

PAUL KRAPPENBAUER, PLAINTIFF AND APPELLANT, VS. JUAN L. ORBETA, DEFENDANT AND APPELLANT.*G.R. No. 28864. October 13, 1928*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Cebu by Paul Krapfenbauer against Juan L. Orbeta, for the purpose of obtaining a judicial declaration to the effect that the contract Exhibit A is void and to obtain the cancellation, in the books of the register of deeds of the Province of Cebu, of the entry referring to said contract. The defendant answered with a general denial and spec be here stated, and also interposed a cross-complaint, seeking affirmative relief conformably to the tenor of the same contract.

Upon hearing the cause the trial court declared that the contract in question was a valid contract of sale with pacto de retro but that the title had not yet consolidated in the purchaser. He therefore refused to declare the contract void but gave judgment in favor of the defendant, upon his cross-complaint, to recover the rental of the property described in the contract at the rate of P300 per month from September, 1926, until December 21, 1926. He also ordered the plaintiff Krapfenbauer to surrender possession of the property to the defendant, without express pronouncement as to costs.

From this decision the plaintiff appealed in so far as it sustained the validity of the contract in question and failed to make a declaration of nullity concerning the same; while the defendant appealed from so much of the decision as declared that the contract had not consolidated and from refusal of the court to award rent to the defendant for the entire period from August 23, 1925, until possession of the property should be delivered to the defendant.

At the beginning of May, 1923, the plaintiff, Paul Krapfenbauer, was the owner of two parcels of land, registered under Act No. 496 and described in the transfer certificates bearing numbers 3134 and 3135, subject to a mortgage in favor of a building and loan association, El Hogar Filipino, in the sum of P24,000, which mortgage had been placed on the property by Andres Krapfenbauer, the plaintiff's father. The plaintiff appears to have assumed the payment of the monthly instalments due upon said mortgage to El Hogar Filipino, but at the time above stated he was nearly a year in arrears in such payments. It therefore became necessary for him to procure funds to satisfy his obligations to the association, in order to prevent the foreclosure with which he was threatened.

In this emergency, with a view to obtaining a loan, the plaintiff approached the defendant Orbeta, who was at the time an attorney for the association. Orbeta refused flatly to lend the plaintiff anything upon a second mortgage, but indicated his willingness to purchase the property under contract of sale with pacto de retro, subject to the mortgage of the building and loan association. Krapfenbauer assented, and a contract was thereupon drawn up of which the following features are noteworthy: First, Krapfenbauer sold and transferred the two parcels of land in question, with their improvements, to Orbeta, his heirs and successors in interest, for the purported consideration of P30,000; secondly, the contract recited the existence of the mortgage lien, in the amount of P24,000, in favor of

El Hogar Filipino, in view of which fact Krapfenbauer transferred conditionally to Orbeta the 120 shares, Class A, of the shares which Krapfenbauer held in the building and loan association, by virtue of the loan extended by it; thirdly, it was agreed that the seller reserved the right to repurchase the property which was the subject of the sale for the sum of P30,000, free from this burden and lien and completely warranted by the purchaser, within the period of one year from the date of the contract, extendible from year to year for two more years, when and so long as the stipulated rent corresponding to a complete year should have been paid by the seller; fourthly, the seller agreed to keep possession of the property in the character of lessee, paying P300 per current month as rent; fifthly, it was stipulated that the seller should pay the provincial and municipal taxes on the property so long as he should remain in possession as lessee.

With reference to the assignments of error of the plaintiff-appellant, we have no hesitancy in affirming the appealed decision in so far as it declares that the document in question (Exhibit A) is a contract of sale with pacto de retro and must be given effect in this sense; for its terms are appropriate to such a sale and the defendant, who is evidently an intelligent man, signed the contract with full knowledge of its contents. That it was not intended to operate as a mortgage is apparent in the fact that the contract was reduced to its present form precisely because of the refusal of the defendant to lend his money upon a mortgage. The contention of the appellant to the effect that he was led to sign this agreement by fraud and deceit practiced upon and against him by the defendant is disproved by the testimony; and even if it were true, fraud and deceit would not be available as a ground of action in this case, because it is not alleged in the complaint as a basis for annulling the agreement.

There is another contention made by the plaintiff with respect to the contract in question which is more plausible, and it is this: We have already noted the fact that the consideration for the sale is stated in the Exhibit A as P30,000. Of this amount only P6,610.41 was actually paid to the plaintiff. The rest, some P23,389.59, represents the balance then due on the mortgage to El Hogar Filipino; and although the contract does not say so in as many words, the defendant assumed and agreed to pay the debt to El Hogar Filipino; as may be inferred from the fact that in the redemption clause the defendant agreed to restore the property to the plaintiff, in case of redemption, free from incumbrances and fully warranted by the defendant. It will be borne in mind also that, under the contract of sale (Exhibit A), the plaintiff retained possession of the property under an agreement to pay rent therefor at the rate of P300 per month, or P3,600 per annum. This rent, the plaintiff pretends, was intended to cover the interest on the alleged loan to the plaintiff of the sum of P6,610.41. If this contention be true, and the transaction merely a loan of the last mentioned sum, the agreement was highly usurious; and so the plaintiff asserts. But, as already intimated, the theory that we are dealing with a mortgage, or an instrument intended to operate as such, is untenable. So far as appears from the evidence, the property in question was worth in the neighborhood of P30,000, and P300 per month is not an unreasonable rent to pay for its use. The consideration recited in the contract was therefore a reasonable amount for the parties to fix as the value of the property.

It is true, however, that the plaintiff only received directly in this transaction the sum of P6,610.41, and it will be noted that the plaintiff's right of redemption was conditioned upon the payment by him of the whole consideration, or P30,000. In other words, the right to redeem was clogged with the stipulation that the plaintiff should not only return what he received but also the amount necessary to pay off the mortgage of the building and loan association. Whether this could be legally required need not here be decided, since it is a purely academic question, the plaintiff having never at any time made any effective tender for the purpose of redeeming the property. If, within the period stipulated for redemption, he had offered to return the sum of P6,610.41, which he actually received from the defendant, and had demanded a reconveyance from the defendant, without requiring the defendant to free the property from the mortgage to El Hogar Filipino, something might perhaps have been said in favor of allowing such redemption. But no such thing occurred.

We are accordingly of the opinion that the contract has consolidated and the right of redemption has been lost. The trial court, while admitting that the contract was truly a sale with pacto de retro, nevertheless held that the title had not consolidated and that the plaintiff would have the right to repurchase for the period of a full year after the defendant shall have paid off the mortgage held by El Hogar Filipino. We are unable to see any legal basis for this ruling, since in our opinion it clearly infringes the stipulation of the contract with respect to the right of redemption. Under that contract the right of redemption lapsed, at the very latest, on May 23, 1926, and possibly sooner, owing to the failure of the plaintiff to make prompt payment of rent.

From what has been said it follows that the judgment of the trial court must be modified by declaring that the plaintiff's right of redemption has lapsed and, under the cross-complaint, the plaintiff will be adjudged to pay rent at the rate of P300 per month, for the properties which are the subject of this action, from August 23, 1925, until possession of the property shall be surrendered to the defendant. In other respects the judgment is affirmed, without costs. So ordered.

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

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