

ANASTACIO N. ABAD, PLAINTIFF AND APPELLANT, VS. CANDIDA CARGANILLO VDA. DE YANCE, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-5682. May 26, 1954*

Ponente: PARAS, C.J.

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On August 30, 1950, the plaintiff, Anastacio N. Abad, filed in the Court of First Instance of Pangasinan a complaint against the defendants Candida Garganillo Vda. de Yance, et al., praying that the deed of sale with right of repurchase dated December 10, 1931, be declared a mere equitable mortgage, and that the defendants be ordered to vacate the land described in paragraph 2 of the complaint and to deliver to the plaintiff certain amounts of palay as his share in the harvest of the land in question or their equivalent in money at P17.87 per cavan. On October 20, 1950, the plaintiff filed an amended complaint, with practically the same prayer as in the original complaint. On November 4, 1950, the defendants filed a motion to dismiss the amended complaint on the ground that its causes of action are barred by prior judgment and by the statute of limitations. This motion to dismiss was opposed by the plaintiff, and on December 4, 1950, the court issued an order overruling the motion to dismiss and ordering the defendants to answer the complaint within the reglementary period. On January 5, 1951, the plaintiff filed a motion for default, alleging that the defendants had failed to file an answer, and on January 17, 1951, the court declared the defendants in default, and authorized the plaintiff to present his evidence on January 29, 1951. In the meantime, or on January 26, 1951, the court received notice of the filing in the Court of Appeals by the defendants of a petition for certiorari, to annul the order of default and to have plaintiff's amended complaint dismissed, as a result of which the Court of First Instance of Pangasinan issued an order on January 29, 1951, suspending further proceedings. Simultaneously, the defendants filed a motion to vacate the order, of default. On December 5, 1951, the defendants' petition for certiorari was dismissed by the Court of Appeals on the ground that they did not file in the trial court a motion for the reconsideration of the order denying their motion to dismiss the amended complaint. On December 17, 1951, the defendants filed in the Court of First Instance of Pangasinan a motion for reconsideration, praying that plaintiff's amended complaint be dismissed with costs, the defendants invoking the following passage appearing in the decision of the Court of Appeals dismissing the defendants' petition for certiorari:

"The land involved in Yance's petition of September 17, 1938, is identically the one which Anastacio Abad claims that he had placed as a mere security for a loan of P1,800, but it was made to appear as sold a retro. In this petition Yance asked that the Register of Deeds be ordered 'to enter and note at the back of Title No. 48515 the herein attached deed of sale with right of repurchase.' If that contract was really one of mortgage, Abad should have so maintained in his answer, instead of admitting that it was one of a sale a retro and waiving away objection that it be so annotated. The nature of the contract entered into between Abad and Yance has thus already been determined. Abad cannot take back his admission and attack this contract asking that it be interpreted as one of mortgage."

On December 22, 1951, the plaintiff filed a petition to strike out the defendant's motion for reconsideration, after

which the court, on January 15, 1952, issued an order setting aside the order of default, required the defendants to answer the amended complaint within 10 days, and denied the defendants' motion for reconsideration. On January 22, 1952, the defendants filed a motion praying that the order of January 15, be reconsidered and that their motion for reconsideration filed on December 17, 1951 be resolved on the merits. On January 29, 1952, the plaintiff in turn filed a motion for reconsideration, praying that the order of default be maintained and the defendants' motion for reconsideration be stricken from the records. This was followed by a motion filed by the defendants on January 29, 1952, praying that plaintiff's amended complaint be dismissed with costs, on the ground of *res judicata*, in that the Court of Appeals, in dismissing the defendants' petition for certiorari, already ruled upon the nature of the contract between the plaintiff and the defendants. After hearing, the Court of First Instance of Pangasinan issued an order on February 25, 1952, dismissing the case with cost against the plaintiff, citing the following pronouncement of the Court of Appeals in its decision dismissing the defendants' petition for certiorari: "The nature of the contract entered into between Abad and Yance has already been determined. Abad cannot take back his admission and attack this contract asking that it be interpreted as one of mortgage." From this order the plaintiff has appealed.

It is at once obvious that the lower court erred in dismissing the case. It is significant that, in the decision of the Court of Appeals, the dismissal of the petition for certiorari filed by the defendants was based on the latter's failure to move for the reconsideration of the order of the Court of First Instance of Pangasinan denying the defendants' motion to dismiss the amended complaint. What was said by the Court of Appeals with reference to the nature of the contract in question was purely an *obiter dictum*, unnecessary for its decision. If it were not so, the defendants' petition would have been granted and plaintiffs amended complaint would have been dismissed. The matter touched upon by the Court of Appeals and invoked by the defendants, may have a proper place in an answer.

Wherefore, the appealed order is hereby set aside and the case remanded to the Court of First Instance of Pangasinan for further proceedings, starting from the issuance of an order by said court requiring the defendants to file an answer within a reasonable period. So ordered without costs.

Pablo, Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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