

IN THE MATTER OF THE PETITION FOR CONSOLIDATION OF OWNERSHIP OF REAL PROPERTY. MARIA V. LINDAYAG, PETITIONER AND APPELLANT, VS. DIOSCORO M. DANA, RESPONDENT AND APPELLEE.

G.R. No. 16734. July 31, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from an order of the Court of First Instance of Zambales in Civil Case No. 143 of that court, dismissing the complaint, upon motion of the respondent Dioscoro M. Dana, on the ground that the action is barred by a previous judgment of the same court. The Court of Appeals endorsed the appeal to Us, for the reason that it involves purely legal questions.

In Civil Case No. 143, petitioner Maria V. Lindayag alleges that Annex "A" attached to the petition (Deed of Sale with pacto de retro executed by respondent in her favor, involving a residential house in Olongapo, Zambales) is a pacto de retro sale; so she prays to consolidate in herself ownership of said house pursuant to the provisions of Article 1607 of the Civil Code. The court dismissed the petition, upon motion of respondent Dana, on the ground of res judicata, because of a previous decision of the same court on June 13, 1958, in Civil Case No. 1728 (entitled "Maria V. Lindayag, plaintiff, vs. Dioscoro M. Dana, defendant, for unlawful detainer").

Civil Case No. 1728 (for unlawful detainer) was originally instituted by Maria V. Lindayag against Dioscoro M. Dana in the Justice of the Peace Court of Olongapo, Zambales. Lindayag sought in said action to eject defendant Dana from the house subject matter of Exhibit "A" (same as in the instant case), claiming that the contract is a pacto de retro sale, and that as Dana had failed to repurchase the house within the period stipulated in the contract, she (Lindayag) has become the absolute owner of the house and that Dana's right to the possession thereof had terminated. Dana moved to dismiss the action in said Justice of the Peace Court, on the ground that said court had no jurisdiction and there is lack of cause of action. In support of the claim of lack of cause of action, Dana contended that the transaction between the parties is an equitable mortgage, not a sale with right to repurchase. The Justice of the Peace held that pursuant to the provisions of Article 1606 of the Civil Code (which provides that defendant in an equitable mortgage may still redeem the property), the action is premature. The case was appealed to the Court of First Instance, which sustained the order of dismissal, in the following terms:

"In this instance, the question for determination is whether the transaction had between the plaintiff Maria V. Lindayag, and the defendant is a pacto de retro sale or merely an equitable mortgage. There is no dispute that on its face Exhibit "A" which is the contract entered into between the parties, purports to be a pacto de retro sale; and that the period for the redemption of the property in question had expired without the defendant having repurchased it. However, the defendant contends that the transaction was actually a loan secured by a mortgage on the defendants' house referred to in paragraph 2 of the complaint. The facts obtaining in this case seem to sustain the defendant's claim. It is to be observed that the contract Exhibit "A" provides 'that the vendor shall be in possession of said residential house only up to the termination of the period aforementioned

for the exercise of the right to repurchase.' It also appears that while the house has an assessed value of P1,800 and a market value of P5,000, the same was allegedly sold to the herein plaintiffs for only P600. Pursuant to Article 1602 of the Civil Code of the Philippines, the contract shall be presumed to be an equitable mortgage when the price of the sale with right to repurchase is unusually inadequate, or when the vendor remains in possession of the property sold as lessee or otherwise. Another circumstance which clearly indicates that the transaction is one of loan, is the fact borne out by the defendant's evidence that he had made partial payments in the total amount of P350 on the amount given him by the plaintiff Maria V. Lindayag. Of course, the latter denied this claim of the defendant. But as between the testimony of the plaintiff Maria V. Lindayag and that of the defendant Dioscoro M. Dana, the Court is inclined to give more credence to the testimony of the defendant, it appearing that his testimony on the matter is corroborated by a disinterested witness named Juan Aquino. * *

* The foregoing considerations, in the opinion of the Court, warrant a finding in favor of the defendant's claim, and finding that the transaction had between the parties in this case was an EQUITABLE MORTGAGE, the Court holds that the herein plaintiffs cannot appropriate the house in question which was given by way of mortgage, notwithstanding any stipulation to the contrary (Article 2088 of the Civil Code of the Philippines). (Decision pp. 37, 38 and 40, Brief for the respondent-appellee.)

No appeal was prosecuted from the decision of the lower court in Civil Case No. 1728.

The sole question in this appeal is, whether or not the decision of the Court of First Instance of Zambales in Civil Case No. 1728, Above-quoted, bars by res adjudicata the instant action instituted by petitioner-appellant Lindayag.

That the former judgment of the lower court (in Civil Case No. 1728) is final is not questioned. Appellant herein claims that in the two cases there are different causes of action; that a judgment rendered in an unlawful detainer case does not bar an action between the same parties respecting title to land or building; that the only question involved in Civil Case No. 1728 is that of possession, and evidence of ownership was received solely for the purpose of determining the character and extent of such possession; and that the finding by the lower court that Annex "A" is an equitable mortgage is a mere opinion.

We find that the petitioner-appellant's contention that Civil Case 1728 does not bar the case at bar is without merit, as can be seen from the above-quoted portion of the decision of the trial court in Civil Case No. 1728. The court had decided that the contract, Exh. "A" (Annex "A" herein) is an equitable mortgage. The nature of the same contract, Annex "A", is again the issue in the instant case. Case No. 1728 was not an action of unlawful detainer, but one involving ownership. The lower court having passed upon this question of ownership in its decision in Civil Case No. 1728, this point may not be raised in issue again between the same parties in this proceeding.

"That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto." (Sec. 45, Rule 39, Rules of Court)

An additional point should be considered in relation to the judgment of the Court of First Instance in the first case. This question is one of jurisdiction. If the previous case was really an action for unlawful detainer and the case continued in the Court of First Instance as such action, the decision of the court would not bind the parties and the court in the present case in accordance with Section 7, Rule 72 of the Rules of Court.

It is true that Civil Case No. 1728 was brought in the Justice of the Peace Court under the title of "unlawful detainer". However, upon examination of the complaint, which is attached as Annex "A" to Respondent-Appellee's Brief, an allegation is contained therein that inasmuch as the contract between the parties is a sale with pacto de retro and the vendor had not repurchased the property within three months, the vendor has become the absolute owner thereof. So that in consequence of the stipulations in the said document that "the

vendor shall be in possession of said residential house only up to the termination of the period aforementioned for the exercise of the right to repurchase, if the vendor shall fail to exercise his right to repurchase within the period stipulated," the complaint sought to obtain a ruling of the court that Lindayag had become the absolute owner of the property by virtue of the provisions of the contract Exhibit "A". The action was clearly an action involving ownership, over which the Justice of the Peace had no jurisdiction. In the Justice of the Peace, the defendant questioned the jurisdiction of the court, but the said court dismissed the complaint, not on the ground of lack of jurisdiction, but on the ground that the deed was an equitable mortgage and the vendor still had the right to purchase the property in accordance with Article 1606 of the Civil Code. On appeal to the Court of First Instance, the defendant did not again raise the question of jurisdiction; so the Court of First Instance obtained jurisdiction of the case by virtue of its original jurisdiction (Sec. 11, Rule 40, Rules of Court). Case No. 1728, therefore, was tried and decided in the Court of First Instance as an action involving the determination of the nature of the contract Exhibit "A". As said court held that the contract should be considered an equitable mortgage, this same question may not again be the subject matter of another action, as in the case at bar. The finding of the court that Exhibit "A" is one of equitable mortgage may not again be questioned in the case at bar, or in any other case between the same parties.

Wherefore, the order of dismissal appealed from is hereby affirmed, with costs against petitioner-appellant.

Bengzon, C. J., Padilla, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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