

FRANCES ALICE HOEY, PETITIONER, VS. AURELIO & COMPANY, INC., RESPONDENT.*G.R. No. L-31111. June 30, 1971*

Ponente: REYES, J.B.L., J.

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Petitioner-appellant (defendant in the lower court) directly appeals from a portion of the decision of the Court of First Instance in Civil Case No. 51949, sentencing her to pay the plaintiff (respondent-appellee herein) the sum of P109,242.30 received from the latter by way of mortgage loans with legal rate of interest from the filing of the complaint. The court a quo had absolved her from paying the amount of P100,757.70, having found the same as usurious interests or exactions.

Petitioner seeks a re-examination of this Court's doctrine in the case of *Angel Jose Warehousing Co., Inc. vs. Chelda Enterprises*[1] to the effect that the usurious lender can recover his capital in case of usurious transactions, which doctrine was applied in the case below.

It is petitioner-appellant's contention, among others, that a usurious lender also forfeits his capital in view of Article 1957 of the New Civil Code[2] which is a new provision, declaring "contracts and stipulations, under any cloak or device whatever, intended to circumvent the laws against usury" as void. It is argued that respondent-appellee forfeited his principal loan of P109,242.30 since it was found to be a usurious lender.

Respondent-appellee, on the other hand, prays for the dismissal of this appeal in its verified answer for reasons therein stated. In its brief,[3] respondent-appellee also disputes the facts as found by the lower court, insisting that the real facts were those presented by it below, viz, that the mortgages are legal and valid and that the foreclosure of the same was in order, which makes petitioner-appellant liable for all the claims in its complaint. Moreover, it has already appealed the lower court's decision to the Court of Appeals and the same is still pending.

The established rule in this jurisdiction is that when a party appeals directly to the Supreme Court, and submits his case there for decision, he is deemed to have waived the right to dispute any finding of fact made by the trial court. The only questions that may be raised are those of law.[4] Petitioner-appellant having appealed on a purely question of law, she is bound by the findings of fact of the court below.

Except for the fact that the appellant herein is the prevailing party in the court below, the situation is similar to that in the case of *Justo, et al. vs. Hernando, et al.*[5] The appellant in the said case also directly appealed to this Court, raising only a question of law. However, the appellee raised questions of fact in his brief. The Supreme Court was confronted with the question of whether to decide the appeal, confining the issue between the parties only to the questions of law raised by the appellant, or whether to consider the issue as extending to the questions of fact raised by the appellee, in which case, the appeal should be referred[6] to the Court of Appeals. It was held and ordered therein that the appeal be decided by the Court of Appeals. The above ruling was reiterated in *Ramos vs. Mañalac and Lopez*[7], and *Masangay, et al. vs. Valencia*.[8]

In the present case, the appellee did not only dispute the facts in its brief. It has appealed the lower court's decision to the Court of Appeals. Following the ruling laid down by this Court in the aforesaid cases, and considering the provision of Section 2, Republic Act No. 5440,[9] effective 9 September 1968, further amending Republic Act No. 296 (otherwise known as the Judiciary Act of 1948), this Court is constrained to refer this appeal to the Court of Appeals. In view hereof, We find it unnecessary to resolve the issue raised by the parties in their respective briefs.

FOR THE FOREGOING REASONS, the herein appeal is remanded to the Court of Appeals for consideration and decision.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Ruiz Castro, J., on leave.

[1] No. L-25704, 24 April 1968, 23 SCRA 119.

[2] Art. 1957 of the New Civil Code reads:

"Art. 1957. Contracts and stipulations, under any cloak or device whatever, intended to circumvent the laws against usury shall be void. The borrower may recover in accordance with the laws on usury."

[3] See pages 4-5, Brief for the Respondent.

[4] Republic vs. Luzon Stevedoring Corporation, No. L-21748, 26 September 1967, 21 SCRA 279 and other cases cited.

[5] No. L-3415, 11 June 1951, 89 Phil. 268.

[6] Underscoring supplied.

[7] No. L-2610, 16 June 1951, 89 Phil. 270

[8] No. L-9786, 31 August 1960, 109 Phil. 213.

[9] Sec. 2 of Republic Act No. 5440 provides in part:

"Sec. 2. Section seventeen of the same Act, as amended, is hereby further amended to read as follows:

'Sec. 17. Jurisdiction of the Supreme Court. -----.

'The Supreme Court shall further have exclusive jurisdiction to review, revise, reverse, modify or affirm on certiorari as the law or rules of court may provide, final judgments and decrees of inferior courts as herein provided, in -

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(4) All other cases in which only errors or questions of law are involved: Provided, however, That if, in addition to constitutional, tax or jurisdictional questions, the cases mentioned in the three next preceding paragraphs also involve questions of fact or mixed questions of fact and law, the aggrieved party shall appeal to the Court of Appeals; and the final judgment or decision of the latter may be reviewed, revised, reversed, modified or affirmed by the Supreme Court on writ of certiorari; -----" (Underscoring supplied)

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