

MARIA SAENZ Y LOPEZ ET AL., PLAINTIFFS AND APPELLANTS, VS. L. P. MITCHELL, ASSIGNEE OF THE INVOLUNTARY INSOLVENCY OF RAFAEL FERNANDEZ, JOSEFA ESCALER, ASSISTED BY HER HUSBAND RA...

G. R. No. 39398. April 10, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

These are two appeals, one taken by the plaintiffs Maria Saenz y Lopez et al., and the other by the defendant L. P. Mitchell, as assignee of the involuntary insolvency of Rafael Fernandez, from the judgment rendered by the Court of First Instance of Pampanga, the dispositive part of which reads as follows:

"Wherefore, the court orders the insolvency of Rafael Fernandez and his wife Josefa Escaler to pay jointly and severally to the plaintiffs the sum of P85,000, plus the costs. The said insolvency is likewise ordered to refund to the plaintiffs the sum of P28,000.

"The defendant Malabon Sugar Company is absolved from the complaint.

"So ordered."

In support of their appeal, the plaintiffs Maria Saenz y Lopez et al., assign the following alleged errors as committed by the court a quo in its decision:

"1. The judge a quo erred in ordering the insolvency of Rafael Fernandez and his wife Josefa Escaler to pay only the sum of P85,000, instead of P240,000, by way of damages caused to the plaintiffs.

"2. The judge a quo erred in not declaring the mortgage constituted by the plaintiff Francisco Gutierrez in favor of the now insolvent Rafael Fernandez on the sugar-cane crop from the Hacienda Dolores for the agricultural year 1931-1932, as well as the assignment thereof by Rafael Fernandez in favor of Malabon Sugar Company, null and void.

"3. The judge a quo erred in absolving the defendant Malabon Sugar Company from the complaint.

"4. The judge a quo erred in not declaring that the assignment by Fernandez in favor of Malabon Sugar Co. was at all events valid only in so far as it affects the plaintiff Francisco Gutierrez Saenz and that it was null and void as regards the other plaintiffs.

"5. The judge a quo at all events erred in not ordering the insolvency to pay to the plaintiffs the value of the crop for the year 1931-1932.

"6. The judge a quo erred in his computation of the amount of the commissions, premiums and brokerage collected by Rafael Fernandez in violation of the Usury Law.

"7. The judge a quo erred in not ordering the insolvency of Rafael Fernandez to pay to the plaintiffs the sum of P5,000 by way of interest and attorney's fees.

"8. The judge a quo erred in not ordering the defendants Rafael Fernandez and Josefa Escaler to pay legal interest on the amount of the damages incurred by the plaintiffs, from the date of the filing of the complaint."

As grounds of his appeal, the defendant L. P. Mitchell, as assignee of the involuntary insolvency of Rafael Fernandez, in turn, assigns the following alleged errors:

"1. The trial court erred in holding that the defendant L. P. Mitchell is liable to the plaintiffs for the damages alleged in the complaint and in not holding that said defendant is an innocent third party with reference to the transactions complained of by the plaintiffs.

"2. The trial court erred in not holding that plaintiffs' damages, if any, were brought about by their own negligent and fraudulent acts and hence they are not entitled to recover anything from the defendant L. P. Mitchell who represents the creditors of the insolvent and not the insolvent himself.

"3. The trial court erred in holding that it had jurisdiction to entertain the claims of the plaintiffs in this case and in sentencing the defendant L. P. Mitchell to pay to said plaintiffs different sums of money.

"4. The trial court erred in finding that the Hacienda Dolores was worth P345,000."

The following facts were proved at the trial and admitted by the parties:

The plaintiffs Maria Saenz y Lopez et al. were the owners of the Hacienda Dolores having an area of 2,022 hectares, situated in the municipality of Porac, Province of Pampanga, and registered in their name in the registry of property of said province. It is covered by transfer certificate of title No. 3132, issued on February 27, 1929, and is assessed at P500,000, according to the inventory of the assignee of the insolvency of Rafael Fernandez (Exhibits A and R).

On September 19, 1929, the said plaintiffs-appellants Maria Saenz y Lopez Vda. de Gutierrez Repide, in her own behalf and as guardian of her minor daughter Maria Gutierrez Saenz, Francisco Gutierrez Saenz, married to Lillian Durcen, and Luis Gutierrez Saenz, executed in favor of Rafael Fernandez a second mortgage on said Hacienda Dolores for a period of five years, and with interest at 12 per cent per annum, to secure the payment of a loan of P100,000 obtained by them from Fernandez, as evidenced by a promissory note for said amount, the mortgage creditor Rafael Fernandez having assumed the mortgagors' obligation in favor of Francisco J. Gonzalez who held the first mortgage as security for the payment of a loan of P30,000 payable within one year, with interest at 10 per cent per annum (Exhibit C).

On July 11, 1930, the said plaintiffs-appellants obtained from Rafael Fernandez an additional loan of P85,000 payable on May 31, 1931, and with interest at 12 per cent per annum, executing a third mortgage on the same hacienda (Exhibit B) and giving additional security therefor, consisting of 16,000 piculs of sugar pertaining to the Hacienda Dolores (Exhibit E). In a deed of the same date, July 11, 1930, executed by the same parties, the period for the payment of the debts was extended to September 20, 1931 (Exhibit F).

The sum of P25,000 was paid on account of the additional indebtedness of P85,000, leaving a total balance of P160,000.

Later, the same plaintiffs-appellants obtained another additional loan of P100,000, thereby raising the indebtedness to P260,000, and the mortgage creditor Rafael Fernandez retained the sum of P31,000 by way of interest. It was on this occasion that Rafael Fernandez required the plaintiffs-appellants to execute a deed of sale of the Hacienda Dolores dated March 30, 1931 (Exhibit I), on condition that he and his wife Josefa Escaler would execute, as they in fact executed, on the same date, March 30, 1931, the document Exhibit J, signed by him and his wife, the herein defendant-appellee Josefa Escaler, whereby the said spouses acknowledged having bought the Hacienda Dolores from said plaintiffs-appellants and bound themselves to resell the same to them within the

period of five years.

On the same date, March 30, 1931, Rafael Fernandez executed a contract of lease of said hacienda in favor only of Francisco Gutierrez Saenz, one of the vendors, for a period of five years and at a rental of P31,200 a year, payable in advance (Exhibit K).

On that very date, March 30, 1931, the lessee Francisco Gutierrez Saenz executed in favor of the lessor Rafael Fernandez a chattel mortgage (Exhibit L), whereby, to secure the payment of a loan of P160,000 which he had obtained from the lessor, he mortgaged all the centrifugal sugar which might be produced during the agricultural year 1931-1932 from the sugar cane planted in the Hacienda Dolores held by him under lease.

By means of the deed of sale Exhibit I, Rafael Fernandez was able to have the register of deeds of the Province of Pampanga issue in his favor transfer certificate of title No. 4904, and by means of said certificate he succeeded in mortgaging the hacienda to Warner, Barnes & Co. for the sum of P308,000 (Exhibit N).

On May 7, 1931, Rafael Fernandez assigned to the Malabon Sugar Company his rights and interests in the mortgage on the crop executed in his favor under Exhibit L by Francisco Gutierrez Saenz, as additional security for the payment of a credit of P500,000 which said Malabon Sugar Company had granted to Fernandez (Exhibit O).

The debtor Rafael Fernandez having failed to pay his indebtedness, the mortgage creditor Warner, Barnes & Co. appointed the justice of the peace of the municipality of Porac, Pampanga, as its assignee and as attorney in fact of Rafael Fernandez, so that, pursuant to the provisions of Act No. 3135, he could sell at public auction the mortgaged hacienda, which he so did, adjudicating the same to Warner, Barnes & Co., Ltd., for the sum of P308,553 and executing in its favor the corresponding certificate of sale (Exhibit P).

All the above-mentioned documents were duly registered in the registry of deeds of Pampanga, with the exception of the document containing the promise to resell, Exhibit J, signed by the spouses Rafael Fernandez and Josefa Escaler.

On July 14, 1931, the plaintiffs-appellants brought this action against the spouses Rafael Fernandez and Josefa Escaler, and Warner, Barnes & Co. The complaint was later amended so as to include the Malabon Sugar Co. as party defendant and to exclude said firm of Warner, Barnes & Co.

On September 23, 1931, the said defendant Rafael Fernandez was declared insolvent. L. P. Mitchell was appointed assignee of his insolvency and, for this reason, the complaint was again amended in order to substitute said assignee in place of Fernandez.

Being procedural in nature, the first question to be decided, which is raised by the defendant-appellant L. P. Mitchell, assignee of the involuntary insolvency of Rafael Fernandez, in his third assignment of error, is whether or not the trial court had jurisdiction to take cognizance of the claim of the plaintiffs-appellants against Rafael Fernandez, the latter being insolvent and his property being in the hands of an assignee.

The claims of the plaintiffs-appellants against the defendant-appellant L. P. Mitchell, as assignee of the involuntary insolvency of Rafael Fernandez, are of two kinds: The first, for liquidated debts amounting to P67,000 consisting of promissory notes for the total amount of P34,000; of commissions and premiums amounting to P28,000, alleged to have been collected in violation of the Usury Law; and of interest and attorney's fees in the sum of P5,000; and the second, for unliquidated damages amounting to P240,000, resulting from alleged fraudulent acts.

The last saving clause of section 60 of Act No. 1956, otherwise known as the Insolvency Law, provides "that if

the amount due the creditor is in dispute, the suit, by leave of the court in insolvency, may proceed to judgment for the purpose of ascertaining the amount due, which amount, when adjudged, may be allowed in the insolvency proceedings, but execution shall be stayed as aforesaid." And section 33 of the same Act provides that "* * * If any action or proceeding in which the insolvent is defendant is pending at the time of the adjudication, the assignee may defend the same in the same manner and with like effect as it might have been defended by the insolvent * * *."

In the case under consideration, the Court of First Instance which heard the involuntary insolvency of Rafael Fernandez, under the authority conferred upon it by the last saving clause of section 60 of Act No. 1956, above quoted, gave leave for the continuation of the present case, which was then pending in the Court of First Instance of Pampanga when Rafael Fernandez was declared insolvent, and the herein defendant-appellant L. P. Mitchell, as assignee in insolvency, appeared therein in accordance with the provisions of section 33 of Act No. 1956, also above quoted. The Court of First Instance of Pampanga, in proceeding to try the case instituted by the herein plaintiffs-appellants against Rafael Fernandez and his wife Josefa Escaler, notwithstanding the fact that Rafael Fernandez had already been declared insolvent and title to his property had already passed into the hands of an assignee, acted in accordance with the law, and, therefore, with jurisdiction.

The second procedural question to be decided, which is raised by the defendant-appellant L. P. Mitchell, assignee of the involuntary insolvency of Rafael Fernandez, in his third assignment of error, is whether or not the Court of First Instance of Pampanga had jurisdiction to order the said insolvency to pay the damages fixed in its judgment and awarded to the plaintiffs-appellants.

The Insolvency Law (Act No. 1956), in providing in its section 60 that "* * * the suit, by leave of the court in insolvency, may proceed to judgment for the purpose of ascertaining the amount due * * *," is silent as to the person against whom said judgment should be entered. It provides, however, that the amount due, when adjudged, may be allowed in the insolvency proceedings, but execution shall be stayed. Since the object of the law in authorizing the court in insolvency to grant leave for the suit to proceed is to ascertain the amount due from the insolvent in order to enable the creditor to present it in the insolvency proceedings, it is the insolvent who should be declared liable for the payment of the amount due and ascertained. Since the purpose of the action is to collect from an insolvent, judgment should be entered against said insolvent so that his creditor may present his claim in his insolvency, and not against the insolvency itself represented by the assignee, who is an officer of the court in insolvency, which alone has jurisdiction under the law to determine who of the alleged creditors of the insolvent are entitled to collect from the insolvency, to ascertain the amount each of them should collect, and to order the assignee to make payment. Otherwise, ordinary courts would be empowered to ascertain the amount which a creditor, whose claim against the insolvent is in dispute, should collect from the insolvency, a thing contrary to the letter and spirit of the Insolvency Law.

Therefore, the trial court exceeded its jurisdiction in ordering the insolvency of Rafael Fernandez to pay to the plaintiffs-appellants the amount specified in its judgment, which said plaintiffs-appellant's are entitled to collect from said Rafael Fernandez.

The third question of procedure to be resolved is whether or not the defendant-appellee Josefa Escaler, not having appealed from the judgment, may make a counter assignment of error and ask for the reversal of said judgment.

In sustaining the affirmative, she relies upon the pronouncement of this court in the case of Garcia Valdez vs. Soterana Tuason (40 Phil., 943), and upon the doctrine laid down in the case of Lucero vs. De Guzman (45 Phil., 852), and in those enunciated by some American courts as elucidated in 3 Corpus Juris, p. 1403, sec. 1567.

In the case of Garcia Valdez vs. Soterana Tuason, supra, the court overruled the demurrer to the complaint, which

ruling was excepted to by the defendant, and proceeded with the trial of the case, after which the court entered an order dismissing the same. The plaintiff appealed. On appeal, the defendant-appellee in her brief called the court's attention to the error committed by the lower court in overruling her demurrer. Finding the defendant-appellee's observation to be well founded, this court considered the same and, through Justice Street, said: "It is not incumbent on the appellee, who occupies a purely defensive position and is seeking no affirmative relief, to make assignments of error. Only an appellant is required to make such assignments. Therefore, when the case occurs, as not infrequently happens, that a trial judge decides a case in favor of one of the parties on a certain ground, it is entirely proper for this court, upon affirming the judgment, to base its decision upon some other point which may have been ignored by the trial court or in respect to which that court may have been entirely in error."

In the election case of *Lucero vs. De Guzman*, supra, this court, again through Justice Street, on page 879, said:

"The rules of this court require that assignments of error should be specific. Of course this does not mean that in an election case a separate assignment must be made with respect to every ballot, which would be intolerable. But it is the duty of the appellant's attorney, in his discussion of the errors imputed to the trial court in the revision of ballots in the different precincts, to point out the error, or errors, into which said court is supposed to have fallen. In a number of instances in the case before us, the appellant's attorneys have contented themselves with a mere submission of the particular ballot in question to the judgment of this court, without attempting to show wherein the trial court erred in admitting or rejecting such ballot. We have uniformly refused to examine such ballots for lack of sufficient assignment.

"The appellee, having been, successful in the court below, of course is not required to make formal assignments of error in this court. Nevertheless it is incumbent upon the appellee to point out in his brief any errors against himself into which the court may be supposed to have fallen ; and in the present case the appellee has availed himself of this privilege by pointing out numerous instances in which the trial court committed error against him. We have carefully examined all of the points favorable to the appellee thus presented, provided the ballots with reference to which error is supposed to have been committed have been identified with such precision as would enable us to resolve the point at issue."

In 3 *Corpus Juris*, p. 1403, sec. 1567, the following doctrines are enunciated:

"In some jurisdictions an assignment of errors by an appellee cannot be considered unless an appeal has been taken or writ of error sued out by him; but in other jurisdictions error may be assigned by appellee or defendant in error without taking an appeal or suing out a writ of error. It has been held that, even in the absence of a statute expressly authorizing it, cross errors may be assigned without taking an appeal or suing out a writ of error, and the rule has much to commend it."

It will be noted that in the case of *Garcia Valdez vs. Soterana Tuason*, supra, the appellee's counter assignment of error was taken into consideration, notwithstanding the fact that she did not appeal, for the reason that her position was purely defensive and no affirmative relief was sought. The doctrine laid down in the election case of *Lucero vs. De Guzman*, supra, was ratified by this court in the case of *Mendoza vs. Mendiola* (53 Phil., 267), wherein it was said:

"2. ID.; ELECTION CONTEST; CONSIDERATION BY THIS COURT OF ERRORS ASSIGNED BY CONTESTEE WHO DID NOT APPEAL FROM JUDGMENT OF COURT BELOW.—The points raised by the contestee's assignments of error should indeed have been considered, notwithstanding his failure to appeal from the judgment of the court below, inasmuch as the questions discussed in said assignments of error were raised by him during the hearing of the case. According to section 480 of the Election Law, the procedure on appeal in election contests is the same as in criminal cases, that is, they are tried de novo on appeal to this court. (*U. S. vs. Noriega and Tobias*, 31 Phil., 310; see the case of *Lucero vs. De Guzman*, 45 Phil., 852.)"

As regards the citation made by the defendant-appellee Josefa Escaler in her brief of a paragraph from 3 *Corpus*

Juris, p. 1403, the doctrines contained therein are not uniform. The general rule is laid down on page 1404, section 1568, of the same treatise, as follows:

"NECESSITY FOR ASSIGNING.—The general rule is well settled that errors operating against appellee or defendant in error will not be considered unless duly assigned. This is so, although appellee's bill of exceptions is otherwise properly in the record, and although cross errors not assigned are argued or discussed in the brief. By failing to assign cross errors appellee or defendant in error is estopped from complaining thereof. And it has been held that rulings to which appellee has assigned no cross error in the supreme court will not be reviewed on his complaint even though he has assigned cross errors in a court of intermediate appellate jurisdiction."

From all the foregoing, the conclusion is reached that an appellee, who is at the same time not an appellant, may on appeal be permitted to make counter assignments of error in ordinary actions, when the purpose is merely to defend himself against an appeal in which errors are alleged to have been committed by the trial court both in the appreciation of facts and in the interpretation of the law, in order to sustain the judgment in his favor but not when his purpose is to seek modification or reversal of the judgment, in which case it is necessary for him to have excepted to and appealed from the judgment.

In this case, the defendant-appellee Josefa Escaler, in making a counter assignment of error alleged to have been committed by the trial court, seeks to obtain the reversal of the appealed judgment, which she is not permitted to do, having failed to except to or appeal from said judgment.

Passing now to the merits of the case, the first question to be decided is that raised by the plaintiffs-appellants in their brief under the first assignment of error alleged to have been committed by the court a quo, and which consists in the trial court having ordered the insolvency of Rafael Fernandez and his wife Josefa Escaler to pay, by way of damages caused to them, only P85,000, instead of P240,000. It will be noted that the question raised in said assignment of error is purely one of fact. We have carefully examined the documentary as well as the oral evidence presented at the trial by the parties in support of their respective contentions and have considered the weight and probative force thereof, in the light of all the circumstances of the case, and we do not justify in disturbing the findings of the court a quo upon this point.

The question raised by said plaintiffs-appellants in their sixth assignment of error is likewise purely one of fact. Aside from the error in the sum which, instead of P28,300, should be P26,600, for commissions, premiums, and brokerage collected by Rafael Fernandez, neither are we justified in altering the conclusions of the trial court on this point.

With respect to the question whether or not the court a quo erred in not declaring the mortgage executed by the plaintiff Francisco Gutierrez Saenz in favor of Rafael Fernandez on the sugar-cane crop of the Hacienda Dolores for the agricultural year 1931-1932, as well as the assignment of the same by Rafael Fernandez in favor of Malabon Sugar Company null and void, it may be noted that the deed executed by the plaintiffs-appellants in favor of Rafael Fernandez, under which they sold to the latter the Hacienda Dolores for the sum of P260,000, was inscribed in the corresponding registry of deeds without any incumbrance or condition of any kind, Rafael Fernandez having acquired absolute and full title of ownership over said hacienda. As the registered exclusive owner of said hacienda, Fernandez had the right to lease the same to anybody, and the contract of lease executed by him in favor exclusively of Francisco Gutierrez Saenz, and registered in the registry of deeds and noted on the corresponding certificate of title, was prima facie valid, and its registration constituted a notice to the whole world that Francisco Gutierrez Saenz was the lessee thereof. As the exclusive lessee, under deed and by registration, of the Hacienda Dolores which already belonged to Rafael Fernandez, Francisco Gutierrez Saenz had the exclusive right to mortgage to anybody the crop produced by him on the hacienda held by him under lease, and the

inscription in the registry of deeds of the mortgage deed executed in favor of Rafael Fernandez in accordance with law operated as a notice to the whole world of the existence of the said lien. (Mahoney vs. Tuason, 39 Phil., 952; Standard Oil Co. of New York vs. Jaramillo, 44 Phil., 630.) In acquiring in good faith and for value the rights of Rafael Fernandez in the mortgage on the crop by virtue of the deed of assignment Exhibit 0, after having seen that there was no notation on Rafael Fernandez' certificate of title to said hacienda showing that other persons had any interest in the crop in question, the defendant-appellee Malabon Sugar Company is protected against any nullifying defect or vice in said mortgage on the crop. (Sparks vs. Galena Nat. Bank, 68 Kan., 148; 74 Pac, 619, 620; 11 Corpus Juris, 663.)

The plaintiffs-appellants contend that although Francisco Gutierrez Saenz is estopped from attacking the validity, of the deed of mortgage on the crop executed by him in favor of Rafael Fernandez, and which Fernandez assigned to the Malabon Sugar Company, it being unlawful for him to repudiate his own acts, his coplaintiffs-appellants are not, because they did not assent to said mortgage. If, as above stated, Rafael Fernandez, by virtue of the inscription in the registry of deeds, became the absolute owner of the Hacienda Dolores and he could, as such owner, lease it to anybody, and if Francisco Gutierrez Saenz, acting for and in his behalf, leased the same from Rafael Fernandez, said Francisco Gutierrez Saenz could, without anybody's knowledge or consent, validly constitute a mortgage on the crop produced on the hacienda held by him under lease, and the herein plaintiffs-appellants cannot claim any right in said crop, inasmuch as there is nothing in the registration of the hacienda in the name of Rafael Fernandez to indicate that they had any interest in the crop that might be produced thereon.

As to the question regarding the clauses contained in the promissory notes Exhibits M-1 and M-2 for the payment of attorney's fees, inasmuch as the amounts therein stipulated are specific, the same should be presented for collection in the insolvency of Rafael Fernandez.

With reference to the legal interest claimed by the plaintiffs-appellants on the amount of the damages awarded, they are entitled to the same from the date of the appealed judgment until this judgment becomes final, in accordance with the provisions of section 510 of the Code of Civil Procedure.

In view of the foregoing considerations, we are of the opinion and so hold: (1) That the insolvency of a debtor, the assignee of which intervenes in an action brought by a creditor for the recovery of a credit against the said debtor before the latter was declared insolvent, which action was authorized by the court in insolvency to be proceeded with for the purpose of ascertaining by judgment the amount due, cannot be ordered to pay said credit after the amount thereof is determined, and it is the insolvent himself for whom the assignee appeared, who should be ordered to pay, it being the creditor's duty to present said judgment in the insolvency proceedings; (2) that a defendant-appellee, who has neither excepted to nor appealed from a judgment, cannot in the appeal taken by the plaintiff-appellant make counter assignments of errors alleged to have been committed by the court a quo for the purpose of asking for the modification or reversal of said judgment; and (3) that the grantee, who in good faith and for value has acquired the rights of the grantor in a mortgage on crop executed by a lessee in favor of the lessor, who is the registered owner of the leased property, which lease and chattel mortgage have been duly inscribed in the corresponding registry of deeds, is protected against any defect which might vitiate or nullify the lease as well as the chattel mortgage.

Wherefore, with the sole modification that, instead of the insolvency, the insolvent Rafael Fernandez himself is substituted, and that the plaintiffs-appellants are allowed interest at 6 per cent per annum on the amount of the damages of P85,000 from the date of the appealed judgment until this judgment shall have become final, in conformity with the provisions of section 510 of the Code of Civil Procedure, the appealed judgment is in all other respects affirmed, without special pronouncement as to costs. So ordered.

Malcolm, Hull, Imperial, and Goddard, JJ., concur.

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