

BERNARDO B. LEGASPI, PETITIONER, VS. COURT OF APPEALS AND LEONARDO B. SALCEDO, RESPONDENTS.

G.R. No. L-45510. May 27, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal by way of certiorari from the decision of the then Court of Appeals in CA-G.R. No. 53947-R and from the resolution denying the petitioner's motion for reconsideration.

On February 8, 1971, the plaintiff now petitioner filed a complaint with the Court of First Instance of Cavite, docketed as Civil Case No. N-1595 for reconveyance to enforce his right to repurchase two parcels of land, Lots Nos. 3962 and 3963 of the Imus Estate covered by TCT Nos. T-4388 and T-4389, respectively, which he sold to the defendant, now private respondent, pursuant to a sale with pacto de retro as evidenced by a Deed of Sale with the Right to Repurchase dated October 15, 1965 and marked as Exhibit "A".

The complaint alleged, among others, that Bernardo B. Legaspi is the registered owner of the aforementioned two parcels of land which he sold to his son-in-law, Leonardo B. Salcedo, on October 15, 1965 for the sum of P25,000.00 with the right to repurchase the same within five years from the execution of the deed of sale; that before the expiry date of the repurchase period which was on October 15, 1970, Legaspi offered and tendered to Salcedo the sum of P25,000.00 for the repurchase of the two parcels of land; that the tender of payment was refused by Salcedo without justifiable or legal cause; that Salcedo refused, to convey the properties to Legaspi as requested by the latter; that on October 15, 1970, Legaspi deposited in the Office of the Clerk of Court of First Instance of Cavite City the amount of P25,125.00 as evidenced by Official Receipt No. 2698797-k marked as Exhibit "B"; that despite earnest efforts towards a compromise after consignment of the repurchase money had been made, Salcedo refused to reconvey the properties in question.

In his answer with compulsory counterclaim, Salcedo alleged, among others, that he denies that Legaspi ever offered and tendered to him the sum of P25,000.00 or requested the execution of the corresponding deed of reconveyance; that what actually transpired on October 15, 1970 was that Legaspi asked for an extension of one year within which to repurchase the two parcels of land bringing with him a document entitled "Extension Period to Repurchase" marked as Exhibit "1" which Salcedo declined to sign; and that Salcedo also denies that earnest efforts towards a compromise were pursued by Legaspi for the latter merely proposed for an extension of one year of the right to repurchase. By way of special defense, Salcedo claimed that Legaspi was no longer entitled to repurchase the properties in question for failure to exercise his right within the stipulated period in accordance with Article 1250 of the Civil Code under which Salcedo maintained he was entitled to the payment of P42,250.00 instead of only P25,000.00. Article 1250 of the Civil Code provides as follows:

"In case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary."

The lower court, after trial, rendered a decision, the dispositive portion of which reads:

"WHEREFORE, judgment is for the plaintiff who retains ownership of Lots Nos. 3962 and 3963 of the Imus Estate covered by TCT Nos. T-3488 and T-3489, respectively, of the Registry of Deeds for the Province of Cavite by automatic operation of law when payment of the obligation has been effected by depositing the whole amount with the Clerk of Court in spite of the refusal to receive the same under the allegation that the plaintiff must be obliged to pay P17,250.00 by way of interest or devaluation where in a case of this nature, sale with right to repurchase, interest has no place in its scheme; and the defendant is hereby ordered to deliver these two lots immediately upon receipt of this decision to the plaintiff as they should have done on October 15, 1970 which in bad faith they have been avoiding using all kinds of tricks to frustrate the payment of the said obligation and for which they should be made to answer for damages as consequences of bad faith; the defendant to pay unto the plaintiff the sum of P10,500.00 yearly from October 15, 1970 until the delivery of these two lots to the plaintiff value of the produce of the said two lots which have been retained by the defendant, yearly, from October 15, 1970 when they should have made physical delivery of these two lots by reason of the payment of the price of the said two lots appearing in the deed of sale with right to repurchase; defendant further to pay to the plaintiff by way of moral, punitive, exemplary, and corrective damages in the amount of P20,000.00; P2,000.00 for attorney's fees, plus the costs of this proceedings. The counterclaim is hereby dismissed; and the Register of Deeds, Cavite Province is hereby ordered to cancel the annotation of the sale with pacto de retro dated October 1, 1965 upon the ground that the repurchase therein mentioned was effected legally on October 15, 1970, inspite of defendant's refusal to allow plaintiff to exercise his right to repurchase reserved to plaintiff in the document."

On appeal, the Court of Appeals reversed the decision and dismissed the complaint holding that:

"x x x [T]he appellee never made a valid tender of payment that amounted to a lawful exercise of the right to repurchase the property involved in the instant case. Neither was a valid consignation made seasonably in court of the amount of P25,000.00 with which to make the repurchase."

A motion for reconsideration was denied, Hence, this appeal by certiorari.

The petitioner assails the decision of the Court of Appeals first, on the ground that the respondent court departed from the accepted and usual course of judicial proceedings contrary to the well-settled rule that as to the matter of credibility of witnesses, the appellate court cannot substitute its own discretion with that of the lower court for the latter court is in a better position to gauge such credibility of witnesses; and secondly on the ground that the respondent court committed a patent error in law and jurisprudence by virtue of its conclusion that "no valid consignation was seasonably made of the amount of P25,000.00 with which to make the repurchase" despite the Official Receipt of the Clerk of Court evidencing the deposit of said amount on the last day of the repurchase period, that is, on October 15, 1970.

The only issue crucial to the present appeal is whether or not the petitioner validly exercised his right to repurchase the properties within the five-year period as stipulated in the sale with pacto de retro entered into between the petitioner as vendor a retro and private respondent as vendee a retro. To resolve this issue, we determine whether it was correct for the respondent court to disturb the findings of fact made by the trial court in its conclusion that there was tender of payment within the redemption period.

Tender of payment is the manifestation made by the debtor to the creditor of his desire to comply with his obligation, with the offer of immediate performance. (Tolentino, Civil Code of the Philippines, Vol. IV [1985]). Generally, it is an act preparatory to consignation as an attempt to make a private settlement before proceeding to the solemnities of consignation. (8 Manresa 325). Consignation is the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment and it generally requires a prior tender of payment. (Limkako v. Teodoro, 74 Phil. 313). In instances where no debt is due and

owing, consignment is not proper. (*Asturias Sugar Central v. Pure Cane Molasses Co.*, 60 Phil. 255) We have early held that:

"Consignment is not required to preserve the right of repurchase as a mere tender of payment is enough if made on time as a basis for an action to compel the vendee a retro to resell the property." (*Villegas v. Capistrano*, 9 Phil. 416; *Rosales v. Reyes, et al.*, 25 Phil. 495; *Paez, et al. v. Magno*, 46 O.G. p. 5425).

Since the case at bar involves the exercise of the right to repurchase, a showing that petitioner made a valid tender of payment is sufficient. It is enough that a sincere or genuine tender of payment and not a mock or deceptive one was made. The fact that he deposited the amount of the repurchase money with the Clerk of Court was simply an additional security for the petitioner. It was not an essential act that had to be performed after tender of payment was refused by the private respondent although it may serve to indicate the veracity of the desire to comply with the obligation.

On the issue of whether or not the tender of payment in the manner described by the petitioner resulted in the exercise of the right to repurchase, we rule that it was erroneous on the part of the respondent court to reverse the factual finding of the trial court that a valid tender of payment was made seasonably. The records do not show that this finding is grounded entirely on speculation, surmises, or conjectures.

One reason emphasized by the respondent for reversing the factual findings of the trial court was a discrepancy regarding the time the consignment was made. Was it made at 10:00 o'clock in the morning or 3:00 o'clock in the afternoon? The discrepancy is not substantial. It is plausible that either the petitioner or the court employee could not correctly recall the exact time, about one year later, when an official transaction was performed on a given day. There is no discrepancy in the date that consignment was effected. Moreover, there is an official receipt evidencing the transaction.

We apply the following:

"Sec. 20. Public and private writings. - The following writings are public:

"(a) The written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial and executive, whether of the Philippines, or of a foreign country;

xxx xxx xxx

(Rule 132, Rules of Court.)

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"x x x [A]ny instrument authorized by a competent official with the solemnities required by law is a public document. x x x [A]n official receipt printed in accordance with the standard forms required by the government is a public document." (*U.S. v. Asensi*, 34 Phil. 750, 757, 758, citing *Cacnio v. Baens*, 5 Phil. 742; and *U.S. v. Vy Guico*, 12 Phil. 209).

"The evidentiary nature of public documents must be sustained in the absence of strong, complete and conclusive proof of its falsity or nullity." (*Martin, Rules of Court, with Notes and Comments, Vol. V, [1974]*, citing *Robinson v. Villafuerte*, 18 Phil. 171; *Sy Tiangco v. Pablo*, 59 Phil. 119; *De Jesus v. Grey*, 59 Phil. 834; *E1 Hogar Filipino v. Olviga*, 60 Phil. 17).

"The law reposes a particular confidence in public officers that it presumes they will discharge their several trusts with accuracy and fidelity; and, therefore, whatever acts they do in the discharge of their public duty may be given in evidence and shall be taken to be true under such a degree of caution as the nature and circumstances of each case may appear to require." (*Antillon v. Barcelona*, 37 Phil. 148, 152).

The alleged correction in the official receipt was not made by the petitioner but by the cashier of the Court of First Instance who received the money. The wife of the private respondent also testified that on October 12, 1970 or three days before the expiry date, the petitioner and his son went to the respondent's house to repurchase the lots. The respondent's letter to the petitioner's lawyer on November 3, 1970 shows that the offer to repurchase the property was rejected because the petitioner could not pay an additional P17,250.00 on top of the repurchase price. Paragraph 6 of the respondent's answer to the complaint states as an Affirmative and Special Defense, the following:

xxx xxx xxx

"6. That if at all plaintiff would be entitled to repurchase the said properties, he should pay the defendant the sum of P42,250.00 in accordance with Art. 1250 of the New Civil Code and upon failure to do so, defendant is entitled to an order of this Honorable Court to have his ownership over the said properties consolidated and the said properties registered in his name in accordance with Art. 1607 of the New Civil Code."

The records, therefore, show that the right of repurchase was seasonably exercised. The records clearly manifest that the petitioner was able to make a valid tender of payment on the 14th of October 1970 by offering personally the amount of P25,000.00 to the private respondent who refused to accept it claiming that the money was devalued. Thereafter, the petitioner informed the private respondent that he would be depositing the same amount with the proper court. (tsn., pp. 6 & 9, February 8, 1972 hearing). The trial court correctly ruled that there was proper exercise of the right to repurchase within the five-year period not for the reason that the deposit of the repurchase money amounted to a tender of payment but for what the evidence submitted before it proved. The appellate court erred when it did not apply the well-accepted doctrine that:

"Conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case." (Chase v. Buencamino, Sr., 130 SCRA 365)

As regards the award of moral, punitive, exemplary and corrective damages in the amount of P20,000.00 made by the trial court, the award is deleted for want of sufficient proof to justify it. The mere refusal to accept the repurchase money on the ground that the value of the peso had devalued did not amount to bad faith which would warrant the payment of these damages by the private respondent.

WHEREFORE, the decision of the former Court of Appeals is hereby REVERSED and SET ASIDE. The decision of the Court of First Instance of Cavite, 7th Judicial District, Branch III is REINSTATED but MODIFIED by the deletion of the award of P20,000.00 for moral, punitive, exemplary and corrective damages. In all other respects, the trial court's decision is AFFIRMED. No costs.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Paras, JJ., concur.

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