

CHINA INSURANCE & SURETY COMPANY, INC., PLAINTIFF AND APPELLANT, VS. B.K. BERKENKOTTER, DEFENDANT AND APPELLANT.

R-CA-G.R. No. 332. April 29, 1949

Ponente: REYES, J.

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REYES, J.:

This case is now before this Court on a petition for reconstitution, the record of the case having been destroyed as a result of the military operations for the liberation of the City of Manila. At the time of the destruction of the record, the case was pending in the Court of Appeals upon appeal by both parties from a decision of the Court of First Instance of Manila.

In the proceeding for reconstitution conducted by the commissioner appointed by this Court (the Court of Appeals not being then in existence), the only portions of the record the parties were able to reconstruct were the following:

"1. Petition dated October 27, 1944, filed by Atty. Antonio Carrascoso, Jr., for the defendant-appellant in this case, wherein the defendant-appellant seeks to consign to the Clerk of Court of Appeals the sum of P23,489.35, in satisfaction of the judgment which had been rendered in the lower court in favor of the plaintiff-appellant and prays for the withdrawal of his appeal;

"2. Notice of consignment, dated October 26, 1944, signed by Atty. Antonio Carrascoso, Jr., for and in behalf of the defendant-appellant, sent to the China Insurance Surety Co., Inc.;

"3. Notice of the resolution of the Court of Appeals of November 2, 1944, to the parties in this case;

"4. The pleading of plaintiff-appellee in this case, bearing the following headings: (1) Opposition to the petition of defendant-appellant; (2) Motion asking triple cost and damages against said defendant; and (3) Motion of Reconsideration in case the said petition has been granted before this opposition has been received by the Court of Appeals (this last item consisting only of two pages, the third page thereof having been lost.)"

No copy of the pleadings, evidence, decision, and briefs was available. The record could not, therefore, be fully or even substantially reconstituted. But notwithstanding this state of affairs, plaintiff-appellant asks that the case be declared reconstituted, and, on the theory that by defendant-appellant's offer of consignment contained in his petition of October 27, 1944, he should be deemed to have recognized the validity of the judgment rendered against him in the lower court and, consequently, estopped from prosecuting his appeal, plaintiff-appellant further prays to order defendant-appellant to pay the amount of the judgment below.

Defendant-appellant objects to both of the above prayers and, on his part, asks that the case be declared reconstituted "in so far only as it refers to defendant's petition of October 27, 1944," and, once that is done, his offer of consignment declared valid and his obligation to plaintiff fully paid and discharged.

With nothing but papers relating to defendant-appellant's consignment of P23,489.35 in military notes with the

clerk of the Court of Appeals, it is obvious that the appeal can not be decided on the merits. Missing are the pleadings, evidence and decision below and the briefs presented on appeal. This Court is, therefore, not sufficiently informed about the issues of fact and law involved to enable it to arrive at a correct decision of the case. The petition to have the record of the case declared completely reconstituted must, therefore, be denied.

This leaves the other question of whether or not the record may be deemed reconstituted in so far only as it refers to defendant's petition of October 27, 1944, with the object in view of determining whether the consignation made by the defendant-appellant was valid or not. On this point, the reconstituted documents show that, while the consignation was really made and the adverse party notified thereof, the same has neither been accepted by the latter nor approved by the court, and in any event there is no clear proof before us that the essentials of a valid consignation are here present, specially the conformity of the proffered payment to the terms of the obligation which is to be paid. It should be remarked in this connection that strict conformity in that regard is required, for, as Manresa says, "** * * el acreedor tan solo, y no el juez, puede autorizar la variacion que para los derechos de aquel suponga la que se intente en el objeto, cuantia o forma de las obligaciones.*" (8 Manresa, 312.) Since the appealed decision is not before us and there is no certain proof of the amount and terms of the obligation which defendant-appellant is required to discharge under the judgment, it is not possible for this Court to pass upon the validity of the consignation in question. Consequently, defendant-appellant's suggestion to have the case declared partially reconstituted for the specific purpose he has in view cannot be entertained.

As to the question of whether or not defendant-appellant is now estopped from prosecuting his appeal on the theory that his offer of consignation amounts to a recognition of the validity of the judgment against him, it appears that the consignation was made at a time (October 27, 1944) when the Japanese military notes were already, to use counsel's own phrase, "almost worthless." Rather than a recognition of the validity of the judgment appealed from, the consignation made in this case may, pending its acceptance by the adverse party or a court declaration that it was properly made (Art. 1180, Civil Code), be regarded as a mere attempt at compromise without prejudice to the prosecution of the appeal if no settlement is effected.

Our conclusion, therefore, is that, on the basis of the documents presented, the record of this case can not be declared reconstituted either fully, as plaintiff-appellant asks, or partially, as defendant-appellant suggests, so that, in default of agreement to take the place of vital documents essential to a correct determination of the case on appeal as contemplated in section 60 of Act No. 3110, the proper remedy is for plaintiff-appellant to file its action anew in accordance with section 30 of the same act.

Wherefore, the petition to have the record of the case declared reconstituted either fully or partially and the petition to order defendant-appellant to pay the amount of the judgment appealed from are hereby denied.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Bengzon, Briones, Tuason, and Montemayor, JJ., concur.

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