

LETICIA H. CALDERA AND MANUEL CALDERA, PLAINTIFFS AND APPELLEES, VS. EUSEBIO BALCUEBA AND ELISEO CLEDERA, DEFENDANTS AND APPELLANTS.

G.R. No. L-1956. August 16, 1949

Ponente: PARAS, J.

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PARAS, J.:

On June 14, 1944, the plaintiffs executed a deed of sale with pacto de retro in favor of the defendants. The consideration was P15,000 and the term was three years. On August 11, 1944, as further security for the payment of the amount of the repurchase price, the plaintiffs executed a mortgage on another lot in favor of the defendants.

On February 28, 1945, the plaintiffs filed an action in the Court of First Instance of Camarines Sur alleging that they had previously offered payment of the repurchase price to the defendants who, however, refused to accept, and that they were accordingly consigning the amount of P15,000. The complaint prayed that the defendants be sentenced to accept payment and to released the plaintiffs from the effects of their obligation to the defendants. In the reamended answer of the defendants dated November 19, 1946, in conjunction with their motion filed on July 31, 1947, and the order of the Court of First Instance of Camarines Sur of August 5, 1947, the defendants interposed a counterclaim for the foreclosure of the mortgage for P15,000 executed by the plaintiffs. Upon petition of the plaintiffs, the Court of First Instance of Camarines Sur issued an order on September 16, 1947, dismissing the defendant's counterclaim on the ground that it is barred by the debt moratorium (Executive Order No. 32). From this order the defendants have appealed, advancing the sole argument that the Executive Order is unconstitutional.

The appeal is premature. The mortgage sued upon in the counterclaim is related to and an incident of the sale with pacto de retro which is in turn the basis of plaintiffs' complaint. In L-2968, Quimosing vs. Javien, (resolution of July 19, 1949), we have dismissed an appeal from an order dismissing a counterclaim on the ground that said appeal is premature.

In this connection, we are constrained to express our surprise at the action of the plaintiffs in setting up the defense of moratorium, since in their complaint they have offered to pay the sum of P15,000.00, the repurchase price under the sale with pacto de retro; and this is the same P15,000 being secured by the mortgage invoked by the defendants in their counterclaim.

The appeal will therefore be as the same is hereby disallowed, with costs against the defendants. So ordered.

Moran, C.J., Ozaeta, Feria, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

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