

FELIX ASTURIAS, ET AL., PETITIONERS VS. COURT OF APPEALS AND NICOLAS MIRAS, RESPONDENTS.

G.R. No. L-17895. September 30, 1963

Ponente: BARRERA, J.

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BARRERA, J.:

Petitioners seek in this appeal the review of the decision of the Court of Appeals confirming in toto the judgment of the Court of First Instance of Quezon Province wherein the contract of sale with right of redemption executed by plaintiff-appellee Nicolas Miras on November 1, 1930 in favor of the spouses Laureano Asturias and Julia Orozco (petitioners' predecessors-in-interest) covering the land in question, was declared one of mortgage with usurious interest and therefore null and void. The defendants, now petitioners, were consequently ordered to vacate the portion (4/5) of the land occupied by them, to pay plaintiff the amount of P4,410.00 which represents the value of the coconuts gathered by them from 1931 to 1941 and from 1946 to 1948 in the concept of usurious interest, minus P500.00 which is the capital of the loan; a further sum of P5,760.00 which they were able to obtain from the produce of the land since 1948; and to return the P30.00 paid on account of the usurious interest from 1928 to 1930.

The contention of the petitioners is that both the trial court and the Court of Appeals erred in admitting and giving credence to the oral testimony of plaintiff Miras tending to vary the terms of the pacto de retro sale (Exh. 1 or B), contrary to the survivorship disqualification rule [Sec. 26(c), Rule 123, Rules of Court]; in not holding that the action of plaintiff has already prescribed and that defendants-petitioners acquired title to the land by prescription, and in ordering them to refund the alleged usurious interest and the fruits of the land since 1930. The pertinent facts as found by the trial court and affirmed by the Court of Appeals are as follows:

In order to pay his debt to the Philippine National Bank, Nicolas Miras, on November 1, 1928, obtained from the spouses Laureano Asturias and Julia Orozco, a loan of P500.00 at 3% interest per month secured by a mortgage in a private document of the land in question. Two years later, in 1930, having paid only P30.00 as interest while the total indebtedness reached the sum of P830.00— P500.00 representing the capital and P330.00 the balance of the unpaid interest for two years—Nicolas Miras, upon the request of the spouses, executed on November 1, 1930, a written document of sale with the right of repurchase within seven years covering the same property for the amount of P830.00. Although not expressed in the contract, the parties agreed that the spouses, in payment of the stipulated 3% per month interest on the P830.00, were to be permitted to gather and benefit by the fruits of the coconut trees planted and growing on the land. Miras remained in possession of the land, cultivating the portion not occupied by the coconuts and raising therein other plants.

After Laureano Asturias died in 1934, and before the death of his widow, Julia Orozco in 1937, Miras offered to redeem the property but the latter requested him to postpone the same to a later date as she had not yet sufficiently benefited from the capital invested as the price of copra unexpectedly went down after 1930. Upon Julia Orozco's death in July 1937, Miras made the same offer to redeem the property from petitioners herein, successors-in-interest of the spouses, who made the same request as their deceased mother, and to which request

Miras once more agreed.

In 1938, one year after Julia Orozco's death, petitioners discovered the document Exh. 1 or B and noting that it was in the form of a sale, they agreed to partition the land among themselves notwithstanding the fact that their father, Laureano Asturias, did not include said property in his will and Miras continued in possession thereof, paying land taxes thereon. In 1943, Amparo, Romeo and Apolonia Camilon, children of the deceased Constanca Asturias, one of the heirs of the creditor spouses, reconveyed to respondent Nicolas Miras their one fifth (1/5) portion of the property in question, upon receipt from him of the sum of P210.00, their share of the credit against Miras.

When the petitioners attempted to enter the property in 1946 and tried to fence the same in 1948, in order to exclude Nicolas Miras therefrom, the latter filed an action for forcible entry and prevented the petitioners from continuing their act. In the same year, because of petitioners' continued refusal to have the property redeemed, Miras filed the present case.

The contention that under the rule of survivorship disqualification, the testimony of respondent Miras is inadmissible to vary the terms of the pacto de retro sale, is untenable because, as found by the Court of Appeals, no timely objection has been made against the admission of such evidence. Furthermore, one of the petitioners (Felix Asturias) was made to testify on such prohibited matters covered by the exclusion-rule (t.s.n. May 27, 1953, pp. 65, 70-71). In view of this, petitioners are correctly deemed to have waived the benefit and protection of the rule.[1]

As a consequence, the finding of fact of the Court of Appeals, arrived at after considering and evaluating the evidence, thus properly admitted, that the contract in question is one of a loan with usurious interest, and, therefore is null and void, is conclusive upon us and can not be reviewed.

The claim of petitioners that the action of plaintiff respondent Miras has already prescribed, and that they in turn had acquired title to the land in question by acquisitive prescription, is without merit, in view of the fact that, as found by the Court of Appeals, the present action is one primarily for revindication or recovery of property and only incidentally to declare the contract of sale with right of repurchase null and void as having been executed for the purpose of disguising a usurious transaction. This is evident from the allegations in the complaint and the reliefs prayed for, which, it is a settled rule, determine the nature of an action or issue (*Rone vs. Claro*, L-4474, May 8, 1958).

Article 4 of the Civil Code (the provision applicable to this transaction) provides that "Acts performed contrary to law are void, except in cases in which the law itself gives validity to such acts". A contract designed to hide a usurious agreement not only violates the law but contravenes public policy. Such a contract can not be countenanced and is therefore illegal and void from its inception. Such being the case, the prayer for the declaration of its nullity is imprescriptible under Article 1410 of the New Civil Code. It is true that this is a new provision, but its principle is equally applicable to the case at bar, as was held in the case of *Eugenio vs. Per dido* 97 Phil., 41 where, in deciding that an action to annul a sale made 1932, in violation of the Homestead Act, had not prescribed, this Court said:

"Under the existing classification, such a contract would be in existent and the 'action or defense for the declaration' of such in existence 'does not prescribe' (Article 1410, New Civil Code). While it is true that this is a new provision, it is nevertheless a principle recognized since *Tipton vs. Velasco* (6 Phil. 67) that mere lapse of time cannot give efficacy to contracts that are null and void". vs. *Beltran* 97 Phil., 772; *Angeles vs. Court of Appeals*, 102 Phil., 1006).

Neither did petitioners acquire title to the land by acquisitive prescription since it appears from the facts found by

the Court of Appeals, that possession of the property was obtained by the petitioners only in 1946 and the original complaint was filed in 1948. Their claim that their possession dates back from 1930 when they started gathering the coconuts from the land in the form of payment of the usurious interest on the loan is groundless. The mere fact that from 1930 they were permitted to enter the land for the purpose of gathering the fruits of the coconuts did not make them possessors of the property in the concept of owners to entitle them to claim prescription. Such possession which was sporadic and by mere tolerance of the owners and actual possessors of the land cannot be the basis of a claim of ownership by prescription.

Having thus arrived at the conclusions above set forth, the decision of the Court of Appeals ordering petitioners to refund to respondent Miras the usurious interest collected in the form of fruits of the land since 1930 is justified.

Wherefore, the decision of the Court of Appeals is hereby affirmed, with costs against petitioners. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] *Abrenica vs. Gonda and De Gracia*, 34 Phil. 739; *Arroyo vs. Azur*, 76 Phil. 493.

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