

QUINTIN DE BORJA, PLAINTIFF AND APPELLANT, VS. FELICIANA MARIANO, DEFENDANT AND APPELLEE,*G.R. No. 44041. October 28, 1938*

Ponente: DIAZ, J.

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This is a case which this court should finally dispose of, by virtue of the provisions of section 138 of the Revised Administrative Code, as amended by section 3 of Commonwealth Act No. 259, because the plaintiff appealed from the decision rendered therein by the court of origin when the latter failed to grant him what he had sought in his complaint, and because most of the evidence then presented in said court is the same as that presented in another case pending therein under No. 6009, which, after having been brought later on appeal to this court, was recently decided adversely to the defendant-appellant therein, who is no other than the herein plaintiff Quintin de Borja (G. R. No. 44040, Oct. 28, 1938).

The question involved in the court of origin referred to some actions instituted by the plaintiff against the defendant for the recovery from the latter of the following sums: P16,000 with the stipulated interest thereon at 12 per cent per annum from September 2, 1926, until fully paid; P1,920 plus legal interest thereon from August 27, 1927; P1,000 as penalty, and P2,300 with legal interest thereon from September 2, 1928, until fully paid. In his complaint, the plaintiff asked that, in case of failure to pay the above-stated sums within ninety days from the date the judgment became final, the property described in his Exhibit A be sold at public auction to satisfy said sums with the proceeds of the sale thereof, and that in case said proceeds should not be sufficient for said purpose, the defendant be ordered to pay the resulting deficiency.

After the trial, the lower court rendered judgment against the defendant, ordering her to pay to the plaintiff, within the period of 90 days from the date the judgment should become final, the following sums: P10,000 plus interest thereon at 12 per cent per annum, and P2,300 plus interest thereon at the same rate per annum, with the warning that should she fail to do so, the mortgaged properties would be sold at public auction undoubtedly for the purpose of applying the proceeds of the sale thereof to the above-stated sums plus the interest thereon. Not satisfied with the judgment, the plaintiff appealed therefrom, alleging later in his brief that the lower court committed what he claims to be errors, stated as follows:

"1. The lower court erred in declaring that the P6,000 included in the deed, Exhibit A, for P16,000, represented an amount due against the deceased Cornelio Sarangaya and not one against the defendant-appellee herein;

"2. The lower court erred in declaring that the amount of P6,000 included in the P16,000 claimed by plaintiff-appellant against the defendant-appellee, had already been adjudged in civil case No. 2585;

"3. The lower court erred in disregarding the unequivocal and precise terms of the public documents Exhibit A and in giving greater faith and credit to the uncorroborated, uncertain, and, contradictory testimony of defendant-appellee;

"4. The lower court erred in disregarding and in not awarding plaintiff-appellant's claim in the sum of P1,920

as principal and P1,000 as indemnity, against the defendant-appellee, despite the promissory note, Exhibit B, and the admissions of the appellee with respect thereto; and

"5. The lower court erred in denying appellant's motion for a new trial."

- A careful examination of the evidence shows that the sum of P16,000 referred to in Exhibit A, which is not a contract of sale with pacto de retro although it is so-called in the body thereof, but a mere mortgage, because this is the nature given to it by the plaintiff himself in his lastly amended complaint, consisted, first of the sum of P5,000 with interest thereon, which Cornelio Sarangaya, in life, owed to Marcelo de Borja, of whose intestate estate the plaintiff was the administrator while said proceedings were yet pending and under trial in the Court of First Instance of Rizal, for which sum said Cornelio Sarangaya had executed the promissory note, Exhibit B, on September 22, 1919, which his widow, the defendant Feliciano Mariano acknowledged on July 30, 1922, by then binding herself to pay the amount thereof in the month of June 1924 (Exhibit B), and of the sum of P40,000 which the plaintiff had paid for said defendant to Dr. Nicanor Jacinto to whom she was indebted in the same amount, excluding interest thereon. The plaintiff attempted to prove that the sum of P6,000 of the above-stated amount of P16,000, represents an account entirely distinct from that expressed in Exhibit B, and that the same is a personal account of the defendant with which her deceased husband had nothing to do. This could not be true, because when the plaintiff rendered his accounts, as administrator, in the intestate proceedings of his father Marcelo de Borja, for the period intervening between January 1, 1925, and the last day of December, 1926, he made it appear that the credit of P6,000, which the intestate estate had against the defendant, had been cancelled on the ground that she had executed the deed of sale with pacto de retro, Exhibit A, which, as already stated, is but a mere mortgage. The plaintiff having admitted that the 76,000 included in the P16,000 stated in Exhibit A and the P5,000 without interest mentioned in Exhibit B, were loans made by the deceased Marcelo de Borja and by his intestate estate to Cornelio Sarangaya, during his lifetime, and to the latter's widow, that is the herein defendant-appellee (appellant's brief, page 7), it becomes inexplicable that said two sums, if it is true that they were distinct and not one and the same, have not been included in said Exhibit A, all the more so because it is not stated therein that the defendant bound herself to comply with the stipulations thereof in her capacity as administratrix or heiress of her deceased husband, but on the contrary, that she personally bound herself to said performance.

It is true that Exhibit B has remained in the possession of the plaintiff and that apparently it continues to be uncanceled to this date, but this certainly proves nothing and can easily be explained. The defendant, naturally, might have thought that, as she had already executed Exhibit A, said Exhibit B became worthless, and for that reason she no longer attempted to ask for the return thereof. On the other hand, she testified that it was her understanding with the plaintiff that the latter would destroy the document in question.

The very fact that the defendant agreed to subscribe Exhibit A, after the plaintiff had paid to Dr. Nicanor Jacinto, for her, the sum of P10,000 owed by her to the latter, which fact is admitted by both parties, and the fact that on that same occasion she agreed to subscribe the deed Exhibit C, which will be discussed later, prove that there were no such two accounts of P6,000 each, but only one; that stated in Exhibit B with interest thereon, which was the same account included in Exhibit A, so that the entire obligation to be charged against her, with her absolute conformity, would be P16,000, instead of P10,000.

To arrive at the same conclusion that the sum of P5,000 referred to in Exhibit B is, together with interest thereon, the same sum of P6,000 under consideration, there is this other reason. According to the uncontradicted testimony of the defendant, she had failed to pay the interest on said amount corresponding to the year 1925. This necessarily shows that at the end of said year, her obligation for interest alone amounted to P600, since the rate stipulated was 12 per cent per annum. To said interest, there should be added that which, according to her, she likewise failed to pay by way of interest corresponding to the months of January to August, 1926, inclusive,

amounting to P400, at the same rate of 12 per cent per annum, from which it may be inferred that what she had to pay by way of interest was P1,000. With this, it clearly appears that the sum of P6,000 added to that of P10,000 referred to in Exhibit A to make the amount of P16,000, is made up of the P5,000 stated in Exhibit B and the P1,000 which the defendant had to pay by way of unpaid interest. We should not lose sight of the fact that said document or contract Exhibit A was executed on September 2, 1926, for which reason the interest on the P5,000, corresponding to said month of September and the following months, was not included therein.

- The evidence relative to the account of P6,000 under consideration herein shows that the same had already been the subject matter of a litigation between the herein parties litigant in case No. 2585 of the Court of First Instance of Nueva Ecija, entitled "Intestate Estate of the deceased Cornelio Sarangaya." In said case, the plaintiff presented his claim for P5,000 plus interest thereon at 12 per cent per annum before the committee on claims and appraisal appointed therein by the court. His claim was approved by said committee and later by the court. As soon as the resolution approving it became final, the plaintiff applied for and obtained from the court, on March 3, 1926, an order directing the defendant, as administratrix of the intestate estate of Cornelio Sarangaya, to pay to said plaintiff the sum in question together with interest thereon. Five months later, that is, on September 2, 1926, the defendant executed the above-stated deed Exhibit A in favor of the plaintiff.

It appears from the testimony of the defendant that Exhibit A includes Cornelio Sarangaya's obligation stated in Exhibit B, which was approved by the committee on claims and appraisal in said case No. 2585 of the Court of First Instance of Nueva Ecija and by said court in its order of March 3, 1926. It will be noted from Exhibit A that the period within which the defendant promised to pay to the plaintiff the sum of P16,000 stated therein, is three (3) years counted from September 2, 1926. In other words, she promised to make said payment on or before September 2, 1929. The defendant having failed to pay said amount, the plaintiff applied to the lower court, in civil case No. 2585 (Intestate estate of the deceased Cornelio Sarangaya), for the purpose of obtaining, as he in fact obtained on March 26, 1930, the issuance of a writ for the execution of the resolution obtained by him in his favor in said case, granting him his claim of P5,000 plus interest thereon at 12 per cent per annum. The execution was carried out by the sheriff and, there having been no bidder at the auction except the plaintiff, the sheriff adjudicated to the latter the defendant's properties which had been attached by him for sale at said auction. The plaintiff, however, did not succeed in keeping the properties so purchased by him, because shortly afterwards Juana Sarangaya and Felix Daluz brought suit against him, giving rise to case No. 6009 of the Court of First Instance of Nueva Ecija, for the purpose of annulling the sale of said properties to him, alleging therein that said properties had previously been sold to them by the herein defendant. The lower court decided the suit in favor of Juana Sarangaya and Felix Daluz, and this court, on appeal taken by the defendant therein, affirmed said judgment in its decision now of record in case G. R. No. 44040 (Oct. 28, 1938).

Taking into account the foregoing facts, there necessarily arise the following questions: (1) Was the resolution rendered in favor of the plaintiff in civil case No. 2585 of the Court of First Instance of Nueva Ecija, imposing upon the defendant the obligation to pay him the sum of P5,000 with interest thereon at 12 per cent per annum, novated by the contract Exhibit A? (2) If so, what effect on the contract Exhibit A could have been produced by the plaintiff's act of filing a petition in case No. 2585 of the Court of First Instance of Nueva Ecija, for the execution of the resolution rendered in his favor more than three years before, merely because the defendant failed to comply with the terms of the contract in question?

There is no doubt that the resolution of the Court of First Instance in the intestate estate of the deceased Cornelio Sarangaya, approving the claim of the plaintiff presented therein before the committee on claims and appraisal, created and imposed upon the defendant the obligation to pay to the plaintiff the sum of P5,000 plus interest thereon which, as already stated, then amounted to P1,000. Said obligation, as any other, could be extinguished

and novated. This was done when the defendant and the plaintiff executed the deed Exhibit A, because the obligation imposed upon the former by said deed is incompatible with that imposed by the resolution in question, inasmuch as both obligations, being one and the same, should not and can not each have its own independent existence. Exhibit A undoubtedly novated the obligation imposed upon the defendant by the resolution in question, and for all purposes, the latter not only has lost all its force and effect but has also been extinguished by the execution of Exhibit A (article 1204 of the Civil Code). Consequently, said contract is the only instrument with force to compel the defendant.

The fact that the plaintiff resorted to the above-cited case (Intestate estate of the deceased Cornelio Sarangaya), for the recovery of his credit of P5,000 plus interest thereon by means of the execution of the resolution therein rendered in his favor, has not in the least altered the effect of Exhibit A, because when he did so, he did not even have the acquiescence, much less the consent, of the defendant. No person can, by himself alone, alter the terms of a contract entered into by him with another.

The conclusion to which this court is led by the foregoing considerations with respect to errors 1 to 3 attributed to the lower court, is that none of them is founded, because, as the obligation of the defendant to pay the sum of P6,000 to the plaintiff, which was imposed upon her by the resolution of the committee on claims and appraisal in civil case No. 2585 and approved by the lower court, has been novated by means of the execution of Exhibit A; and as the defendant has failed to pay said sum to the plaintiff as she bound herself to do in said document, she should do so now, not by virtue of the resolution in question but by virtue of Exhibit A. In other words, the defendant should pay to the plaintiff the sum of P16,000 plus interest thereon at 12 per cent per annum from September 2, 1926, until fully paid.

- As to the fourth error attributed to the lower court by the plaintiff, the preponderance of the evidence shows that the defendant was indebted to the plaintiff, independently of the sum of P16,000 stated hereinbefore, in the sum of P2,300 together with interest thereon, and that the same was her personal obligation not in any way related: to the intestate estate of her deceased husband, Cornelio Sarangaya. This explains why she executed Exhibit C, which, as already stated, bears the same date as Exhibit A (September 2, 1926). If, as the defendant attempted to prove, said sum of P2,300 plus interest thereon had any relation to the sum stated in Exhibit A, there would be no possible explanation of her execution of said document Exhibit C, much less if it is borne in mind that she executed the same on the same date she executed Exhibit A. If she executed it, it was undoubtedly because she well knew that two accounts under different concepts and of distinct nature were involved.

Having arrived at the above-stated conclusion, it becomes unnecessary to discuss the fifth alleged error attributed to the lower court.

For all the foregoing, the appealed judgment is modified by ordering the defendant to pay to the plaintiff: (a) the sum of P16,000 plus the interest thereon at 12 per cent per annum from September 2, 1926, until fully paid, it being held, in passing, that the obligation imposed upon the defendant by the resolution of the committee on claims and appraisal appointed in civil case No. 2585 of the Court of First Instance of Nueva Ecija, entitled "Intestate estate of the deceased Cornelio Sarangaya" and approved by said court on March 3, 1926, has been extinguished, having been novated by means of the execution of the contract Exhibit A; and (b) also the sum of P2,300 plus the interest thereon at the same rate of 12 per cent per annum from September 2, 1926, until fully paid. In all other respects, the appealed judgment is affirmed, with the costs to the defendant. So ordered.

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

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