

JESUS AZCONA, PLAINTIFF AND APPELLEE, VS. ALBERTA L. REYES AND GERVASIO LARRACAS, SPECIAL ADMINISTRATOR OF THE ESTATE OF FLORENTINA CORDERO, DEFENDANTS AND APPELLANTS.

G. R. No. 39590. February 06, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This case involves two appeals, one by Alberta L. Reyes and the other by Gervasio Larraeas, as special administrator of the intestate estate of Florentina Cordero, from the judgment rendered by the Court of First Instance of Mindoro, the dispositive part of which reads as follows:

"In view of the foregoing considerations, the court has arrived at the conclusion that the action brought by the plaintiff is justified.

"Wherefore, the court orders Alberta L. Reyes, and in her capacity as administratrix of the estate of the deceased Florentina Cordero, to pay to the plaintiff: the sum of P11,985.05, with interest thereon at 12 per cent per annum until fully paid; 10 per cent of said sum representing expenses and attorney's fees, and the sum of P26 as fees for the registration of the mortgage deed.

"In case the defendant fails to pay the aforesaid sums within ninety days from the date this judgment shall have become final, it is hereby ordered that the parcels of land described in Exhibit A be sold at public auction and the proceeds thereof applied to the payment of said sums, the balance to be turned over to the defendant Alberta L. Reyes. So ordered."

In support of their appeal, both defendants assign eight identical alleged errors, as committed by the court a quo in its decision, which errors will be discussed in the body of this decision.

The following pertinent facts, established by a preponderance of the evidence adduced during the trial, are necessary for the resolution of the questions raised in these appeals, to wit:

On October 11, 1920, Florentina Cordero, now deceased, executed a power of attorney authorizing her only daughter, the herein defendant-appellant Alberta L. Reyes, to mortgage in her name and representation all her land situated in the municipality of Pola, Mindoro (Exhibit 9).

On October 22, 1920, the defendant-appellant Alberta L. Reyes, personally and as attorney in fact of her mother Florentina Cordero, in consideration of the sum of P6,500 received from Enrique Azcona, now deceased, sold to the latter, with the right of repurchase within the period of four years, five parcels of land with certificates of title belonging to her and her mother Florentina Cordero. The vendors became lessees of the property sold, at a yearly rental of P780 (Exhibit 1).

On October 23, 1920, said defendant-appellant Alberta L. Reyes, as attorney in fact of her mother Florentina

Cordero, in consideration of the sum of P5,000 received from Enrique Azcona, sold to the latter, with the right of repurchase within the period of four years, one parcel of land with certificate of title No. 58 of the registry of deeds of Mindoro, belonging to the principal Florentina Cordero. Florentina Cordero became the lessee of said property at a yearly rental of P600 (Exhibit 2).

On October 1, 1925, Alberta L. Reyes and her mother Florentina Cordero jointly executed a power of attorney authorizing Gregorio Venturanza to sell and encumber all their real and personal property including their cattle (Exhibit 12).

Enrique Azcona died on May 12, 1925, and was succeeded in all his rights by his only son, the plaintiff-appellee Jesus Azcona, to whom the entire estate of his deceased father, together with the credits evidenced by the documents Exhibits 1 and 2, was judicially adjudicated.

Inasmuch as neither the defendant-appellant Alberta L. Reyes nor the deceased Florentina Cordero, during her lifetime, had exercised her right of redemption in accordance with the aforesaid deeds Exhibits 1 and 2 within the period of four years, and inasmuch as they had asked for an extension of time, on November 29, 1926, Gregorio Venturanza, as attorney in fact of said Alberta L. Reyes and Florentina Cordero, on one side, and Jesus Azcona, on the other, executed a deed whereby the deeds of sale with the right of repurchase, Exhibits 1 and 2, dated October 22 and 23, 1920, respectively, were cancelled and their respective amounts of P6,500 and P5,000, together with the sum of P1,000 representing the unpaid accrued interest thereon, or a total amount of P12,500, were converted into a mortgage credit. In order to secure the cancellation of the registration of the alleged sales with the right of repurchase, the parcels of land described in the respective deeds were resold to the vendors and a mortgage was constituted thereon to secure the payment of said mortgage credit of P12,500 within the period of two years, extensible to another two years, with interest at 12 per cent per annum. Under said contract the mortgagors Alberta L. Reyes and Florentina Cordero were permitted to liquidate said debt by installments in the sum of P2,500 with the interest due, to be paid on December first of every year, beginning December 1, 1927 (Exhibit A).

The mortgagors Alberta L. Reyes and Florentina Cordero, through their said attorney in fact Gregorio Venturanza, paid by way of amortization and interest as follows: P2,500 on February 15, 1927, leaving a balance of P10,325; P2,200 on October 17, 1927, leaving a balance of P8,964.76; P1,200 on February 9, 1929, leaving a balance of P9,199.09; P350 on June 30, 1929, leaving a balance of P9,281.44; and P600 on September 20, 1929, leaving a balance of P8,935.12. Since the last mentioned date, the mortgagors failed to pay amortization and interest so that on June 30, 1932, the unpaid balance thereof together with the unpaid accrued interest amounted to P11,958.05.

The parties admit and the trial court so found that, although Exhibits 1 and 2 are in the form of deeds of sale with pacto de retro, in reality they represent mortgage loans.

The first question to decide in this appeal is whether or not the deed of resale and mortgage dated November 29, 1926 (Exhibit A) is legal and valid.

Both appellants contend that inasmuch as the deeds Exhibits 1 and 2, executed by Alberta L. Reyes, personally and in representation of her mother Florentina Cordero, in favor of Enrique Azcona, are not true deeds of sale with pacto de retro but of mortgage, the resale of the parcels of land described therein, made by Jesus Azcona in favor of said Alberta L. Reyes and Florentina Cordero, is null and void on the ground that, as mere mortgagors, they never ceased to be the owners thereof and that Enrique Azcona, as a mere mortgagee, never acquired any title of ownership thereto. Such theory is legally correct; in order for a sale to be valid, it is necessary that the vendor be the owner of the thing sold, inasmuch as it is a principle of law that nobody can dispose of that which does not belong to him. However, as has been noted, the sales with pacto de retro evidenced by Exhibits 1 and 2

were fictitious for the reason that the contracts entered into by Alberta L. Reyes and the deceased Enrique Azcona were really mortgage in their nature. Therefore, the resale was a mere formality resorted to for the purpose of obtaining the lawful cancellation of the registration thereof in the registry of deeds and the notation of the mortgage deed Exhibit A.

The defendants-appellants contend that Exhibit A is likewise void as a mortgage deed on the ground that it lacks consideration or principal obligation which it purports to secure.

There is no question that the defendant-appellant Alberta L. Reyes, personally and as attorney in fact of her mother Florentina Cordero, received the sum of P6,500 from the deceased Enrique Azcona under Exhibit 1 and that, as attorney in fact of her mother alone, she received the sum of P5,000 from said deceased under Exhibit 2, both sums representing the purchase price of certain parcels of land described in said documents, which were sold with the right of repurchase. Both parties admit that said documents are really mere contracts of loan secured by mortgage. As above stated, the sum of P12,500 which constitutes the cause or consideration of the deed of resale and mortgage Exhibit A is the total of the sums of P6,500 and P5,000 which Alberta L. Reyes, personally and as attorney in fact of her mother Florentina Cordero, received from Enrique Azcona, together with the sum of P1,000 representing the unpaid credits passed by inheritance to the plaintiff-appellee Jesus Azcona, as the only son of Enrique Azcona. Therefore, it cannot be said that the mortgage Exhibit A, executed by Gregorio Venturanza, as attorney in fact of Alberta L. Reyes and Florentina Cordero, in favor of Jesus Azcona, lacks consideration or principal obligation for the fulfillment of which said instrument was executed as security.

The defendants-appellants, however, impugn the validity of Exhibits 1 and 2 with regard to Florentina Cordero, alleging that they were not executed in such form as to bind the principal, having been signed only with the name Alberta L. Reyes.

Upon examination of said documents, it will be noted that Alberta L. Reyes made it appear in Exhibit 1 that she acted as Florentina Cordero's attorney in fact under a power of attorney issued to her by attaching a copy of said power of attorney to the deed in question, and in Exhibit 2 she likewise inserted the entire power of attorney. In the case of *Orden de Dominicos vs. De Coster* (50 Phil., 115), this court held that such form is valid and sufficient under the law.

Considered as mere contracts of mortgage loans, the deeds Exhibits 1 and 2 dated October 22 and 23, 1920, respectively, are binding upon Florentina Cordero, and compliance with the obligations contracted thereunder may be demanded in her intestate proceedings either as credit in favor of the intestate estate of Enrique Azcona or as credit in favor of the plaintiff-appellee Jesus Azcona against said Florentina Cordero under the mortgage deed Exhibit A.

In regard to the question of usury raised by the defendants-appellants in their respective briefs, although it is true that failure to file a sworn answer to a cross-complaint for the recovery of usurious interest paid implies an admission of the existence of a usurious rate of interest (*Lo Bun Chay vs. Paulino*, 54 Phil., 144, cited with approval in the case of *Ramirez and Polido vs. Bergado*, 56 Phil., 810), however, the counterclaim and cross-complaint filed in this case failed to state facts constituting the alleged usury but merely allege that in payment of a debt of P9,500 the plaintiff and his predecessor in interest received the amount of P20,130. Such statement does not in itself constitute an allegation of usury and failure to file a reply thereto implies denial of such allegation (sec. 104, Act No. 190).

Neither has the existence of usurious interest been proven during the trial inasmuch as in both Exhibits 1 and 2 it is stipulated that the vendors, as lessees, would have to pay the sum of P1,380 as yearly rental. Such sum, computed on the basis of a capital of P11,500 gives a rate of interest of only 12 per cent per annum, which is

allowed by law (Robinson vs. Sackermann and Postal Savings Bank, 46 Phil., 539). Furthermore, in the deed of resale and mortgage loan Exhibit A, interest at the rate of only 12 per cent per annum is stipulated. The existence of a stipulation to the effect that accrued interest shall bear interest does not imply that the loans in question are usurious inasmuch as it is permitted to charge compound interest (sec. 5, Act No. 2655, as amended by sec. 3 of Act No. 3291; Cu Unjieng e Hijos vs. Mabalacat Sugar Co., 54 Phil., 976).

With respect to the true state of the accounts of the mortgagor Alberta L. Reyes and the deceased Florentina Cordero with the mortgagee Jesus Azcona, the evidence presented to that effect has been examined and this court has found that the conclusions arrived at by the court a quo are supported thereby.

Wherefore, not finding any error in the judgment appealed from, it is hereby affirmed in toto, with the costs against the appellants. So ordered.

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

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