

NARCISO VICENTE AND SINFOROSA LUCAS, PLAINTIFFS AND APPELLANTS VS. FERMIN LUCAS, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. L-6745. August 31, 1954

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal taken by the plaintiffs, Narciso Vicente and his wife Sinforosa Lucas, from a decision of the Court of First Instance of Ilocos Norte dismissing plaintiffs' complaint, with costs against them.

The facts are not disputed, the case having been submitted for decision upon an "agreement of facts." It appears that on October 2, 1935, plaintiffs herein instituted Civil Case No. 4050 of said court, to compel defendant Fermin Lucas and his wife, Leocadia Bautista, to convey and deliver a parcel of land situated in the barrio of Santa Albina in the poblacion of Laoag, Ilocos Norte, more particularly described as follows:

"Urban: Consisting of a residential lot situated in Barrio No. 11, Laoag, Ilocos Norte and designated as Lot No. 10971 of the Laoag Cadastre. Bounded on the NE. by Lot No. 10970; SE. 10972; SW. by P. Zamora Street and on the NW. by Valentin Lagasca Street, having an area of 230 square meters, more or less. It is assessed at P290.00 and declared under Tax No. 015470," (p. 2, Record on Appeal)

The complaint was based upon a document seemingly executed, on October 7, 1928, in Ilocano, whereby pursuant to its translation into Spanish, which has been marked as exhibit "A-1"—Fermin Lucas and his wife, acknowledged to have mortgaged the above described property to the plaintiffs for the sum of seventy five (P75.00) pesos, with the understanding that in case of failure to return said amount within the year 1929, plaintiffs shall be entitled to appropriate said lot. Mr. and Mrs. Lucas assailed the validity of this instrument upon the ground that it was a loan with a pacto de comisorio, which is prohibited by law, but on April 2, 1938, judgment was rendered for the plaintiffs, upon the theory that, as contended by the latter, the contract was merely a pacto de retro sale. Sometime after this decision had become final and executory, or on July 11, 1939, Fermin Lucas and his wife instituted Civil Case No. 4413 of the same court, against plaintiffs herein, for the purpose of annulling said decision, the same being allegedly contrary to law. As it was to be expected, this pretense was not sustained, and said Civil Case No. 4413 was dismissed in a decision dated October 29, 1942, from which no appeal had been interposed. Meanwhile, or on February 14, 1941, Lucas and his children Antonio, Fausta and Victoriana, all surnamed Lucas—his wife Sinforosa Bautista having died in the meantime—obtained a decision in cadastral case No. 53 of said court, G.L.R.O. Cadastral Record No. 1221, directing the registration of the lot in question in their names. Nothing appears to have been done during the occupation. After liberation, plaintiffs demanded delivery of the possession of said lot and, Lucas and his aforementioned children having refused to do so, the present action was instituted on June 26, 1950, to compel the defendants, according to said stipulation of facts, "to make a reconveyance in favor of plaintiffs and to surrender the land described in the complaint to plaintiffs and for damages."

Defendants contend that the instrument Exhibit "A", upon which plaintiffs based their complaint in Civil Case No.

4050, evinced a simple mortgage with pacto comisorio, in violation of Article 1859 of the Civil Code of Spain, which was then in force in the Philippines; that said agreement was null and void ab initio; and that the decision in Civil Case No. 4050 enforcing said agreement is, for that reason, illegal and, likewise, void. This conclusion is, however, untenable. There is no question about the jurisdiction of the court over the parties in, and the subject matter of, civil case No. 4050, or about the regularity of the proceedings therein. Even if the court, in deciding that case, had reached an erroneous conclusion in determining the nature of the deed Exhibit A, the error, if any, was reviewable only by appeal. No such step having been taken, the decision became final and executory, and is valid and binding upon the parties in the case and their successors in interest. The question whether or not Exhibit A is a deed of conditional sale or one establishing merely an equitable mortgage with a pacto comisorio, constitutes now a res adjudicata and is no longer open for review. It has been settled by two (2) decisions which are final and executory, namely, the decision in civil case No. 4050, and the decision rendered in civil case No. 4413.

This notwithstanding, the lower court dismissed the present case upon the ground of prescription of action, more than twelve (12) years having elapsed from April 2, 1938, date of the decision in Civil Case No. 4050, to June 26, 1950, when the case at bar was instituted. We note, however, that prescription of action was not pleaded by defendants herein. Indeed, the issues raised by them are summarized in paragraphs 12 and 13 of the "agreement of facts" as follows:

"12. That defendants contend that the receipt marked as Exhibit 'A-1' (Translation Exh. 'A-2') and attached to Exhibit 'A' of this agreement of facts is not a pacto de retro sale but is contract of pledge or a simple mortgage and that receipt Exhibit 'A-1' is one that is against the provisions of Art. 1859 of the Old Civil Code and reenforced or strengthened by Art. 2088 of the New Civil Code;

"13. That defendants in the present case contend that the decision rendered in Civil Case No. 4050 of the Court of First Instance of Ilocos Norte can not be executed for it is null and void ab initio for the reason that it was based on an agreement contrary to provisions of law being pacto comisorio." (Record on Appeal, p. 18.)

Pursuant to section 10 of Rule 9 of the Rules of Court:

"Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived; except the defense of failure to state a cause of action, which may be alleged in a later pleading, if one is permitted, or by motion for judgment on the pleadings, or at the trial on the merits; but in the last instance, the motion shall be disposed of as provided in section 5 of Rule 17 in the light of any evidence which may have been received. Whenever it appears that the court has no jurisdiction over the subject-matter, it shall dismiss the action." (Italics ours.)

Inasmuch as the defendants had never pleaded the statute of limitations, it follows that they have waived this defense and that the lower court had, accordingly, erred in applying it in the case at bar. It appearing, furthermore, that, long before the defendants had secured the registration of the lot in question in their names, a final judgment had been rendered against them in Civil Case No. 4050, declaring that plaintiffs are entitled to said lot, it is clear that the decree of registration had been fraudulently obtained by the defendants and that they should, therefore, be required to reconvey said property to the plaintiffs.

Wherefore, the judgment appealed from is hereby reversed and another one shall be entered sentencing the defendants to execute the corresponding deed of reconveyance within thirty (30) days from the date on which this decision shall have become final. Should the defendants neglect or refuse to do so, the Clerk of the lower court is hereby authorized and directed to execute the aforementioned deed of reconveyance, for and in behalf of the defendants herein, and upon its approval by said court, said instrument shall have the same force and effect as if the defendants had personally executed it. The defendants are, likewise, sentenced to deliver the property in

question, as well as the owner's duplicate certificate of title thereto, to the plaintiffs, and to pay the costs. So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador and Reyes, J. B. L., JJ., concur.

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