

SEVERINA ROSALES AND PUREZA CONGZON, PLAINTIFFS AND APPELLANTS, VS. LEOCADIO S. TANSECO, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. L-4135. November 29, 1951

Ponente: BENGZON, J.

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BENGZON, J.:

This is an appeal from the order of the court of first instance of Samar, dismissing the plaintiffs' complaint mainly on the ground of prescription. The order was issued upon motion of the defendants, who pointed out that the action sought the annulment of certain documents, the latest of which had been executed in 1936, i.e. more than ten years before the institution of the proceedings.

The complaint, filed in May 1947, is divided into three causes of action and makes the following material averments:

Plaintiffs are the widow and daughter, respectively, of Eustaquio Congzon, who owned with his wife a piece of land with improvements in Catbalogan, Samar. On August 15, 1927, defendant Leocadio S. Tanseco prepared a fictitious mortgage of the land in favor of Tan Tay San, which he made Eustaquio Congzon sign without consideration. That document was subsequently cancelled to be substituted in May, 1930 by another "mortgage"[1] for P26,000 in favor of defendant Tan Sun, which Eustaquio Congzon again signed thru fraud and without consideration. On March 30, 1932 Tan Sun transfer ed all his rights to defendant Tan Tay San, who in turn assigned his interests to defendant Leocadio Tanseco in April, 1936.

For second cause of action the complaint incorporates the pertinent allegations of the first, and asserts that the buildings on the lot were totally burned in June 1942; that said buildings have always been occupied by the mortgagees, and sever by Eustaquio Congzon; but that the plaintiffs, who never enjoyed the possession and fruits of their land, did satisfy taxes thereon amounting to P39,480.75.

In their third cause of action, the plaintiffs stated that from and after the destruction of the buildings on June 8, 1942, they were in actual and quiet possession of the lot until June 1, 1946, when defendant Leocadio Tanseco, thru force, intimidation and strategy, and without their consent, occupied the property and constructed thereon a house, all to their damage and prejudice.

Plaintiffs prayed that they be declared owners of the lot, that the "mortgage" documents and assignments be annulled, and that Leocadio Tanseco be ordered to vacate and pay damages and costs.

After some unimportant procedural incidents, the defendants submitted a motion to dismiss, arguing that it was too late for plaintiff to question the validity of the "mortgage" and the assignments (more than ten years had elapsed) and as the said mortgage had not been paid, the plaintiffs have no right to recover their realty. The court sustained the defendants' position. Hence this appeal.

His Honor was right in holding that, due to prescription, plaintiffs are precluded from seeking avoidance of the

"mortgage" and its assignments on the grounds of fraud or lack of consideration.

But the second cause of action, although incompletely stated, makes out a good case if construed in relation to the applicable legal provisions.

As submitted to the court the "mortgage" in favor of Tan Sun contained, in addition to ordinary stipulations, the following agreement:

"Que el deudor hipotecario no pague intereses por la cantidad adeudada, cediendo sin embargo su uso al acreedor hipotecario sin ningun alquiler, y teniendo dicho acreedor hipotecario derecho a percibir todos los alquileres de la finca, mientras el deudor hipotecario no pague o hiciere pagar a Tan Sun totalmente su deuda."

Therefore the contract although entitled "Escritura de Hipoteca" was in reality a contract of antichresis.[2]

In a contract of antichresis the creditor is obliged to pay the taxes on the property, unless the contract says otherwise (Art. 1682 Civil Code). The contract between Eustaquio Congzon and Tan Sun said nothing about taxes. Hence it was the obligation of the creditor or creditors to pay taxes on the property at issue herein.

Now, the second cause of action states that the debtor has paid for taxes on the property the amount of P39,480.75. Bearing in mind that the credit was only P26,000 it is plain to see that under the second cause of action the plaintiffs affirmed in effect that they had already discharged their debt (by advancing the taxes which the creditor should have paid) and they are entitled to the return of their property free from all encumbrance. At least there was good ground for accounting. Consequently, it was error to dismiss upon a mere motion filed before the answer.

Furthermore the third cause of action, posed the question. Where the antichretic debtor peacefully in possession of the premises given as guaranty is ejected thru force or strategy by the antichretic creditor does he have a right of action?

Under the Civil Code every possessor is entitled to be respected in his possession; and should he be disturbed therein he shall be protected, or possession shall be restored to him, by the means established by the laws of procedure (Art. 446). And a possessor, however he may have acquired his possession, cannot be deprived thereof without legal proceedings.[3] Nevertheless we shall not further pursue this line of inquiry, being sufficiently convinced that plaintiffs have a valid claim under their second cause of action, the allegations of which were provisionally admitted by the motion to dismiss.

Wherefore the appealed order will be reversed and the record remanded to the court a quo for further proceedings. Costs against appellees.

Pablo, Padilla, Tuason, Reyes, Jugo, and Baustista Angello, JJ., concur.
Paras, C.J., and Feria, J., took no part.

[1] It is a deed of antichresis as explained later.

[2] *Distor vs. Dorado* 46 Phil. 162; *Toquero vs. Villegas*.

[3] *Kincaid vs. Cabututan*, 35 Phil. 383; *Rodriguez vs. Taiño*, 16 Phil., 301; *Belen*, 13 Phil., 202; *Rojas vs. Mijares*, 9 Phil., 252.

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