

LUNETA MOTOR COMPANY, PETITIONER, VS. ANGEL DIMAGIBA, ET AL., RESPONDENTS

G. R. No. L-17061. December 30, 1961

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Sometime prior to May 7, 1956, the Luneta Motor Company filed several cases in the Courts of First Instance of Manila and Cavite against Angel Dimagiba and Natividad Noriel concerning the purchase from said company by Dimagiba of a truck the price of which he was not able to pay according to their agreement. These cases eventually were settled amicably by virtue of a compromise agreement entered into between the company and the two defendants as a result of which Dimagiba signed a promissory note on the aforesaid date in favor of the company for the sum of P16,126.12 which he promised to pay in 18 monthly installments. To guarantee the payment of said indebtedness two chattel mortgages were executed separately by Dimagiba and Noriel wherein they placed as security, two trucks belonging to each of them. Subsequently, because of some tires and spare parts bought on credit by Dimagiba from the same company, he executed two more promissory notes, one on June 11, 1956 in the sum of P1,108.00 payable in 4 equal installments, and the other on July 20, 1956 for P700.00 payable in 5 equal installments. Because the aforesaid equipment was used by Dimagiba in the truck bought by him, the chattel mortgage he had executed was made extensive to the value of said two promissory notes.

On November 27, 1956, due to the failure of Dimagiba to pay several installments that became due on the three promissory notes executed by him to cover the value of the truck and the equipment he had purchased, the Luneta Motor Company filed a complaint before the court of First Instance of Manila against Dimagiba and Noriel for replevin and for recovery of the balance of the latter's obligation praying at the same time that a warrant of seizure be issued directing the sheriff to seize the mortgaged trucks and turn them over to plaintiff, and, finding this prayer meritorious, the two trucks were ordered seized and delivered to plaintiff after filing on its part the bond fixed by the court. Later, a supplemental complaint was filed by the same company against the same defendants to recover the sum of P1,455.61 being the value of certain parts found to be missing in the truck of Dimagiba.

In the meantime, a writ of injunction was prayed for by Noriel in an attempt to forestall the seizure of her truck by the plaintiff which was granted upon her filing a bond of P7,500.00, which later was reduced to P1,600.00, but having failed to put up said bond the replevin continued and on May 10, 1957, Noriel's truck was sold at public auction upon petition of plaintiff and was adjudicated to the same plaintiff as the highest bidder for the sum of P5,000.00.

After trial, the court a quo rendered decision holding that since plaintiff has seized the two trucks and chose to foreclose the mortgages executed thereon pursuant to Article 1484 of the new Civil Code it can no longer recover the balance of the purchase price against either defendants and consequently, it affirmed the writ of manual delivery of the truck belonging to Dimagiba but dismissed the complaint against Noriel, ordering Dimagiba to pay plaintiff the sum of P1,455.61 representing the value of the parts found missing in his truck, with legal interest thereon from the filing of the complaint, and the costs of action. However, when defendants called the attention of

the court a quo that while it ordered the dismissal of the complaint against Noriel and set aside the writ of manual delivery issued, in relation thereto it overlooked the latter's counterclaim relative to the return of her truck or the payment of its value in default thereof, the court a quo modified its decision by ordering plaintiff to pay Noriel the sum of P10,000.00 with legal interest thereon from the date of the filing of the counterclaim, it having found that the return of the truck has become legally impossible.

Within the period prescribed to perfect an appeal, plaintiff caused the truck of Dimagiba to be sold at public auction at which it bought the same for P9,000.00 as the highest bidder. And when the case was elevated to the Court of Appeals, the latter affirmed in toto the decision of the court a quo. The case is now before us on a petition for review filed by the plaintiff.

It appears that Angel Dimagiba bought from the Luneta Motor Company a truck for a price which, was compromised at P16,126.12 payable in 18 monthly installments to guarantee which he executed a chattel mortgage on the same truck on May 7, 1956, and as a further security thereof one Natividad Noriel also executed on the same date a chattel mortgage on another truck which belonged to the latter. It also appears that when Dimagiba failed to pay several installments as he agreed in the promissory note he executed to cover the price of the truck he purchased, the company instituted an action not only to recover the balance of his obligation but to secure the seizure of the two trucks mortgaged with a prayer that the proceeds that may be realized after the sale of said trucks be applied to the payment of the judgment that may be rendered in the case. Because of the vague nature of the allegations contained in the complaint, as well as in its prayer, the court a quo as well as the Court of Appeals, considered the action taken as one of both replevin and foreclosure of mortgage.

In effect, after the filing of the complaint, the first step taken by plaintiff was to ask for the seizure of the two trucks subject of replevin, which was granted, the sheriff having taken possession thereof and having turned them over to the plaintiff. Thereafter, while the main case was still pending trial on the merits, plaintiff secured from the sheriff the sale of the truck of Noriel at public auction which plaintiff itself bought as the highest bidder for the sum of P5,000.00. And considering that plaintiff could not foreclose the mortgage of Noriel's truck out of court and at the same time ask for judgment on the balance of the obligation against the principal debtor Angel Dimagiba, the court a quo declared that such sale which was carried out at the request of the plaintiff has no legal validity considering that plaintiff chose at the same time to foreclose the chattel mortgage executed by Dimagiba to secure the payment of the same obligation, and so it dismissed the case insofar as Noriel is concerned, while it ordered the payment to her of its value which was fixed at P10,000.00. Thus, in reaching the conclusion that the scheme of the creditor cannot be sustained because it would be a flagrant violation of Article 1484 of the Civil Code, the court a quo said:

"While it is true that Exhibit '4' on its face appears to be a compromise, there is no question that by virtue of said compromise, the truck of Angel Dimagiba was once more sold to him on the installment plan by Luneta Motor Co. and Angel was made to assume the balance of the account including parts and tires all on credit; the Court does not see that this being the case, the case can be taken out of the operation of Article 1484 of the New Civil Code; the law is quite emphatic when it declares that any agreement to the contrary would be null and void; and the evidence having established the fact that the consideration of the two promissory notes. Exhibits '6' and 'I' were casings and inner tubes also as the Court understands incorporated into the truck and covered as plaintiff itself alleges in paragraph 3 of its complaint, in the chattel mortgage, Exhibit 'C', the only effect should be as the Court understands and her liability being only secondary, neither should she be required anymore to pay the balance due unto plaintiff from Angel Dimagiba, so that the result would be that with respect to the money liability prayed for in the complaint, the same will have to be a dismissal. * * * "

To the above ruling the Court of Appeals has fully agreed.

We do not find any error in this ruling of the Court a quo which was concurred in by the Court of Appeals for the same is in line with the letter and spirit of Article 1484 of the new Civil Code. Indeed, said article prescribes three remedies which a vendor may pursue in a contract of sale of personal property the price of which is payable in installments, to wit: (1) exact fulfillment of the obligation; (2) cancel the sale; and (3) foreclose the mortgage on the thing sold. If he chooses the third remedy, the article provides that he shall have no further action against the purchaser to recover any unpaid balance of the purchase price. It even adds that any agreement to the contrary shall be void.

But in the instant case the vendor was not content in Choosing any of the three remedies, but chose to avail itself of the first and third remedies. More than that, plaintiff even went to the extent of suing for replevin. In other words, it filed an action containing three remedies: to collect the purchase price, to seize the property purchased, and to foreclose the mortgage executed thereon. Plaintiff even went to the extent of selling first the property of Noriel, who is not the vendee, out of court, and after doing so, it asked the court for judgment on the balance. Such a scheme is not only irregular but is a flagrant circumvention of the prohibition of the law.

The issues posed before us by petitioner cannot now be passed upon not only because we consider them unnecessary but because they were not raised either before the Court of Appeals or before the court a quo.

Wherefore, the decision appealed from is affirmed, with costs against petitioner.

Bengzon, C. J., Padilla, Concepcion, Barrera, Paredes, and De Leon, JJ., concur.

Labrador, J., reserve his vote.

Reyes, J.B.L., J., concurs in the result.

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