

SILVESTRA BARON, PLAINTIFF AND APPELLEE, VS. ANSELMO SAMPANG, DEFENDANT AND APPELLANT.*G.R. No. 27048. September 27, 1927*

Ponente: JOHNS, J.

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Plaintiff alleges that she is the registered owner of a certain parcel of land evidenced by certificate of title No. 4995 in the Province of Tarlac. That on June 28, 1922, she leased it to the defendant for six years at an agreed rental of P800 per annum, to be paid annually during the months of April and May of each year. It further provided that during the life of the lease, the defendant had the option to purchase the land upon the payment of P12,000. It is then alleged that the defendant has failed to pay the stipulated rental, and frequent demands therefor have been made and payment refused. That by reason of the actions and conduct of the defendant, the plaintiff has been damaged in the further sum of P1,200, and plaintiff prays for the rescission of the contract, the delivery of the land to the plaintiff, and judgment for rental at P800 per annum until possession is delivered, and for the sum of P1,200 as damages.

Summons was issued and the defendant was duly served and required to appear and answer the complaint within twenty days. For failure to appear within the time specified, the defendant was declared in default, and later evidence was taken on the part of the plaintiff, and judgment was rendered against the defendant for the amount of annual rental for four years from June 28, 1922, with interest at 12 per cent per annum, cancelling the lease, and requiring the defendant to surrender possession to the plaintiff. After the default was entered and two days before the judgment was rendered, the defendant served a copy of his answer consisting of a general and specific denial, and alleging as a special defense that he had paid the stipulated rental up to the 30th of May, 1925. That the latter part of May, 1926, he offered the plaintiff the rental for the agricultural years of 1925-1926, and the further sum of P10,000 as the purchase price of the land described in the complaint "desiring to make use of the right of option to purchase which was reserved to him in Exhibit A of the plaintiff, but the plaintiff without any cause refused to accept the rental or the amount of the price tendered." As a counterclaim, he also alleges that he is ready and willing to pay the plaintiff the rental for the agricultural years 1925-1926, plus the sum of P10,000 as the agreed price of the land, for which he prays a corresponding judgment. The answer was not verified.

The defendant also filed a motion praying that the decision be set aside, and that he be granted leave to file the answer and defend on the merits. The lower court denied this motion upon the ground that it "is not supported by any affidavit of merit to justify not only the reopening of the case, but also the fact that said defendant has really a just and valid defense which, if proven, might change the result of the case." On October 26, 1926, the defendant filed a motion for a reconsideration which was denied by the court on November 1, 1926. On November 2, 1926, the defendant filed his personal affidavit asking for a further reconsideration, in which the grounds for the motion were fully stated, to which were attached the affidavits of Jose Gutierrez David, Atanacio M. Baluyot and that of the defendant. The purpose of the verified motion and the attached affidavits was to show to the court that the

defendant had a meritorious defense. After an exhaustive hearing the lower court again denied defendant's motion to set aside the judgment. The defendant appeals and contends that the lower court erred in approving the alleged irregular and illegal procedure in which the hearing of this case was held, and in finding that the defendant has failed to pay the rental in question for a period of four years, and in rendering the decision in this case, and abused its discretion in denying defendant's motion to set aside the default, and to relieve the defendant, and in denying his motion for a new trial.

JOHNS, J.:

The granting or the refusal of a motion to set aside a default judgment and a motion for a new trial is a matter largely in the discretion of the trial court. In the instant case, had the trial court sustained the defendant's motion, it would not have been reversible error, and, for the same reason, it is not reversible error to deny the motion. The complaint is founded upon a written instrument, the execution of which is admitted. For the alleged failure of the defendant to pay the stipulated rental, the plaintiff brought this action to recover judgment for the amount of the rental, cancellation of the lease, and the possession of the property. In his motion for a new trial the defendant has not shown any receipt for the payment of the rental or any evidence from which the court could find as a fact that the rental has been paid. A judgment having been rendered against the defendant by default, to set it aside and order a trial on the merits, it devolved upon the defendant to both allege and prove that he had a meritorious defense. Upon that question the lower court found that the defendant had not made such a showing, and we cannot say, as a matter of law, that there was an abuse of discretion.

The judgment of the lower court is affirmed, with costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor Romualdez, and Villa-Real, JJ., concur.

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