

EMILIANO DALANDAN, AND MARIA DALANDAN, ASSISTED BY HER HUSBAND JULIAN SILVERIO, PLAINTIFFS AND APPELLANTS, VS. VICTORIA JULIO, ELEUTERIO SANTOS AND FRANCISCA ECHIPARI, AS NATURA...

G.R. No. L-19101. February 29, 1964

Ponente: BARRERA, J.

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BARRERA, J.:

From the order of the Court of First Instance of Rizal (Branch VII, Pasay City) dismissing their complaint (Civil Case No. 317-R) against defendants Victoria Julio, Eleuterio Santos, and Francisca Echipari (as natural guardian ad litem of the minors Dolores, Ponciano, Lorenzo and Nolasco Santos), plaintiffs Emiliano Dalandan and Maria Dalandan (assisted by her husband Julian Silverio), interposed the present appeal.

The pertinent averments of the complaint that initiated this case filed on December 20, 1960 and amended on January 23, 1961, read as follows:

"7. That sometime in September 24, 1932, during the lifetime of Clemente Dalandan and Victorina Dalandan (widower and widow respectively), they executed a notarial document whereby said Clemente Dalandan sold, ceded, and transferred by way of pacto de retro sale to Victorina Dalandan(fifty (50) plots or 'salt beds' (banigan), which form part of the one hundred and fifty two (152) plots or 'banigan' found on six (6) parcels of registered land, situated at Las Piñas, Rizal and which is specifically described under Tax Declaration Nob. 7480, 7481, 7482, 7483, 774 and 7919 of Las Piñas, Rizal, subject to the right of Clemente Dalandan to repurchase the said fifty (50) plots or 'banigan' for the same amount of Four Thousand Pesos (P4,000.00) within ten (10) years from September 24, 1932 the date of said pacto de retro sale:

"8. That before the expiration of the ten (10) years period stipulated in the said pacto de retro sale above-referred to, the said Clemente Dalandan and Victorina Dalandan executed another notarial document on May 14, 1940, which expressly modified and amended the said pacto de retro sale, in that Victorina Dalandan expressly waived the ten (10) years period of redemption or repurchase, provided for in said pacto de retro sale, and granted to Clemente Dalandan the right to redeem or pay the price of P4,000.00 at any time, without any limitation as to the period of redemption or repurchase, provided, that Victorina Dalandan shall enjoy and be entitled to receive the products of the said fifty (50) plots or 'banigan' during the period that said P4,000.00 has not been returned to her (Victorina Dalandan) by Clemente Dalandan, and which notarial document dated May 14, 1940, a copy is hereto attached and said part hereof as Annex 'A'.

"9. That in the aforesaid notarial document (Annex 'A' hereof), it was also expressly provided that in the event of death of Victorina Dalandan, the redemption price of P4,000.00 shall be paid to Engracio Santos and Eleuterio Santos (both grandsons of Victorina Dalandan) at P1,500.00 each, and to Victoria Julio (daughter of Victorina Dalandan), the amount of P1,000.00.

"10. That the document executed by the deceased Clemente Dalandan in favor of the deceased Victorina Dalandan over the said fifty (50) plots or 'banigan' as alleged in paragraphs 5, 6, and 7 hereof, are in truth an

equitable mortgage, for:

(a) The document executed on May 14, 1940 (Annex 'A' hereof) expressly modified and amended the said document of September 24, 1932, as Victorina Dalandan expressly waived the ten (10) years period of redemption or repurchase therein and extending and/or granting a new period which is indefinite for Clemente Dalandan to redeem or repurchase those fifty (50) plots or 'banigan'.

(b) It may be fairly inferred from the context of said Annex 'A' that the real intention of the parties therein was that the transaction was only a security for the payment of a debt in the amount of P4,000.00, because of the use or employment of the words 'redemption' and 'redemption price' therein found.

(c) The defendants, as well as their predecessor-in-interest, had never taken steps to consolidate ownership over the said fifty (50) plots or 'banigan', as required under Article 1607 of the new Civil Code, in spite of the lapse of over twenty (20) years, since they executed Annex 'A' hereof, which inaction on the part of the defendants and their predecessor-in-interest strongly indicates that the transaction between Victorina Dalandan and Clemente Dulandan was really one of mortgage.

(d) Even assuming- the contract (Annex 'A') was a true sale with right of repurchase, although it is merely a mortgage, still under the last paragraph of Article 1606 of the new Civil Code, the plaintiffs herein have still thirty (30) days to repurchase from the time final judgment is rendered in & civil action to consolidate ownership, and which civil action has never been filed by the defendants nor their predecessor-in- interest.

(d) During the period from 1932 up to the present, the plaintiffs and their predecessor-in-interest were the ones paying the real estate taxes over the said lots, and that the defendants nor their predecessor-in -interest never paid any real estate taxes over the same.

(f) The provision in the contract, to the effect that Victorina Dalandan shall enjoy and be entitled to receive the products of the said fifty (50) plots during the period that the amount of P4,000.00 is not returned to her, is against the nature of a sale with pacto de retro, and is incompatible or inconsistent with such kind of contract, and is more in consonant with and justify the fact that said contract was really one of mortgage or equitable mortgage.

"11. That on December 12, 1960, the defendants were notified in writing that the plaintiffs are now ready to pay the amount of P4,000.00 to them, in the manner and amount provided in Annex 'A' hereof, and requesting the defendants to name the place and time where they desire to accept the said amount as payment of the debt of the plaintiff's predecessor-in-Interest, but the defendants inspite of the fact that they received the said notice in writing) refused to accept or receive the said amount from the plaintiffs; and until the filing of this complaint, the defendants Eleuterio Santos and Francisco Echipari did not even honor to answer the said offer of payment of the plaintiffs, except the defendant Victoria Julio who answered the plaintiffs' letter by refusing to accept payment tendered to her, and instead claims that she is the exclusive owner of the said (50) plots or 'banigan' by inheritance from her deceased mother, Victorina Dalandan, to the exclusion of Engracio Santos and Eleuterio Santos, and winch letters tendering payment and the answer thereto are hereto attached and made part hereof as Annexes B, C, D and E respectively.

"12. That in the aforesaid letters (Annexes B, C, and D) the defendants were notified that their refusal to accept the amount of P4,000.00 from the plaintiffs will force the latter to consign the same in court, and to institute the proper action against them.

"13. That due to the refusal of the defendants to accept the payment of P4,000.00 as alleged in the preceding paragraph for the redemption of the said fifty plots or 'banigan' mentioned in the preceding paragraphs, the plaintiffs are forced to consign or deposit the amount of P4,000.00 in court, as per Official Receipt No. F-55425.17, dated December 20, 1960, and which amount is now at the disposal of this Honorable Court,

"14. That the plaintiffs, herein, having duly consigned the said amount of P4,00.00, with due notice to the defendants, the plaintiffs, therefore, are entitled as of right under Article 1260 of the new Civil Code, to seek the cancellation of their aforesaid obligation and hereby prays the Court to order the cancellation, release, and discharge of those fifty (50) plots or 'banigan' from the equitable mortgage embodied in Annex 'A' hereof, as well as that notarial document dated September 24, 1932, executed and ratified by Clemente Dalandan and Victorina Dalandan before Notary Public Juan Ortega and entered as Doc. No. 604, Page 19, Book 7, Series of 1932 of the said Notary Public;"

Against this complaint, defendants filed a motion to dismiss, on the grounds that (1) the complaint states no cause of action; and (2) granting that it states a cause of action, it is already barred by the Statute of Limitations and/or laches, because:

(a) The stipulation that the subject matter of the sale may be redeemed at any time without limitation is null and void and after the expiration of ten (10) years from the execution of the document, title to the property is consolidated ipso facto to the vendee a retro.

(b) The plaintiffs cited only one circumstance, namely, the alleged extension of the period of redemption, as to why the document in question is merely an equitable mortgage, the rest of the circumstances alleged in the complaint being either insufficient or mere conclusion of law, and under the doctrine laid down by the Supreme Court in the case of Siopongco vs. Castro (L-12167, April 29, 1959), for documents executed before 1950, there must be a combination of several circumstances enumerated in Article 1602 of the new Civil Code before courts may be justified in concluding that parties intended the written document of pacto de retro to be a mere security for the payment of debt and, under the same decision, Article 1606 of the new Civil Code is not applicable, because ownership has vested in the defendants before the approval of said Code.

(c) Under the old Civil Code, it is not necessary for the vendee a retro to consolidate ownership, because the same takes place upon failure to exercise the right of redemption under Article 1518 of the same Code. And, even under the new Civil Code, ownership is consolidated by operation of law and the requirement of judicial order in Article 1607 of the same Code is merely for purposes of registering the consolidation of title (Rosario vs. Rosario 110 Phil., 394).

(d) Plaintiffs should have filed an action for reformation of instrument within the statutory period which under the doctrine laid down in the case of Conde vs. Cuenca (L-9405, July 31, 1956) must be within ten (10) years from the time the right of action accrued.

(f) The allegation of usury is a mere conclusion of law and the ultimate facts to sustain the same clearly shows that the alleged income of P480.00 a year does not exceed 12% of the purchase price of P4,000.00. Besides, there could be no usury, because the transaction in question is one of true sale.

(g) The mere fact that taxes were allegedly paid by plaintiffs on the property in question is not one of these circumstances mentioned under Article 1602 of the new Civil Code but an agreement where the vendor binds himself to pay the taxes on the land allegedly sold, which is not alleged in the complaint.

To this motion to dismiss, plaintiffs duly filed an opposition, to which defendants filed a reply. On April 29, 1961, the court dismissed the complaint, in an order, which reads:

"ORDER"

"This is a motion to dismiss the amended complaint filed on January 27, 1961, on the following grounds: (1) That the complaint states no cause of action; (2) That even if we concede arguendo that the complaint states a cause of action, the same is already barred by the Statute of Limitations and/or laches.

"After a careful consideration of the allegations of the amended complaint, and taking into account the

document, Annex (A) thereof, which serves as the main basis of the complaint, it is our sense that plaintiffs had already lost their rights to redeem the lands in question within the period of ten years from the date of the execution of said document. The stipulation in the contract that the parties thereto hereby waive the 10-year period for redemption or repurchase provided for therein and instead, the party of the First Part, Clemente Dalandan, is hereby granted the right by the party of the Second Part, Victorina Dalandan, to make the redemption or pay the purchase price of Four Thousand Pesos (P4,000.00) to the latter, his heirs, or assigns, at any time without any limitation as to the period of redemption or repurchase, whatsoever', offends against the provisions of Article 1508 of the old Civil Code in so providing that the right to repurchase may be exercised at anytime, that is even after the 10 year period shall have elapsed. Such stipulation is, consequently, illicit and could, not be given force and effect by this Court, for it runs counter to the provisions of the law on the matter.

"Let it not be said, because of the allegation in Paragraph 10 of the amended complaint, that the document, Annex 'A', in question is in truth an equitable mortgage, the motion to dismiss could not be sustained, because it hypothetically admits the truth thereof. Such allegations of 'equitable mortgage' in the complaint is, to our mind, but a mere conclusion of plaintiffs, and not a material allegation, so that the same can not be deemed admitted by the defendants who filed the motion to dismiss. "Considering that the document, Annex 'A', has the earmarks of a sale with right to repurchase and, as the plaintiffs failed to exercise their rights to redeem the same within the statutory period fixed by the old Civil Code which is applicable to the case at bar, we hereby hold that the plaintiffs had already lost whatever rights they had over the property.

"WHEREFORE, the amended complaint is hereby dismissed without costs.

"SO ORDERED."

Their motion for reconsideration of said order, having been denied, plaintiffs directly appealed to us.

The only issue to be resolved in this case is whether the trial court correctly dismissed plaintiff's complaint.

The records show that on September 24, 1932, Clemente Dalandan,[1] for and in consideration of the sum of P4,000.00, executed a contract of sale of 50 salt beds (banigan) located at Sitio Lakura, Las Piñas, Rizal, in favor of Victorina Dalandan,[2] with right to repurchase the same within 10 years from the date of the execution of the contract, by paying back and returning to the latter the purchase price of P4,000.00, with all the expenses incident to the preparation of said contract and, upon failure of Clemente Dalandan to exercise said right of repurchase within said period title thereto shall pass to and become vested, absolutely and without reservation, to Victorina Dalandan, her heirs, and assigns. On May 14, 1940, however, or prior to the expiration of the period of repurchase agreed upon, the parties executed another contract (Annex "A"), pertinent portion of which reads:

"That the parties hereto have decided and agreed by these presents to modify the conditions and agreements stated in the above-mentioned document of pacto de retro sale, in the sense that they hereby waive the 10-year period for redemption or repurchase provided for therein and, instead, the Party of the First Part, Clemente Dalandan, is hereby granted the right by the Party of the Second Part, Victorina Dalandan, to make the redemption or pay the purchase price of Four Thousand Pesos (P4,000.00) to the latter, his heirs, or assigns, at any time, with out any limitation as to the period of redemption or repurchase, whatsoever: Provided, however, That during the time or period that the said purchase price of Four Thousand Pesos is not paid, the Party of the Second Part or Victorina Dalandan shall enjoy and be entitled to receive the products from the said fifty (50) plots or 'banigan' stated above; and Provided, further, that upon the death of the Party of the Second Part, in the event that redemption price of P4,000.00 has not been paid, the same should be paid by the Party of the First Part, his heirs or assigns, to the persons as follows:

Note that the above stipulation:, whereby the parties waived the original 10-year period for redemption or repurchase of the property subject of the sale a retro, granting to the vendor a retro. Clemente Dalandan the ' right to make the repurchase "at any time, without any limitation as to the period of redemption or repurchase, whatsoever", is violative of Article 1508 of the old Civil Code, applicable to the instant case, which reads:

"Art. 1508. The right referred to in the next, preceding- article, in default of an express agreement, shall endure four years, counted from the date of the contract.

"Should there be an agreement, the period shall not exceed ten years."

In the case of *Yadao vs. Yadao* (20 Phil. 260), where the contract contained a stipulation that the vendor a retro could repurchase the land any time he had the money, this Court held that under the provision of the Civil Code (old), the life of a pacto de retro or agreement could not exceed ten years, and if the property subject of the contract was not redeemed within that period, the title then passed irrevocably to the vendee.

In line with this ruling, the aforementioned stipulation of May 14, 1940, insofar as it gave the vendor right to repurchase beyond the ten year period, is illicit and, therefore, null and void and cannot be given force and effect. The vendor a retro Clemente Dalandan should have exercised his right to repurchase the property in question at any time prior to the expiration of 10 years from September 24, 1932, the date of execution of the sale a retro. Having failed to do so, title to said propperty had been consolidated, ipso facto, in the vendee a retro Victorina Dalandan, on September 24, 1942, (*Alojado vs. Lim Siongco*, 51 Phil. 339, 342).

But appellants contend that if the said stipulation of May 14, 1940, wherein the parties waived the 10-year repurchase period originally agreed upon in the contract of September 24, 1932, was null and void, then the vendee a retro Victorina Dalandan became the absolute owner of the property, even prior to the expiration of the 10- year repurchase period. Hence, they urge that, as a consequence, such a waiver amounted to a promise to sell the property sold a retro, on the part of the vendee a retro to the vendor a retro Clemente Dalandan for an indefinite period and, therefore, did not violate the aforequoted provision of Article 1508 of the old Civil Code.

The claim is untenable. The waiver of the time limit to exercise the right of repurchase did not destroy or extinguish the right itself, but only modified its exercise. Therefore the contract remained to be a sale subject to repurchase, and did not become an absolute sale. Nor is such a stipulation (waiver of the period of redemption) a promise to sell, an independent contract. The right to repurchase for an indefinite period granted in the agreement of May 14, 1940 is the same right to repurchase within ten years provided in the September 24, 1932 contract. An agreement to repurchase becomes a promise to sell when made after an absolute sale, or after title has been consolidated in the vendee a retro, because where the sale is made without such an agreement or where the period of repurchase has already expired, the purchaser acquires the thing sold absolutely. If he afterwards grants the vendor the right to repurchase, it is a new contract and is equivalent to a promise to sell (*Ramos vs. Icasiano*, 51 Phil. 343, 346). The case of *Madamba vs. Tumaneng* (88 Phil., 333) cited by appellants is not in point, for there, the promise to sell the 2 parcels of land sold a retro was made after the vendee a retro had become absolute owners thereof, and therefore was an independent undertaking binding on the latter. (See *Ramos vs. Icasiano*, supra). In the instant ease, the promise (if at all) to resell was made prior to the expiration of the repurchase period and before the vendee a retro had become absolute owner of the property, and as such, was not a new contract but a mere modification in the exercise of the same right of repurchase already reserved in the original contract of September 24, 1932.

Appellants also argue that by filing a motion to dismiss, appellees thereby admitted the allegation of "equitable mortgage" found in Paragraph 10 of the amended complaint. '

The argument is not sound. As the trial court correctly pointed out, "such allegation of 'equitable mortgage' in the

complaint is a mere conclusion of plain tiff is (appellants), and not a material allegation, so that the same cannot be deemed admitted by defendants (appellees) who filed the motion to dismiss". As a rule, the complaint should contain allegation of ultimate facts constituting the plaintiff's cause of action.

"Neither is it proper to allege in a pleading inferences of fact from facts not stated, or incorrect inferences from facts stated, for they are not the ultimate facts required by law to be pleaded. Legal conclusions need not be pleaded, because so far as they are correct they are useless, and when erroneous, worse than useless." (I Moran, Comments on the Rules of Court [1957 Ed.] 109.)

And, to determine the sufficiency of the cause of action, only the facts alleged in the complaint and no other should be considered.

"The allegation of nullify of a judgment in a complaint, being a conclusion and not a material allegation, is not deemed admitted by the party who files a motion to dismiss." (Quiambao vs. Peralta, 102 Phil., 899)

The additional allegation in the amended complaint that from 1932 up to the present, appellants and their predecessor-in-interest were the ones paying the real estate taxes on the property subject of the sale a retro is of no moment, because it is not the fact of alleged payment of taxes that gives rise to the disputable presumption (of equitable mortgage) under Article 1602 of the new Civil Code, but an agreement whereby the vendor & retro binds himself to pay the taxes on the property sold a retro (Par. 5). There is absolutely no allegation in appellants' complaint of such an agreement. Moreover, as the transaction in question took place before the effectivity of the new Civil Code, this circumstance (paying taxes) alone is not sufficient to justify the conclusion that said transaction is a mere equitable mortgage and not a sale a retro. As we held in Siopongco vs. Castro (G.E. No. L-12167, April 29, 1959) :

"Before 1950, the principle obtained here, that a combination of several such circumstances (stated in Article 1602 new Civil Code) might justify the courts in concluding that the parties intended the written documents of pacto de retro to be a mere security for the payment of a debt. One was not enough. So that Article 1602 (providing one only of such circumstances as enough to give rise to the presumption) in effect enunciates a new rule of law . As such, we do not think it could affect contracts - like this - entered into before 1950,"

Lastly, we note that the provision in the contract of May 14, 1940 entitling the vendee a retro Victorina Dalandan to enjoy and receive the products of the property sold a retro is not incompatible with a contract of sale a retro. In the case of Claridad vs. Novella (105 Phil., 756), we already ruled that:

"The fact that the vendee a retro was given the right to enjoy the usufruct of the land during the period of redemption, far from being a factor favoring an equitable mortgage, is an argument in favor of appellee's theory (that the contract was a sale a retro), for usufruct is an element of ownership which is involved in a contract of sale."

For all the foregoing, we find and so hold, that appellants' amended, complaint, on its face, states no cause of action and, therefore, the trial court correctly dismissed the same.

Wherefore, the order appealed from is hereby affirmed, with costs against the appellants. It is so ordered.

Bengzon, C. J., Padilla, Labrador, Reyes, J. B. L., Dizon, Regala and Makalintal, JJ., concur.

[1] Predecessor-in-interest of plaintiffs-appellants.

[2] Predecessor-in-interest of defendants-appellees.

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