

CLEOFÉ VELEZ, PLAINTIFF AND APPELLANT, VS. MAXIMO BALZARZA AND FLAVIA MABILIN, DEFENDANTS AND APPELLEES.*G.R No. 48389. July 27, 1942*

Ponente: BOCOBO, J.

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On November 16, 1937, plaintiff in an amended complaint prayed for the return of certain parcels of land which she alleged had been sold by defendants to plaintiff's deceased husband, Ramon Neri San Jose, with right of repurchase. She further alleged that defendants had remained in possession of said land under a contract of lease, but that for over two years defendants had not paid the agreed rentals. In paragraph 4 of the complaint, she stated that "in the distribution of the estate of the deceased Ramon Neri San Jose who died on November 7, 1932, duly approved by this Honorable Court, the said lands were adjudicated as share of the herein plaintiff." In their amended answer, defendants alleged that the real agreement was a loan secured by a mortgage of those lands; and that whereas the amount borrowed was only P2,400, defendants had however already paid P4,420.88. Defendants therefore prayed for the return of the excess, or P2,029.88.

At the trial, the parties agreed to the following stipulation of facts: that plaintiff has a right to bring this suit; that the real question involved is the collection of a debt; that defendants admit having executed Exhibits A to E; that plaintiff admits defendants have made the payments according to the receipts marked as Exhibits 1 to 22; and that the lands described in the above-mentioned documents have been given as a security for the payment of the obligation of defendants.

The trial court found that the total amount loaned on various dates by the deceased Neri to the defendants, was P3,067; that defendants paid P4,429.88, of which P3,997.25 was received by Neri and P432.63 by plaintiff; that these payments were not made by way of interests or rents, but as payments for the principal; that defendants overpaid the amount of P1,362.88. The court below exonerated defendants from the complaint and ordered plaintiff to return to defendants the sum of P432.63 which she, plaintiff, had received from defendants although said amount was not due, applying article 1895 of the Civil Code. As for the amount received by deceased Neri, the court held that the same not having¹ been presented before the committee on appraisal and claims during the administration of the estate of said Neri, defendants are not entitled to its return. Plaintiff appealed from the judgment.

It is necessary to inquire into the contractual relations between Neri and defendants. Exhibit A, dated December 24, 1927, purports to be a sale of four parcels of land for the price of P600, with a right of repurchase within three years. Exhibit D, dated March 16, 1928, likewise purports to be a sale of three parcels of land for P400, with a right of repurchase within three years. Each of these two contracts has the following stipulation: "El comprador Ramon Neri San Jose toma posesion de las fincas vendidas, y el sera quien cosechara todos los productos que dan o puedan dar las fincas aqui vendidas durante el plazo de retracto y puede hacer y ejercitar todos los actos de dominio con tal que no este en pugna con el derecho de recompra de los vendedores." (In Exhibit D the last words of this clause are "del vendedor" because only defendant Balzarza signed the contract.) Exhibits B, C, and E are

contracts of loan, dated respectively, December 24, 1927; February 2, 1928; and February 6, 1930, for various amounts, from Neri to defendants. Each of these three documents recites that defendants received a certain amount from Neri; that on November 23, 1927, defendants sold three parcels of land to Neri; and that defendants have promised to Neri that upon return of the amount mentioned in in said document of November 23, 1927, defendants will return the sum borrowed by means of the present contract.

Evidently all these five loans appearing in Exhibits A to E were secured by the mortgage of the seven parcels of land mentioned in Exhibits A and D. These transactions being loans, according to the stipulation of facts, the question is whether the payments were intended to be applied to the principal, as contended by defendants, or were considered as either rents or interests, upon the theory advanced by plaintiff.

The payments could not have been intended as rents because in accordance with a clause in the contract, Neri took possession of the lands and collected the fruits thereof. The creditor having enjoyed the beneficial use of the lands delivered as security for the loan, it appears to have been the intention of the parties that the creditor should be compensated thereby. Furthermore, in none of the contracts offered in evidence is there any promise made by defendants to pay rents. It would have been strange for such a clause to appear in Exhibits A and D wherein it was stipulated that the creditor took possession of the lands and would reap the fruits of the same. It is true that in the receipts signed by Neri and by plaintiff these payments are called rents. But these receipts have been prepared by Neri and by plaintiff, and defendants in their ignorance did not look into the wording, being merely satisfied that they were proofs of payment.

If those payments were not rents, plaintiff-appellant maintains they must have been interests. Neither is this contention tenable because no interest is due unless it is expressly stipulated, (Article 1755, Civil Code.) Moreover, as under the contract the lender took possession of the lands and reaped the fruits thereof, it must have been thought by the parties that it was unfair to make the borrower pay interest in addition. It is also significant that the borrower paid a total of P1,143.50 up to August 5, 1929 (a period of 1 year, 8 months and 13 days from the initial loan) when the debt up to that date was only P2,100. If such amount of P1,143.50 was collected as interest, then out and out usury was committed by the lender, which cannot be presumed.

Counsel for appellant argues that as the deceased Ramon Neri San Jose "was publicly known as a money lender" the parties must have had in mind the payment of interests. However, the alleged occupation of said Neri does not appear in the stipulation of facts or anywhere else in the evidence. But even if that fact appeared in the record, it would not constitute sufficient compliance with the requisite of article 1755 of the Civil Code that interest must be expressly stipulated.

In *Guzman vs. Balarag* (11 Phil., 503, 508-509 [year 1908]), the plaintiff therein loaned P1,500 to defendant who mortgaged his house and lot. Plaintiff took possession of the premises and collected rents from third persons. It was claimed by the plaintiff that these rents received by him should be applied to the payment of interest. But this Court held otherwise, saying:

"If the debtor Paseal Balrag is only under the obligation to pay the creditor, Guzman, the 1,500 pesos received as a loan, without interest, upon permitting the latter to collect the rent of property owned by the debtor and keep the amounts so collected, it must be assumed that it was in order to provide for the refund of the debt arising from the loan. It is not possible to apply the money except in settlement of the debt, unless the allegations of the debtor be disproven; the record does not contain any proof of the contrary allegation to the effect that it was stipulated that the rent collected should be applied to the payment of interest, and the allocation of the defendant debtor is all the more convincing and irrefutable, inasmuch as it has not in any way been demonstrated that interest on the loan was stipulated."

Therefore, the trial court was right in finding that these payments were applied to the principal.

At this juncture, article 1756 of the Civil Code comes into view. It provides that, "The borrower who has paid interests without their being stipulated, cannot recover them nor apply them to the principal." It seems plausible to argue that although the parties originally intended no interest when the loans were made, nevertheless if defendants wished to pay and did pay interest, according to said article 1756 they can neither recover the amounts nor apply them to the principal. However, the trial court found as a fact that "los pagos hechos no fueron ni en concepto de intereses ni de alquileres, sino como pagos del capital." ("the payments made were not either by way of interests nor of rents but as payments for the principal.") The court further found that "the question would have been different if the defendants had admitted, or if it had been proved that the payments made by the defendants were by way of interest."

The liability of plaintiff to return the excess payments is in keeping with article 1895 of the Civil Code which provides that, "when something is received which there is no right to collect, and which by mistake has been unduly delivered, the obligation to restore it arises." The two requisites are present: (1) there is no right to collect these excess sums; and (2) the amounts have been paid through mistake by defendants. Such mistake is shown by the fact that the parties in their contracts never intended that either rents or interest should be paid, and by the further fact that when these payments were made, they were intended by defendants to be applied to the principal, but they overpaid the amounts loaned to them.

Article 1895 of the Civil Code above quoted, is therefore applicable. This legal provision, which determines the quasi-contract of *solutio indebiti*, is one of the concrete manifestations of the ancient principle that no one shall enrich himself unjustly at the expense of another. In the Roman Law Digest the maxim was formulated thus: "*Jure naturae acuum est, neminem cum alterius detrimento et injuria fieri locupletiores.*" And the *Partidas* declared; "*Ninguno non deve enriquecerse tortizadamente con daño de otro.*" Such axiom has grown through the centuries in legislation, in the science of law and in court decisions. The lawmaker has found it one of the helpful guides in framing statutes and codes. Thus, it is unfolded in many articles scattered in the Spanish Civil Code. (See for example, articles 360, 361, 464, 647, 648, 797, 1158, 1163, 1295, 1303, 1304, 1893 and 1895, Civil Code.) This time-honored aphorism has also been adopted by jurists in their study of the conflict of rights. It has been accepted by the courts, which have not hesitated to apply it when the exigencies of right and equity demanded its assertion. It is a part of that affluent reservoir of justice upon which judicial discretion draws whenever the statutory laws are inadequate because they do not speak or do so with a confused voice.

As for the amount to be returned by plaintiff, the trial court held that plaintiff should return only the excess sum she actually received (P432.63) but not the overpayment made to the deceased Neri. If the defendants had appealed from the latter phase of the judgment, perhaps the application of section 749 of the Code of Civil Procedure (now Rule 89, section 5 of the new Rules of Court) might have been studied. Under that provision, contingent claims which become absolute after the settlement of the estate of a deceased person may be enforced proportionately against the distributees of the estate, and in the instant case this claim against Neri did not become absolute till the discovery of the mistake, after the distribution of his estate. But defendants not having appealed, this aspect of the case, will not be passed upon.

Wherefore, the judgment appealed from is affirmed, with costs against the appellant. So ordered.

Yulo, C. J., Moran, Ozaeta, and Paras, JJ., concur.

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