

CARLOS DORONILA, PLAINTIFF AND APPELLANT, VS. DOLORES VASQUEZ DE ARROYO AND THE PROVINCIAL SHERIFF OF ILOILO, DEFENDANTS AND APPELLEES.*G.R. No. 48004. June 27, 1941*

Ponente: LAUREL, J.

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In civil case No. 9031 of the Court of First Instance of Iloilo, entitled "Dolores Vasquez de Arroyo vs. Mariano B. Arroyo," the plaintiff there—one of the defendants-appellees here—obtained a judgment against her defendant husband, Mariano B. Arroyo, for alimony at the rate of P500 per month beginning February, 1932. Because of the failure of Mariano B. Arroyo to comply with this judgment, Dolores Vasquez obtained an order of execution and, on July 27, 1935, the provincial sheriff of Iloilo sold at public auction to Dolores Vasquez a parcel of land covered by transfer certificate of title No. 6386 for the sum of P4,500. The final certificate of sale was executed in her favor on August 10, 1936. In connection with the aforesaid levy, Carlos Doronila, plaintiff and appellant herein, filed a third-party claim with the provincial sheriff, but the latter nevertheless effected the sale upon the filing by Dolores Vasquez of the required bond of P1,000.

On September 23, 1935, plaintiff-appellant Carlos Doronila filed civil case No. 10269 in the Court of First Instance of Iloilo in which it was asked that the auction sale above referred to be set aside and that he be declared the sole owner of the property in question, it being claimed by him that the same was conveyed to him by Mariano B. Arroyo, first, under a sale by installment executed on June 10, 1933 and, later, under a definite sale executed on February 11, 1935. The Court of First Instance of Iloilo rendered judgment declaring the transfer relied upon by Carlos Doronila null and void as being in fraud of creditors, and upholding the validity of the levy and sale sought to be annulled. Upon appeal to the Court of Appeals (CA-G. R. No. 414) this judgment was affirmed on March 31, 1937. On April 12, 1937, Carlos Doronila offered to redeem the controverted property, at the same time depositing with the provincial sheriff of Iloilo the sum of P4,608 covering the full amount of the purchase price at the auction sale plus the corresponding interest. Redemption was refused on the ground that the period provided by law for that purpose had already expired. In view of such refusal on the part of the provincial sheriff to allow the tendered redemption, Carlos Doronila instituted this civil case No. 10874 in the Court of First Instance of Iloilo for the purpose of annulling the deed of absolute sale executed by the provincial sheriff in favor of Dolores Vasquez and of compelling the latter and the said sheriff to permit Carlos Doronila to redeem the land in question. The trial court dismissed the complaint principally on the ground that the period for the redemption of the land sold at public auction by the provincial sheriff to Dolores Vasquez on July 27, 1935 had already expired. It is from this decision that plaintiff-appellant Carlos Doronila has brought the present appeal.

Six errors are assigned in the brief for the plaintiff-appellant, but the important questions raised refer (a) to the right of Carlos Doronila to redeem the property in question (error No. I) and (6) to the expiration of the time of redemption (error No. II). Following the line of approach of the trial judge, we do not consider it necessary to determine the first question for the reason that if, as found by the trial court, the time for redemption had already

expired, it would serve no purpose to consider whether the appellant had that right.

Section 465 of the Code of Civil Procedure provides that the judgment debtor or redemptioner may redeem the property from the purchaser at any time within twelve months after the sale, and it is admitted by the appellant that, if the time during which civil case No. 10269 was pending (from September 23, 1935 to March 31, 1937) is not deducted, the tendered redemption was made beyond the twelve months' period fixed in the aforesaid legal provision. The appellant, however, invokes equitable considerations in favor of the redemption and argues with vehemence that it would be unfair to count the period during which civil case No. 10269 was pending, because he could not be expected to claim merely the right of redemption when in said action he sought a judicial declaration of absolute ownership. While redemption must be effected within the time prescribed, there are indeed cases where, having in view the purpose sought to be achieved by statutory provisions of this kind and principally to promote justice and avoid injustice, courts may by reasonable construction allow redemption notwithstanding the actual expiration of the period fixed in the statute. We have, however, inquired into the equities of this case and have come to the conclusion that the judgment of the lower court should not be disturbed.

As hereinbefore mentioned, the conveyance alleged to have been made by Mariano B. Arroyo in favor of the appellant and relied upon by the latter in claiming ownership in civil case No. 10269 was found to be fraudulent. The appellant cannot be said to have had no conscious collaboration in the fraud intended by Mariano B. Arroyo to defeat the judgment for alimony rendered against him in civil case No. 9031 in favor of the herein appellee, Dolores Vasquez. To support this statement we have only to refer to the following passages of the decision of the Court of Appeals in CA-G. R. No. 414 affirming the judgment of the Court of First Instance of Iloilo in civil case No. 10269;

"* * * Pero es innecesario resolver esa contradiccion en el presente caso, porque la venta que invoca a su favor el demandante y apelante ha sido efectuada por Mariano B. Arroyo en fraude de acreedores. Cuando se hizo esa venta el 10 de junio de 1933 por Mariano B. Arroyo, ya se habia dictado contra 61 la sentencia por alimentos. Esa sentencia fue promulgada el 31 de marzo de 1933, o sea, mas de dos meses antes de verificarse la venta ya mencionada. Segiin el artfculo 1297 del Codigo Civil, se presumen fraudulentas las enajenaciones a titulo oneroso, hechas por personas contra quienes se hubiere pronunciado antes sentencia condenatoria. Y no hay en los autos ninguna prueba que destruya esa presuncion. Por el contrario, existen circunstancias que la apoyan. En la fecha en que se verifico la venta, Mariano B. Arroyo estaba en estado casi de insolvencia.

"Y hay un detalle muy significative que no debe pasar inadvertido. Esa venta verificada en junio de 1933, no fue registrada sino en julio de 1935. Carlos Doronila, antes de efectuarse la venta, que, como ya se ha dicho, era a plazos, pago, segun el, una gran parte del precio, adquiriendo, de ese modo, un interes considerable que proteger mediante el registro de la transaccion. No la registro, empero, sino dos afios despues, y, segun todas las circunstancias, no tenia motivo alguno para ello, como no fuera el ocultar la transaccion para ayudar a Mariano B. Arroyo a defraudar a sus acreedores. En efecto, por no haberse registrado esa venta, Dolores Vasquez de Arroyo no se entero, el tiempo del embargo, de que su esposo Mariano B. Arroyo era acreedor de Carlos Doronila por el remanente del precio que, segun la escritura de venta, quedaba por pagar, y que ascendia a mas de diez mil pesos (P10,000). Y, por consiguiente, ella perdio la oportunidad de embargar el credito, el cual le hubiera sido mucho mas provechoso que la propiedad misma, que estaba gravada. Ahora, ella ya no puede embargar ese credito, porque, aun despues del embargo y aun despues de la subasta, Carlos Doronila estuvo pagandolo, segun el, a Mariano B. Arroyo. , "Carlos Doronila afirma que todos los pagos hechos por 61 a Mariano B. Arroyo fueron reales. Si eso es cierto o no, solo el y Mariano B. Arroyo lo saben. Ni Dolores Vasquez de Arroyo ni el Sheriff Provincial de Iloilo tienen medios de comprobarlo. * * *".

We may add that after the mortgage held by one Remedios Jalandoni against Mariano B. Arroyo on the land in dispute had been assigned to Carlos Doronila, the latter, by an amended complaint filed against Mariano B. Arroyo on September 11, 1935 in civil case No. 10199 of the Court of First Instance of Iloilo, obtained the

corresponding foreclosure judgment upon default of Mariano B. Arroyo. In this foreclosure proceeding the herein appellee Dolores Vasquez was not made a party, although the appellant knew that the litigated land had already been sold at public auction to Dolores Vasquez, said appellant having filed a third-party claim with the provincial sheriff. There was clearly a violation of section 255 of the Code of Civil Procedure requiring that in an action for foreclosure of a real estate mortgage, the complaint shall set forth, among others, the names and residences of all persons having or claiming an interest in the premises, all of whom shall be made defendants in the action. If anything can be inferred from the course thus followed by the appellant, it is perhaps no other than a stubborn desire on his part to further help Mariano B. Arroyo in defeating the right of Dolores Vasquez to receive the alimony awarded to her in civil case No. 9031. If, as pretended by the appellant, the land mortgaged to Remedios Jalandoni had been sold by Carlos Doronila to the appellant prior to the filing of the amended complaint in civil case No. 10199, the result is that he was simply trying to foreclose a mortgage on the property of which he was already the absolute owner. The land in question could not have been the subject of execution in said civil case No. 10199, for, as the trial court held in civil case No. 10269—

"En el presente asunto Carlos Doronila pidio la nulidad de la venta en subasta publica de dicho terreno en el asunto 9031. El Juzgado en decision recaida en este asunto de febrero 28, 1936 declaro validb el embargo y subasta publica del referido terreno en dicho asunto civil 9031; el cual pronunciamiento ipso facto resuelve todas las cuestiones sobre el asunto civil 10199, que es posterior al 9031. Los procedimientos seguidos en el primitivo asunto 9031 con respecto al terreno en cuestion se efectuaron obteniendo las correspondientes anotaciones o registros de documentos del citado predio, de modo que este no puede ser afectado por cualquiera orden o decision en el asunto civil 10199, 'Carlos Doronila versus Mariano B. Arroyo', a menos que la decision dictada en el presente asunto 10269, 'Carlos Doronila versus Dolores Vasquez et al.' sea revocada por nuestro Tribunal Supremo, declarando en su consecuencia nulos el embargo y venta en publica subasta en el asunto civil 9031.

"Para evitar, sin embargo, torcidas interpretaciones, el Juzgado declara que el terreno en cuestion, que es el mismo objeto del asunto civil 9031, no debe ser objeto de ejecucion en virtud del otro asunto civil 10199, 'Carlos Doronila versus Mariano B. Arroyo.'"

A circumstance showing inconsistency in the position of the appellant, and tending to support the suggestion that the appellant knowingly cooperated in the attempt of Mariano B. Arroyo to defraud the appellee Dolores Vasquez, is found in the sale by Mariano B. Arroyo to the appellant on June 16, 1937 of the former's right of redemption, notwithstanding the fact that the appellant pretends that he had already become the owner of the property in question by virtue of a prior conveyance executed by Mariano B. Arroyo. It is noteworthy that the consideration for the alleged sale of the right of redemption was only one peso.

In view of all the circumstances surrounding the instant case, we are convinced that the appellant has not come to the court with clean hands and we are accordingly constrained to rule that this case is not a fitting example that calls for the extension, on equitable considerations, of the period of redemption fixed in section 465 of the Code of Civil Procedure in the sense desired by the appellant.

We therefore affirm the judgment of the lower court in its entirety, with costs against the plaintiff-appellant. So ordered.

Avanceña, C. J., Diaz, and Horrilleno, JJ., concur.

Moran, J., concurs in the result.

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