

FELISA TORIBIO, PLAINTIFF AND APPELLEE, VS. DOLORES FOZ ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 11039. September 13, 1916

Ponente: TORRES, J.

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TORRES, J.:

This appeal by bill of exceptions was filed by counsel for the defendants from the judgment of March 19, 1915, in which the Court of First Instance of Manila ordered the defendant Dolores Foz to pay to the plaintiff the sum of P1,193, with legal interest thereon from August 22, 1914, besides the costs. This judgment was subsequently amended by an order of April 15, 1915, wherein Buenaventura Toribio and his wife Dolores Foz were both ordered jointly to pay the said sum.

On August 22, 1914, counsel for Felisa Toribio filed a complaint in the said court alleging as a cause of action, that the plaintiff sold to the defendant Dolores Foz and to her husband Buenaventura Toribio his rights of redemption and lease in the property having certificate of title No. 2263, issued by the register of deeds of the city of Manila, for the sum of P2,200, less that of P700 which the plaintiff owed to the defendant spouses; that the defendant Dolores Foz, on January 26, 1914, in her own name and in that of her husband, executed and delivered to the plaintiff-vendor of the said rights, the following instrument of indebtedness:

"I, Dolores Foz, in my own name and in that of my husband, Don Buenaventura Toribio, and authorized by the latter so to do, hereby acknowledge that I owe D.a Felisa Toribio the sum of one thousand, five hundred pesos, Philippine currency (P1,500) that being the balance of the price for the rights of redemption and lease in the property having certificate of title No. 2263, issued by the register of deeds of Manila, which rights I have purchased from the said creditor.

"Manila, January 26, 1914.

(Sgd.) "DOLORES F. DE TORIBIO."

That the plaintiff, on June 20, 1914, at the request of the defendant Dolores Foz and confiding in her good faith, executed in behalf of the latter the proper deed of sale of the said rights, the certificate of indebtedness above transcribed forming a part of the price of the said sale; and that the defendants, notwithstanding the several demands made upon them by the plaintiff, had not paid and did refuse to pay the said sum of P1,500. Counsel for Felisa Toribio therefore prayed the court to enter judgment rescinding the contract of sale of the said rights or else to order the defendants to pay to the plaintiff the sum of P1,500, together with the legal interest thereon, besides the costs of the trial.

On October 19, 1914, the defendant Dolores Foz filed an answer to the aforementioned complaint, denying each and all of the allegations therein contained and specifically denying all the facts set up against her special defense, in which she averred that she had paid to the plaintiff the whole of the price of the conveyance to her of the right of redemption referred to in the complaint. The defendant Buenaventura Toribio, by a writing of March 9, 1915, answered the complaint, repeating and putting forward as his own all the allegations contained in the answer and

defense made by his wife, Dolores Foz.

After the hearing and the introduction of evidence by both parties, the court rendered the judgment aforesaid, to which the defendants excepted and in writing moved for a reopening of the case and a new trial. This motion was overruled, exception was taken by the defendants, and, on the filing of the proper bill of exceptions, the same was approved and transmitted to the clerk of this court.

The record shows it to have been duly proven that the plaintiff, Felisa Toribio, was the owner of a parcel of urban property situated at the intersection of Calles Raon and Sales of the district of Santa Cruz, Manila, having certificate of title No. 2263; that said parcel was sold under right of repurchase to Carlos Rodriguez Pomar, the plaintiff retaining, however, the right to continue to occupy the house thereon on the condition of her paying to the purchaser a monthly rental of P38 and, of course, on that of her redeeming the property.

It was also proven that the defendant Dolores Foz, wife of Buenaventura Toribio who was absent in the provinces, in her capacity of attorney in fact and representative of her husband, covenanted with the plaintiff for the purchase of the rights in the said real property sold under pacto de retro to Rodriguez Pomar. To this end and by a deed of the date of June 30, 1914, ratified before the notary Ramon Muyot, the plaintiff sold both her right of redemption and that of occupying the house to the defendant spouses for the sum of P2,200, which, according to a statement contained in the said instrument signed by the plaintiff, the said defendant had received from Buenaventura Toribio and counted to her entire satisfaction.

The record also shows that the plaintiff herself testified that she was previously in debt to the defendants in the sum of P700, which sum, added to that of P1,500 which the said spouses owed her, formed the purchase price of her said real rights. From this last amount there must be deducted that of P307 paid on account, as attested by the receipt Exhibit 1, the signature of which was acknowledged by the plaintiff.

The plaintiff alleges that the said sum of P1,500 has not been wholly paid by the defendants, and that if she executed the said deed of sale, Exhibit 2, on June 30, 1914, in which she declared that she had received the price of the sale, it was only to accommodate her brother, the defendant, and her sister-in-law, Dolores Foz, who proposed by means thereof to obtain money at a reduced rate of interest in order to redeem the property, and that she did not believe that these, her relatives, would repudiate their debt. The plaintiff testified at the trial that, having agreed with the defendant spouses upon the sale of her real rights long prior to the date of the execution of the instrument Exhibit 2, the defendant Dolores Foz, as the general attorney in fact and representative of her husband, had signed and delivered to the plaintiff, on January 26, 1914, the certificate of indebtedness hereinabove transcribed.

The plaintiff admitted that the defendant Dolores Foz had paid P307 on account, as proven by the receipt in defendant's possession signed by the plaintiff on April 18, 1914, but she denied that she had received the price of the sale, P2,200, as set forth in the instrument Exhibit 2, signed by herself on June 30, 1914.

The defendants, however, swore that they paid the whole of the said amount of P2,200 before the deed of sale, Exhibit 2, was made out; that this is shown by the plaintiff's own statement contained therein of having received to her entire satisfaction from the defendant Buenaventura Toribio the price of the sale P2,200. Dolores Foz also testified that, after deducting the P700 which the plaintiff owed her, the remainder still due for the purchase of the rights in the property in question was only P1,500, which entire sum was paid prior to the execution of the proper deed of sale in the following manner: P307 on April 18, 1914, according to the receipt issued by the plaintiff and marked as Exhibit 1; P693 on a subsequent date; and finally, the additional sum of P600, which she delivered to plaintiff before the execution of the said deed of sale, Exhibit 2. The defendant Dolores Foz further testified that as the said partial payments were made to the plaintiff in the presence of the notary Ramon Muyot, she, Dolores,

being in a hurry, forgot to require receipts for the sums delivered, and also through thoughtlessness she failed to require the return of her certificate of indebtedness of the P1,500 that she had delivered to the plaintiff on January 26, 1914. However, the notary Ramon Muyot, having been called to the stand for the purpose of explaining the point in controversy, denied having seen the defendant Dolores Foz make any payment of money to the plaintiff Feliza Toribio.

So then, the question submitted to the decision of this court is whether the sum of P1,500, which the defendant spouses owed to the plaintiff from January 26, 1914, was or was not wholly paid to her.

As the plaintiff copied in her complaint the certificate of indebtedness given by Dolores Foz on January 26, 1914, for the sum of P1,500, and the latter did not under oath deny, either in her answer or during the trial, having executed it, there can be no doubt that the genuineness and due execution of the said instrument must be admitted, pursuant to the provisions of section 103 of the Code of Civil Procedure. The defendant Dolores alleges, however, that she had wholly paid the said sum, for, six months subsequent to the date of that receipt, the plaintiff stated in the instrument Exhibit 2, executed by the latter on June 30, 1914, that she had received the sum of P2,200, counted to her entire satisfaction and paid to her by Don Buenaventura Toribio, husband of Dolores Foz.

Aside from the fact that it is not shown in the record that the notary, Muyot, attested in the instrument Exhibit 2 that the sale price was paid, it is incontrovertible that this same notary in his testimony denied having witnessed any payment whatever by the said purchasers to the plaintiff-vendor. This latter testified that the sale price was covered by a debt of P700 owing to the purchasers and the signing of a certificate of indebtedness by the latter for the sum of P1,500, although the major part had not been paid to the vendor.

The defendants, in view of the certainty of the debt mentioned in the receipt of January 26, 1914, were in duty bound to prove that not only had they paid P307 on account on April 18th of the same year as they did by Exhibit 1, but also that they had paid the whole of the balance of the amount claimed by presenting the receipt or receipts of the payments made, which they did not do, when it was their strict duty to furnish such proof. (Sec. 297, Code of Civ. Proc.; Behn, Meyer & Co. vs. Rosatzin, 5 Phil. Rep., 660; and Miller, Sloss & Scott vs. Jones, 9 Phil. Rep., 648.)

If it is true that the whole sum specified in the said certificate of indebtedness was paid, no explanation has been offered why the receipt of January 26, 1914, remained in possession of the creditor and was not canceled in the deed of sale, if the debt, as well as the price of the sale, was really paid. The existence in the hands of the creditor of an instrument of credit, is evidence that the debt is still unpaid, unless the contrary be fully proven. (Sec. 334, No. 8, Code of Civ. Proc; Bantug vs. Del Rosario, 11 Phil. Rep., 511; Ramos vs. Ledesma, 12 Phil. Rep., 656; and Ormachea Tin-Congco vs. Trillana, 13 Phil. Rep., 194.)

Notwithstanding that the vendor, Feliza Toribio, related in the deed of sale that she had received the sum of P2,200 to her entire satisfaction and in hand paid to her by Buenaventura Toribio, which statement was ratified under oath before a notary, yet as the payment of the price of the sale was denied by the said vendor, and as the purchasers did not prove that they made such payment, the vendor's statement cannot prevail against the conclusive proof shown by the record that the payment was not actually made and that it was made to appear in the said deed for the sole purpose of furthering certain financial transactions which the purchasers intended to make.

For the foregoing reasons, whereby the errors assigned by the appellants to the judgment appealed from have been refuted, we hereby affirm the said judgment with the costs against the defendant-appellant. So ordered.

Johnson, Trent and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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