CANDIDO AMIL, PETITIONER, VS. COURT OF APPEALS, AND SPOUSES ERNESTO GADOR AND NILA GADOR, RESPONDENTS.

G.R. No. 125272. October 07, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision[1] of the Court of Appeals, dated January 29, 1996, affirming the decision of the Regional Trial Court, Branch 36, Dumaguete City, Negros Oriental, dated October 26, 1993, which declared private respondents Ernesto and Nila Gador the absolute owners of the parcel of land, covered by Transfer Certificate of Title No. 14021, in Calindagan, Dumaguete City, Negros Oriental.

The facts are as follows:

> Petitioner Amil and private respondents Ernesto and Nila Gador executed a document entitled "Deed of Pacto de Retro Sale," dated November 14, 1987, involving the land in dispute. The parties stipulated:
>
> That Vendor A-Retro, Candido C. Amil, for and in consideration of the sum of THIRTY THOUSAND (P30,000.00) PESOS, Philippine Currency, in hand paid to him and receipt whereof is hereby acknowledged to his entire satisfaction, do by these presents, SELL, TRANSFER and CONVEY, under Pacto De Retro, unto the herein Vendees A-Retro, the spouses Ernesto T. Gador and Nila A. Gador their heirs, successors and assigns, the above described parcel of land together with all the improvements thereon, free from all liens and encumbrances.
>
> That Vendor A-Retro, Candido C. Amil, reserve for himself the right to redeem or repurchase the property herein sold, and the Vendees A-Retro, in turn, obligate themselves to resell the parcel of land sold, within a period of THREE (3) YEARS, from and after the due execution of this instrument, for the same price of THIRTY THOUSAND (P30,000.00) PESOS, Philippine Currency; PROVIDED, HOWEVER, that if the Vendor A-Retro, Candido C. Amil, fails to exercise his right to redeem or repurchase as herein granted within the period stipulated upon, then this conveyance shall be deemed to be an absolute and irrevocable sale, without the necessity of executing any further deed or instituting judicial action to consolidate the ownership in the name of the Vendees A-Retro.[2]

The parties executed another document entitled "Addendum to Deed of Pacto de Retro Sale," dated December 12, 1987 which provided:

> That the Party of the First Part, the spouses Ernesto T. Gador and Nila A. Gador, are the Mortgagees of that certain parcel of land situated at Barrio Calindagan, Dumaguete City, under Transfer Certificate of Title No. 14021 and the Party of the Second Part is the Mortagor of said parcel of land, for and in consideration of the sum of Thirty Thousand (P30,000.00) Pesos, Philippine Currency, per Doc. No. 3; Book No. 1; Page No. 1; Series of 1987 of Notary Public Jose G. Hernando, Jr., dated the 14th day of November, 1987, at Dumaguete City.
>
> That considering that the Party of the First Part has to pay an additional sum of One Thousand and Eight Hundred (P1,800.00) Pesos, Philippine Currency, to cover costs or expenses for Capital Gains Tax and

> Documentary Stamps, the Party of the Second Part hereby agrees and covenants that his right to redeem or repurchase the parcel of land subject matter of the Mortgage, within the period stipulated, shall cover and includes said amount of (P1,800.00) or the total sum of Thirty One Thousand Eight Hundred (P31,800.00) Pesos, Philippine Currency.[3]

After the redemption period had expired, private respondents filed a petition for the consolidation of their ownership over the property in question. Petitioner was declared in default as his counsel, Atty. Reynaldo Piñero, failed to file an answer to the petition. Thereafter, the case was heard and on October 26, 1993, judgment was rendered by the court, the dispositive portion of which states:

> WHEREFORE, in view of the foregoing and considering the fact that respondent failed to file an answer to the petition or failed to appear before this Court, in spite of the Court's efforts in exerting all possible means to give the respondent his day in Court in order for him to be duly heard before this Court in connection with this case, this Court hereby renders Judgment declaring petitioners Ernesto T. Gador and Nila A. Gador as the absolute owners of the Five Hundred (500) square meters of Lot No. 782-D-4 of the Subdivision Plan, Psd-07-03-006671, being a portion of Lot 782-D (LRC) Psd-120931, situated in the Barrio of Calindagan, City of Dumaguete, the same being covered by Transfer Certificate of Title No. 14021. The Register of Deeds of Dumaguete City is hereby ordered to make the corresponding annotation of the Consolidation of Ownership in the Vendee-A-Retro, Ernesto T. Gador and Nila A. Gador on the Transfer Certificate of Title No. 14021 upon payment of the prescribed fees thereof.

Petitioner, through a new counsel, then filed a motion for new trial, which, however, was denied. He appealed to the Court of Appeals, which, in its decision dated January 29, 1996, affirmed the decision of the trial court. The Court of Appeals ruled:

> We agree with the trial court's denial of respondent-appellant's motion for new trial. Respondent had been given full opportunity to answer and be heard. It is the duty of a party litigant to make inquiries to counsel on matters concerning his case (Elino Ong Reyes vs. CA, 189 SCRA 46; Florendo vs. Florendo, 27 SCRA 432). In fact, respondent's alleged counsel never even entered his appearance. Under these circumstances, including those earlier adverted to, We rule that respondent did not exercise the ordinary prudence required of him by Rule 37, section 1(a) of the Rules of Court, and his negligence is not excusable to justify a new trial.
>
> We find likewise without merit defendant-appellant's contentions that the Addendum dated December 12, 1987 clarifies or at least engenders doubt as to the real intent of the parties and that the contract is in reality a mortgage. The Addendum itself speaks of a capital gains tax to be paid by the spouses Ernesto and Nila Gador. It also states that Candido C. Amil "hereby agrees and covenants (that) his right to redeem on repurchase the parcel of land x x x ". Such stipulations are distinctive indicia of a sale, transfer or exchange of real property with right to repurchase. The two documents, read together and taken jointly, clearly evince a contract of sale with right to repurchase. It is therefore of no moment that the words "mortgage" and "mortgagee" were used in the Addendum. If words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former. (Article 1370, New Civil Code; Sy vs. Court of Appeals, 131 SCRA 116).
>
> WHEREFORE, finding no error in the judgment appealed from, the same is hereby AFFIRMED in toto. With costs against appellant.
>
> Hence, this petition. It is contended that-
>
> 1. The lower Court gravely erred in denying appellant's motion for new trial; and
>
> 2. The lower Court gravely erred in granting consolidation of ownership in favor of petitioners-appellees considering that by their own evidence, namely, the "Addendum to Deed of Pacto de Retro Sale" dated December 12, 1987 (Exh. "B", Record), it is expressly stated that the contract is merely MORTGAGE, NOT PACTO DE RETRO SALE.

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We find the petition to be meritorious. Rule 37, 1 of the Revised Rules of Court of 1964 provides:

Within the period for perfecting appeal, the aggrieved party may move the trial court to set aside the judgment and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights;
>
> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered, and produced at the trial, and which if presented would probably alter the result;
>
> (c) Award of excessive damages, or insufficiency of the evidence to justify the decision, or that the decision is against the law.

As already noted, the Court of Appeals affirmed the denial of a new trial on the ground that the failure of petitioner's original counsel to file an answer within the reglementary period cannot be considered as excusable negligence which ordinary prudence could not have guarded against. According to the Court of Appeals, petitioner is bound by the mistakes of his former counsel.

To be sure, as a rule, a party is bound by the mistakes of his counsel. As we explained in Tesoro v. Court of Appeals:[4]

> It has been repeatedly enunciated that a client is bound by the action of his counsel in the conduct of a case and cannot be heard to complain that the result might have been different had he proceeded differently. A client is bound by the mistakes of his lawyer. If such grounds were to be admitted as reasons for reopening cases, there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent or experienced or learned.

Accordingly, this Court has affirmed the denial by trial courts of motions for new trial on the ground that the failure of counsel to file an answer within the reglementary period cannot be considered as excusable negligence.[5]

In this case, however, there are factual considerations necessitating a different outcome. First, an exception to he principle that a client is bound by the mistakes of his counsel is one wherein the negligence of the latter is so gross that the former was deprived of his day in court, as a result of which he is deprived of property without due process of law. Thus, in Legarda v. Court of Appeals,[6] this Court ordered the restoration to petitioner of her property sold at public auction in satisfaction of a default judgment resulting from the failure of her counsel to submit an answer and his lack of vigilance in protecting her interests in subsequent proceedings before the trial court and the Court of Appeals.

In the instant case, petitioner was likewise declared in default because of the failure of his former counsel, Atty. Piñero, to file within the reglementary period an answer to private respondents' petition for consolidation of ownership. Atty. Piñero likewise failed to take any action to protect the interests of petitioner in subsequent proceedings before the trial court, such as by filing an opposition to the motion to declare him in default or by moving to set aside the order of default. It was Atty. Saleto J. Erasmes, the present counsel of petitioner, who filed the motion for new trial after a judgment by default had been rendered against him. As a consequence of his former counsel's gross negligence, petitioner was deprived of his day in court.

Secondly, as we have emphasized, trial courts should be liberal in setting aside orders of default and granting motions for new trial if the defendant appears to have a meritorious defense.[7] Parties must be given every opportunity to present their sides. The issuance of orders of default should be the exception rather than the rule, to be allowed only in clear cases of obstinate refusal by the defendant to comply with the orders of the trial court.[8]

Thirdly, petitioner appears to have a meritorious defense. Indeed, it would appear that the contract between petitioner and private respondents is an equitable mortgage rather than a pacto de retro sale. Arts. 1602 and 1603 of the Civil Code provide:

> ART. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:
>
> (1) When the price of a sale with right to repurchase is unusually inadequate;
>
> (2) When the vendor remains in possession as lessee or otherwise;
>
> (3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;
>
> (4) When the purchaser retains for himself a part of the purchase price;
>
> (5) When the vendor binds himself to pay the taxes on the thing sold;
>
> (6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall procure the payment of a debt or the performance of any other obligation.

In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or other wise shall be considered as interest which shall be subject to the usury laws.

ART. 1603. In case of doubt, a contract purporting to be a sale with right to repurchase shall be construed as an equitable mortgage.

The price of P30,000.00 for the subject property appears to be unusually inadequate. Furthermore, the words “mortgage,” “mortgagor,” and “mortgagees” appear in the “Addendum to Deed of Pacto de Retro Sale.” Finally, it should be noted that the “Deed of Pacto de Retro Sale” provides that “if the Vendor A-Retro, Candido C. Amil, fails to exercise his right to redeem or repurchase as herein granted within the period stipulated upon, then this conveyance shall be deemed to be an absolute and irrevocable sale, without the necessity of executing any further deed or instituting judicial action to consolidate the ownership in he name of the Vendees A-Retro.” This stipulation is void for being a pactum commissorium.[9] Considering all these, the trial court should have granted petitioner a new trial to enable him to present evidence on the true nature of the contract in question.

WHEREFORE, the decision of the Court of Appeals dated January 29, 1996, is hereby REVERSED and the case is REMANDED to the Regional Trial Court, Branch 36, Dumaguete City, Negros Oriental for further proceedings in accordance with this decision.

SO ORDERED.

Quisumbing, and Buena, JJ., concur.

Bellosillo, (Chairman), J., on official leave.

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[1] Per Justice Portia Aliño-Hormachuelos and concurred in by Justices Artemon D. Luna and Ramon A. Barcelona.

[2] Petition, Annex B, Rollo, pp. 21-22.

[3] Id., Annex A, Rollo, pp. 17-18.

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[4] 54 SCRA 296 (1973).

[5] See Malipol v. Tan, 55 SCRA 202 (1974).

[6] 195 SCRA 418 (1991).

[7] See Leyte v. Cusi, Jr., 152 SCRA 496 (1987).

[8] Supra, pp. 498-499.

[9] Ching Sen Ben v. Court of Appeals, G.R. No. 124355, September 21, 1999.

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