

EUSEBIO S. MILLAR, PLAINTIFF AND APPELLEE, VS. DOHOTEONADRES, DEFENDANT AND APPELLANT.

G.R. No. 48679. August 11, 1943

Ponente: MORAN, J.

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MORAN, J.:

Under Rule 41, section 4, of the new Rules of Court, appellant is bound to specify in his notice of appeal the court to which the appeal is to be taken. And under Rule 42, section 3, where the appeal is based upon a pure question of law, appellant shall so state in his notice of appeal and then no other question shall be allowed and the evidence need not be elevated. In the instant case, appellant stated in his notice of appeal the following:

"Que interpone por el presente, apelacion de la decision dictada en el fondo en esta causa de fecha 11 de julio de 1941, y que mas arriba se transcribe para ante la Honorable Corte Suprema, teniendo en cuenta que todas las cuestiones envueltas en este litigio son en un noventa por ciento de derecho, pues si bien se ha cuestionado la conclusion de hecho, en cuanto a si la carta exhibit N-1, fue enviada o no realmente al demandado, sin embargo, en la motion de nueva vista se ha planteado la siguiente cuestion de derecho, aun para el caso de declarar.se probado tal hecho del envio, a saber;

"Es contraria a derecho, y a la equidad, la conclusion del Juzgado, declarando que las supuestas cartas exhibits Q y N-1, pruebas self-serving, del demandante imponiendo la condicion del plazo, y fecha, aun suponiendo por gracia de argumento, que se consideren pruebas legales y competentes, son suficientes para haber extinguido el derecho de recompra del demandado, debido a que contradice las disposiciones del articulo 1125 delCodigo Civil, en relation con el articulo 1128 del mismo codigo. La conclusion del Honorable Juzgado en una palabra, y con el mejor respeto, equivale a sancionar, que el demandante se hiciera justicia para si mismo'."

Since appellant caused this case to be elevated to this Court where no questions of fact may be allowed, we construe the above statement as a waiver on his part of the question of fact therein indicated to rely his appeal mainly upon the question of law therein specified.

The facts as found by the trial court are the following. A judgment having been secured by plaintiff Eusebio S. Millar in the justice of the peace court of Tayabas against defendant Doroteo Nadres for the sum of P558.14, the provincial sheriff, pursuant to a writ of execution, sold at public auction the two parcels of land belonging to said defendant and plaintiff was the highest bidder for the amount of the judgment. Defendant failed to redeem the property within the time prescribed by the rules, and on March 8, 1934, a final deed of sale was executed in plaintiff's favor and thereafter transfer certificates of title were issued to him. Subsequently, upon defendant's request, plaintiff accorded him an option to repurchase the two parcels of land until December 31, 1934. In November of same year, defendant paid P200 on account but failed to pay the balance until the period of option expired. On defendant's second request, plaintiff renewed the option to repurchase the property, the option to expire on April 30, 1938, but subject to the condition that the balance would carry an interest of 12 per cent per annum and that upon defendant's default, the option would be automatically cancelled and that whatever defendant might have paid would be treated as rentals of the property to be computed at the rate of P20 per month

from September, 1936. In accordance with this new agreement, defendant made a second payment of P200 in November, 1935, but having failed to pay the balance within the time stipulated, plaintiff instituted ejectment proceedings against him in the justice of the peace court of Tayabas. Defendant set up a claim of ownership and in view thereof, the parties mutually agreed to dismiss the ejectment proceedings and to submit the question of ownership to the Court of First Instance. The action to this effect was instituted in the latter court on March 26, 1940, and after due trial, judgment was rendered wherein defendant's option to repurchase the property was declared already forfeited. He was also condemned to pay plaintiff a monthly rental of P20 from May, 1938, and the P400 he had paid was ordered applied thereto. Finally, defendant was ordered to vacate the property and to deliver their possession to plaintiff. From this judgment defendant interposed the present appeal.

Defendant now contends that, after his first option had expired on December 31, 1934, he made on November 18, 1935, a second payment on account of the redemption price in the sum of P200; that as plaintiff accepted such payment there was an implied extension of the period for the right of redemption, and since that extension has not been determined then by both parties, the court, not the plaintiff alone, can fix the period. This contention is not borne out by the facts found by the trial court. In the trial court's decision it is stated that, upon the expiration of the first option on December 31, 1934, plaintiff gave defendant a second option to expire on April 30, 1938. There is nothing in the decision showing that an indefinite extension of time has ever been given impliedly the defendant. Furthermore, such an implied extension was without consideration in so far as plaintiff was concerned, and may be treated merely as a period of grace which may be made ineffectual upon failure of the debtor to comply with the terms thereof within a reasonable time. (Cf. *Cu Unjieng e Hijos vs. Mabalacat Sugar Co.*, 54 Phil., 976, 978-979). The first option given the defendant was for one year, and when for more than three years he failed to take advantage of the period of grace given him, plaintiff was more than justified in terminating such period of grace.

In this connection, a distinction should be drawn between the consideration for the option to repurchase and the consideration for the repurchase itself. The P400 paid by defendant to plaintiff were part of the repurchase price but not of the consideration for the option to repurchase. For such option and for the extensions given the defendant, no consideration at all has ever been paid to plaintiff. Thus, the provisions of article 1128 of the Civil Code do not apply.

There is another consideration in plaintiff's favor. When the first option was given the defendant, the latter bound himself to pay all the land taxes overdue on the property in question. Defendant failed to comply with such obligation and the property was sold at public auction. Defendant himself admitted that he did not appear at the public sale, but plaintiff appeared and purchased the property. Thus, plaintiff had a double title to the property, one derived from a judicial sale and the other from a tax sale. It is true that defendant paid also the over-due taxes to the municipal treasurer, but this he did after the property had been sold by the Government to plaintiff. Judgment is affirmed, with costs against appellant.

Yulo, C. J., concurs.

CONCURRING

BOCOBO, J.,

I concur in the result. The legal provision applicable is article 1504, Civil Code, which reads:

"ART. 1504. En la venta de bienes inmuebles, aun euando se hubiera estipulado que por falta de pago del precio en el tiempo convenido tendra lugar de pleno derecho la resolucion del contrato, el comprador podra

pagar, aun despues de expirado el termino, interin no haya sido requendo judicialmente o por acta notarial. Hecho el requerimiento, el Juez no podra concederle nuevo termino."

The contractual relation between plaintiff-appellee and defendant-appellant was that of seller and purchaser, respectively. There was a perfected contract of purchase and sale, and not a mere option to repurchase the two parcels of land in question, for these reasons:

- The period for redemption had expired, a final deed of conveyance had been executed and a new certificate of title had been issued in favor of plaintiff-appellee.
- Defendant-appellant paid on account of the purchase price in November, 1934, the sum of P200, and in November, 1935 another sum of P200.

But whether the contract herein was one of perfected sale or a mere option to repurchase, defendant-appellant in virtue of article 1504 has forfeited his rights under the contract because before defendant-appellant could complete payment of the purchase price, plaintiff-appellee had already rescinded the contract by suing defendant-appellant for the recovery of these parcels of land. This is the judicial demand referred to in article 1504. According to Manresa, the demand mentioned in this article is not for payment, "sino mas bien una notification autentica de que el vendedor opta por la resolucion del contrato." The dissenting opinion, therefore, seems to be mistaken when it states that plaintiff-appellee did not rescind the contract.

As the article provides, the courts can no longer grant the defendant-appellant a new period for payment. It is too late for him to expect another extension, inasmuch as plaintiff-appellee has already chosen to rescind the sale by bringing the action to recover the lands. In fact, Plaintiff-appellee has been extremely indulgent toward defendant-appellant by waiting for nearly four years after the first period agreed upon, which ended December 31, 1934. After forbearing for so long, he at last started judicial proceedings (first on November 9, 1938 before the justice of the peace court and later, on March 26, 1940, in the Court of First Instance) to recover the parcels of land in question. He was amply justified in finally taking this attitude.

This being so, it is immaterial whether or not defendant-appellant received the letter giving him another extension till April 30, 1938. It is enough that plaintiff-appellee brought suit to recover the lots after the second payment of P200 in November, 1935, but before defendant-appellee could pay the entire purchase price.

It is true that defendant-appellee offered to pay what he stated was the balance on November 16, 1938, but this offer was made after the ejectment proceedings had been instituted in the justice of the peace court of Tayabas on November 9 1938.

This view of the case which I take constrains me to depart from the conclusion in the majority opinion that a consideration was necessary for the option to repurchase and for the extensions therefor. Article 1504 grants the purchaser an extension after the period fixed for payment has expired. No additional consideration is necessary because the law itself creates the new period.

OZAETA J.,

I occur in this opinion of Mr. Justice Bocodo.

DISSENTING

PARAS, J.,

This Court has no jurisdiction over the appeal, Appellant's notice of appeal states that 10 per cent of the questions involved in the case are of fact and, indeed, his brief discusses issues of fact properly raised in the assignments of error. It matters not that said notice also alleges that the other 90 per cent refer to questions of law and, therefore, the appeal is being taken to the Supreme Court, for the reason that the parties cannot confer jurisdiction upon the court. Such act on the part of the appellant, far from constituting a waiver to raise questions of fact, was merely an error in procedure. As provided in section 138, paragraph 6, of the Revised Administrative Code, as amended by section 2 of Commonwealth Act No 3, this Court should certify, as it has been its practice, the case to the Court of Appeals where it properly belongs. But as the majority have chosen not to do so, I will state what in my opinion are the real facts of the case and the corresponding conclusion of law.

The property involved consists of two parcels of land, with improvements thereon, assessed at P9,000 in 1932 and P5,000 in 1935 (see Exhibit 12). By virtue of a final judgment of the justice of the peace court of Tayabas against the appellant, the original owner, said property was on November 23, 1932, sold at public auction in favor of the judgment creditor, the appellee, for the sum of P558.14. After the period of redemption had elapsed, a final deed of conveyance was executed and a new certificate of title issued in favor of the appellee. The following undated letter was thereafter addressed by the appellant to the appellee:

"Mr. EUSEBIO S. MILLAR

"SIR:

"I am writing to you through this letter and I request from you that my two parcels of land that have their original titles Nos. 29999, lot 6297 and certificate of transfer No. 3491, lot No. 7, Plan Psu. No 8361 that you have attached from me definite sale of the sheriff provincial of Tayabas dated March 8, 1934 and through your motion with the Court of First Instance of Lucena Tayabas for the approval of sale have had an order of the Hon. Judge C. M. Villareal of the 28th of March, 1934 for the said lots above mentioned in view of the facts that you are in Possession of the land and I recognize you as the owner of same. I would like to ask from you a little consideration to let me redeem my land although the time for the redemption has already expired and I shall pay you before the end of this year the sum * * * so that the above-mentioned two lots shall be again be mine. I shall also answer for the expenses for the notary and registrar of title for the said transfer.

"If you are agreeable with this I would like you to sign below this so that I will know your conformity and I shall be ready to pay for the overdue land taxes or assessment for the said lots.

"I am hoping that you will agree with little request and if the time comes until the end of this year 1934 and I don't pay you the said amount this request shall be of no value at all and I shall continue to recognize you as the owner of the said lots.

"Sincerely

(Sgd.) "DOROTEO NADRES"

At the bottom of the foregoing letter, the appellee signed his name after the note reading: "I agree with this request of Mr. Doroteo Nadres to the agreement preceding this letter." On November 30, 1934, the appellant paid on account the sum of P200. In spite of the judicial sale, the appellant never lost actual possession of the property and at and from the time the above-quoted letter was sent, he continued to be in such possession (t. s. n., pp. 17 and 53).

In my opinion the agreement entered into between the appellant and the appellee is one of purchase and sale of the property, followed by physical possession on the part of the appellant and partial payment by the latter of the stipulated price, P558.14 (t. s. n., p. 10), to the appellee. It appears further that, notwithstanding the expiration of the time for the payment of the purchase price, no court action was taken by the appellee who, on the contrary, gave an extension. As a matter of fact, the appellant made another payment of P200 on November 18, 1935, and the receipt therefor signed by the appellee states:

"Tay Nov 18 1935

"Received from Mr. Doroteo Nadres of Tayabas, Tayabas the sum of (P200) pesos twohundred only by cash. For credit to his account in two lots Nos. 7-PSU-8361 and 6297 of the Cad. Survey of Tay.

"THE PEOLPE'S GROCERY

"Eusebio S. Millar

(Sgd.) "By: Eusebio S. Millah."

The relations between the parties had been cordial and to some extent they undertook common business enterprises until November, 1938, when trouble arose between them. This seems to be the reason for the stand now taken by the appellee and for the filing of the complaint in the present case on March 26, 1940. Indeed, when the appellant, on November 16, 1938, offered to pay to the appellee what he thought was the exact unpaid balance of the purchase price before the complaint was brought, the appellee refused to accept the payment, claiming then that he was the absolute owner of the property.

It is alleged by the appellee that sometime before the appellant offered to pay the unpaid balance of his account, the former had written a letter to the appellant intimating that, if the balance of P424.14 was not paid in full on or before April 30, 1938, the agreement to convey would be deemed cancelled and any payment theretofore made by the appellant would be considered as rentals for the property at the rate of P20 a month. Receipt of the alleged letter sent, according to the appellee, by ordinary mail, is denied by the appellant. I am inclined to believe the latter, as it appears that all other letters were sent by registered mail; and it is hard to suppose that the appellee would depart from such practice in connection with the alleged letter designed especially to alter the agreement of the parties. Even admitting, however, appellee's allegation, the conditions imposed in the letter cannot be enforced against the appellant who has never agreed thereto.

The appellant might have defaulted in completing the payment of the purchase price but the Proper remedy of the appellee was to ask for either the fulfilment of the contract or its rescission, of which he had failed to avail himself. Two members of the Court in concurring with the majority opinion invoke article 1504 of the Civil Code which sanctions a pacto comiso. There is no such clause here, and even if there were, this Court has held in the case of *Ocejo, Perez & Co. vs. International Bank* (37 Phil., 631), that "the election of the seller to demand a rescission of a sale does not in itself operate to revest the title in him, if it has passed to the seller, or produce the resolution of the contract, if still executory. The right to a rescission is not absolute, but is subject to the power of the court, in its discretion, to allow the buyer to make payment, notwithstanding the election of the seller to demand rescission. Where rescission is permitted the operative act which produces the resolution of the contract is the decree of the court."

Inasmuch as there was an offer to settle appellant's account long before the present action was instituted (see letter, dated November 16, 1938, Exhibit D), and the parties disagreed as to its exact amount principally due to the rate of interest that should be paid, I deem it more equitable and just, under all the circumstances of this case, to merely sentence the appellant to pay the exact balance of the purchase price plus the incidental expenses still due and owing from him to the appellee who, upon receipt thereof, should in turn execute a deed of conveyance Or

transfer of the property in question in favor of the appellant. While it appears that the property had been seized by the Government for nonpayment of taxes, the appellee paid on account of the redemption price the sum of P96.38 before the expiration of the period of redemption (see Exhibit V-1). He, however, did not make any additional payment, and the municipal treasurer of Tayabas allowed the appellant to pay the balance of P288.95. As stated in his letter the outstanding account is as follows:

"Intereses al 6 por ciento sobre la suma de P565.63, desde Noviembre 23 de 1932 hasta Noviembre 30 de 1934; dos años y 7 días

P 68.56

Intereses al 6 por ciento sobre la suma de P365.63, desde Noviembre 30 de 1934 hasta Noviembre 18 de 1935, 11 meses y 18 días

21.93

Intereses al 6 por ciento sobre la suma de P165.63, desde Noviembre 18 de 1935 de P165.63, desde Noviembre 18 de 1935 hasta Noviembre 18 de 1938, cuatro años

39.75

Cantidad remanente de la deuda de P565.63, para la redención y recompra de las parcelas de los Títulos Nos. 3491 y Catastral No. 29999 del Registro de Tayabas, deducidos los P200 pagados en Noviembre 30, 1934, y P200 en Noviembre 18 de 1935

165.63

Gastos de abogados, mociones y otros, señalados por el Sr. Eusebio S. Millar

43.20

P339.07

"(Salvo cualquier error de cuenta y computación.)"

In addition, the appellant stated:

"P ¿Esta usted dispuesto a añadir al ofrecimiento de pago consignado en el Exhibit 2-C, el pago de amillaramiento que ha hecho el demandante el año 1940?—R. Yo debo pagar porque el pago al tesorero.

* * * * *

P. El demandante ha dicho aqui que para transferir los titulos a su nombre en el catastro, ha pagado el en el catastro una cantidad por cada titulo; ¿esta usted dispuesto a añadir al ofrecimiento de pago, lo que el ha pagado?—R. Si, señor, si me presenta el recibo de la cantidad, estoy dispuesto apagar." (t.s.n. pp. 54-55.)

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