

DEMETBIO BUNAYOG, PLAINTIFF AND APPELLANT, VS. SIXTO CHIONG, DEFENDANT AND APPELLEE.

G.R. No. L-13230. November 23, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On September 6, 1956, plaintiff brought this action against defendant before the Court of First Instance of Misamis Occidental praying that his ownership over the property in question be consolidated by virtue of the latter's failure to redeem it as agreed upon, and that he be awarded damages and attorney's fees.

Defendant in his answer admitted that the property in question was sold by him to plaintiff with an option to repurchase within a stipulated period and that he failed to exercise that right within the period agreed upon, but denied that he violated any condition of the contract which would entitle plaintiff to damages whereupon he moved that judgment be rendered on the pleadings insofar as his prayer for consolidation of ownership is concerned although with regard to damages the court may set the case for hearing if it believes said claim to be tenable.

Plaintiff filed his opposition to the motion contending that while the issue as regards the consolidation of ownership is not disputed the issue as to the claim for damages is controverted and hence there is need that a hearing be had insofar as said damages is concerned.

On January 12, 1957, the court considering that the answer of defendant is practically a confession of judgment with regard to the consolidation of ownership, while the claim for damages is untenable, rendered judgment declaring the Ownership of the property consolidated in favor of plaintiff but without making any pronouncement as to damages and costs.

Hence plaintiff interposed the present appeal contending that the trial court erred in not declaring that defendant violated the contract of pacto de retro sale by his failure to redeem the property as agreed upon, and in not awarding damages to plaintiff as prayed for in the complaint.

There is no merit in the appeal. A cursory examination of the terms of the contract in relation to the averments of the complaint would show that appellee bound himself to pay damages, court and attorney's fees only if he should violate any of the conditions stipulated therein. Here appellee did not violate any of the conditions stipulated, or at least none has been alleged to warrant any award for damages. The failure of appellee to redeem the property cannot be considered as an infringement of the contract. That is a right reserved to him which he may waive if he so desires. Such failure cannot give rise to an award for damages.

Appellant makes mention in his brief of certain facts which show bad faith on the part of appellee in selling the property in that he sold to him something which he knew did not belong to him, but said facts do not appear in the complaint and so cannot now be taken into account in this appeal.

Wherefore, the order appealed from is affirmed, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

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