

FAUSTO CATAGONA, PLAINTIFF AND APPELLEE, VS. SEGUNDO DIONISIO, ET AL., DEFENDANTS AND APPELLANTS.*G. R. No. L-12731. January 29, 1959*

Ponente: BAUTISTA ANGELO, J.

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On June 2, 1954, plaintiff filed in the Court of First Instance of Nueva Ecija an action to declare certain contract entered into between him and defendant to be a mere mortgage and not a sale with right to repurchase; to order defendant to receive the amount of P100.00, with interest thereon, representing the balance of plaintiff's indebtedness to defendant; to declare the alleged contract of mortgage released, and to order defendant to pay the aggregate amount of P14,500.00 by way of damages and attorney's fees.

Defendant, answering the complaint, claimed that the contract alluded to by plaintiff is one of sale with right to repurchase and plaintiff having failed to pay the consideration of the same within the period agreed upon, he consolidated his ownership over the property. And by way of counterclaim, he asked that plaintiff be ordered, to pay the aggregate amount of P4,500.00 as damages and attorney's fees. Plaintiff replied to the counterclaim, asking that the same be dismissed as frivolous and unfounded.

On September 2, 1954, the parties, instead of going to trial, submitted, a written agreement which contains the conditions under which the differences between, them, would be settled, and on the same date, the court rendered judgment approving the agreement and ordering the parties to comply with its contents.

On May 25, 1955, defendant filed a motion for execution alleging that plaintiff has failed to comply with the terms and conditions contained in the written agreement, which the court granted, it appearing that the decision has already become final and executory and on August 25, 1955, the provincial sheriff, in obedience to the writ issued by the court, sold the property subject of litigation at public auction, the property having been awarded to defendant as the highest bidder.

On April 7, 1956, plaintiff paid to the provincial sheriff the amount of P3,205.00 representing the redemption price of the property sold to defendant at public auction on August 25, 1955, and as a consequence, the sheriff executed a deed of repurchase in plaintiff's favor which was duly registered with the Register of Deeds of the province. In order that the corresponding transfer of the property may be effected and a new title issued in his name, plaintiff filed on April 16, 1956 a motion praying that defendant be ordered to surrender to the Register of Deeds Transfer Certificate of Title No. 18965 which was issued to him as a result of the auction sale., This motion was granted on April 23, 1956.

On June 26, 1956, defendant filed a motion for reconsideration alleging that the court erred in ordering the surrender of his title to the Register of Deeds because plaintiff has no longer any right under our laws to redeem the property sold at public auction because the sale was held as a result of the foreclosure of a mortgage which was executed by the plaintiff, unlike in foreclosure cases affecting mortgages executed in favor of the Philippine National Bank or the Rehabilitation Finance Corporation where, by express provision of the law, the mortgagor

may still redeem the property within one year from the date of the sale. But this motion was denied for lack of merit, hence the present appeal.

The written agreement submitted by the parties to the trial court by way of amicable, settlement reads as follows.:

"The parties herein, assisted by their respective counsel, to this Honorable Court respectfully submit for approval and as basis of judgment herein, the following amicable agreement to which the said parties have entered into:

"1. The defendant Hereby renounces all his rights, interests, shares and participation in the parcel of land in Question described in paragraph 3 of the complaint in favor of the plaintiff, his lawful heirs, executors, administrators and assigns;

"2. The deed of sale, with right of redemption. (Annexes A, B, and Exhibit 1) are hereby revoked, cancelled and released;

"3.. That transfer Certificate of Title No. NT-15007 of the Province of Nueva Ecija in the name of the defendant be cancelled and that, in lieu thereof, a new transfer certificate be issued in the name and in favor of the plaintiff who is married to Loreta de la Cruz of Guimba, Nueva Ecija;

"4. The plaintiff hereby acknowledges that he is indebted to the defendant in the sum of P2,600 000, which sum he does hereby promise and agree to pay without any interest whatsoever on the last day of February, 1955 at the residence of the latter. From the moment, of default, 12% interest shall be charged thereon until the same shall have been fully paid.

"5. In order to secure the true and faithful payment of the said obligation, the plaintiff hereby promises and agrees to execute simultaneously with the issuance of a new certificate of title on and over the said land in question described in paragraph 3 of the complaint in favor of the said defendant, mortgaging and using the said land as security of the said loan.

"6. That plaintiff hereby respects the right of the defendant to harvest the standing crops on the said land in question, but, his said right shall definitely terminate at the end of the present agricultural year.

"7. All expenses incurred by the defendant for the taxes of the land in question, and in the subdivision thereof are included, in the aforesaid loan and all benefits derived therefrom shall accrue in favor of the plaintiff.

"8. All other conflicting claims or rights of action, for and against the herein parties which had been previously contracted are hereby deemed waived, revoked and condoned, and all evidence of the said claims are hereby rendered null and void.

"9. Any decision to be rendered herein in accordance with the precise terms and conditions of this amicable agreement shall become final and executory upon its promulgation, and that the same shall be without any pronouncement as to costs,"

It would appear that the parties agreed to settle their controversy under the following conditions: (1) the alleged deed of sale with right to repurchase mentioned in the complaint was cancelled and released; (2) the title issued in the name of defendant when he consolidated his ownership over the property was cancelled and a new one was to be issued in the name of plaintiff (3) plaintiff acknowledged being indebted to defendant in the sum of P2,600.00 which he agreed to pay without interest on the last day of February, 1955; (4) to secure said indebtedness, plaintiff agreed to execute a deed of mortgage on the property in favor of defendant; and (5) all conflicting claims or rights of action existing between the parties are deemed waived, revoked or condoned. And this agreement was approved by the court and a judgment was rendered enjoining compliance with its terms and conditions.

It would, also appear that far from exacting from plaintiff the execution of the deed of mortgage in his favor to Secure the payment of the indebtedness which plaintiff acknowledged to pay in the sum of P2,600.00 as agreed upon, defendant, upon failure of plaintiff to pay said indebtedness, asked for the execution of the judgment, which was granted, and as a consequence the property was sold at public auction and was awarded to defendant as the

highest bidder And the Register of Deeds issued in his favor Transfer Certificate of Title No. 18665. Then on April 7, 1956, or within one year from, the date of sale, plaintiff paid the Sheriff the amount of P3,205.00 representing the money for the repurchase of the property in accordance with law.

It is obvious that the contention of defendant that the property "was sold, at public auction as a result of the foreclosure of an alleged mortgage executed by plaintiff which was contemplated in the written agreement, is not correct, for, as already stated above, defendant waived his right to the execution of the mortgage and preferred to have the benefit of an ordinary writ of execution to enable him to obtain complete satisfaction of his credit. It is therefore clear that plaintiff is entitled to exercise his right of redemption within one year from the Sale as provided by law, and this is what was authorized by the trial court. We see no plausible reason for disturbing the order it issued on April 23, 1956 which is the subject of the present appeal.

Wherefore, the order appealed from is affirmed, with costs against appellant.

Paras, C.J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.

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