

**KOPPEL (PHILIPPINES) INC., PLAINTIFF AND APPELLEE, VS.
RUSTICO A. MAGALLANES, IN HIS INDIVIDUAL CAPACITY AND AS
SPECIAL ADMINISTRATOR OF THE ESTATE OF PAULINO
MAGALLANES, DEFEND...**

G.R. No. L-12644. April 29, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Antonio Magallanes, as special administrator of the estate of Paulino Magallanes, seeks a review of an order of the Court of First Instance of Misamis Occidental.

This case was instituted by Koppel (Philippines) Inc., on February 22, 1954. In its complaint, plaintiff alleged that early in November, 1952, it sold to the original defendant, Rustico Magallanes, as special administrator of the estate of Paulino Magallanes, certain agricultural machineries consisting of a tractor, a plow and a harrow, more particularly described in the complaint, for the aggregate sum of P14,470, on account of which P8,700, was paid in cash, thereby leaving a balance of P5,770, payable on installments as specified in the complaint; that' as security for the payment of said sum of P5,770, the aforementioned defendant constituted in favor of plaintiff a chattel mortgage on the harrow above referred to and a real estate mortgage on two parcels of land situated in the municipality of Tangub, province of Misamis Occidental, as set forth in a deed of chattel and real estate mortgage executed by said parties on November 19, 1952, which instrument was registered in the office of the Register of Deeds of said province on December 15, 1952; that of said sum of P5,770 only P1,450 had been paid by the defendant, thereby leaving a balance of P4,824, which was long overdue and unpaid despite repeated demands; that in said deed of chattel and real estate mortgage, defendant had agreed to pay, in the event of foreclosure proceedings, an additional sum equivalent to 25 per cent of the total indebtedness, or P1,206, by way of attorney's fees, thus increasing defendant's debt to P6,030; and that, plaintiff elected to foreclose the real estate mortgage judicially, simultaneously with the extrajudicial foreclosure of the chattel mortgage, for it believed that the proceeds to be realized in the latter would be insufficient to fully satisfy defendant's obligation. Plaintiff prayed, in its complaint, that defendant be held to be indebted in said sum of P6,030, plus interest thereon, and the additional sum of P1,206, by way of attorney's fees, in addition to the costs, and that, after crediting such amount as may be realized in the extrajudicial foreclosure of the chattel mortgage, the defendant be sentenced to pay the balance to plaintiff, within ninety (90) days, and, in default of such payment, to order the sale of said two (2) parcels of land in the manner provided in Rule 70 of the Rules of Court.

Defendant filed an answer admitting some allegations of the complaint, including the original indebtedness of P5,770, but alleging that the unpaid balance thereof is P4,205, not the sum stated in the complaint; that defendant's failure to pay said balance of P4,205 was "due to the excessive interest" imposed by the plaintiff; that the aforesaid chattel and real estate mortgage is null and void, it being "contrary to public policy"; that the interest charged on the principal obligation is usurious; and that the stipulated attorney's fees is excessive and should be reduced.

After due trial, on February 24, 1955, decision was rendered, in open court, stating that both parties had "agreed" in "open court" that the "net amount" of defendant's "outstanding obligation" was P3,873, including attorney's fees, and that defendant had "agreed to a judgment" for said amount, and, consequently, ordering him to deposit it, within ninety (90) days, with the clerk of court, and directing, if he failed to do so, the sale of the mortgaged lands to satisfy said obligation, with interest thereon. On May 29, 1956, plaintiff filed a motion alleging, among: other things, that it had purchased said lands for P2,500, at a public auction held in compliance with the aforementioned decision, thereby living an unpaid balance of P1,373.75, and praying that the sale in its favor be confirmed and the corresponding deed of sale executed by the sheriff approved, and that a deficiency judgment be rendered, and a writ of execution issued, for said sum of P1,373.75.

Meanwhile, Rustico Magallanes had been relieved, and appellant Antonio Magallanes was appointed and assumed office in his stead, as special administrator of the estate of Paulino Magallanes. Thereafter, or on July 31, 1956, Antonio Magallanes filed an "answer", admitting some allegations in said motion of the plaintiff dated May 29, 1956; denying any knowledge or information about the truth of other allegations therein; asserting that the above mentioned chattel and real estate mortgage "can be the subject of reformation of instrument or amendment of the contract on the ground of mistake or inequitable conduct in accordance with Article 1359 of the new Civil Code"; that judgment had been entered "through mistake," for the chattel mortgage had already been foreclosed extra-judicially, and "plaintiff cannot recover the unpaid balance of the price", and Rustico Magallanes was not the absolute owner of the properties mortgaged to plaintiff, apart from the fact that latter "cannot appropriate the things given by way of pledge or mortgage, or dispose of them"; and praying that "judgment be rendered in favor of the defendant" and for ".such other relief consistent with law and equity and for cost". By an order dated January 11, 1957, the lower court confirmed the aforementioned sale to the plaintiff, but denied the motion for a deficiency judgment and a writ of execution.

Soon thereafter, or on February 12, 1957, defendant filed a "Petition for Relief from Judgment and Order." He alleged therein that the judgment, dated February 24, 1955, and the order, dated January 11, 1957, came to his knowledge in July, 1956, and on February 5, 1957, respectively; that said judgment was "entered through extrinsic fraud by the plaintiff"; that defendant has a good and substantial defense, inasmuch as (1) the registration of the chattel mortgage in the province where the lands are situated "is a futile act", (2) the deed of chattel and real estate mortgage was founded upon a "usurious transaction" and (3) failed to express the "true intent and agreement of the parties", (4) the mortgagor was not the absolute owner of the property mortgaged, and (5) having extrajudicially foreclosed the chattel mortgage, plaintiff may no longer recover the unpaid balance of the price. This motion was denied on March 2, 1957. Hence, the present appeal.

Pursuant to section 3 of Rule 38 of the Rules of Court, a petition for relief from a judgment or order of a court of first instance must be filed "within sixty (60) days after the petitioner learns of the judgment, order, or other proceeding to be set aside and not more than six months after such judgment or order was entered or such proceeding was taken." In the case at bar, the lower court rendered its judgment on February 24, 1955, whereas the petition for relief therefrom was filed on February 12, 1957, almost two (2) years later. More than six (6) months having elapsed since the entry of said judgment, defendant may not avail himself of the relief provided for in Rule 38 of the Rules of Court. Besides, the judgment was rendered in "open court," upon agreement made, likewise, in open court, of both parties, who were present, therefore, at the promulgation of the judgment and had knowledge thereof since February 24, 1955. No matter how we may look at defendant's petition for relief and regardless of its Intrinsic demerits—and much could be said about it—said petition cannot be entertained, therefore, it having been filed beyond the reglementary period.

It is argued that the petition was submitted within sixty (60) days from defendant's knowledge, and within six (6)

months from the issuance, of the order of January 11, 1957. But, it is not claimed that this order was issued through "fraud, accident, mistake or excusable negligence," to warrant the relief to set it aside. Besides, said order is a necessary consequence of the aforementioned judgment, and should, accordingly, be maintained as long as the latter remains in full force and effect.

It is lastly urged that the defendant seeks to annul said judgment, and that this remedy may be applied for within four (4) years from the discovery of the fraud (Sec. 43[3], Act No. 190). This is, however, the period within which the annulment of a judgment may be prayed for in an action independent and separate from that in which it was rendered (*Anuran vs. Aquino*, 38 Phil., 29, 32; *Banco Español-Filipino vs. Palanca*, 37 Phil., 921, 949-950; *Javier vs. Paredes*, 62 Phil., 910; *Domingo vs. Manuel*, 68 Phil., 134; *Garchitorena vs. Sotelo*, 74 Phil., 25; *Quion vs. Claridad*, 74 Phil., 100). Moreover, the basis of that separate action for annulment of the judgment must be "extrinsic" fraud (*Almeda vs. Cruz*, 84 Phil., 643; 47 Off. Gaz., 1179; *Varela vs. Villanueva*, 96 Phil., 248; 50 Off. Gaz., 4242; *In re De Leon*, 87 Phil., 551; 48 Phil., 619; *U. S. vs. Throckworton*, 98 U.S. 65, 25 L. ed. 96; *Donovan vs. Miller*, 88 Pac. 82, 84). Again, the aforementioned period of four (4) years does not apply to a petition, filed in the original or main action, to secure a relief against said judgment, particularly when the petition is based upon an alleged error in the judgment or a supposed flaw in the transaction which is the very subjectmatter of litigation, for, contrary to appellant's pretense, such error or flaw constitutes, not extrinsic fraud, but, at best, intrinsic fraud—if any, on which we need not, and do not, express any opinion, insofar as the case at bar is concerned—which may be a ground for review only on appeal (*Tarca, et al. vs. Cason Vda. de Carretero*, 99 Phil., 419; 52 Off. Gaz., 3558; *Vicente and Lucas vs. Lucas, et al.*, 95 Phil., 716).

Wherefore, the order appealed from is hereby affirmed, with costs against the administrator-appellant. It is so ordered.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Endencia, Barrera, and Gutierrez David, JJ., concur.
Reyes, J.B.L., J., took no part.

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