

CHUA LAMKO, PETITIONER, VS. ALFREDO DIOSO, ET AL. RESPONDENTS.

G.R. No. L-6923. October 31, 1955

Ponente: BENGZON, J.

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BENGZON, J.:

This petition to review the decision of the Court of Appeals was given due course upon the sole legal question whether the counterclaim of Chua Lamko against the plaintiffs had prescribed.

The material facts necessary to determine the issue are these:

In March, 1939, in Civil Case No. 7080 of Laguna, Chua Lamko obtained judgment to foreclose the mortgage debt of Eligio Dioso (predecessor of the plaintiffs) for the amount of P1,910.10 with interest. The mortgaged property was accordingly sold by the Sheriff, at public auction, to Chua Lamko as the highest bidder; but he never obtained judicial confirmation of the sale. He took possession of the property, and in 1946 sold it to defendants Prudencio Maranan and Leovigilda Suarez, for P2,500 who in turn sold it to defendants Panfilo Velo and Gloria Reyes in 1948 for P4,200. The latter conveyed the property for P3,500 to Pedro Deza and Ligaya Sto. Domingo in 1949. On February 22, 1950 plaintiffs instituted this action to recover the mortgaged property, alleging ownership and nullity of the sale to Chua Lamko and of the subsequent conveyances.

Brought in as a third-party defendant by his successors in interest who are the defendants, Chua Lamko interposed by way of counterclaim against plaintiffs, the judgment he had obtained in Civil Case No. 7080 which, according to him, amounted to P3,918.96 and which he should be paid, if plaintiffs persisted in their refusal to validate the foreclosure sale.

After hearing the parties, the Hon. Nicasio Yatco, Judge of the Laguna court of first instance, declared that Chua Lamko did not acquire title to the property and could pass none to the defendants; that the plaintiffs were the owners thereof entitled to its possession; that defendants' rights (as buyers) against Chua Lamko shall be reserved; and that Chua Lamko's counterclaim founded on the judgment had already prescribed, the Court having no jurisdiction to pass on the same.

The Court of Appeals affirmed His Honor's decision, with costs against appellant Chua Lamko.

In this petition to review, Chua Lamko expressly affirms he does not assail that part of the judgment of both courts disregarding the foreclosure sale and awarding ownership of the property to plaintiffs. But he insists on his counter-claim contending first, that it has not prescribed because of the Moratorium Law, and second, that the lower courts could not consider prescription because it had not been alleged by plaintiffs in their answer to his counterclaim in the court of first instance.

The Laguna Court, it should be stated, dismissed the counterclaim (based on the judgment in Case No. 7080) for the reason that said judgment had been entered in March, 1939, whereas Chua Lamko for the first time asserted it in this proceeding in March, 1950, after more than ten years. In other words his action to enforce the judgment

had been barred by the statute of limitations. (Rule 39, sec. 6; sec. 43 of Act 190.)

Chua Lamko asked for reconsideration asserting that prescription had not been alleged by plaintiffs and was waived. The plaintiffs, replying, insisted the judgment had prescribed and could not be enforced. The court refused to reconsider. On appeal to the Court of Appeals, the identical point was raised; but it was overruled.

It is true that if the defense of prescription is not raised in the answer it is deemed waived under Rule 9, sees. 9, 10 of the Rules of Court. But the waiver applies to defenses of prescription "that would raise issues of fact not appearing upon the preceding pleading."

"The defendant may set fourth by answer as many affirmative defenses as he may have. All such grounds of defense as would raise issues of fact not arising upon the preceding pleading must be specifically pleaded, including fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and all other matter by way of confession and avoidance." (Sec. 9, Rule 9.) (Underlining ours.)

The plaintiffs were not required to specifically plead prescription, because the pleading of Chua Lamko disclosed that the judgment had been rendered in March 7, 1939 and it was asserted only in March, 1950; i.e., more than ten years before. No issue of fact was involved by their claim of prescription; these two dates were not denied. Therefore their failure to plead it did not constitute waiver.

This makes it unnecessary to go into the other reason of the lower courts for disallowing this counterclaim; lack of jurisdiction.

Petitioner however asserts that as he was prevented from enforcing the judgment of 1939 during the Moratorium interval, his right of action was suspended and the ten-year period did not elapse. This poses the important question whether in view of our ruling in *Rutter vs. Esteban*, (93 Phil., 63), the Moratorium Laws had the effect of stopping temporarily the running of the Statute of Limitations.

We find however that this was not raised in Chua Lamko's brief submitted to the Court of Appeals; and under our rulings petitioner is precluded from raising the question here;^[1] specially because the Moratorium order is an excuse that may be renounced.

At any rate, this plea is unmeritorious, because there is every reason to believe that Chua Lamko would not have filed an action to enforce the 1939 judgment, even if the Moratorium Laws had not been enacted. Because he was satisfied with the result of the auction sale—he asked for no deficiency judgment—and sold the property for more than the amount of his recovery. He believed his judgment had been paid. He may not therefore be heard to say, "I did not file an action because of the Moratorium." With or without the moratorium, he would not have filed the action to enforce the judgment.

An equitable consideration has not escaped our attention: Chua Lamko loses his credit and the mortgaged property. However he is resigned to the second: he does not question the lower courts' award of ownership. As to the first, it appears that he has received rentals of the property since 1939 (p. 24, Record of Appeal) and if plaintiffs are to be believed up to 1950, the sales to other persons being allegedly fictitious. On the other hand, the effect of prescription is that the creditor loses his money. His personal reasons for not suing on time do not carry weight. His mistaken belief that he had already been paid, is no cause for stopping the course of the statute of limitations.

Judgment affirmed, with costs. So ordered.

Paras, C. J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, and Reyes, J.B.L., JJ., concur.

[1] Tiacho vs. Tan Si Kiok, 45 Off. Gaz., 2466; Spencer vs. Celino, G. E. No. 46271; Moran Rules of Court (1952 Ed., Vol. I, p. 952.)

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