

RIO Y COMPAÑIA (SUCCESSOR TO RIO Y OLABARRIETA), PETITIONER VS. COURT OF APPEALS AND MANUEL REY, RESPONDENTS.

G. R. No. L-15666. June 30, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Rio y Compania Normal 0 false false false EN-US X-NONE X-NONE MicrosoftInternetExplorer4 , successor to Rio y Olabarrieta, brought an action against Manuel Rey before the Court of First Instance of Palawan to recover the sum of P16,811.89, plus 9 per cent interest thereon, as well as to foreclose the deed of mortgage executed to guarantee the loan.

Defendant filed a motion to dismiss on the ground of prescription, but as the facts averred in the pleading do not support the plea, the motion was denied. Thereupon, defendant filed his answer wherein he reiterated his defense that plaintiff's action has already prescribed.

After the parties had submitted their evidence, the court found that on the basis of the facts proven, plaintiff's action has already prescribed, and, accordingly, dismissed the complaint. Plaintiff appealed to the Court of Appeals. After due hearing, the Court of Appeals affirmed the decision of the court a quo. The case is now before us on a petition for review.

The issues posed by petitioner are: (1) Who has the burden of proof as to the claim of the statute of limitations in the instant case?; (2) Is respondent Rey required to prove that he was "not a war sufferer" because that is the essence of his defense of prescription? and (3) Is petitioner Rio y Compania required to prove that respondent Rey was "a war sufferer and war damage claimant?"

The pertinent facts as found by the Court of Appeals are: "The term of the mortgage was for one year, to start from February 11, 1938, and might be extended for one year more upon agreement of the parties. The evidence fails to reveal an express agreement of the parties as to the extension of the mortgage for another year. So, on February 11, 1939 the action to enforce the mortgage eventually accrued. Granting, however, that it had been extended for one year more, which was the only extension authorized by the contract, according to paragraphs 3 and 5 thereof, the action for foreclosure should have arisen on February 11, 1940. From February 11, 1939 to April 10, 1954 when this action was filed, fifteen (15) years, one (1) month and twenty-nine (29) days had elapsed. From February 11, 1940 to April 10, 1954 there is an expanse of fourteen (14) years, one (1) month and twenty-nine (29) days. And if we subtract from this the three (3) years, four (4) months and sixteen (16) days period, from March 10, 1945 to July 26, 1948, during which the moratorium law was in force, the ensuing difference is ten (10) years, nine (9) months and thirteen (13) days. Thus, even reckoning the period for the action to foreclose from February 11, 1940, the present action was presented ten (10) years, nine (9) months and thirteen (13) days after its accrual."

It should be noted that the Court of Appeals, in the same manner as the court a quo, only deducted the short period

of moratorium, consisting of 3 years 4 months and 16 days, as applied by this Court in *Bachrach Motor Co., Inc. vs. Antonio Lejano*, (105 Phil., 6; 56 Off. Gaz. [17] 3276) (citing therein a long line of similar decisions), and not the long period which is applied if the debtor is a war sufferer or a war damage claimant. And the court deemed it proper to make that deduction because of its theory that it was incumbent upon petitioner to prove that respondent was a war sufferer and petitioner failed to do so. Thus, the following is the comment of the Court of Appeals on the matter:

"We believe that this is the rule applicable in the instant case, as the evidence fails to disclose that "Rey had filed a claim for war damage. We disagree with the proposition that Rey, to be protected by the benefits of prescription, should have proven that he was not a war sufferer. The *Rio y Compania*, appellant herein, invokes the protection of the Moratorium Law and consequently, bears the burden of proving that Rey had filed a claim for war damage and, therefore, no action for any pecuniary obligation could have been filed against him until after the decision in the case, of *Rutter vs. Esteban* (49 Off. Gaz., 1807)."

This finding is now assigned as error. Petitioner contends that since respondent set up in his favor the defense of prescription he had the burden of proof to establish that he was not a war sufferer or has not filed any war damage claim, in order that petitioner may be prevented from claiming the benefit of the long moratorium period. And since respondent failed to do so, the presumption is that he was a war sufferer, a circumstance which should be considered in favor of petitioner.

We are constrained to agree to this contention in view of our ruling in the case of *Rio y Compania* (successor to *Rio y Olabarrieta*) vs. *Datu Jolkipli*, (105 Phil., 525) wherein we said:

"Under the circumstances, it was incumbent upon the defendant to plead and prove that he was not covered by the Moratorium Law, Act 342, in order to establish that plaintiff's action was barred by prescription in all cases that may be established under the complaint. The rule, on the authority of *Lyon vs. Bertram*, 20 How. (U.S.) 149, 15 Law Ed. 847, is stated by American Jurisprudence to be as follows:

'A plea of the statute (of limitations) can not be sustained which rests upon a supposed state of facts which may not exist. It must be an answer to any case which may be legally established under the declaration. So where the statute imposed a bar on certain contracts after three years and on others after two years, the plea of the statute was held to be bad where it did not show that the contract in question was of the latter class.' (34 Am. Jur. 341, Sec. 431, note 8)

"The defendant has not shown nor pleaded that he was not a war sufferer and had not filed a war damage claim. While constituting negative averments, they are of the essence of his contention that plaintiff's claim was barred, and hence the burden of proving them lay on defendant-appellee (Rule 123, sec. 70.) * * *"

It was, therefore, incumbent upon respondent to prove that he was not a war sufferer or a war damage claimant in order that petitioner may not claim the benefit of the long moratorium period, and having failed to do so, the logical conclusion is that he was, thus tolling the period of prescription until May 18, 1953 when we declared unconstitutional Republic Act 342.[1] As a consequence, we are persuaded to hold that petitioner's action has not yet prescribed.

It appearing that neither the court of first instance, nor the Court of Appeals, has made any finding as to how much is the amount actually due the petitioner from respondent, there is need to remand this case to the court of origin in order that this point may be determined, and judgment rendered accordingly.

Wherefore, the decision appealed from is reversed. The case is remanded to the lower court for further proceedings in line with this decision. Costs against respondent Manuel Rey.

Bengzon, C. J., Padilla, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] Rutter vs. Esteban (93 Phil., 68; 49 Off. Gaz. 1807.

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