

MARIA AVES CON SU MARIDO SEGISMUNDO ALZONA (ALIAS TAN SIAMCO), RECURRENTES, CONTRA HUGO ORILLENEDA, RECURRIDO.*G.R. No. 46640. June 27, 1940*

Ponente: IMPERIAL, J.

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Tratase de la apelacion en forma de certiorari interpuesta por los demandantes-recurrentes contra la decision de la Tercera Division del Tribunal de Apelaciones que revoco la sentencia del Juzgado de Primera Instancia de Tayabas y declaro al demandado-recurrido y a su esposa Irene Lucero duenos de todo el lote, objeto del litigio, juntamente con sus mejoras y edincios en el existentes, y que tienen derecho a retener la posesion de los mismos; y condeno al demandado-recurrido a que pague a los demandantes-recurrentes la suma de P269.81 con sus intereses legates desde la fecha en que quede firme la referida decision, sin costas.

Los recurrentes ejercitaron la accion para recobrar del recurrido la posesion de un terreno destinado a edification, situado en la poblacion de Macalelon, Provincia de Tayabas, de 453 metros cuadrados de superficie, lindante al Norte con la calle Unson, al Este con el atrio de la Iglesia Catolica Romana, al Sur con Tirso Esclanda y Herederos del finado Gregorio Javier y al Oeste con la calle McKinley, declarado para los fines de amillaramiento a nombre de Maria Aves, la esposa del recurrente, con el valor de P320; y para que el citado recurrido levante la casa de cana y nipa que edified en la porcidn Norte del solar. El recurrido alego en su contestation que el y su esposa Irene Lucero son los duenos exclusivos del terreno y sus mejoras y que los recurrentes no tienen derecho al remedio que han solicitado.

El Tribunal de Apelaciones, despues de revisar las pruebas presentadas por las partes en el Juzgado de origen, sento las conclusiones siguientes:

"The pertinent facts necessary for the resolution of the issue involved are that from 1927 and the subsequent years until 1931 the appellant had been taking merchandise on credit from the store of the appellee, Segismundo Alzona, alias Tan Siamco, and borrowed from the latter on different occasions during the specified period certain amounts in cash. In order to secure the payment of the accumulated debt the aforementioned appellee was given a special power of attorney, Exhibit 1, executed on June 19, 1929, to lease in favor of the municipality of Macalelon, Tayabas, for school purposes a house standing on a lot belonging to the said appellant and his wife, Irene Lucero, at the rate of at least P25 per month authorizing him to collect the monthly rental to be credited on the outstanding debts of the latter. In pursuance thereof Alzona conveyed by way of lease the said house to the above mentioned municipality at the rate of P25 per month as rent and collected therefrom the total sum of P86.66 covering the period from June 17 to September 30, 1929.

"On January 30, 1939 Alzona caused the appellant to execute a notarial document, Exhibit C, by which the latter and his wife conveyed the entire lot described therein including the same house which was transferred under lease in favor of the municipality of Macalelon as above stated to the other appellee, Maria Aves, wife of Alzona, in consideration of the sum of P560 which represents the accumulated debt of P440 owed by the

appellant to Alzona and the sum of P120 charged by the latter as accumulated interest thereon subject to the right of redemption for a term of one year, and that in case of failure to redeem the property at the expiration of that period the same shall be transferred in absolute sale in favor of the said Maria Aves upon payment by the latter of the additional sum of P640 to the debtor.

"Subsequently; the appellant and his wife continued taking from time to time merchandise on credit from Alzona and again borrowed as before additional amounts in cash until the value of the goods taken on credit and the cash thus accumulated amounted to the aggregate sum of F320. In the meantime Alzona likewise continued collecting under the aforementioned power of attorney previously issued to him the monthly rental of the house under Iea3e amounting to the total sum of P150 which covers the period from October 1, 1929 to March 31, 1930.

"On February 13, 1931, Alzona again caused the appellant and his wife to execute the document, Exhibit D, by which the mortgage deed or alleged conditional sale, Exhibit C, was novated (1) by adding to the amount of P560 the sum of P440 representing the newly accumulated debt of the said appellant and his wife in the sum of P320 plus P120 as accumulated interest thereon, making a total of P1,000 for which the same property mortgaged under Exhibit C was encumbered under the document, Exhibit D, and (2) by extending the period of redemption to January 20, 1932, subject to the condition that if the property would not be redeemed at the expiration of the extended period, the same should be conveyed in absolute sale to the alleged purchaser, Maria Aves, who should have to pay the additional sum of P200 to the debtor.

"On May 23, 1932, in view of the fact that the appellant had not been able to pay his indebtedness, Alzona caused the appellant and his wife to execute the document, Exhibit B—appellees, by which the said appellant and his wife waived their right of redemption secured under Exhibit D, and in consideration of the additional sum of P350, alleged to have been paid by Maria Aves to the aforesaid appellant and his wife the same property was transferred in absolute sale to the said Maria Aves.

"The evidence further reveals, however, that neither the appellant nor his wife ever received from either one of the appellees the amounts set forth in the documents, Exhibits C, D and B at the time of their execution and that the aforesaid appellant was made to understand when these documents were executed that they constituted a mere security to guarantee the payment of his accumulated debts to the appellee, Segismundo Alzona, in the aggregate sum of 9760.

"There is no doubt in our mind that the deed, Exhibit C, was a mere mortgage. That such was the intention of the contracting parties when the same was executed is clearly expressed by the use therein of the word 'hipoteca' to secure the payment of the debt. Even in the deed, Exhibit D, the same intention was expressed when it recited that the property in question was encumbered in the total sum of P1,000. We believe that the use of phrases in those documents conveying the idea of conditional or absolute sale is a cloak to cover the excessive interest charged by the appellee, Alzona, on the debt of the appellant. In fact Alzona practically admitted that the appellant never received any amount of money from Maria Aves the alleged grantee or creditor mentioned in those documents when he declared that the amounts stated in those documents were taken from him; and notwithstanding the fact that the real contract was entered into between him and the appellant his name was not mentioned at all in those three documents but only that of the appellee, Maria Aves, for the reason, according to him, that he was not yet married to her at the time. Such facts and circumstances strongly indicate that the appellee, Alzona, obtained the documents in question through fraud and misrepresentation from the appellant who appears to be ignorant man, not knowing the Spanish language in which these documents were written.

"Furthermore, it has been fully established that the appellant and his wife have been in actual possession of the entire lot in question since 1908 as exclusive owner without interruption up to the present time, having declared the said property for tax purposes, and have been paying the taxes thereon except in the years 1930, 1931, 1932, 1934, and 1935 when the taxes were paid by the appellee, Alzona, in the name of the appellant

amounting to P27.15 as per official tax receipts appearing on record; but the taxes corresponding to the year 1933 was paid by appellant himself in his own name. It has been fully established, further, that the appellant built another house on the portion claimed by the appellees in which he and his family have been living up to the present time since 1929, when his other house standing in the other portion of the land in question was leased to the municipality of Macalelon for school purposes. Consequently, the appellees' contention that they allowed the appellant to occupy the portion in question and authorized him to build a temporary structure for his residence and family for the period of one year and a half as they attempted to show by means of a private document, Exhibit A, can not be sustained. Such an allegation was not only denied by the appellant, but it was completely destroyed by the fact that the house to be constructed in accordance with the document, Exhibit A, was already standing on the portion in question since 1929 while the said document, Exhibit A, was executed in 1932. Besides, the testimony of the appellant with respect to the execution of the documents, Exhibits A and B, is strongly corroborated by the declaration of the witness, Francisco Abarques, one of the instrumental witnesses who signed the said documents Exhibits A and B. Abarques testified that these documents were prepared and signed at the same time and on the same occasion, on May 23, 1932, and at the same place after the appellant was given to understand that the document, Exhibit B, was a mere mortgage, and that no money was delivered at that time. Considering the fact that the witness, Abarques, was requested by the appellee, Alzona, to sign as a witness the documents, Exhibits A and B, and that there was no showing that this witness had some motive for testifying falsely against the appellee, Alzona; and considering the further fact that he is not related in any way to either one of the interested parties herein and that he is, therefore, absolutely impartial, we are of the opinion that his testimony deserves full faith and credit and that it is amply sufficient to overcome that of the notary public, Penalosa, who prepared those documents and asserted that he has informed the appellant of the contents thereof, for it is admitted by the said notary public that he is the compadre of the appellee, Alzona, and that he used to prepare many documents for the said Alzona,

"Considering the facts and circumstances surrounding the execution of the three documents in question, Exhibits C, D and B, in relation to the conduct of the appellee, Alzona, prior to and after their execution we are forced to the conclusion that all these documents constituted a mere mortgage on the property in question to secure the payment of the accumulated debts of the appellant to the appellee, Segismundo Alzona, in the total sum of P760 and that all the additional amounts in excess thereof as set forth in those documents were charged by the appellee as interest. But as this interest is quite excessive he is not entitled to recover except the actual amount of indebtedness above stated

"With respect to the rents of the house leased to the municipality amounting to ₱255.83 as shown by the official vouchers presented in evidence, we think the allegation of the appellee Alzona, to the effect that he had turned over the said amount to the appellant sounds incredible. The appellant positively denied this allegation. No receipt was presented to prove the delivery of such amount to the appellant. In fact the appellant demanded an accounting of the rents collected by the appellee, Alzona, but the latter refused to do so and for this reason he brought the matter before the anti-usury board which caused an investigation of the appellee in connection therewith; and this is what prompted the said appellee to institute the present suit against the appellant. The amount of ₱255.83 collected and kept by the appellee, Alzona, must therefore be deducted from the indebtedness of the appellant in the sum of P760, so that there is a balance of ₱504.17. But there should be added to this amount the reimbursement for the realty taxes paid by appellee Alzona for the property in question amounting to P27.15; hence, the total amount of the outstanding indebtedness to which the appellees are entitled to recover from the appellant is ₱531.32."

Al resolver la mocion de reconsideracion presentada por el abogado del recurrido, el Tribunal de Apelaciones en su resolution promulgada el 18 de marzo de 1939, rectifico los hechos relacionados con el dinero que los recurrentes deben restituir al recurrido e hizo el siguiente pronunciamiento:

"According to the vouchers, Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 19, and 11 the total amount received and collected by the appellee as rent of one building belonging to the appellant for school purposes is P1,016.96. By deducting

from this amount the sum of P726, which is the aggregate amount of the original debt due from the appellant and the sum of P27.15 for realty taxes paid by the appellee on the property in question, there is a balance in favor of the said appellant of P269.81, which should be reimbursed by the appellee to the latter."

En el primer senalamiento de error los recurrentes sostienen que el Tribunal de Apelaciones infringio la ley al hacer caso omiso del contenido de los Exhibits A y D y al dar mayor credito a la declaracion prestada por el testigo instrumental Francisco Abarques. El senalamiento de error implica mas bien cuestion de hecho y a.preciacion de pruebas que este Tribunal no puede alterar en este procedimiento de certiorari. Por la regla general los documentos se interpretan por los terminos precisos en que estan redactados, pero los tribunales, en el ejercicio de su sana discrecion, estan llamados a admitir pruebas directas y circunstanciales coetaneas, necesarias para su correcta interpretacion con el fin de hacer prevalecer la verdadera intencion de las partes (arts. 1281 y 1282, Codigo Civil).

Los senalamientos de error II, III, IV y V aluden al Exhibit I que segun los recurrentes el Tribunal de Apelaciones dejo de considerar al dictar la sentencia apelada. Alegan los recurrentes que si se le hubiera dado el valor probatorio que tiene el Tribunal de Apelaciones hubiera declarado necesariamente valido el Exhibit B y hubiese sentado la conclusion de derecho de que el recurrido renuncio a su derecho de retracto y reconocio el dominio del terreno en favor de ellos. Y concluyen que el Tribunal de Apelaciones hubiera descontado igualmente de la suma de P269.81 la cantidad de P150 a que se refiere el Exhibit I.

El Exhibit I es un documento por el que el recurrente Segismundo Alzona vendio con pacto de retro al recurrido, en la cantidad de P150, una parcela de terreno que un tal Luis Mafiago le habfa hipotecado, y que el nombrado Manago hipoteco a su vez al recurrido. Considerados los pactos contenidos en el documento, resulta evidente que el mismo es ficticio y carece de valor probatorio alguno. Si el terreno lo tenia el recurrente Alzona en mera garantia o hipoteca, es claro que no podia traspasar su dominio, en venta con pacto de retro, al recurrido. Tampoco podia gravarlo en hipoteca Luis Mafiago al recurrido porque para ello habia necesidad de redimirlo primeramente, pagando los P150 a Alzona; pero aun cuando esto se hubiese hecho, es obvio que Alzona no podia transmitir el terreno en venta con pacto de retro a favor del recurrido. Teniendo en cuenta estas consideraciones, debe concluirse que el Tribunal de Apelaciones no erro al dejar de apreciar el Exhibit I y al no deducir la cantidad de P150 de la otra suma de dinero que los recurrentes tienen que pagar al recurrido. El ultimo senalamiento de error carece igualmente de merito porque, aceptando las conclusiones de hecho sentadas por el Tribunal de Apelaciones, resulta que la ley se ha aplicado correctamente y la decision apelada se halla ajustada a derecho.

Se deniega el recurso, con las costas a los recurrentes. Asi se ordena.

Avanceña, Pres., Diaz, Laurel, Concepcion, y Moran, MM., estan conformes.

Se deniega el recurso.

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