

WLLIAM C. PFLEIDER, PLAINTIFF AND APPELLANT, VS. C. N. HODGES, DEFENDANT AND APPELLEE.*G. R. No. 17683. July 31, 1962*

Ponente: LABRADOR, J.

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Appeal from an order of the Court of First Instance of Negros Occidental, Hon. Francisco Arellano, presiding, dismissing the above-entitled civil case and denying a motion to reconsider or set aside the said order of dismissal.

On May 1, 1958, plaintiff filed a complaint in the case alleging, inter alia, the following material facts: That in or about 1941, plaintiff borrowed from the defendant the sum of P10,000 and to secure payment thereof mortgaged two parcels of land valued at around P100,000 and various sawmill machineries valued at P150,000; that as the defendant was then in the provincial jail serving sentence for usury, he secured the consent of the plaintiff to enter into a simulated sale of the said properties in order to hide the usurious mortgage; that the sale was followed by a simulated lease, dated February 6, 1941, of the same properties sold, for a period of three months at the rate of P470.79 monthly; that as a consequence of the sale, the lands conveyed were transferred to the name of the defendant in his books of account and the amount of the mortgage was carried in said books as an indebtedness of plaintiff; that in 1954, when the account of the plaintiff had reached the sum of P105,511.64, the defendant herein filed civil case No. 2860 for the recovery of possession in the Court of First Instance of Negros Occidental; that because the defendant had realty no intention to own the properties mortgaged, he agreed to settle the case with the plaintiff whereby he signed on February 23, 1954, a contract of sale to the plaintiff on installment of the above-described properties for P90,273.73, thereby substituting the aforementioned lease contract with a contract to sell; that on March 13, 1956, a civil case for detainer was brought in the Justice of the Peace Court of Asia, Negros Occidental, but the complaint was dismissed on appeal by the plaintiff. The prayer is that the court declare the transaction between plaintiff and defendant as an equitable mortgage and compel the parties to execute the necessary documents to carry out the transaction of mortgage, and, in the alternative, to renew the contract to sell on installment for 10 years for P10,000, with interest at the rate of 10% from February 7, 1941, less whatever payments the plaintiff may have made.

The defendant having been summoned, he filed on July 31, a motion to dismiss the complaint alleging as a first ground that the action of the plaintiff has prescribed, and as a second ground, that the action is barred by a prior judgment. In support of his second ground, the motion recites the fact that on November 9, 1953, defendant filed a complaint for the recovery of the possession of the properties, with rentals and damages, which action was docketed in the Court of First Instance of Negros Occidental as civil case No. 2860; that defendant in that action, and plaintiff herein, answered the complaint praying that the transaction be considered as loan secured with mortgage; that subsequently the defendant withdrew his answer and counterclaim and submitted a confession for judgment and that as a result the court rendered decision on August 24, 1954. The answer appends the amended complaint filed in said civil case No. 2860, CFI of Negros Occidental, with copies of documents attached thereto,

the answer which contains special defenses as Annex "B", the withdrawal of the answer, and a confession for judgment, Annex "C", and the decision, Annex "D". The decision, Annex "D", orders the defendant (plaintiff-appellant herein) to deliver or surrender the possession of the lands, to pay plaintiff P61,916.26 for unpaid rents, etc., plus P500.00 for attorney's fees.

On September 6, 1958, plaintiff filed an amended complaint in this case. The allegations of the amended complaint are practically the same as the original complaint but the prayer contained the following:

That the court declare null and void the iniquitous sale of the properties by the plaintiff to the defendant and in the alternative, to order the defendant to renew the contract to sell on installment for 10 years, with the consideration based on the original amount of P10,000, plus the legal rate of interest. The defendant having insisted on the reconsideration of his motion to dismiss, the court on October 3, 1958, dismissed the complaint on the ground that the decision in civil case No. 2860, constitutes a bar to the present action. In arriving at this conclusion Judge Arellano reasoned as follows:

"Ciertamente que la acci6n envuelta en dicha causa No. 2860 era sobre restituci6n de posesi6n y no una reivindicaci6n de propiedad de las dos parcelas de terreno en contraversia, pero la indusidn en la misma del cobro de los alquileres correspondientes implica necesariamente la existencia de la relaci6n de arrendador y arrendatario entre las partes litigantes, siendo el demandante en dicha causa el arrendador y el demandado el arrendatario. De Manera que, el derecho de propiedad sobre los terrenos arrendados se sobreentiende existente y vinculado en la persona del arrendador. El arrendatario no puede negar el derecho de propiedad de aquel. Habiendose fallado, como se ha dicho la sufeodicha causa (No. 2860) in virtud de sentencia firme y ejecutoria, la presente causa que reproduce y revive la teoria formulada por el demandante en su contestaci6n en aquella causa, constituye y es cosa Luzgada."

The date of the order is October 3, 1958 and on January 6, 1959, the attorney for the plaintiff filed a petition for relief from judgment, alleging that the plaintiff's counsel could not be present at the hearing of the motion to dismiss for the reason that when the notice was sent to his office (in Negros) he was in Iloilo attending trial of another case before the Iloilo court, and that he has a good defense to the claim of res judicata, because the defendant "entered into a gentleman's agreement with the plaintiff which nullified and set aside the judgment in civil case No. 2860." It is further alleged that the present suit and the action in civil case No. 2860 are different, and that even if they are, the same contains an alternative cause of action, etc.

The above motion was opposed by counsel for the defendant and after a reply to the opposition was filed by plaintiff's counsel, the court entered an order dated July 18, 1959 denying the petition for relief from judgment. After a denial of a motion to reconsider this order, the present appeal was prosecuted.

The main issue raised on this appeal is whether the judgment rendered in civil case No. 2860 of the Court of First Instance of Negros Occidental between the same parties may be considered as a bar to the present action.

A study of the complaint in civil case No. 2860, reveals that it alleges the same cause of action as the complaint in the case at bar.' The only question at issue, therefore, is, Would the judgment in said civil case No. 2860 bar the present suit? The amended complaint contains the following express allegations:

"10. That in 1954 when the account of plaintiff to defendant by virtue of the aforementioned lease had amounted to about P105,511.64, the defendant, in order to collect the said amount, filed Civil Case No. 2860 for Recovery of Possession, in the Court of First Instance of Negros Occidental.

11. "That because the defendant had really no intention to own and hold said properties above-described, he agreed to settle said case with the plaintiff, whereby he signed on February 23, 1954 a contract to sell to the plaintiff on installment the above-described properties for F90,273.73, thereby substituting the aforementioned

lease contract with the Contract to sell;"

The above-quoted last paragraph is an allegation that civil case No. 2860 was settled upon plaintiff Hodges' executing a contract on February 28, 1954, to sell the properties subject of the action. That settlement is also shown by the fact that, practically at the same time, defendant Pfeider in civil case No. 2860, withdrew his answer and on August 21, 1954 (see Rec. on Appeal, pp. 36-37) confessed judgment in accordance with the prayer of the complaint. The judgment is dated August 24, 1954.

Under the facts set forth above, it is evident that the original sale entered into between the parties, upon which Hodges based his action to recover the possession of the properties sold in civil case No. 2860 of the Court of First Instance of Negros Occidental, was superseded by the contract to sell executed on February 23, 1954 by Hodges in favor of Pfeider. Assuming for the sake of agreement that the original action of the plaintiff to declare that the original sale of his properties in 1941 was a simulated contract to hide a usurious loan, had lapsed or is barred by the judgment rendered in said civil case No. 2860, the right of the plaintiff to demand the enforcement of the contract to sell alleged to have been executed by Hodges on February 23, 1954 (allegation expressly made in paragraph 11, of the above-quoted amended complaint) is not barred by the previous-judgment rendered in civil case No. 2860. The amended complaint filed by the plaintiff in the case at bar asks that the original sale made in the year 1941 be declared to be a usurious contract of sale, or in case the same cannot be granted, that the alternative cause of action, praying for the renewal of the contract to sell executed by the defendant Hodges on February 25, 1954, be enforced. This alternative cause of action clearly is not barred by the judgment in civil case No. 2860 for it is a new cause of action that arose as a consideration for the confession of judgment in said previous case.

From the above considerations, it is apparent that the order of the court declaring that the present complaint of the plaintiff is barred by the decision in civil case No. 2860, is incorrect. Wherefore, the order of dismissal and the order of the court denying the motion for relief, are hereby set aside, and the case is hereby remanded to the Court of First Instance of Negros Occidental for further proceedings on the amended complaint. With costs against the defendant-appellee.

Bengzon, C. J., Padilla, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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