

CECILIO DIEGO, PLAINTIFF AND APPELLEE, VS. SEGUNDO FERNANDO, DEFENDANT AND APPELLANT.*G.R. No. L-15128. August 25, 1960*

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

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Appeal by defendant Segundo Fernando from the judgment of the Court of First Instance of Nueva Ecija in its Civil Case No. 1694 for foreclosure of mortgage. The appeal was originally brought to the Court of Appeals, but was certified to us by that tribunal because it raises only questions of law.

The facts are not disputed. On May 26, 1950, the defendant Segundo Fernando executed a deed of mortgage in favor of plaintiff Cecilio Diego over two parcels of land registered in his name, to secure a loan of P2,000, without interest, payable within four years from the date of the mortgage (Exhibit "A"). After the execution of the deed, possession of the mortgaged properties were turned over to the mortgagee.

The debtor having failed to pay the loan after four years, the mortgagee Diego made several demands upon him for payment; and as the demands were unheeded, Diego filed this action for foreclosure of mortgage.

Defendant Fernando's defense was that the true transaction between him and plaintiff was one of antichresis and not of mortgage; and that as plaintiff had allegedly received a total of 120 cavans of palay from the properties given as security, which, at the rate of P10 a cavan, represented a value of P5,200, his debt had already been paid, with plaintiff still owing him a refund of some P2,720.00.

The Court below, however, found that there was nothing in the deed of mortgage Exhibit "A" to show that it was not a true contract of mortgage, and that the fact that possession of the mortgaged properties were turned over to the mortgagee did not alter the transaction; that the parties must have intended that the mortgagee would collect the fruits of the mortgaged properties as interest on his loan, which agreement is not uncommon; and that the evidence showed that plaintiff had already received 65 cavans of palay from the properties during the period of his possession. Whereupon, judgment was rendered for plaintiff in the amount of P2,000, the loan he gave the defendant, with legal interest from the filing of the action until full payment, plus P500 as attorney's fees and the costs; and in case of default in payment, for the foreclosure of the mortgage. From this judgment, defendant took the present appeal.

The main issue raised is whether the contract between the parties is one of mortgage or of antichresis. Appellant, while admitting that the contract Exhibit "A" shows a deed of mortgage, contends that the admitted fact that the loan was without interest, coupled with the transfer of the possession of the properties mortgaged to the mortgagee, reveals that the true transaction between him and appellee was one of antichresis. As correctly pointed out by appellee and the lower court, however, it is not an essential requisite of a mortgage that possession of the mortgaged premises be retained by the mortgagor (*Legaspi and Salcedo vs. Celestial*, 66 Phil., 372). To be antichresis, it must be expressly agreed between creditor and debtor that the former, having been given possession of the properties given as security, is to apply their fruits to the payment of the interest, if owing, and thereafter to

the principal of his credit (Art. 2132, Civil Code, Barretto vs. Barretto, 37 Phil., 234; Diaz vs. De Mendezona, 48 Phil., 666); so that if a contract of loan with security does not stipulate the payment of interest but provides for the delivery to the creditor by the debtor of the property given as security, in order that the latter may gather its fruits, without stating that said fruits are to be applied to the payment of interest, if any, and afterwards that of the principal, the contract is a mortgage and not antichresis (Legaspi vs. Celestial, supra). The court below, therefore, did not err in holding that the contract Exhibit "A" is a true mortgage and not an antichresis.

The above conclusion does not mean, however, that appellee, having received the fruits of the properties mortgaged, will be allowed to appropriate them for himself and not be required to account for them to the appellant. For the contract of mortgage Exhibit "A" clearly provides that fee loan of P2,000 was "without interest within four (4) years from date of this instrument"; and there being no evidence to show that the parties had intended to supersede such stipulation when the possession of the mortgaged properties, were turned over to the appellee by another allowing the latter to collect, the fruits thereof as interest on the loan, the trial court is not authorized to infer from this transfer of possession alone that the parties had verbally modified their written agreement that the loan was to be without interest for four years, and substituted another giving appellee the right to receive the fruits of the mortgaged properties as interests.

The true position of appellee herein under his contract with appellant is a "mortgage in possession" as that term is understood in American equity jurisprudence; that is, "one who has lawfully acquired actual or constructive possession of the premises mortgaged to him, standing upon his rights as mortgagee and not claiming under another title, for the purpose of enforcing his security upon such property or making its income help to pay his debt" (Diaz vs. De Mendezona, citing 27 Cyc. 1237, 48 Phil., 666). As such mortgagee in possession, his rights and obligations are, as pointed out by this Court in Macapinlac vs. Gutierrez Repide (43 Phil., 770), similar to those of an antichretic creditor:

"The respective rights and obligations of the parties to a contract of antichresis, under the Civil Code, appear to be similar and in many respects identical with those recognized in the equity jurisprudence of England and America as incident to the position of a mortgagee in possession, in reference to which the following propositions may be taken to be established, namely, that if the mortgagee acquires possession in any lawful manner, he is entitled to retain such possession until the indebtedness is satisfied and the property redeemed; that the non-payment of the debt within the term agreed does not vest the ownership of the property in the creditor; that the general duty of the mortgagee in possession towards the premises is that of the ordinary prudent owner; that the mortgagee must account for the rents and profits of the land, or its value for purposes of use and occupation, any amount thus realized going towards the discharge on the mortgage debt; that if the mortgagee remains in possession after the mortgage debt has been satisfied, he becomes a trustee for the mortgagor as to the excess of the rents and profits over such debt; and lastly, that the mortgagor can only enforce his rights to the land by an equitable action for an account and to redeem. (3 Pom. Eq. Jur. secs. 1215-1218)"

Similarly, in Enriquez vs. National Bank, 55 Phil., 414, we ruled that a creditor with a lien on real property who took possession thereof with the consent of the debtor, held it as an "antichretic creditor with the right to collect the credit with interest from the fruits, returning to the antichretic debtor the balance, if any, after deducting the expenses", because the fact that the debtor consented and asked the creditor to take charge of managing his property "does not entitle the latter to appropriate to itself the fruits thereof unless the former has expressly waived his right thereto".

In the present case, the parties having agreed that the loan was to be without interest, and the appellant not having expressly waived his right to the fruits of the properties mortgaged during the time they were in appellee's possession, the latter, like an antichretic creditor, must account for the value of the fruits received by him, and

deduct it from the loan obtained by appellant. According to the findings of the trial court, appellee had received a net share of 55 cavans of palay out of the mortgaged properties up to the time he filed the present action; at the rate of P9.00 per cavan (a rate admitted by the parties), the total value of the fruits received by appellee is P495.00. Deducting this amount from the loan of P2,000 received by appellant from appellee, the former has only P1,505.00 left to pay the latter.

Appellant also claims that the lower court erred in ordering him to pay legal interest on his indebtedness to plaintiff from the filing of the action, since the latter is, up to the present, still in the possession of the properties mortgaged and still enjoying its fruits. The court did not err in so holding, since at the time the action was filed and up to the present, appellant has not discharged his indebtedness to appellee, and the law allows the latter, in the absence of stipulation as to payment of interest, legal interest from the time of the debtor's default (Art. 2209, New Civil Code, Art. 1108, old). However, appellee should be made to account for the fruits he received from the properties mortgaged from the time of the filing of this action until full payment by appellant, which fruits should be deducted from the total amount due him from appellant under this judgment.

Wherefore, the judgment of the court below is modified in the sense that the amount of appellee's principal recovery is reduced to P1,505, with an obligation on the part of appellee to render an accounting of all the fruits received by him from the properties in question from the time of the filing of this action until full payment, or in case of appellant's failure to pay, until foreclosure of the mortgage thereon, the value of which fruits shall be deducted from the total amount of his recovery. No costs in this instance.

Paras, C, J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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