

ILDEFONSO BIANDO AND MODESTO ESPANTO, PLAINTIFFS AND APPELLEES, VS. CIRIACO EMBESTRO AND RAMON BARDAJE, DEFENDANTS. RAMON BARDAJE, DEFENDANT AND APPELLANT.

G.R. No. 11919. July 27, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

On 10 March 1956 the spouses Ildefonso Biando and Modesta Espanto filed in the Court of First Instance of Camarines Sur an amended complaint against Ciriaco Embestro and Ramon Bardaje praying that the deed of sale of a parcel of land with the right reserved by the vendors to repurchase it executed by them on 19 May 1952 in favor of the defendant Embestro be declared one of equitable mortgage to guarantee the payment of a loan of P100; that the assignment or conveyance of the parcel of land by Embestro to Bardaje on 18 July 1953 be declared null and void; that Embestro be ordered to receive from the plaintiffs the sum of P100 tendered by the latter on 19 May 1955 as payment of the loan and the sum of F5 as reimbursement for expenses incurred in the execution of the deed; that the defendants be ordered to pay the plaintiffs damages in the sum of F438 annually from May 1952 until possession of the parcel of land is delivered to them; that the defendants be ordered to pay the costs; and that the plaintiffs be granted other just and equitable relief (civil No. 3154).

The defendants answered that the deed of sale of the parcel of land with the right reserved by the vendors to repurchase it executed by the plaintiffs is as it purports to be; that the plaintiffs never offered to repurchase the parcel of land; that before selling it to his co-defendant, Embestro offered to resell it to the plaintiffs but the latter could not repurchase it because they had no money; and that before buying it the defendant Bardaje inquired from the plaintiffs whether they were still interested in repurchasing it but the latter assured him that they were not because they had no money. The defendants set up a counterclaim of P500 as expenses incurred in clearing the parcel of land and planting it with abaca, banana and other plants.

At the pre-trial conference of the parties assisted by their respective counsel held by the Court on 7 May 1956, the parties agreed:

- That the defendants hereby resell to the plaintiffs the land described in Annex "A" of the complaint for P100.00;
- That in addition to the sum of PI 00.00, the plaintiffs will pay the defendant Ramon Bardaje the value of whatever improvements he may have introduced on said land since it was conveyed to him by the defendant Ciriaco Embestro to the present;
- That the parties hereby reserve their right to present evidence on the improvements introduced by said Ramon Bardaje as well as the value thereof;
- That Mr. Daniel P. Magistrado be appointed commissioner to go to the land and make an ocular inspection of the improvements thereon to ascertain their nature, extent, age and value. He must perform his duties in the presence of the parties or their representatives, and his fees shall be paid in share and share alike by them, to be

charged as costs against the defendants if there are no improvements on the land and against the plaintiffs if there are improvements on the land;

- That the defendants will execute the deed of reconveyance and deliver the land to the plaintiffs as soon as the judgment rendered herein becomes final, and the sum of P100.00 together with the value of the improvements, if any, is paid to the defendant Ramon Bardaje, and that the plaintiffs will pay these sums as soon likewise as the decision becomes final;

- That the parties hereby waive all their other claims to damages and attorney's fees;

- That the hearing of this case for the approval of the commissioner's report and the reception of evidence on the improvements on the land is set for June 28, 1956; and

- That hereafter judgment be rendered in accordance with this Order, without any pronouncement as to costs.

After an ocular inspection, the Commissioner submitted to the Court his report on 13 June 1956. As no objection to the report was interposed by any of the parties, the Court rendered judgment, the dispositive part of which set for trial, neither the plaintiffs nor their counsel appeared despite notice. The defendants appeared by counsel and submitted the case for decision on the basis of the amicable settlement entered into by and between the parties and the Commissioner's report. On 30 June 1956 the Court rendered judgment, the dispositive part of which provides:

WHEREFORE, judgment is hereby rendered ordering the defendant Ramon Bardaje to execute to the plaintiffs the deed of reconveyance of the land described in Annex "A" of the complaint and to deliver it to him as soon as this decision becomes final and condemning the plaintiffs to pay Ramon Bardaje, as soon likewise as this decision becomes final, the sum of P158.00 and the commissioner's fee paid by Bardaje, amounting to P20.00, without any pronouncement as to costs. To obviate any controversy, Ramon Bardaje must deposit with the Clerk of Court the deed of reconveyance and the plaintiffs the amount of P178.00 or before the date this decision becomes final.

On 25 July 1956, the plaintiffs filed a motion praying that the Provincial Treasurer of Camarines Sur be ordered to deliver to the defendant Bardaje the sum of P105 deposited by them with the Clerk of Court under Official Receipt No. 0584461, dated 28 November 1955, which in turn was deposited with the Provincial Treasurer under Official Receipt No. 0586417, dated 29 November 1955. On 26 July the Court entered an order authorizing Bardaje to withdraw from the Provincial Treasurer the sum of P105.

On 30 August the defendant Bardaje filed a motion praying that for failure to deposit in full the sum of P178, the plaintiffs be restrained from entering the parcel of land, gathering the fruits of the plants and exercising acts of possession and ownership therein. On 1 September the Court denied the defendant's motion for his failure to deposit with the Clerk of Court the deed of reconveyance. On 4 September the plaintiffs deposited with the Clerk of Court the balance of P73 to complete payment of the sum of P178. On 13 September the defendant Bardaje filed a motion for reconsideration of the order of 1 September denying his motion dated 30 August. He claimed that the amicable settlement entered into by the parties on 7 May 1956 at the pre-trial conference called by the Court created reciprocal obligations between them, to wit: the plaintiffs to deposit in court the sum of P178 on or before the judgment becomes final and the defendant Bardaje to execute the deed of reconveyance as soon thereafter, and that not having deposited the sum of P178, but only the sum of P105 within 30 days before the judgment became final, that is from 14 July when he received notice of judgment to 13 August, and having deposited the balance of P73 only on 4 September, or 21 days after the judgment became final, the plaintiffs' cannot demand of him the fulfillment of his obligation. On 15 September the Court denied the motion for reconsideration.

On 6 October the plaintiffs prayed that the defendant Bardaje be ordered to execute the deed of reconveyance. On

the same date the defendant Bardaje objected to the plaintiff's motion for the same reasons adduced in his previous motions. On 9 October the Court entered an order directing the defendant Bardaje to execute within 35 days from receipt of notice thereof the deed of reconveyance and, should he fail to do so, authorizing and directing the Clerk of Court to execute the deed for him. On 12 October the defendant filed a notice of appeal from the foregoing order, a record on appeal and appeal bond.

On the same day, he filed a petition for a writ of injunction to restrain the plaintiffs, their agents or representatives, or any other person acting in their name, place and stead, from entering the parcel of land, gathering the fruits therefrom and exercising acts of ownership and possession therein during the pendency of the appeal. On 13 October the Court entered an order denying his petition for a writ of injunction, and another on 20 October directing the defendant Bardaje "to expugn from the record on appeal the statements on page 1 not found in the judgment, orders or pleadings entered or submitted in this case and incorporate therein the amended complaint, the amended answer, and the motions and orders herein-above referred to," within one week from receipt of notice. On 24 October the defendant Bardaje filed a motion for reconsideration of the previous order. On 27 October the Court denied his motion. On 10 November the defendant Bardaje filed a notice of appeal from —

* * * (a) the order of the court of October 13, 1956, denying his petition for injunction; (b) the order of October 20, 1956, disapproving his original record on appeal; (c) the order of October 27, 1956, denying his motion for reconsideration of the orders (a) and (b) first mentioned: and (d) the order of October 6, 1956, ordering defendant to execute the deed of reconveyance, said orders being clearly against the law.

In his brief the appellant argues only against the order of 9 October 1956 directing him to execute the deed of reconveyance within 35 days from receipt of notice of the order, and should he fail to do so, authorizing and directing the Clerk of Court to execute it for him.

In the amicable settlement entered into by and between the parties and in the judgment rendered pursuant thereto, the Court ordered the appellant to execute the deed of reconveyance and deliver possession of the parcel of land to the appellees, and the appellees to pay the appellant the sum of P178 as soon as the judgment becomes final, meaning immediately or after the judgment becomes final. Appellants received notice of the judgment on 14 July 1956. Pursuant to the Rules, it became final on 13 August. Before judgment became final, or on 25 July the appellees filed a motion praying that the Provincial Treasurer of Camarines Sur be ordered to deliver to the appellant the sum of P105 previously deposited by them with the Clerk of Court and later on with the said Provincial Treasurer; on 26 July the Court entered an order authorizing the appellant to withdraw from the Provincial Treasurer the said sum of P105; and 21 days after the judgment became final, or on 4 September, the appellees deposited with the Clerk of Court the balance of P73 to complete the sum of P178 due from them. The appellant refused to draw and receive the two sums deposited by the appellees. The appellees having performed their part of the reciprocal obligation are entitled to compel the appellant to fulfill his. The last part of the judgment, to the effect that "To obviate any controversy, Ramon Bardaje must deposit with the Clerk of Court the deed of reconveyance and the plaintiffs the amount of P178.00 on or before the date this decision becomes final," cannot prevail over the agreement of the parties and the first part of the judgment of the Court that their reciprocal obligations be performed as soon as the judgment becomes final. It is but a mere suggestion of the Court to the parties to avoid further controversy, which cannot alter or modify their agreement sanctioned by the Court. And even if it be given effect, time not being the essence of the agreement, a slight delay on the part of the appellees in the performance of their obligation is not sufficient ground for the resolution of the agreement.

The order appealed from is affirmed, with costs against the appellant.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.

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