

TOMAS OSMEÑA, PLAINTIFF AND APPELLEE, VS. CENONA RAMA, DEFENDANT AND APPELLANT.

G.R. No. 4437. September 09, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that upon the 15th day of November, 1890, the defendant herein executed and delivered to Victoriano Osmeña the following contract:

"Exhibit A.

P200.00.

"CEBU, November 15, 1890.

"I, Doña Cenona Rama, a resident of this city, and of legal age, have received from Don Victoriano Osmena the sum of two hundred pesos in cash which I will pay in sugar in the month of January or February of the coming year, at the price ruling on the day of delivering the sugar into his warehouses, and I will pay him interest at the rate of half a cuartillo per month on each peso, beginning on this date until the day of the settlement; and if I can not pay in full, a balance shall be struck, showing the amount outstanding at the end of each June, including interest, and such balance as may be outstanding against me shall be considered as capital which I will always pay in sugar, together with the interest mentioned above. I further promise that I will sell to the said Señor Osmeña all the sugar that I may harvest, and as a guarantee, pledge as security all of my present and future property, and as special security the house with tile roof and ground floor of stone in which I live in Pagina; in proof whereof, I sign this document, and he shall be entitled to make claim against me at the expiration of the term stated in this document.

(Signed) "CENONA RAMA.

"Witnesses:

"FAUSTO PEÑALOSA.

"FRANCISCO MEDALLE."

On the 27th day of October, 1891, the defendant executed and delivered to the said Victoriano Osmeña the following contract:

"Exhibit B.

"CEBU, October 27, 1891.

"On this date I have asked for a further loan and have received from Don Victoriano Osmeña the sum of seventy pesos in cash, fifty pesos of which I have loaned to Don Evaristo Penares, which we will pay in sugar in the month of January of the coming year according to the former conditions.

(Signed) "CENONA RAMA.

"Prom Don Evaristo Peñares

P50

"Doña Cenona Rama

20

P70

"Received-Evaristo Peñares."

Some time after the execution and delivery of the above contracts, the said Victoriano Osmeña died. In the settlement and division of the property of his estate the above contracts became the property of one of his heirs, Agustina Rafols. Later, the date does not appear, the said Agustina Rafols ceded to the present plaintiff all of her right and interest in said contracts.

On the 15th day of March, 1902, the plaintiff presented the contracts to the defendant for payment and she acknowledged her responsibility upon said contracts by an indorsement upon them in "the following language:

"Exhibit C.

"CEBU, March 15, 1902.

"On this date I hereby promise, in the presence of two witnesses, that, if the house of strong materials in which I live in Pagina is sold, I will pay my indebtedness to Don Tomas Osmeña as set forth in this document.

(Signed) "CENONA RAMA."

The defendant not having paid the amount due on said contracts; the plaintiff, upon the 26th day of June, 1906, commenced the present action in the Court of First Instance of the Province of Cebu. The complaint filed in said cause alleged the execution and delivery of the above contracts, the demand for payment, and the failure to pay on the part of the defendant, and the prayer for a judgment for the amount due on the said contracts. The defendant answered by filing a general denial and setting up the special defense of prescription.

The case was finally brought on to trial in the Court of First Instance, and the only witness produced during the trial was the plaintiff himself. The defendant did not offer any proof whatever in the lower court.

After hearing the evidence adduced during the trial, the lower court rendered a judgment in favor of the plaintiff arid against the defendant for the sum of P200 with interest at the rate of 18¾ per cent per annum, from the 15th day of November, 1890, and for the sum of P20, with interest at the rate of 18¾ per cent per annum, from the 27th day of October, 1891, until the said sums were paid. From this judgment the defendant appealed.

The lower court found that P50 of the P70 mentioned in Exhibit B had not been borrowed by the defendant, but by one Evaristo Penares; therefore the defendant had no responsibility for the payment of the said P50.

The only questions raised by the appellant were questions of fact. The appellant alleges that the proof adduced during the trial of the cause was not sufficient to support the findings of the lower court. It was suggested during the discussion of the case in this court that, in the acknowledgment above quoted of the indebtedness made by the

defendant, she imposed the condition that she would pay the obligation if she sold her house. If that statement found in her acknowledgment of the indebtedness should be regarded as a condition, it was a condition which depended upon her exclusive will, and is, therefore, void. (Art. 1115, Civil Code.) The acknowledgment, therefore, was an absolute acknowledgment of the obligation and was sufficient to prevent the statute of limitation from barring the action upon the original contract.

We are satisfied, from all of the evidence adduced during the trial, that the judgment of the lower court should be affirmed. So ordered.

Arellano, C. J., Torres, Carson, and Moreland, JJ., concur.

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