

JUAN RETES, PLAINTIFF AND APPELLEE, VS. DAMASO SUELTO, DEFENDANT AND APPELLANT.

G.R. No. 6591. October 24, 1911

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 29th of January, 1909, the plaintiff filed a complaint against the defendant for the purpose of recovering the possession of five parcels of land, which were particularly described in paragraph two of the complaint, together with damages for the unlawful detention of the same.

The facts alleged in the first three paragraphs of the complaint, which were admitted to be true by the defendant, are as follows:

"First. That the plaintiff and defendant are citizens of the barrio of Tampe, municipality of Ayuquitan, of the Province of Oriental Negros.

"Second. That upon the 16th of March, 1904, the plaintiff received of the defendant as a loan the sum of P408, to guarantee the payment of which sum he mortgaged the following described parcels of land:

"(a) In the sitio of Tandayat, municipality of Ayuquitan, with an area of eight gantas of shelled corn, planted in coco palms, bounded on the north by land of Crisanto Retes, Matias Rada, and Laurencio Salatandor, on the south by land of Gabina Salatandor, and on the west by that of Cipriano Cines.

"(b) In the sitio of Tandayat, municipality of Ayuquitan, with an area of two gantas of shelled corn, planted in coco palms, bounded on the north by land of Rufino Cines, on the east by the seashore, on the south by land of Higino Catipay, and on the west by the highway.

"(c) In the sitio of Tandayat, municipality of Ayuquitan, with an area of twenty gantas of shelled corn, planted in coco palms, bounded on the north by land of Antonio Cid, on the east by the highway, on the south and west by a mangrove swamp.

"(d) In the sitio of Tampe, municipality of Ayuquitan, with an area of half a cavan of shelled corn, planted in coco palms, bounded on the north by land of Cipriana Belocora, on the east by the seashore, on the south by land of the deceased Marcelino Estorado, and on the west by land of Sinforosa Silay.

"(e) In the sitio of Tampe, said municipality of Ayuquitan, with an area of one ganta of shelled corn, with coco and buri palsas, bounded on the north by land of Balbino Binondo, on the east by the highway, on the south by (land of) Matea Retes, Venancio Bandoquillo, and Damian Binondo, and on the west by (land of) Geronimo de la Pena.

"Third. That the debt and the conditions of the mortgage appear in a simple document, in which it also appears that the defendant should gather all of the fruits of said parcels of land as long as the plaintiff failed to satisfy the said debt, provided that the payment should not be made before the expiration of one year nor after four years, with the condition that the plaintiff and defendant should pay in equal parts the taxes due upon the said

land until the entire debt should be paid."

It appears from the evidence adduced during the trial of the cause that the plaintiff on the 24th of February, 1908, went to the house of the defendant for the purpose of paying to the defendant the sum due on the said alleged mortgage, amounting to P408, and that the defendant refused to receive the said sum and to return to the plaintiff the lands in question, which had been given as a guaranty for the payment of said sum.

It appears also from the record that on or about the 5th of March, 1908, the plaintiff cited the defendant to appear before the justice of the peace of the pueblo of Ayuquitan, for the purpose of making a judicial offer to pay the said indebtedness and to secure the return of the possession of the lands in question. The evidence shows that the plaintiff, in the presence of the justice of the peace and others, offered to pay to the defendant, in cash, the said sum of P408. The defendant refuse to accept the said money, whereupon the justice of the peace directed the plaintiff to deposit the said sum with Felipe Remollo, president of the said pueblo, to be held for the benefit of the defendant and to be paid to him any time he might wish to receive it.

The record also shows that the defendant remained in possession of said land described in the complaint and continued to gather the crops, from the date on which the plaintiff deposited the amount due on the indebtedness between himself and the defendant, up to the time the action was commenced in the lower court.

The lower court found that the value of the crops gathered by the defendant after the plaintiff had offered to return the money, amounted to P500. The money which the plaintiff had deposited by the direction of the justice of the peace in the hands of Felipe Remollo, was still in the possession of the said Remollo at the time of the trial.

From the record it appears that the plaintiff had done all that he was required to do for the purpose of securing the return of the possession of the land in question and was entitled to the possession of the same from and after the date on which he made a legal offer to pay the amount of the indebtedness due the defendant. (Lafont vs. Pascasio, 5 Phil. Rep., 391.) When a person having the right of repurchase under a contract of pacto de retro makes a bona fide offer to repurchase, in accordance with the agreement and tenders the necessary amount of money, he has done all the law requires of him to preserve his right and to entitle him to the possession of the property. (Villegas vs. Capistrano, 9 Phil. Rep., 416; Fructo vs. Fuentes, 15 Phil. Rep., 362.)

The lower court rendered a judgment against the defendant and in favor of the plaintiff in the sum of P500, this being the value of the crops harvested by the defendant from the lands in question after the plaintiff had offered to repurchase the same, together with the return of the possession of the land.

It appears that the said P408 was still in the hands of Felipe Remollo at the time of the trial. The defendant has a right to receive from Felipe Remollo the said P408.

We find nothing in the record that justifies a modification of the conclusions of the lower court. Therefore the judgment of the lower court is hereby affirmed with costs.

Torres, Mapa, Carson, and Moreland, JJ., concur.

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