

RAMON A. AREVALO, AS ADMINISTRATOR OF THE ESTATE OF CATALINO AREVALO, DECEASED, PLAINTIFF AND APPELLEE, VS. J. F. DIMAYUGA, DEFENDANT AND APPELLANT.

G.R. No. 26218. January 29, 1927

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced in the Court of First Instance of the City of Manila on the 24th day of April, 1925. Its purpose was to recover the possession of a certain piece of property located at 622 Calle Regidor in the City of Manila, together with the rent thereon for the years 1922, 1923, 1924, and up to and including the month of April, 1925, in a sum amounting to P8,066.66.

The defendant interposed a general and special defense. In his special defense he alleged that the property in question was his sole and separate property; that he had given said property to the deceased Catalino Arevalo as a guaranty for the payment of a loan of P20,000 on the 12th day of October, 1920; that the document executed, evidencing said loan, while in form was a pacto de retro, was in fact a mere loan and that the promise to pay rent in said contract was a mere promise to pay interest on said loan at 12 per cent per annum; that at the time of the execution and delivery of said document the deceased Catalino Arevalo collected from the defendant the sum of P150 as a supposed commission; that the contract of January 27, 1922, referred to in paragraph 5 of the complaint was also fictitious and that he had signed the same by virtue of a verbal agreement to extend the time for the repayment of the P20,000 for two months and the payment by the defendant to the plaintiff of P600 additional each year, in addition to the rent already agreed upon, making a total rental of the property in question of P3,000 per year for the use and occupation thereof; that he had paid to Catalino Arevalo the sum of P3,311.09; that the said contracts of the 12th day of October, 1920, and the 27th day of January, 1922, were contrary to the provisions of Act No. 2655, known as the Usury Law. The defendant prayed for a judgment against the plaintiff for the sum of P2,000 as attorney's fees in the trial court and an additional sum of P3,000 as attorney's fees in case of an appeal, as well as for a judgment against the plaintiff for the sum of P3,311.09. He also prayed that he be absolved from all liability under the complaint and that said contracts be declared null and void. He further prayed that the registrar of titles to land in the City of Manila be ordered to cancel the registration of the title of said property in the name of Catalino Arevalo.

Upon the issue thus presented the cause was brought on for trial. After hearing the evidence adduced during the trial of the cause the Honorable C. A. Imperial, judge, in a very well prepared opinion, in which reference was made to all of the important facts, rendered a judgment, the dispositive part of which is as follows:

"Fundado eh las consideraciones que preceden, el Juzgado dicta sentencia a favor del demandante, en su capacidad de administrador judicial del intestado del finado D. Catalino Arevalo, declarandole dueño de la finca urbana cuestionada y con derecho a poseerla, y se ordena al demandado que le restituya dicha finca urbana y que le pague la cantidad de ocho mil sesenta y seis pesos con sesenta y seis centimos (P8,066.66) que representan los

alquileres correspondientes desde el 1.º de enero de 1922 hasta el 30 de abril de 1925, inclusive, mas los alquileres correspondientes desde el 1.º de mayo de 1925 hasta la fecha de la restitucion de la propiedad, a razon de P250 al mes ademas de los intereses legales sobre todas dichas cantidades a partir desde el 26 de abril de 1925, fecha en que se presento la demanda, y las costas. Se sobreseen las reconvencciones y contrademandas del demandado.

"Asi se ordena."

From that judgment the defendant appealed and presents several assignments of error.

In his first assignment of error he contends that the lower court committed an error in excluding certain testimony given by the defendant during the trial of the cause. The testimony in question relates to certain conversations which the defendant is supposed to have had with Catalino Arevalo during his lifetime. The appellant admits that the testimony in question was not admissible under the provisions of paragraph 7 of section 383 of the Code of Procedure in Civil Actions. He argues, however, that inasmuch as there was no objection presented to the admissibility of said testimony at the time it was presented, the motion which the plaintiff presented thereafter to have the same excluded was too late. He contends that the lower court committed an error in granting the motion of the plaintiff to strike said testimony from the record.

The rule of evidence is well established, that the protest or objection against the admission of evidence should be presented at the time the evidence is offered and that the proper time to make protest or objection to the admissibility of evidence is when the question is presented to the witness or at the time the answer thereto is given. It is also a well established rule of evidence that the court may, in its discretion, strike out incompetent evidence although such evidence was given without objection and although the motion to strike out is not made until the evidence is already in. (38 Cyc, 1407; Edisto Phosphate Co. vs. Stanford, 112 Ala., 493; In re Lasak, 131 N. Y., 624.)

The court may also, upon its own. motion, strike out evidence improperly admitted at any time during the day of the trial or at any time before the close of the trial. It has also been held that the court, upon its own motion, even during the closing argument of the counsel, may strike out evidence improperly admitted. Parties to the action are not precluded from asking the court to discard irrelevant and inadmissible evidence even though it had been previously admitted without objection.

It may be added, however, that the testimony of the defendant, while relating to a conversation which he had with Catalino Arevalo during his lifetime, could have had but little bearing upon the questions presented. But whatever the testimony was and whatever bearing it might have had upon the questions presented for solution, it should not have been admitted, and was properly stricken out by the trial court. A party to an action against an executor or administrator of a deceased person, upon a claim against the estate of the latter, is absolutely prohibited by law from giving testimony concerning such claim or demand as to anything that occurred before the death of the person against whose estate the action is presented. Death has closed the lips of one party and the law has closed the lips of the other. (Maxilom vs. Tabotabo, 9 Phil., 390, Kiel vs. Estate of P. S. Sabert, 46 Phil., 193; Anderson vs. Laugen, 122 Wis., 57; Jones on Evidence, vol. 4, 628-630.)

We find nothing in the first assignment of error which in any way justifies a modification of the judgment appealed from.

In his second assignment of error the appellant alleges that the lower court committed an error in dismissing his counterclaim and in not admitting the same in accordance with the provisions of section 9 of Act No. 2655. In support of his second assignment of error the appellant claims that inasmuch as the plaintiff had not answered his

counterclaim under oath, the facts alleged therein had been admitted and could not thereafter be denied. Act No. 2655 is an act fixing rates of interest upon loans and declaring the effect of receiving or taking usurious rates and for other purposes. Section 9 of said Act provides that the person or corporation sued shall file its answer in writing under oath to the complaint brought or filed against said person or corporation before a competent court to recover the money or other personal or real property, seeds or agricultural products, charged or received in violation of the provisions of that Act. The lack (omission) of taking an oath of an answer to a complaint will mean the admission of the facts contained in the latter.

Without deciding the question whether or not there existed usury, or whether or not usury can exist in cases like the present, it is sufficient to say in the present case that no recovery for usury can be had in any case unless the action for that purpose "is brought within two years after such payment or delivery" is made. In the present case no claim was made for the recovery of any of the alleged usurious amounts for a period of more than three years after said alleged illegal payments had been made. (Sec. 6, Act No. 2655, as amended by section 4 of Act No. 3291.)

For a clearer understanding of the questions presented in this case we deem it advisable to set out the actual contractual relations between the parties.

On the 12th day of October, 1920, the defendant J. F. Dimayuga sold to Catalino Arevalo, under a pacto de retro, a piece of property located at 622 Calle Regidor in the District of Santa Cruz of the City of Manila for the sum of P20,000, with the right to repurchase the same at the same price within a period of two years counted from the 20th day of October, 1920. The same contract provided that during the period for the repurchase of said property the said J. F. Dimayuga should pay to Catalino Arevalo for the use and occupation of said property the sum of P200 per month, payable in advance during the first five days of each and every month at the residence of the said Arevalo. The contract further provided that in case the vendor (J. F. Dimayuga) should fail to pay the said rent for a period of two consecutive months, that he would thereby lose the right to repurchase said property.

On the 27th day of January, 1922, by mutual agreement between the vendor and the purchaser of said property the said contract of the 12th day of October, 1920, was amended. By the terms of said original contract it was stipulated that the time within which the vendor could repurchase said property would expire upon the 12th day of October, 1922. Said amended contract stipulated that the period for the repurchase of the property in question should be extended until the 12th day of October, 1924. Said amended contract further stipulated that, in case the said Catalino Arevalo should need the price fixed in the sale of said property, he could fix the time for the repurchase of the same by giving to the vendor four months' notice in advance. In the said amended contract it was stipulated that, except for said amendments, the original contract should remain in full force and effect. The vendor J. F. Dimayuga having failed to pay the rent for a period of more than two months the title to said property was consolidated, under the terms of the contract, in the purchaser Catalino Arevalo.

That the contract between Catalino Arevalo and the defendant dated October 12, 1920, was a pacto de retro, is not only proved by the form of the contract itself but by the admission of the defendant made during the trial of the present cause. He admitted that the contract was a pacto de retro and that he knew that it was such a contract. That the defendant knew at the time he signed said contract that it was a pacto de retro and not a loan, is also proved by witnesses who were present at the time he signed it. The witness Mariano de Leon testified that the defendant desired that the contract be a pacto de retro and not a loan. There is absolutely no proof in the record that justifies the claim of the defendant that the contract was a contract for the loan of money and not a pacto de retro.

The certificate of title under the Torrens system which the defendant held to the property in question (transfer certificate No. 14331) was turned over to Catalino Arevalo at the time the contract in question was made. Later

said transfer certificate together with the contract in question was presented to the registrar of titles of the City of Manila after the condition for the repurchase of the property, and a new certificate of title was issued to him (transfer certificate No. 23794). It results, therefore, from the facts of the record, that the defendant, after he had executed the contract in question on the 12th day of October, 1920, in which he sold to Catalino Arevalo the property in question with the right to repurchase, became a mere lessee of the property and his only rights were (a) To repurchase the same within the period mentioned in said contract, (b) to occupy it as a tenant and (c) his obligation was to pay rent in accordance with the term of the contract.

What has been said above with reference to the facts relating to the execution of said contract and its terms and provisions and the resulting obligations therefrom on the part of the defendant, is a sufficient answer to the contention of the appellant in his third assignment of error relating to his liability upon said contract. The judgment of the court below, refusing to declare null and void the amended contract of the 27th day of January, 1922, is fully supported not only by said contract but by the oral evidence adduced during the trial of the cause.

With reference to the fourth assignment of error, in which the appellant alleges that the lower court committed an error in not granting his motion for reconsideration, it may be said that nothing has been found in the record nor in the allegations of the parties which in any way would have justified the lower court in granting said motion. No error was committed therefore in denying the same.

After a careful examination of the entire record in relation with the judgment rendered by the lower court and the assignments of error presented by the appellant, we find no reason nor justification for changing or modifying the judgment appealed from. The same is therefore hereby affirmed, with costs. So ordered.

Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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