

MARIA RAMOS, PETITIONER, VS. SANTIAGO OSORIO AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-27306. April 29, 1971

Ponente: DIZON, J.

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DIZON, J.:

This is an appeal from a decision of the Court of Appeals in CA-G.R. No. 19970-R entitled Santiago Osorio, Plaintiff-Appellant vs. Maria Ramos, assisted by her husband, Vicente Cruz, Defendant-Appellee.

On May 29, 1956, the Court of First Instance of Manila rendered a decision in Civil Case No. 25421 entitled Santiago Osorio vs. Maria Ramos, et al., dismissing plaintiff's complaint and, in relation to defendant's counterclaim, sentencing him to pay said defendant the amount of P776.00, with interest thereon at the legal rate from January 1, 1952 until full payment thereof. The P776.00, according to the trial court, was the amount paid by Maria Ramos to Santiago Osorio in excess of the legal rate, said court having found, in relation to the former's counterclaim, that the transaction between the parties was tainted with usury.

From the above decision, Osorio appealed to the Court of Appeals where on or before September 1959 the record of the case was lost (CA-G.R. No. 19970-R). The Court of Appeals, however, was duly informed thereof only on August 24, 1962.

It is not disputed that on July 12, 1961, the Court of Appeals dismissed Osorio's appeal because of his failure to take the necessary steps for the completion of the record within the time to him given for that purpose. On August 18, 1961, obviously because of a motion for reconsideration filed by Osorio, the Court of Appeals issued a resolution reaffirming its former resolution of July 12, 1961 dismissing his appeal. It appears, however, that on October 12, 1961, resolving another motion filed by Osorio for the admission of the transcript submitted by him and for a reinstatement of his appeal, the Court of Appeals set aside its previous resolutions of dismissal of July 12 and August 18, 1961, reinstated Osorio's appeal, and subsequently rendered the appealed decision which modified that of the Court of First Instance of Manila by setting aside that portion thereof providing for the refund of usurious interests paid. The present appeal interposed by petitioner Maria Ramos refers only to that portion of the decision of the Court of Appeals modifying the decision of the trial court as above-mentioned, claiming firstly, that when said court issued its resolution of October 14, 1961 setting aside its previous resolutions of July 12 and August 18 of the same year, it had already lost jurisdiction over the case because said resolutions dismissing Osorio's appeal had already become executory and, secondly; that the Court of Appeals likewise erred in setting aside, on the ground of prescription, the decision of the Court of First Instance of Manila insofar as it sentenced Osorio to refund to petitioner the sum of P776.00, for the reason that Osorio had not pleaded said defense in the Court of First Instance.

The record discloses that one of the affirmative defenses interposed by petitioner Maria Ramos as defendant in Civil Case No. 25421 of the Court of First Instance of Manila was that the transaction between her and the therein plaintiff Santiago Osorio was usurious and that she had actually paid the latter interests above the rate authorized

by law. She also interposed in her answer a counterclaim for the recovery of the usurious interests paid by her to Osorio amounting to the total sum of P776.00 (Record on Appeal, Pages 12-16).

Santiago Osorio filed a reply to the answer of the defendant, which included his own answer to the latter's counterclaim. Nowhere in said pleading, however, did he plead the defense of prescription as far as the amount of P776.00 claimed in Maria Ramos' counterclaim was concerned. It was only in the Court of Appeals (CA-G.R. No. 19970-R) that he raised such defense in the third assignment of error submitted in his brief as plaintiff-appellant.

It is settled law in this jurisdiction that the defense of prescription is waivable, and that if it was not raised as a defense in the trial court, it cannot be considered on appeal, the general rule being that the appellate court is not authorized to consider and resolve any question not properly raised in the lower court (*Subido vs. Lacson* 55 O.G., 8281, 8285; *Moran*, Comments on the Rules of Court, Vol. I, p. 784, 1947 Edition).

Our conclusion, therefore, is that the Court of Appeals erred in setting aside the decision of the Court of First Instance of Manila in Civil Case No. 25421 sentencing the herein respondent Santiago Osorio to pay the herein petitioner Maria Ramos the sum of P776.00.

In the light of the above conclusion, We do not find it necessary to resolve the other question raised by petitioner in her brief.

WHEREFORE, the appealed decision is modified by eliminating therefrom the portion thereof setting aside the decision of the Court of First Instance of Manila sentencing herein respondent Santiago Osorio to pay petitioner Maria Ramos the sum of P776.00, and affirming instead the decision of said Court of First Instance on the matter. With costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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