver thereafter the possession of the property, subject matter of the mortgage, to the plaintiff, and (3) to pay the costs of this suit. The damages claimed by both parties, not having been supported by evidence, are hereby dismissed."

Appellants contend that the court a quo erred in interpreting the third mortgage document in relation with the first and second mortgage agreements.

Since the failure of the third document to truly express the intent of the parties was raised by plaintiff's complaint, the trial court rightly considered, the previous mortgage contracts in discerning the real intent. It is settled that previous, simultaneous and subsequent acts of the parties are properly cognizable indicia of their true intention (*Velasquez vs. Teodoro*, 46 Phil., 757).

Accordingly, in the light of the previous mortgage agreements entered into between the parties, it will readily be seen that the parties in the third mortgage agreement did not intend to set back the date of redemption to until after nine years thence.

We fully agree with the following observation of the court a quo:

"* * * The first contract of mortgage was for the sum of P1,600.00 redeemable for a period of nine (9) years, to start on August 15, 1956. With an additional sum of P150.00 obtained by the mortgagor from the mortgagee more than four years thereafter, another contract of mortgage was executed on March 3, 1961, and the redemption of the same could be made by the mortgagor within nine (9) years, from March 3, 1961 which under all circumstances the term is easy or reasonable. The Court could not see any reason why by the additional of P100.00 to P1,750.00, barely two months from March 3, 1961, the terms for redemption as

indicated in Exhibit 'C' would be made after and not within nine (9) years. This could not have been intended by the mortgagor and if he had signed the said Exhibit 'C' it could be as observed by this Court while in the witness stand due to his ignorance and dire need of money. Something suspicious must be considered why for only two months the mortgagor would bind himself to another contract (Exhibit C) with unfavorable terms against him. To the mortgagee nothing would be lost if the mortgagor would be allowed, to redeem within nine (9) years because the sum owed would undoubtedly be returned. It could be that the purpose or intention of the parties as indicated above are inconsistent but the one which is compatible with equity shall prevail and in the instant case that of the mortgagor." (R. on A., pp. 47-48)

Parenthetically, we notice that the date of the first document is August 15, 1956. From said date up to the present almost 9 years have elapsed. It appears in the record that possession of the land has always been with the defendants who were authorized under all the contracts to enjoy the fruits of said land. It is very significant that the third contract provided: "Ang posession ng lupang ito ay malilipat sa aking pinagsanglaan, at ang ano mang pakinabang sa naulit na lupa ay siyang magsisilbing wasto at sapat na pakinabang, lumabis man o kumulang man sa por ciento legal na 12% na ipinaguutos ng batas."

As we said above, considering the three documents in determining the intention of the parties, under equitable considerations the appellants' investment of P1,850.00 has been fully, if not more than fully, recompensed with the nine years enjoyment of the fruits of the land.

Consequently, as the court a quo stated, interpretation of the third document as allowing redemption within nine years, as is clearly allowed in the second document, is in accord with reason as well as equity.

Since defendants refused to accept plaintiff's redemption of the mortgage, rescission was available to plaintiff, under Article 1191 of the New Civil Code, for breach of a reciprocal obligation. Nonetheless, plaintiff actually elected to enforce fulfillment of the obligation by the present suit, with the tender of payment and consignment. Rescission, therefore, did not have to be declared.

Wherefore, with the elimination of the portion which states: "declaring the rescission of the deed of mortgage Exhibit 'C', dated May 26, 1961", the judgment appealed from is affirmed in all other respects. Without costs.

It is so ordered.

Bengzon, C. J., Bautista Angelo, Conception, Reyes, J. B. L., Paredes, Dizon, Regala, Makalintal and Zaldivar, JJ., concur.

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