

**ANACLETO CONDE, ET AL., PLAINTIFFS AND APPELLANTS, V.S.  
FELIX CUENCE AND ELPIDIA MALAGA, DEFENDANTS AND  
APPELLEES.***G.R. No. L-9405. July 31, 1956*

Ponente: REYES, A., J.

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Under date of March 15, 1943, Anacleto Cone, owner of a parcel of land described in Original Certificate of Title No. 66165 of the land recors of Iloilo, executed a deed, purporting to convey the said land by way of sale to the spouses Felix Cuenca and Elipidia Malaga for the sum of P225.00, subject to repurchase within three years. About seven years thereafter, that is, on February 7, 1951, Anacleto Conde filed a complaint in the Court of First Instance of Iloilo against the said spouses, alleging that the said deed of sale "was not a true sale, but only a mortgage"; that it never was his intention "to sell his only land" that with the help of the relatives he "to sell his only land" that with the help of the relatives he "found out in Registry of Property that, instead of the deed of mortgage he thought he executed in 1943, there appeared a deed of sale, and the Original Certificate of Title No. 66165 was cancelled, and in its stead, a new Title was issued in the names of the defendants"; and that though the defendants had agreed to an extension of the time for payment, they subsequently refused to accept the payment offered. The complaint, therefore, prayed for judgment declaring the deed of sale in question "null and void ab-initio but one of mortgage."

Answering the complaint, the defendants denied having entered into a contract of mortgage with the plaintiff, and by way of special defense alleged that true contract had between them was, as appears in the deed aforementioned, one of sale with right of repurchase, and that, as this right was not exercised within the stipulated period, title to the land bought was consiladated and consequently plaintiff's certificate of title was cancelled and, in its place, a new one was issued to defendants on January 3, 1947.

Before trial on the merits, the defendants filed motion to dismiss on the ground that complaint did not state a cause of action in that, while plaintiff's remedy was to ask for the reformation of the instrument, the complaint asked instead for its annulment, and the court, according to defendants, may not grant what is not prayed for. The motion also pleaded prescription under article 1391 of the new Civil Code, which provides that an action for the annulment of a contract shall be brough within four years. Acting on this motion, the lower court dismissed the complaint on the ground that plaintiff's action for annulment had already prescribed. From the order of dismissed. plaintiff's heirs-who substituted him and prosecuted the case after his death - appealed to this Court.

That order must be revoked. As defendants themselves allege in their motion, plaintiff's remedy is one for the reformation of an instrument under article 1365 of the new Civil Code. That article reads:

" ART. 1365. If two parties agree upon the mortgage or pledge of real or personal property, but the instrument states that the property is sold absolutely or with a right of repurchase, reformation of the instrument is proper."

Plaintiff's case comes squarely under the article, and it is precisely the remedy therein prescribed that he wants when in his complaint he prays for judgment "declaring the deed of sale Annex 'A' null and void ab-initio but one of mortgage." Stated more explicitly, the prayer is to have the deed declared void as a sale and construed or given the effect of a mere mortgage so as to make it conform to the real intention of the parties. In other words, what is sought is "reformation", which is defined as "that remedy in equity by means of which a written instrument is made or construed so as to express or conform to the real intention of the parties when some error or mistake has been committed." (53 C. J. 906, cited in Padilla's Civil Code Annotated, Vol II p. 431.) Moreover, the complaint also prays for such remedy as in justice and equity plaintiff may be entitled to in the premises, and it is clear that upon the facts pleaded reformation is proper in accordance with article 1365 of the new Civil Code.

As an action for reformation, plaintiff had 10 years within which to bring it from the time the right of action accrued. (Art. 1144, new Civil Code.) Whether that period is counted from 1943, when the instrument was executed, or from 1947, when, according to the lower court, plaintiff was supposed to have constructive notice that the deed he had executed was not as he had intended it to be, it is obvious that plaintiff's action had not yet prescribed on February 4, 1951, the day it was filed in court.

Wherefore, the order of dismissal is set aside and the case remanded to the court a quo for further proceedings. Costs against the appellees.

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

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