

ROSARIO LIMKAKO AND JOSE LIMKAKO, PLAINTIFFS AND APPELLANTS, VS. NARCISA F. DE TEODORO AND. HER HUSBAND JOSE TEODORO, JR., DEFENDANTS AND APPELLEES.

G.R. No. 48914. August 11, 1943

Ponente: OZAETA, J.

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OZAETA, J.:

This appeal was brought directly to this Court from the Court of First Instance because it involves only a question of law. The decision appealed from states the facts in Part as follows:

"Plaintiffs and Margarita David were co-owners pro indiviso of properties situated at Nos. 755-757-763 and 771 Soler St., Manila, the former owning two-thirds and the latter one-third. Plaintiffs mortgaged their two-third part of the properties to Margarita David for P10,500, plus the agreed interest, and the latter, before her death, donated the mortgage credit to her two adopted daughters, Narcisa F. de Teodoro, wife of Jose Teodoro, Jr., and Priscila F. de Sison, wife of Attorney Carlos M. Sison, each to receive P5.250. One-third of the properties owned by Margarita David was, after her death, allotted to Narcisa F. de Teodoro by virtue of an extrajudicial partition entered into between her and Priscila F. de Sison, as universal heirness of the said Margarita David.

"On August 23, 1941, plaintiffs sold the mortgaged properties to Carlos M. Sison for only P5,600. "The conditions of the sale were: (a) that they should pay off the one-half share of Narcisa F. de Teodoro on the mortgage credit; and (6) that they should execute a deed of mortgage in the sum of P11,500 in favor of Carlos M. Sison on the real properties mentioned (see the corresponding deed attached to the record of the case).[1] The purchase price of P5,600 was paid by Carlos M. Sison in a certified check issued by him in favor of the plaintiffs which bears No. 79824

"After the sale of the mortgaged properties, plaintiffs informed Narcisa F. de Teodoro of their desire to pay off her share in the mortgage credit, and, upon refusal of the latter to accept the offer, indorsed the check No. 79824 to her, consigned it in the office of the clerk of this court, who, in turn, deposited the check in the Insular Treasury as fiduciary funds. Narcisa F. de Teodoro refused to accept the offer on the ground that she, being the co-owner of the mortgaged property in one-third part thereof and not Carlos M. Sison, she has a preferential right to the sale. This action was brought by the plaintiffs to compel the defendants Narcisa F. de Teodoro and her husband Jose Teodora, Jr., to accept the check in payment of their share in the mortgage credit, and the complaint was filed" for them by Carlos M. Sison as their attorney."

It should be added that the mortgage fell due on September 1, 1941, on which date the plaintiffs deposited with the clerk of court PNB certified check No. 79824 for P5.600, representing the principal and interest due as of that date to the defendant Narcisa F. de Teodoro as her share in the mortgage credit.

This action was commenced by the plaintiffs as mortgagors on the same date, September 1, 1941. On October 15, 1941, after an unsuccessful attempt to have the complaint dismissed, the defendants answered said complaint, insisting that as co-owners of the mortgaged property they had "the prior right to purchase" it from the plaintiffs

for the same sum of P5,600," and prayed among other things that the complaint be dismissed and that the defendants "be given a reasonable time within which they may exercise their right to purchase the above property for the same sum of P5,600, Philippine currency."

In August, 1942, before the case was called for trial, the defendants manifested to the court their readiness and willingness to accept the payment offered by the plaintiffs "instead of upholding and insisting on their right to acquire by purchase one-half of the properties involved in the deed of mortgage, inasmuch as they were "presently in bad need of cash, occasioned by the existing situation, to meet the obligations due the Government"; but it turned out that the amount deposited by the plaintiffs cannot be withdrawn from the National Treasury for lack of appropriation. Wherefore, the defendants prayed the court to order the plaintiffs "to deliver in lieu of the certified PNB check in the amount of P5,600 the total sum of P5,703.90 in cash to the herein defendants, with interest at 10 per cent from September 2, 1942, up to the date of payment, with costs against the defendants."

On August 29, 1942, the parties submitted the case upon a stipulation of facts, and thereafter the trial court rendered its decision whereby it held that the defendants cannot be compelled to "accept the valueless check in payment of their share in the mortgage credit" and dismissed the complaint with costs against the plaintiff "reserving to the defendants the right to foreclose mortgage against both the plaintiffs and Carlos M. Sison," as well as the action set up in their cross-complaint referring to the annulment of the sale to Carlos M. Sison and the purchase of the property by the defendants from the plaintiffs.

The question to decide is whether or not the consignation of payment made by the plaintiffs was valid. Under article 1176 of the Civil Code, if a creditor to whom tender of payment has been made should refuse without reason to accept it, the debtor may relieve himself of liability by the consignation of the thing due. "In order that the consignation of the thing due may release the obligor, previous notice thereof must be given to the persons interested in the performance of the obligation." (Article 1177.) "Consignation shall be made by the delivery of the things due to the court, accompanied by site proof of tender, when required, and of notice of the consignation in other cases. After the consignation has been, made the persons interested shall also be notified thereof." (Article 1178.)

We deduce from the stipulated facts that there was a tender of payment by the plaintiffs of the amount due to the defendants and a refusal of the latter to accept it. In the words of the stipulation, "the defendant (Narcisa F. de Teodoro) believing that she has a preferential right to pay off the share of Priscila F. de Sison being coowner of the property, offered to pay off the share and interest of her co-mortgagee, Mrs. Priscila F. de Sison, but plaintiffs insisted to pay defendant instead." In other words, Mrs. Teodoro refused to accept the payment because instead of canceling her part of the mortgage she wanted to acquire her comortgagee's (Mrs. Sison's) interest therein. And that was because Mrs. Teodoro, being a coowner of the mortgaged property, wanted to buy the mortgagors' interest therein and did not want them to sell it to Attorney Sison.

We are of the opinion that the reason thus adduced by Mrs. Teodoro for her refusal to accept the payment was not valid. Her right as a coowner of the property, in case of its sale to a third person, was not to prevent or annul the sale but to redeem the property at the same price within nine days counted from the date of the record of the transfer in the registry of deeds, or in default thereof, from the time the redemptioner may have had knowledge of the sale. (Articles 1521, 1522, and 1524 of the Civil Code.) The plaintiffs had the right to sell their interest in said property to a third person (article 399), without prejudice to the right of Mrs. Teodoro to redeem it from the purchaser (article 1522). Consequently, the plaintiffs had the right to pay off Mrs. Teodoro's participation in the mortgage when it fell due and to consign the amount in court upon her refusal to accept the payment. Thus the first requisite of consignation—tender of payment and refusal to accept it without reason— appears to have been fulfilled. (Article 1176.)

The second requisite is, that previous notice of the consignation be made to the persons interested in the performance of the obligation. (Article 1177.) The record is silent on this point, but no attack on the consignation is made by the defendants upon that score. The defendants assail the right of the plaintiffs to make the consignation because they deny the right of the plaintiffs to pay off their (defendants') participation in the mortgage; and that contention, as we have seen, is untenable.

The third requisite is, that after the consignation has been made, the persons interested shall also be notified thereof. This was fulfilled by the service of summons upon the defendants together with a copy of the complaint herein.

The defendants did not in their answer question the validity of the consignation on the ground that the amount consigned did not cover all the interest due up to September 1, 1941; but subsequently, in their amended manifestation and petition dated August 14, 1942, the defendants claimed that the total amount due was P5,703.90 and not P5,600. There is no stipulation, however, upon that point except the following:

"(8) That defendant, in her present need for funds to pay the Government and to promote family harmony, especially in this grave period of uncertainty and putting aside the merits of the pending case, petitioned this Honorable Court to allow them to withdraw this check No. 79824 of the Philippine National Bank for P5,600 without prejudice to whatever interests are not yet paid by the plaintiffs as per Amended Manifestation and Petition dated, August 14th, 1942."

Inasmuch as the defendants did not base their refusal to accept the payment tendered on the ground that it was not the full amount due but only on the ground that the plaintiffs had no right to make the payment, we believe the consignation of payment cannot be nullified on the ground of insufficiency of the amount. Defendants' reservation of the right to claim from the plaintiffs the deficiency, if any, should, however, be maintained.

The trial court seems to have labored under the misapprehension that the PNB certified check deposited by the plaintiffs became valueless on account of the war. We say that is a misapprehension because, as stated by the trial court itself in the earlier part of its decision, the clerk of court deposited said check in the National Treasury as a fiduciary fund. In other words, the amount of said check was actually paid by the bank to the National Treasurer and formed part of the fiduciary fund of the Government. If it cannot be collected now, it is only because there is yet no appropriation by the present administration for the payment of said trust fund. In the last analysis, the controversy boils down to whether it is the plaintiffs or the defendants who should buffer the inconvenience of petitioning and waiting for the Government to make the payment.

The defendants contended in the lower court that the plaintiffs had no more right or interest in the subject matter of the complaint because they had sold the mortgaged property to their attorney, Carlos M. Sison, before the commencement of the present action. That contention was correctly overruled by the trial court because, in the first place, the sale was conditional and, in the second place, even after the sale the plaintiffs, as mortgagors and debtors of the defendants, continued to be liable to the latter until the mortgage was canceled. Therefore, the plaintiffs had the right to compel the defendants to accept the payment and release them from further liability.

It results from the foregoing considerations that the consignation of payment made by the plaintiffs was valid and that consequently they were relieved of liability to the defendants for the sum of P5,600; and in the assumption that that was all the amount due as the principal and interest of Mrs. Teodoro's participation in the mortgage up to September 1, 1941, Mrs. Teodoro should be ordered to release and cancel her part of the mortgage. The consignation of said amount operated as payment thereof to her, and therefore it is she, and not the plaintiffs, who has the right to and should claim it from the Government.

Wherefore, the judgment appealed from is reversed, and it is hereby ordered that the case be remanded to the

court of origin with instruction to receive proofs on defendants' reserved claim that in addition to the said sum of P5.600 there was due to them on account of interest up to September 1, 1941, the sum of P103.90, and to enter another judgment accordingly in conformity with this opinion; i. e., ordering the defendants, upon payment of such additional amount for interest as may be proven, to cancel their share of the mortgage and to return the corresponding certificate of title to the plaintiffs. Neither party shall recover costs from the other in both instances. So ordered.

Yulo, C. J., Imperial, and Hontiveros, JJ., concur.

PARAS, J.:

I concur in the result

[1] The document referred to says "that this sale shall become null and void" when the conditions mentioned were fulfilled.

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