

ESTEBAN G. HERNAEZ, PLAINTIFF-APPELLEE, VS. ANDRES MAMALIO, DEFENDANT-APPELLANT.

G.R. No. L-28251. July 13, 1973

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal, certified to this Court by the Court of Appeals as involving purely questions of law, from the summary judgment rendered by the Court of First Instance Isabela in its Civil Case No. Br. II-533 on July 28, 1964, involving a demand for the repurchase of a home-stead, the dispositive portion of which reads thus:

“WHEREFORE, the Court hereby renders summary judgment, ordering the herein defendant that, upon tender to him or deposit with the Clerk of Court, of the original amount of the selling price of FOUR THOUSAND THREE HUNDRED SEVENTY FIVE PESOS (P4,375.00), as shown by the notarized deed of sale, to execute a notarial deed resale reconveying in favor of the plaintiff the land covered by the original certificate of title of plaintiff No. P-1270. In case the defendant will dilly-dally in promptly executing the deed of reconveyance, after the finality of this judgment, the Clerk of Court is hereby authorized in advance to execute for and in behalf of the defendant and under authority of this Court a deed of reconveyance in favor of the plaintiff, upon deposit with him of the repurchase money of P4,375.00.

The plaintiff, with the advice of his counsel, waived his right to damages. Defendant shall pay the costs." (pp. 18-19, Record on Appeal.)

The land in question is a portion of a homestead of 8.2264 hectares secured by plaintiff, Esteban Hernaez, under Patent No. V-5392 (H. A. No. H-230625 of Lot No. 1315 of Santiago Cad. 211, Case 6, dated May 29, 1950) and for which Original Certificate of Title No. P-1270 of the Office of the Register of Deeds of Isabela was issued in his name on October 11, 1950. Appellee had sold the same to appellant Andres Mamalio, on July 14, 1955, although the sale was entered in the Register's Office only on September 20, 1955. In his complaint filed on January 2, 1960, appellee alleges that inasmuch as when this sale took place, not more than five (5) years had elapsed since he acquired title, he had the legal right to repurchase the land, and alternatively, he also claimed that because the sale had not been approved by the Secretary of Agriculture and Natural Resources, it is null and void.

On April 18, 1960, appellant moved to dismiss on the ground that only the Secretary of Agriculture and Natural Resources and not appellee has the legal per-sonality and capacity to sue for the annulment of the sale of a homestead without the Secretary's approval, but the motion was denied on May 7, 1960. Whereupon, appellant filed his answer alleging that the only reason for the initiation of this action is the desire of the appellee to demand "additional purchase money -- because the price of (the) land has gone up due to the construction of irrigation canals and dikes, and the said parcel of land in question (has been) greatly improved" and that appellee "is not ready, able and very willing to make the repurchase".

The case was set for pre-trial on July 28, 1964, on which date, due to the failure of appellant and his counsel to appear, the trial court issued the following self-explanatory order:

"Today is the pre-trial of this case. In spite of due notice to counsel of record of the defendant, Atty. Querubin Butuyan Rasiles, he and his client failed to appear.

"The material allegations of the com-plaint for repurchase under the Public Land Law are paragraphs 2, 3 and 4 herein quoted:

'2. That the plaintiff, Esteban G. Hernaez was granted by the govern-ment of Homestead with an area of 20.3190 hectares in sitio Diniga, barrio of Rizal, Municipality of Santiago, Province of Isabela, Philippines, the order for issuance of Patent No. V-5392 (H. A. No. H-230625) of Lot No. 1315 of Santiago Cad. 211, Case No. 6, was dated May 29, 1950, and that the corresponding Original Certificate of Title No. P-1270 issued in the name of the plaintiff, Esteban Hernaez was transcribed in the Registration Book for the province of Isabela, October 11, 1950.'

'3. That the said homesteader Esteban G. Hernaez (plaintiff) sold a portion of the above referred homestead to the defendant Andres Mamalio, a portion with an area of 8.2284 hectares for the sum of FOUR THOUSAND THREE HUNDRED AND SEVENTY FIVE PESOS (P4,375.00), Philippine Currency, executed before Notary Public, Venancio B. Fernando x x x transcribed under Entry No. 1539 on September 20, 1955 at 11:25 a.m. in the Registration Book of Isabela, x x x (description herein now omitted)

'4. That the plaintiff demanded repeatedly from the defendant Andres Mamalio the repurchase of the above described portion sold to him but the defendant repeatedly refuse x x x'

"And the alternative cause of action alleges:

'By way of an ALTERNATIVE CAUSE OF ACTION'

'8. That the deed of sale executed by the plaintiff in favor of the defend-ant for a portion of the homestead described in paragraph 3 of this com-plaint was inoperative for lack of approval of the Honorable Secretary of Agriculture and Natural Resources, the sale having been made within the 25 years next following the issuance of the title.'

"In view of the alternative cause of action counsel for the defendant filed a motion to dismiss the whole case on the following ground:

'It is the settled law on homestead that if the homesteader sells his home-stead minus the approval of the Secretary of Agriculture and Natural Resources and latter tries to repurchase the same, he is not the proper party to question the sale of the homestead. It is the govern-ment that should question the deed of sale. This is the ruling in the cases of x x x,'

"Ruling on the said motion to dismiss, the Court denied the said motion to dismiss for the reasons stated in the order of May 7, 1960, substantially to the effect that the motion is tenable as to the alternative cause of action, but not against the primary action based on Section 119 of the Public Land Act.

"The defendant admitted paragraphs 1, 2, and 3 of the complaint, and as regards paragraphs 4, 5 and 6, he alleged:

'2. That defendant denies specific-ally the contents of paragraphs 4, the same being false, imaginary and without basis, the truth about the matter is that plaintiff and his representatives came to Asingan, Pangasinan, asking defendant for additional money rep-resenting additional purchase price of the parcel of land subject of his litigation but defendant refused to accede to the demand of the plaintiff, x x x'

"Counsel for the plaintiff instead of presenting evidence in support of the complaint for this pre-trial, he moved for judgment on the pleadings. Apparently, the motion is well founded. If plaintiff's counsel is really convinced that judgment on the pleadings can be rendered, he should have forthwith filed a motion for judgment on the pleadings immediately after receipt of defendant's answer.

"Judgment on the pleadings is fraught with dangers to the movant plaintiff in that the controverted facts in the pleadings are resolved in favor of the adverse party, and if judgment on the pleadings in favor of the plaintiff is denied, judgment on the pleadings shall be rendered in favor of the defendant. To play safe, the Court however, renders a summary judgment instead of judgment on the pleadings, by way of utmost caution, or *ex abundante cautela* in order that the right of the plaintiff is duly safe-guarded. The right of the plaintiff to repurchase is self-evident, because the defendant having admitted the execution of the deed of sale, by imperative mandate of section 119 of the Public Land Law, as amended, the plaintiff-vendor, has the right to repurchase the same within five years.

"Counsel for the plaintiff manifested that plaintiff waives her right to claim damages by reason of the owner's share in the products of the land. Plaintiff himself confirmed in open Court her waiver.

"The Court disapproves the strategy adopted in the answer by setting so many defenses which are not meritorious, and on top of that, it sets up a fantastic counter-claim of damages amounting to a total of P18,000.00. In good practice and in the light of legal ethics, such frightening strategy not be resorted to.

"WHEREFORE, the Court hereby renders summary judgment, ordering the herein defendant that, upon tender to him or deposit with the Clerk of Court, of the original amount of the selling price of FOUR THOUSAND THREE HUNDRED SEVENTY FIVE PESOS (P4,375.00), as shown by the notarized deed of sale, to execute a notarial deed resale reconveying in favor of the plaintiff the land covered by the original certificates of title of plaintiff No. P-1270. In case the defendant will dilly-dally in promptly executing the deed of reconveyance, after the finality of this judgment, the Clerk of Court is hereby authorized in advance to execute for and in behalf of the defendant and under authority of this Court a deed of reconveyance in favor of the plaintiff, upon deposit with him of the repurchase money of P4,375.00.

"The plaintiff, with the advice of his counsel, waived his right to damages. Defendant shall pay the costs." (pp. 14-19, Record on Appeal)

At 5:08 p.m. on the same date, counsel for appellant sent the following telegram to the clerk of court:

"TELEGRAM RECEIVED

13FY INPC 740 PAID
ASINGAN PANG. JULY 28/64
CLERK COURT FIRST INSTANCE
CAUAYAN ISA.

PLEASE POSTPONE HERNAEZ MA-MALIO CASE MOTION COMING.

RASILES 508 PM"

(p. 19, Record on Appeal)

which was received at the boarding house of the trial judge at 5:30 that same afternoon, but nothing else was done by appellant's counsel until September 24, 1964, when he filed the following motion which speaks for itself:

"COMES NOW the defendant by and through the undersigned counsel and unto this Honor-able Court, most respectfully state:

"1. That when the above-entitled case was set for pre-trial conference on July 28, 1964, the undersigned counsel sent a telegram and with the condition that he will file a motion with the necessary supporting affidavit;

"2. That when the said case was scheduled, the undersigned counsel was sick as evidenced by a medical certificate which will be later on shown to this Honorable Court because the attending physician was out when counsel went to get the said medical certificate;

"3. That before the said hearing, counsel asked some of his law partners to appear in his behalf which was voluntarily accepted but unluckily they had engine trouble before they reached Cauayan so that they were not able to attend the said hearing; the affidavit of the driver will also be presented during the said hearing of this motion because he is also out;

"4. That it was never the intention of the undersigned counsel to incur the judicious wrath of this Honorable Court by not appearing voluntarily on the said date.

"WHEREFORE, it is most respectfully prayed that the judgment given on July 28, 1964 be lifted and reconsidered.

"Asingan, Pangasinan, for Cauayan, Isabela, September 10, 1964."

(pp. 20-21, Record on Appeal)

On September 29, 1964, the court denied this motion holding that none of the facts therein alleged is supported by oath or verification and counsel's allegation of illness was without support of a medical certificate. Under date of October 19, 1964, counsel filed another motion for reconsideration explaining his failure to attach any affidavits to the previous motion and attaching this time the affidavit of Atty. Alfredo de Vega stating that he was the one assigned to handle the case at the hearing scheduled July 28, 1964 and that he was not able to proceed because the car of Atty. Rasiles which he used to go to Cauayan, the place of trial, "had engine trouble in a very isolated place and at night time, so that the following morning (he) informed Atty. Rasiles that (he was) not able to proceed and so that the necessary telegraphic motion could be sent". According to the record on appeal, the next order of the trial court was issued already on September 3, 1965, and this was to deny the motion for reconsideration (apparently that of October 19, 1964) and at the same time approve the said record on appeal. Pertinently, however, the record on appeal reveals that appellant must have sought relief from this Court against the order of the trial judge denying his motion to set aside the summary judgment against them and that this Court resolved his plea as follows:

"The petition for certiorari with a prayer for preliminary injunction in G.R. No. L-23997 (Andres Mamalio vs. Hon. Pedro Quinto, etc., et al.), is DISMISSED; appeal in due time is/was the remedy.'

(SEALED)

Very truly yours,
(Sgd.) PAULINO S. MARQUEZ
Clerk of Court

Mr. Prudencio V. Mejia (Reg.)
Urdaneta, Pangasinan
Atty. Basilio H. Toquero
Bayombong, Nueva Vizcaya"

(p. 29, Record on Appeal)

which resolution became final, according to the record on appeal itself, on February 4, 1965. It appears that subsequently, on May 4, 1965, appellant filed his notice of appeal and appeal bond and on May 5, 1965 the record on appeal which the trial judge approved, as already noted, on September 3, 1965.

Counsel now contends in effect in his brief that appellant was denied his day in court by the trial judge when he rendered a summary judgment notwithstanding that the absence of appellant at the pre-trial was excusable and, besides, said summary judgment is not supported by any affidavit as required by Section 1 of Rule 34. Counsel's pose is untenable.

Actually, what the trial court did render is not a summary judgment, although as may be observed from the order quoted earlier above, His Honor tried hard to make it appear to be so. It is more accurately a judgment on the pleadings, the defendant having failed to appear without justifiable cause at the pre-trial (Section 3, Rule 20) and the factual issues raised by said defendant in the answer regarding the alleged improper motive and lack of financial readiness and willingness of plaintiff, being obviously immaterial and sham. In an action to enforce the right to repurchase a homestead within five (5) years from the sale thereof, it is of no consequence what exactly might be the motive of the plaintiff, and it is unnecessary for the Court to inquire before hand into his financial capacity to make the repurchase for the simple reason that such question will resolve itself should he fail to make the corresponding tender of payment within the prescribed period.

Indeed, were it not for the due process implication of appellant's assignments of error, which always deserves appropriate scrutiny by this Court whenever invoked, this appeal should be dismissed outright, since the record on appeal does not contain sufficient relevant data showing that this appeal was taken on time, it appearing that the notice of appeal and appeal bond, including the record on appeal were filed only on May 4 and 5, 1965 whereas the order on appeal was rendered on July 28, 1964, more than nine (9) months before. And inasmuch as no denial of due process has been successfully shown, the jurisdictional incapacity of this Court to proceed entertaining this appeal for the reason just stated becomes apparent.

WHEREFORE, the judgment of the trial court is affirmed, with costs against appellant.

Makalintal, Actg. C.J., Zaldivar, Fernando, Makasiar, Antonio, and Esguerra, JJ., concur.

Ruiz Castro and Teehankee, JJ., concur in the result.

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