

MARCELO G. VAZQUEZ, PLAINTIFF-APPELLEE, VS. AGATA TACSAGON VDA. DE ABKILAN, AS JUDICIAL ADMINISTRATRIX OF THE INTESTATE ESTATE OF ATANASIO ABKILAN, DEFENDANT-APPELLANT.

G.R. No. 48621. February 26, 1943

Ponente: OZAETA, J.

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OZAETA, J.:

The narration of the facts pertinent to the issue raised in this appeal may be abridged as follows:

Atanasio Abkilan, who died during the pendency of this action, had been indebted to Marcelo G. Vazquez and Andrea Olea for some years previous to April 26, 1926., That indebtedness, which bore interest at the rate of 10% per annum and was secured by a mortgage on lots Nos. 711, 1515, and 1528 of the cadastral survey of Himamaylan, Occidental Negros, became due and demandable on July 31, 1925; but as the debtor was unable to pay it, a new contract entitled "Deed of Mortgage" was entered into by the parties on April 26, 1926, wherein Abkilan acknowledged that the total amount owing from him to his said creditors was P34,812.46, which he obligated himself to pay on or before July 31, 1935, without any interest up to the last mentioned date but with interest thereafter, if unpaid, at the rate of 12% per annum, and as security he conveyed to them by way of mortgage lots Nos. 711 and 1528 of the cadastral survey of Himamaylan. It was further stipulated in said contract: (1) that the creditors shall have the usufruct of a specified portion of lot No. 711, with an area of about seven hectares, during four agricultural years from the date of the contract up to the end of the crop year 1930- 1931, without paying any rent; (2) that during the existence of the mortgage Abkilan was obligated to raise sugar cane on the remaining part of said lot No. 711, which should be milled either in the sugar mill of the Hacienda Dos Hermanos, belonging to Olea, or in the Binalbagan central, should the parties deem it more advantageous to produce centrifugal instead of muscovado sugar; if milled in the former, 50 % of the sugar produced would belong to the creditors, who would have to take charge and pay the expenses of cutting the sugar cane and conveying it to the mill and of placing and packing the sugar in bayones, and if milled in the latter (Binalbagan central) Abkilan had to pay to his creditors 15% of the centrifugal sugar produced during the crop years 1927-1928 to 1930-1931, inclusive, and 17% thereafter, the expenses of cutting the sugar cane and placing it on the railroad cars of the sugar central to be for the account of the creditors; in either case Abkilan's net share in the sugar was to be sold by his creditors and applied to the payment of his indebtedness; (3) that the creditors obligated themselves to furnish the debtor a credit of P2,000 yearly without interest to defray his expenses in planting sugar cane, but should the amount drawn by Abkilan for such expenses exceed P2,000 or P80 per hectare for new planting and P50 per hectare for ratoons, the excess shall bear interest at 12% per annum; and (4) that in case of suit the debtor shall pay 10% of the total amount due on the date of the rendition of the judgment by way of penalty to cover judicial expenses and attorney's fees.

Subsequently Marcelo G. Vazquez acquired the interest of Andrea Olea in the mortgage.

This action was instituted to foreclose the mortgage, on which, as found by the trial court, there was due the total sum of P29,913.08 less the sum of P561.39.

Insofar as this appeal is concerned, the judgment of the trial court requires the defendant administratrix of Abkilan to pay to the plaintiff the sum of P29,351.69, with interest thereon at the rate of 12% per annum from July 31, 1935, to the date of payment, plus 10% of the amount due on the date of the rendition of the judgment by way of penalty, and the costs, with appropriate directions for the sale of the mortgaged property.

With industry and tenacity which to us seem worthy of a better cause, appellant maintains that the contract in question is in reality an antichresis; that it is usurious; and that the plaintiff should be required to account for the sugar obtained from that portion of lot No. 711 ceded in usufruct, as well as for all the sugar received by him and Olea by way of the 15%, 17%, or 50% participation provided for in said contract.

The previous mortgage, which matured on July 31, 1925, and which was substituted by the contract in question, provided for interest at 10% per annum as well as for a 15% participation of the creditors in the centrifugal sugar to be produced from the mortgaged property. The contract in question eliminated the interest of 10% per annum on the principal of P34,812.46 from April 26, 1926, to July 31, 1935, and granted the debtor a further credit of at least P2,000 a year without interest, but ceded to the creditors the use, without paying any rent, of a portion of seven hectares of lot No. 711 for four agricultural years ending with the crop year 1930-1931.

The plaintiff contended, and the trial court held, that the consideration or equivalent for the usufruct of the portion of seven hectares ceded to the creditors was not the elimination of the interest but only the reduction of their participation in the centrifugal sugar from 17% to 15% during the four crop years covered by said usufruct. We do not think so. From a perusal of the contract in question in the light of the surrounding circumstances, particularly the provisions of the preceding contract, we believe that the cession of the usufruct and the increase of the creditors' participation in the centrifugal sugar from 15% to 17% during the years subsequent to the expiration of the usufruct were intended to be compensated by the condonation of the interest on the loan for more than nine years and by the obligation of the creditors to grant the debtor an additional credit of at least P2,000 a year without interest.

Nevertheless, there is no basis in the record for believing that the parties intended the contract in question to be one of antichresis. Before the commencement of this action the plaintiff sent to Abkilan several yearly statements of account, but Abkilan never demanded an accounting of the proceeds from the usufruct and the sugar received by the plaintiff under said contract on the theory that they should be applied to the payment of his indebtedness. Neither is there any basis for the proposition that the stipulations in said contract regarding the usufruct on seven hectares and the participation of the creditors in the sugar produced by the debtor were resorted to and adopted as a mere cloak to hide a usurious operation. It must be borne in mind that the creditors' participation in the debtor's sugar, altho forming part of the consideration for the loan, cannot be imputed exclusively to the interest thereon because the creditors had to render service and undergo expenses to earn such participation.

If it had been pleaded and proved that the annual rental value of the portion of seven hectares of lot No. 711 ceded by Abkilan to the plaintiff in usufruct for four years, plus the net profit to be realized by the plaintiff from his participation in the sugar produced from the rest of said lot, was known by the parties to exceed the equivalent of 12% yearly interest on the loan and that the mortgage contract in question was resorted to in order to circumvent the Anti-Usury Law, the court might be justified in declaring said contract to be one of equitable antichresis, just as a sale with pacto de retro has often been declared an equitable mortgage, upon the principle that Equity looks thru the form into the substance. But such a situation does not obtain in the case before us; there was neither allegation nor proof to that effect. On the other hand the trial court believed that even if an accounting by appellee

be ordered as pretended by appellant, the result would not be favorable to the latter. As a matter of fact and as appears from the appealed decision, the plaintiff, in a memorandum filed by his counsel in the court below, offered to render an accounting of all the products and benefits received by him under said contract provided that both parties should agree not to appeal from the result thereof and provided further that the rate of interest to be charged should be only 6% per annum up to July 31, 1935, and 12% per annum thereafter; but the defendant ignored and impliedly rejected said offer.

We are fully satisfied that appellant's pretensions are entirely devoid of merit.

The judgment is affirmed, with costs. So ordered.

Yulo, C.J., Momn, Paras, and Bocobo, JJ., concur.

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