

HERMITO SIERVO, COMPLAINANT, VS. JUDGE JUAN E. INFANTE, RESPONDENT.

A.C. No. 1363. September 28, 1976

Ponente: ANTONIO, J.

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ANTONIO, J.:

Respondent, as counsel of defendant Sales Siervo in Civil Case No. 91,[1] in the Court of First Instance of Laoang, Northern Samar, is charged in this case for disbar-ment by complainant Hermito Siervo, son of the deceased Sales Siervo, with grave misconduct in connection with said civil case.

After the respondent has submitted his answer in denial of the charges and the reply thereto by complainant, the matter was referred to the Solicitor General on November 15, 1974, for investigation, report and recommendation.

On September 2, 1976, the Solicitor General submitted his report, recommending dismissal of the charges.

The facts, as found by the Solicitor General, are as follows:

"From the evidence, it appears that respondent Judge Juan Infante, Municipal Judge of Pambujan, Northern Samar, was sometime in 1966, the counsel of Sales Siervo, father of herein complainant Hermito Siervo, in Civil Case No. 91 of the Court of First Instance of Northern Samar, Laoang, Branch, which was against Estanislao Cerda, for consolidation of ownership.

"It appears in the case that Estanislao Cerda bought a parcel of land from Sales Siervo under pacto de retro; that neither Sales Siervo nor his heirs after his death re-deemed the land within the period of redemption (p. 21, Record); that Estanislao Cerda instituted an action for consolidation of ownership and that in a decision dated March 19, 1969, the trial court allowed the consolidation and declared Estanislao Cerda the owner of the property (p. 40, Record).

"Respondent Judge Juan Infante, as Siervo's counsel, received the decision on March 25, 1969. Within the period of appeal he advised the Siervos that they can reacquire the land either by appealing the decision or by redeeming it by paying the redemption price of P400.00. However, the widow of the late Sales Siervo told Judge Infante that they could not afford to appeal and that they have no money to redeem the land (p. 49, Record). The Siervos then went to Atty. Socrates Desales of Laoang who told them that he knows of no way of helping them (p. 3, Report and Recommendation of Acting Provincial Fiscal Mariano M. Singzon). From 1969 when the decision was rendered, there was complete silence over the case, until on June 18, 1974, the instant complaint was filed by Hermito Siervo before this Honorable Court (p. 1, Record; p. 3, Report of Fiscal Singzon).

"Complainant Siervo claims that respondent intentionally caused the case to be lost because he (respondent) had an arrangement to buy the land from Estanislao Cerda (p. 1, Record). In an affidavit attached to the complaint, it was also claimed that respondent had no desire to win the case for the Siervos because they do not pay him professional fees (pp. 1, 11, Record).

"Respondent, in his defense, submitted the affidavit of Estanislao Cerda in which he stated that Cerda is

pre-sently occupying the land, being the owner; that he did not have an agreement with Judge Infante that he would buy the land in question should he (Estanislao Cerda) win the case; and that Judge Infante never offered to purchase the land (p. 48, Record).

"The trial court in said Civil Case No. 91, found that the transaction is indeed a sale with a right to repurchase. This finding is sustained not only by the very contract it-self, Exhibit A (p. 21, Record), but also by the testimo-nies of witnesses for vendee a retro.

"The Siervos, however, apparently were not serious at the time to reacquire the land otherwise they could have raised P400.00 as suggested by respondent and redeem it or take an appeal (p. 49, Record). But it took the Siervos almost five (5) years to realize that Judge Infante alleged-ly did them wrong.

"The investigating Fiscal recommends dismissal of the instant case. We concur with his recommendation, because there is no convincing proof to sustain the charge. There is no showing that Judge Infante omitted to present against Estanislao Cerda evidence in his possession which could have won the case and prevent the consolidation. There is also no convincing proof showing that it was not a pacto de retro sale. In fact the Deed of Sale with Right of Repurchase (Exh. A, pp. 13, 42, Record) explicitly states that 'Vendor reserves * * * to repurchase the afore-cited pro-perty * * *,' within three (3) but not exceeding four (4) years. As held by the trial court if indeed this was not the true intention of the parties, the Siervos should have filed the corresponding action for reformation of the con-tract or at least attempt to pay the purchase price before the period for redemption had expired (pp. 44-45, Record). The Siervos neglected to do this within the period of re-demption.

"Indeed, there is no showing that adverse judgment was rendered against the Siervos because of respondent's negligence or failure to present relevant evidence that was available or arguments that were persuasive. The claim that Judge Infante deliberately lost the case because he wanted to purchase it is contradicted by the fact that there is, as we have stated, no proof that he could have won the case and by the undisputed affidavit of the owner, Estanis-lao Cerda, showing that he is still the owner and presently occupying the land. * * *"

There is no question that an attorney enjoys the legal presumption that he is innocent of the charges preferred against him until the contrary is proved. It is only when such presumption is overcome by convincing proof of the law-yer's misconduct that the serious consequences of disbarment or suspension should follow. As stressed in *Deles v. Aragona, Jr.*[2] "[t]he object of a disbarment proceeding is not so much to punish the individual attorney himself, as to safeguard the administration of justice by protecting the court and the public from the misconduct of officers of the court, and to remove from the profession of law persons whose disregard for their oath of office have proved them unfit to continue discharging the trust reposed in them as members of the bar. Thus, the power to disbar attorneys ought always to be exercised with great caution, and only in clear cases of misconduct which seriously affects the standing and character of the lawyer as an officer of the court and member of the bar." [3] We find that the evidence presented do not measure up to the above criteria.

WHEREFORE , in view of the foregoing, the charges against respondent are dismissed for lack of merit.

Fernando, (Chairman), Barredo, Aquino, and Concepcion, Jr., JJ., concur.

[1] Entitled "Estanislao Cerda, plaintiff, versus Sales Siervo, Defend-ant, for Consolidation of Ownership."

[2] Adm. Case No. 598, March 28, 1969, 27 SCRA 633, 644.

[3] *Velesv. Aragona, Jr.*, supra; *Gov. Candoy*, Adm. Case No. 736, Octo-ber 23, 1967, 21 SCRA 439, 442.

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