

CASIANO JAVIER, PLAINTIFF AND APPELLANT, VS. MARIANO CABANOS, DEFENDANT AND APPELLEE.

G.R. No. 31284. October 28, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The plaintiff Casiano Javier appeals to this court from the judgment of the Court of First Instance of Laguna, the dispositive part of which is as follows:

"Wherefore, it is hereby declared that the remedy prayed for in the complaint should not be granted, and the defendant is hereby absolved therefrom, with the costs of this instance against the plaintiff.

"As to the defendant's counterclaim, it is hereby declared that the plaintiff's debt of P10,000, contracted by virtue of the deed, Exhibit A, is due and payable, and the latter is hereby ordered to pay said sum to the defendant within ninety days from notice of this decision, in default of which, the mortgaged lands shall be sold at public auction and the proceeds thereof applied to the payment of said debt and the legal expenses of this proceeding.

"It is so ordered."

In support of his appeal, the appellant assigns the following alleged errors committed by the lower court in its judgment, to wit:

"1. The lower court erred in not holding that the defendant is a mortgage creditor in possession, wherefore, the rights of the parties are essentially the same as those in a contract of antichresis.

"2. Consequently, in not applying the fruits of the lands received by the creditor to the payment of the mortgage debt, and in not rendering judgment in accordance with the balance thereof."

The following facts set forth in the judgment of the lower court are necessary and pertinent to the resolution of the questions raised in the present appeal.

On September 11, 1922, the plaintiff executed a deed in defendant's favor, whereby he sold to the latter with pacto de retro the lands described in the complaint for the sum of P10,806 (Exhibit 1), for a period of four years. Subsequently, the herein plaintiff alleging that said contract was in reality a usurious loan and not a sale with pacto de retro, instituted civil case No. 4174 of said court. However, on the day set for the trial of the case, the parties compromised the case, and entered into the following stipulation of facts:

"The parties and their respective attorneys agree and stipulate the following facts:

"1. That the debt of the plaintiff Casiano Javier is exactly ten thousand pesos (P10,000) instead of P10,806.

"2. That the deed of sale with pacto de retro dated September 11, 1922, shall be understood, to all intents and purposes, as a deed of mortgage.

"3. That the plaintiff Casiano Javier shall execute a new deed of mortgage, which should be recorded, in accordance herewith, after ten days.

"4. That the period for the redemption of the mortgage will expire on September 11, 1927, instead of September 11, 1926.

"5. That the defendant Mariano Cabanos shall continue in possession of the mortgaged property until the payment of the aforesaid debt of ten thousand pesos.

"6. And lastly, the parties pray that the court render judgment in accordance with this stipulation of fact."

In accordance with the foregoing stipulation, the corresponding final judgment was rendered, wherein, among other things, the plaintiff was ordered to execute another deed of mortgage, in lieu of the aforesaid deed of sale with pacto de retro, subject to the following conditions: "That the plaintiff's debt, secured by the mortgage, amounts to P10,000 only instead of P10,806; that the period for the redemption of the mortgage shall expire on September 11, 1927 and not on September 11, 1926; that the defendant, Mariano Cabanos, who took possession of the mortgage property on September 11, 1922, shall continue in possession thereof until the complete payment of the aforesaid debt of P10,000." As a result of the judgment thus rendered, the plaintiff executed the deed, Exhibit A, paragraph 3 of which states:

"3. That P8,500 of said debt of P10,000 correspond to the first parcel; P500 to the second parcel, and P1,000 to the third parcel; provided, however, that the debt is not divisible but shall be payable at the same time."

The appellant contends that the contract entered into between the plaintiff and the defendant, pursuant to the judgment of the Court of First Instance of Laguna in civil case No. 4174, is one of antichresis, inasmuch as the creditor has been in possession of the land, which is the security therefor, and, consequently, he must render an accounting of the fruits of said land for the purpose of applying the same, first, to the payment of the interest and afterwards to that of the capital, according to the doctrine enunciated by this court in the case of *Macapinlac vs. Gutierrez Repide* (43 Phil., 770).

We believe that this legal classification given by the appellant to the contract in question is proper; but the right of the contracting parties to stipulate as to the application of the fruits, is not inconsistent with this juridical consideration. The defendant entered into an agreement with the plaintiff, whereby he renounced his right as vendee with pacto de retro of the three land parcels belonging to the plaintiff in the sum of P10,806. As such vendee with pacto de retro, Mariano Cabanos acquired the ownership and possession of the lands sold, subject to the right of repurchase of Casiano Javier for a period of four years, during which time the latter would make use of the purchase price and the former of the land and the fruits thereof. Before the expiration of the prior repurchase, Mariano Cabanos made a compromise with Casiano Javier, whereby he renounced his better right as a vendee with pacto de retro and contented himself to be a mere mortgage creditor. Under this new contract, the defendant should have surrendered the possession of the lands to the plaintiff, making a stipulation between the creditor and the debtor as to the payment of the interest for the use by the latter of the capital; but they did not do this and preferred to maintain the former relation as to the lands, Mariano Cabanos making use of said lands and the fruits thereof, and Casiano Javier of the capital. If, then, in the contract of sale with pacto de retro, the interest on the capital was compensated by the fruits of the land, of which the defendant took possession, and if the contracting parties, in converting said contract of sale with pacto de retro into one of mortgage, did not wish to alter the state of things as to the possession of the land by the defendant, it is evident that in so doing they mutually understood that Casiano Javier would continue making use of the capital during the period of the contract and Mariano Cabanos would remain in possession of the land, the interest on the capital being compensated by the fruits of the land of the former.

In view of these considerations, and giving to the new contract between the parties the character of a contract of antichresis, the fruits received by the defendant from the lands in question must be considered as compensation for the interest which his capital should earn during the period of the contract, and Casiano Javier must pay his creditor, Mariano Cabanos, the amount of the loan of P10,000, in order to recover the land which is the subject matter of the antichresis.

Wherefore, the judgment appealed from is hereby affirmed, with the sole modification that, with regard to the counterclaim, the period within which the said debt should be paid as well as the order of the sale at public auction must be eliminated therefrom, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, Johns, and Romualdez, JJ., concur.

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