

MARIA MACAPINLAC AND EUFROSINA MACAPINLAC LORENZO, PETITIONERS, VS. THE COURT OF APPEALS (FIRST DIVISION) AND AVELINA BALLESTEROS, RESPONDENTS.

G.R. No. L-2400. May 18, 1950

Ponente: REYES, J.

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REYES, J.:

This is an appeal by certiorari from a decision of the Court of Appeals.

It appears that the petitioners, Maria Macapinlac and Eufrosina Macapinlac-Lorenzo, were indebted to the respondent, Avelina Ballesteros in the sum of P500. To secure the payment of this debt, petitioners mortgaged a piece of land in Tuguegarao, province of Cagayan, executing for that purpose, on November 29, 1937 a deed entitled "Mortgage with Option to Buy" and containing the following stipulations:

"It is further agreed, that in default of the Mortgagors in the performance of any of their obligations above stated within two (2) years the Mortgagors will sell the same to the amount not to exceed (P1,000) one-thousand pesos, Philippine Currency, or in case the Mortgagors will sell the same to third persons, the Mortgagee will be given preference to buy the same provided that the above price will not be exceeded."

As the petitioners failed to pay I within the stipulated period of two years not only the original debt of P500 but also the additional sums, totalling P470, later taken by them, an action was brought against them by the respondent on January 13, 1940 in the Court of First Instance of Cagayan for the recovery of the total sum due, the complaint being later amended so as to convert the action into one for specific performance, that is to say, to compel petitioners to deed over to respondent the property covered by the mortgage on the theory that the mortgage deed gave the mortgagee the option to buy the mortgaged property. Answering the complaint, petitioners put up the defense that although entitled "Mortgage with Option to Buy", the mortgage deed did in fact give to petitioners the option to sell, and to the respondent a mere preferred right to purchase the property mortgaged. After trial the lower court rendered a decision upholding petitioners' contention, and finding that petitioners had theretofore consigned in court the sum of P1,100 for the payment of the debt (though according to respondent it was for the purpose of lifting the writ of attachment), declared the mortgage discharged and the petitioners absolved from the complaint.

Notified of the decision on April 10, 1944, respondent on the following day filed notice of her intention to appeal, followed sometime later by a cash deposit of P60 as appeal bond. Then on May 3, 1944, she filed her record on appeal. Objected to on the ground that it did not conform to the Rules, the record on appeal was disapproved, but respondent was given ten days within which to present an amended one, which she did. As the court still refused to approve the amended record on appeal, respondent filed a petition with the Court of Appeals (for Northern Luzon) to compel the lower court to approve the said record on appeal and give the appeal due course. The case was at this stage when its record both in the Court of Appeals (for Northern Luzon) and in the Court of First Instance of Cagayan were destroyed in the battle for Liberation in 1945.

On November 26, 1945, respondent 'sought to have the record of the case reconstituted by filing a petition for that purpose, in the Court of First Instance of Cagayan. But after hearing, the court, on October 23, 1946, declared the reconstitution a failure and ordered it given up without prejudice to the filing of a new action. The order was couched in the following terms:

"Sin perjuicio del ejercicio de otra nueva accion, si asi lo creyere conveniente la promovente, el Juzgado declarando fracasada esta reconstitucion, da por desistida de la misma aquella, sin costas."

In consonance with this order, respondent, on October 28, 1946, filed in the Court of First Instance of Cagayan a new action for specific performance (Civil Case No. 27). Petitioners moved for the dismissal of this new action on the theory that the same was barred by the judgment rendered in the former case (civil case No. 2382). The lower court denied the motion but reserved to petitioners the right to set up in their answer the defense of res judicata. Not willing to go further without the issue of res judicata being first decided, petitioners came to this Court with a petition for a writ of prohibition to enjoin the lower court from proceeding with the trial of the case. But the petition was dismissed on the ground that petitioners had a remedy by appeal in case the lower court "should erroneously or illegally overrule the point of res judicata" which they were allowed to set up in their answer in said Civil Case No. 27 of said court.

Taking its regular course, the new action went to trial, and on May 21, 1947, judgment; was rendered in favor of plaintiff (respondent herein) ordering the defendants (herein petitioners) to execute a deed of absolute sale conveying the property in question to plaintiff. The new judgment is thus a reversal of the one rendered in the former case whose record the parties were not able to reconstitute.

On appeal to the Court of Appeals this new judgment was affirmed, and it is the confirmatory decision of that Court that has been brought here for review through a petition for a writ of certiorari.

The first question presented is whether the action in which the judgment under review was rendered is barred by the judgment in the former case, the record of which both in the Court of First Instance and in the Court of Appeals no longer exists. In the determination of this question, notice must be taken of the fact that at the time the new action was filed the former judgment had not yet attained the stage of finality, as the same was still in the process of appeal to a higher court. We cannot assume that appellant had meant to abandon her appeal by not asking for the reconstitution of her petition for mandamus to compel the trial court to elevate the record of the case to the appellate court. It would be unjust to entertain that assumption in the teeth of the fact that appellant did precisely ask for the reconstitution of the record in the Court of First Instance in order, according to her, that "there may be a record to be certified or remanded by the Court of First Instance should mandamus be held tenable." Why take the trouble of having that record reconstituted if the intention was to give up the appeal? Moreover, no inference unfavorable to respondent can be drawn from the fact that she has not asked for the reconstitution of the record of the mandamus case in the Court of Appeals. Under the law (Section 29 of Act No. 3110) a party who has waived reconstitution by failing to petition for the same within the prescribed period may still file his action anew. Respondent in this case is, therefore, still free to renew her action for mandamus. But that move would be to no purpose in the absence of any record that could be certified to the Court of Appeals in the event the petition was granted. In the last analysis, then, the reconstitution of the record in the Court of First Instance was essential to the renewal of any attempt to prosecute the appeal already begun by respondent when the record was destroyed. But as such reconstitution, at the time it was attempted, proved to be a failure, the only practical solution to the problem was for respondent herein to file her action anew. This is sanctioned by section 30 of Act No. 3110, and it is precisely what the Court of First Instance authorized her to do in the order hereinbefore quoted.

From the foregoing it is clear that the judgment, whose reconstitution was unsuccessfully sought, has not become

final, so that res judicata may not be set up.

There is nothing to the suggestion that this Court has already upheld petitioners' defense of res judicata when, in dismissing their petition for a writ of prohibition to enjoin the Court of First Instance from proceeding with the trial of the new case, it declared that they had a remedy by appeal in case the said court "should erroneously or illegally overrule the point of res judicata" which they were allowed to set up in their answer. By this pronouncement, this Court did not necessarily mean to say that the defense of res judicata had to be upheld, thereby closing the door to a contrary decision. What was meant was that this court should not be called upon to decide that question until it had been passed upon by the trial court.

It only remains to consider whether or not the Court of Appeals erred in holding that the deed of mortgage gave respondent Avelina Ballesteros the option to purchase the property mortgaged. We note, however, that in arriving at that conclusion the respondent court took into account not only the provisions of the deed but also the subsequent acts of the parties, especially the receipts issued for the additional sum taken by petitioners from the mortgagee. The conclusion is based upon an analysis of the evidence, so that whether the said conclusion is correct or not is essentially a question of fact which can not be reviewed by this Court on appeal.

There being no reversible error in the decision appealed from, the same is hereby affirmed, with costs against the petitioners.

Moran, C.J., Ozaeta, Pablo, Bengzon, and Tuason, JJ., concur.

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