

ANTONIO F. AQUINO, SPECIAL ADMINISTRATOR OF THE TESTATE ESTATE OF THE DECEASED MARIANO AQUINO, PLAINTIFF AND APPELLEE, VS. TOMAS DEALA, DEFENDANT AND APPELLANT.

G. R. No. 43304. October 21, 1936

Ponente: RECTO, J.

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RECTO, J.:

The questions raised in this appeal may be summarized into two: (1) Whether the contract evidenced by the documents Exhibits 1, 3, 4 and 5 is a sale with right of repurchase or a simple loan secured by real property, and (2) whether or not, as the question of ownership of the real property referred to in the complaint has been raised in the municipal court of Manila where this case originated, and later in the Court of First Instance of Manila, where it was brought on appeal, said courts had jurisdiction to continue hearing it. The other questions are incidental and subordinate and the resolution thereof will depend upon that of the former ones.

The following facts have been established by the evidence of the case:

The defendant approached Mariano Aquino, the plain- tiff's father, to solicit a loan for a certain amount secured by the real property described in4 original certificate of title No. 5014, on which a house of strong1 materials designated by No. 670, Tanduay Street, was built. Mariano Aquino acceded to the defendant's proposition on condition that the transaction be evidenced by a deed in the form and under the conditions of Exhibit 1. The defendant accepted the conditions imposed because otherwise he would not have obtained the sum needed by him, and to that effect Exhibit 1 was executed, the principal clauses of which read as follows:

"2. In consideration of the sum of four thousand pesos (P4,000) actually received by Tomas Deala and paid by Mariano Aquino, said Tomas Deala sells, cedes and transfers to said Mariano Aquino the real property described in paragraph 1 of this deed, free from all liens and incumbrances, subject to the resolutory condition hereinafter stated.

"3. It is hereby agreed and stipulated between Tomas Deala and Mariano Aquino that the latter hereafter becomes the owner of the property sold, the vendor being liable for eviction and warranty in the present sale.

"4. It is likewise stipulated that the vendor Tomas Deala shall be entitled to repurchase the property sold, provided he pays the selling price within the period of four (4) years from this date, plus any other sum for the payment of which he may be liable under the terms of this document.

"5. It is likewise stipulated that Tomas Deala binds himself to construct a two-story house of strong materials on the vacant lot of the parcels of land described in paragraph 1 of this deed, within the period of six (6) months from this date.

"6. It is also stipulated that said Tomas Deala binds himself to insure against fire the buildings on the parcel of land above-stated for not less than three thousand pesos (P3,000), the premiums thereon to be paid by said Tomas Deala who will immediately indorse the policy to the purchaser Mariano Aquino after the property is insured.

"7. It is likewise stipulated that should the period for the repurchase elapse and the vendor fails to make use of such right, this sale will become final and irrevocable without the necessity of executing any other document therefor.

"8. It is likewise stipulated that Tomas Deala will defray the expenses for the execution of this deed and that of the repurchase, as the case may be, as well as the registration of both documents in the registry of deeds.

"9. Mariano Aquino, as purchaser, states his acceptance of and conformity to the sale executed by Tomas Deala.

"10. Upon the consummation of the sale under the above-stated terms, it is now stipulated and agreed that Mariano Aquino cedes and Tomas Deala receives, under lease, the property described in paragraph 1 of this deed, as well as the house which said Deala binds himself to build, on the following conditions:

"(a) The term of the lease is four (4) years, from this date.

"(b) The lease will be for the sum of forty pesos (P40) a month, payable in advance within the first five days of every month, at the residence of the lessor.

"(c) Failure to pay the lease for three (3) consecutive months will entitle the lessor to eject the lessee from the property leased.

"(d) Payment of the land tax on the property leased as well as of any other tax actually imposed or hereafter to be imposed thereon, will be charged to the account of the lessee.

"(e) Expenses for the conservation and hygienization of the leased property, as well as those in compliance with all orders issued by any office or dependency of the government in connection with said property, will also be charged to the account of the lessee.

"(f) Payment of the electric current, gas consumption, water and sewer service of the leased property will likewise be charged to the account of the lessee.

"11. Lastly, it is stipulated that in the event Mariano Aquino has to resort to an attorney or the courts of justice to enforce the stipulations of this contract, Tomas Deala will pay to said Mariano Aquino damages in the sum of three hundred pesos (P300), which will have to be added to the repurchase price agreed upon in case the right of repurchase above-stated is exercised."

Exhibit 1 was novated on December 26, 1926, the only alteration made being in the clause referring to the price and the rent which were increased to P4,500 and P45, respectively (Exhibit 3). It was renovated on May 31, 1927, by increasing said price and rent to P5,200 and P52, respectively (Exhibit 4), and on April 20, 1931, it was finally renovated by increasing the price to P6,600, reducing the rent to 1*49.50 a month and extending the period of repurchase to April 20, 1933, the original period of four years agreed upon in Exhibit 1 having expired some months before. With the exception of the amount of the price and the rent and the extension of the period of repurchase, the stipulations of the original deed (Exhibit 1) were left intact in the subsequent novations (Exhibits 3, 4 and 5).

On November 4, 1926, the defendant obtained permission from the department of engineering and public works to construct a two-story house of strong materials on the vacant part of the lot in question, the work having been finished about June 23, 1928.

On June 9, 1933, Mariano Aquino had the consolidation of his ownership of the property referred to in said documents registered in the registry of deeds and transfer certificate of title No. 42982 (Exhibit B) was issued to him. He died sometime later and his son Antonio F. Aquino, who instituted the present ejectment proceedings in the municipal court of Manila, was appointed special administrator of his testate estate. The defendant timely raised the question of ownership both in the court of origin and in the Court of First Instance. The municipal court ordered the defendant to vacate the property in question and to pay the plaintiff the unpaid rents at the rate of P50 a month, plus the costs. The Court of First Instance, on appeal, substantially affirmed the appealed judgment,

overruling the defenses set up by the defendant.

We are of the opinion that the defendant's contention regarding the nature of the contract Exhibit 1 and the novations thereof is meritorious. Although from the defendant's testimony that Mariano Aquino refused to give him the sum of P4,000 if the contract was not executed under the conditions of Exhibit 1, it may be inferred that the parties entered, with reluctance on the part of the defendant, into a contract of sale with pacto de retro and not of simple loan, the very terms of the stipulations of Exhibit 1, the subsequent conduct of the parties and other circumstances of the case warrant the conclusion that the true intention of the parties was the granting of a loan in a certain amount to the defendant, with interest at 12 per cent per annum which, in view of the defendant's precarious situation, was later reduced to 9 per cent so that he could build another house on the vacant part of the lot in question, the loan being secured by said lot, the house already built thereon at the time of the execution of the contract and that which the defendant intended to build with the money received from Mariano Aquino. If the words "sale with right of repurchase", "price", "repurchase", "right of redemption", "lease", "rent", "purchaser", "vendor", and other similar words used according to custom in the deed Exhibit 1, the other stipulations contained therein and the other circumstances of the case are incompatible with the idea that it was the intention of the assignor to transfer the ownership of the property in question to the purchaser at a certain price, the vendor reserving for himself only the right to repurchase it within a certain period.

Let us begin with the stipulations of the original contract Exhibit 1. Those contained in paragraphs 5, 6, 10 and 11 thereof are, in our opinion, incompatible with the theory that the contract was one of purchase and sale as claimed by the plaintiff. We should not lose sight of the fact that between an absolute sale and a sale with right of repurchase, no difference exists except that in the latter the ownership of the purchaser is subject to the resolutory condition, that the vendor exercises his right of repurchase within the time agreed upon.

Under paragraph 5 of Exhibit 1, the so-called vendor found himself to construct a two-story house of strong materials within six months on the vacant part of the lot referred to in the contract. If the contract were truly one of purchase and sale, it is not explained why the vendor should have to assume said obligation and spend the money received from the purchaser in compliance therewith. The act which the defendant bound himself to execute by virtue of the contractual clause under consideration was an act of ownership and the performance thereof devolved upon the purchaser-owner, not upon the vendor-lessee. Said clause indicates that Mariano Aquino, in granting the loan of P4,000 to the defendant, considered the security offered insufficient and therefore required the debtor to amplify it by constructing another additional house on the lot given as security. Had it been the intention of the parties to make this new house, upon construction, a part of the subject matter of the said sale, a stipulation regarding payment of additional rent would have been inserted in the contract inasmuch as a rental of P40 a month was fixed for the use and occupation of the house already existing on the property which is the subject matter of the contract. It is true that under paragraph 10 this sum of P40 was for the rent not only of the house already existing but also of that which the defendant undertook to construct, but this part of the contract is clearly fictitious, because if the rent of P40 covered the two houses, it is not explained Why the lessee should agree to pay rent for the occupation of an in-existent house which he himself was to construct with his own money and how the lessor should accept rent of only P40 for two houses of strong materials, one of which consists of two stories.

Paragraph 6 and paragraph 10, sub-paragraph (d), of Exhibit 1 imposed upon the vendor the obligation to insure against fire the buildings constructed on the property which is the subject matter of the contract, for not less than P3,000, the payment of the premiums thereof being to the account of said vendor who was obliged to indorse the policy immediately to the purchaser and to pay, also for his own account and responsibility, the land tax and any other taxes imposed or that might thereafter be imposed upon the property. When a property is insured, the

indemnity, in case of loss, is paid to the owner because the insurable interest is his. This being so, the correlative obligation to pay for the insurance premiums should devolve upon the owner and not upon the lessee or vendor with right of repurchase who, with the exception of his right of redemption, should have considered all other juridical relations with the property sold extinguished after the contract. The same is true with respect to the payment of the land tax. This lien should have been shouldered by the owner and not by the lessee.

Under paragraph 10, sub-paragraph (e), the expenses for the conservation of the property should likewise be for the account of the defendant. However, these expenses are ordinarily for the account of the lessor (article 1554, Civil Code).

It appears that Mariano Aquino desired to obtain a net income of 12 per cent per annum from his investment and for this reason he caused the defendant to assume the obligation to pay not only the land tax and insurance of the property but also the expenses for its conservation. If Mariano Aquino had assumed these obligations which strictly belong to the owner of the property, instead of imposing them upon the defendant, he would not have been able to realize said net income of 12 per cent per annum on his capital, because he would have had to deduct therefrom the sum represented by the insurance, the land tax and the expenses for the conservation of the property. On the other hand, had he assumed such obligations and compensated these liens by charging interest in excess of 12 per cent he would have openly violated the Usury Law.

The other facts of the case showing that the contract in question was a simple loan with interest at 12 per cent which was later reduced to 9 per cent are as follows:

(a) When the alleged sale price was increased to P4,500 in the first novation of the contract on December 26, 1926, the rent of the property was increased to P45, in spite of the fact that said property had suffered no change, in order to maintain the rate of interest at 12 per cent. When the contract was novated for the second time on May 31, 1927, by increasing the so-called selling price to P5,200, the rent was likewise increased to P52 in order to continue maintaining the rate of interest at 12 per cent. It was only when said contract was novated for the last time on April 20, 1931, and the so-called selling price was increased to P6,600 that the rent was reduced to P49.50 a month because Mariano Aquino had acceded to reduce the rate of interest to 9 per cent. The new house on the lot in question had just been finished about June 23, 1928, and it is strange that the fluctuations of the amount of the rent had nothing to do with the construction of said new house but with the successive increases of the so-called selling price, or the amount of the loan. In other words, the rent went up or down not because of the improvement or amplification of the leased property but because of the increase of the amount of the loan and the rate of the interest agreed upon by the parties.

(b) The term of the right of redemption, under the original deed, was supposed to expire and it expired on September 25, 1930. However* the so-called purchaser, far from having the consolidation of his ownership registered in the registry of deeds, executed Exhibit 5, on April 20, 1931, "extending" the already expired original term of four years stipulated in Exhibit 1 to April 20, 1933. This shows that, notwithstanding the form of the contract, Mariano Aquino always considered the transaction as a simple loan. The affirmation made in paragraph 3 of the deed Exhibit 5 that "as the term of the contract had expired on September 25, 1930, the same remaining in statu quo, etc., excludes every idea that the parties intended to enter into a contract of sale. In fact, once the period for the right of redemption has expired without the right having been exercised, it could not be said, if the contract were one of sale with pacto de retro, that "the contract has remained in statu quo", because failure to exercise the right of redemption, in such contract, automatically "produces the effect of consolidating the ownership of the purchaser without the necessity of any other act on his part, the fact on which his ownership was temporarily conditioned not having been realized.

In *Padilla vs. Linsangan* (19 Phil., 65), we stated that "the court will not construe an instrument to be one of a sale *con pacto de retro*, with the stringent and onerous effects that follow, unless the terms of the instrument and all the circumstances positively require it. Whenever, under the terms of the writing, any other construction can fairly and reasonably be made, such construction will be adopted. Sales with a right to repurchase, as defined by the Civil Code, are not favored, and the contract will be construed as a mere loan unless the court can see that, if enforced according to its terms, it is not an unconscionable one."

We consider the following provisions of the Civil Code in matters of interpretation of contracts pertinent to the case:

"If the words appear to be contrary to the evident intention of the contracting parties, the intention shall prevail." (Art. 1281.)

"In order to judge as to the intention of the contracting parties, attention must be paid principally to their conduct at the time of making the contract and subsequently thereto." (Art. 1282.)

It may be contended that "the contracting parties may establish any agreements, terms and conditions that may deem advisable, provided they are not contrary to law, morals, or public order." (Art. 1255, Civil Code.) However, we do not declare herein the nullity of the agreements contained in Exhibit 1 and in its various novations. None of said agreements is contrary to law, morals, or public order, and all of them should therefore be maintained out of respect to the will of the contracting parties. The validity of these agreements, however, is one thing, while the juridical qualification of the contract resulting therefrom is very distinctly another. Such agreements, in our opinion, change the status of the sale with *pacto de retro* and give rise to juridical relations of a different nature. Similar thereto is a contract of *commodatum* wherein payment of compensation by the person acquiring the use of the thing is stipulated. This stipulation is valid but the *commodatum*, although so termed, ceases to exist and is converted into another contract with different effects (art. 1741). The same thing happens with the contract of *depositum*. Although it would seem that article 1760 of the Civil Code indirectly authorizes the constitution of an onerous deposit, when there is an express stipulation to that effect, this court has repeatedly held that the deposit should be considered a loan when it contains a stipulation for payment of interest. (*Garcia Gavieres vs. Pardo de Tavera*, 1 Phil., 71; *Barretto vs. Reyes*, 10 Phil., 489; *In re Guardianship of the minors Tamboco*, 36 Phil., 939, 941) In order not to multiply the examples, we shall cite the cases of use and habitation wherein the usufructuary who consumes all the fruits of the thing subject to use, and the person having the right of habitation who occupies the whole house, are considered usufructuaries (art. 527).

The other point to be resolved is whether or not the municipal court had jurisdiction to proceed with the trial of the case after the defendant had raised the question of ownership therein. We have repeatedly held that the mere fact that the defendant, in his answer, claims to be the owner of the property from which the plaintiff seeks to eject him is not sufficient to divest a justice of the peace court of its summary jurisdiction in actions of forcible entry and detainer, because were the principle otherwise, the ends of justice would be frustrated by making the efficacy of this kind of actions depend upon the defendant in all cases. However, we have also held (*Supia and Batioco vs. Quintero and Ayala*, 59 Phil., 312), favorably citing *Pettit vs. Black* (13 Neb., 142, 154), and *Green vs. Morse* (57 Neb., 391), that the foregoing rule does not hold when the evidence shows that the question of title is actually involved in the litigation and that the defendant's contention, according to said evidence, is meritorious. In this case the records do not disclose the nature of the evidence presented in the municipal court of origin in connection with the question of ownership raised by the defendant and, therefore, we are not in a position to rule that said court was without jurisdiction to proceed with the trial of the case. We find, however, that the evidence presented in the Court of First Instance of Manila, where the case was brought on appeal, shows that the title to the disputed property was correctly questioned. Therefore the Court of First Instance should have declared itself

without jurisdiction to proceed with the trial of the case on appeal after examining said evidence, and ordered the dismissal thereof.

Wherefore, we are of the opinion and so hold that the case should be dismissed without prejudice to any other action compatible with the pronouncements contained in this decision, which the parties or any of them might desire to bring, without costs.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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