Supreme Court E-Library

is that of appeal and not certiorari is a rule too elementary to be discussed herein. This rule, however, is not without exceptions for to insist on its application in all cases may not always serve the ends of justice. The object of procedural law is to facilitate the adjudication of conflicting claims. Thus, although an appeal is available, certiorari still lies when such appeal does not prove to be a more speedy and adequate remedy." xxx

Upon the foregoing considerations, I vote to grant the Petition and to set aside the Order of default.

FIRST DIVISION

[G.R. No. L-27289. April 15, 1985]

JUAN AGUINALDO, substituted by MARINA and PRIMITIVO AGUINALDO, *plaintiffs-appellants, vs.* JOSE ESTEBAN and FRANCISCA SARMIENTO, *defendants-appellees.*

SYLLABUS

CIVIL LAW; CONTRACTS; DEED OF TRANSFER; LACK OF CONSIDERATION; RENDERS DOCUMENT NULL AND VOID; CASE AT BAR.— It is significant to note that herein plaintiff-appellant was not even a witness in the document when his father who is of low intelligence, illiterate and could not even sign his name, affixed his thumbmark in the document in question. It would appear that the execution of the contract was made behind his back and/or without giving notice to him. Stated differently, if the transaction was on the level, why was not plaintiff-appellant asked to sign as a witness to the document. It may be true that the contract was read to the old man but it is doubtful if he understood the meaning of its contents. The contract was so written that anyone could believe he was only giving his property by way of mortgage, not as a sale. For instance, in paragraph 2 thereof, it reads "x x x ay

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isinasangla at patuloyan ipaaari ko sa nasabing magasawa ang lupang nabanggit ko sa itaas, x x x." In some Tagalog provinces the word "Sangla" means "Bilihan Mabibiling Muli" or "Pacto de Retro." By this contract, the vendee-a-retro takes possession of the property as owner until the same is repurchased or redeemed. On the other hand, mortgage is understood as "Prenda." In the case at bar, defendants-appellees took possession of the property on March 26, 1955 when they started giving Jose Aguinaldo the fifty centavos (P0.50) a day. It would appear then that the money which he has been receiving from the Estebans come from his own property. In effect, there was no consideration for the transfer of the property — be it sale, mortgage or *Pacto Comisario*.

APPEARANCES OF COUNSEL

Crisostomo M. Diokno for plaintiffs-appellants.
Andres Franco for defendants.

D E C I S I O N

RELOVA, *J.*:

In Civil Case No. 6977, the Court of First Instance of Rizal declared the contract, entitled: "Sanglaan ng Isang Lupa na Patuluyan Ipaaari," valid and binding contract of sale and dismissed the complaint as well as the counterclaim with costs against the plaintiff. From said judgment of the lower court, appeal was taken to this Court, "the same involving, as it does, a question of law." (p. 25, *Rollo*)

Plaintiff Juan Aguinaldo in his complaint alleged, among others, that on June 23, 1958, defendants, through fraud, deceit and misrepresentations and exercising undue pressure, influence and advantage, procured the thumbmark of Jose Aguinaldo, father of plaintiff, to be affixed on subject contract; that defendants caused the cancellation of Tax Declaration No. 4004, Rizal (1948) in the name of Jose Aguinaldo and the issuance in lieu thereof of Tax Declaration No. 10725-Rizal in the names of defendant spouses; that the document in question on which Jose Aguinaldo

Supreme Court E-Library

affixed his thumbmark is not true and genuine, as the thumbmark appearing thereon is a forgery; that it contains terms and conditions which partake the nature of "pacto comisario" which render same null and void; that it does not fix a period for the payment of the loan nor does it state the duration of the mortgage; that plaintiff is the sole successor-in-interest and legal heir of Jose Aguinaldo who died intestate in October 1960; that defendants having no right to win and possess the property in question are withholding the possession thereof from plaintiff and consequently deprived plaintiff of the fruits of said property; and that by reason of the wilful and malevolent acts of defendants, plaintiff suffered moral and actual damages in the amount of P4,000.00.

In their answer, defendants claim absolute ownership of subject property upon the death of Jose Aguinaldo in October 1960 on the theory that the document in controversy is one of sale and not one of mortgage.

The parties, through their respective counsels, agreed to submit the case for decision solely on whether the contract in question, Annex "A" of the complaint, is one of mortgage or of sale.

When plaintiff Juan Aguinaldo died intestate on August 6, 1965, his heirs, namely: Marina and Primitivo, both surnamed Aguinaldo, petitioned the trial court that they be substituted as party plaintiffs in lieu of their deceased father.

It is the position of plaintiffs-appellants that the document in question, Annex "A" of the complaint, is null and void because it contains stipulations which partake of the nature of "pacto comisario." On the other hand, the defendants contend that the contract is a valid sale and, as such, it passed the title to them.

Hereunder is the contract in question:

"SANGLAAN NG ISANG LUPA-CANAVERAL NA PATULOYAN IPAAARI

HAYAG SA SINO MAN MAKAKABASA:

"Na, ako JOSE AGUINALDO, Pilipino, balo, may karampatan gulang, tubo at naninirahan sa Bo. Bambang, Tagig, Rizal, Kapuluan Pilipinas, sa pamamagitan nito ay

Supreme Court E-Library

ISINASAYSAY KO AT PINAGTITIBAY:

"1. Na, sarili at tunay kong pagaari dahil sa ipinagkaloob sa akin ng aking amain Martin Concepcion (patay) ang isang parcelang lupa-canaveral, at ang lupang ito ay napagkikilala at naliligiran ng mga pagaaring lupa ng mga kahangganan kagaya ng mga sumusunod:

'Isang parcelang lupa-canaveral na nasa pook ng Bo. Bambang, Tagig, Rizal, at siyang lupang nakatala sa Tax Declaration No. 4004-Rizal (1948), sa Tanggapan ng Tasador ng lupa sa lalawigan ng Rizal, Pasig, Rizal, at valor ameliarado ng P70.00 at napaloob sa mga pagaaring lupa ng mga kahangganan kagaya ng mga sumusunod: Sa Norte, Antonio Silvestre at Pedro Sarmiento; sa Este, Domingo Luga; sa Sur, Dionisio Dionisio at Pedro Sarmiento, at sa Weste, Tomas Cruz'

"2. Na, alang-alang sa halagang LIMANG DAAN AT APATNAPUNG PISO (P540.00), salaping Pilipino na sa kasalukuyan ay ating ginagamit, ay natanggap ko na, sa hindi biglaan kung hindi LIMANGPUNG SENTIMOS (P0.50) lamang araw-araw magbuhat pa nuong Marzo 26, 1955, at ang kabuuang halaga ng halagang nabanggit sa itaas nito, sa oras na ito, ay kusang loob kong tinanggap sa magasawang JOSE ESTEBAN AT FRANCISCA SARMIENTO, mga Pilipino, may karampatan gulang, naninirahan at may padalahan sulat sa Bo. Bambang, Tagig, Rizal, ay ISINASANGLA AT PATULOYAN IPAARI KO sa nasabing magasawa ang lupang nabanggit ko sa itaas, sa aming mga kasunduan kagaya ng mga sumusunod:

"NA AKO, JOSE AGUINALDO AY PAKAKANIN HABANG NABUBUHAY NG MAGASAWANG JOSE ESTEBAN AT FRANCISCA SARMIENTO, O NG KANILANG KAHALILI AT TAGAPAGMANA, AT BILANG KABAYARAN NAMAN SA HALAGANG LIMANG DAAN AT APATNAPUNG PISO (540.00) AT PAGPAPAKAIN SA AKIN NG MAGASAWANG JOSE ESTEBAN AT FRANCISCA SARMIENTO, ORAS NA AKO AY MAMATAY SILA (JOSE ESTEBAN AT FRANCISCA SARMIENTO) NA ANG LUBOSAN MAGMAMAYARI NG AKING LUPANG ISINANGLANG ITO SA KANILA, SAPAGKAT ANG LAHAT NG AKING KARAPATAN SA LUPA, NGAYON PA AY IPINAGKAKALOOB KO SA KANILA SA ILALIM NG KASUNDUAN.'

"3. Na, ang lupa-canaveral na isinasangla ko sa pamamagitan ng kasulatan ito na ipaaring patuluyan ay pinamomosiyonan ng mag-asawang Jose Esteban at Francisca Sarmiento, nuong pang Marzo 26, 1955.

Supreme Court E-Library

"4. Na, ang lupang akin binabanggit sa kasulatan ito, ay hindi ko ipinagkakautang sa kanino man tao, na maliban sa magasawang Jose Esteban at Francisca Sarmiento.

"5. Na, ang lupa kong ito na siyang nakatala sa Tax Declaration No. 4004-Rizal (1948), ay hindi nakatala sa bisa ng Batas Blg. 496 o maging sa Hipotecaria Española, at napagkasunduan ang kasulatan ito, ay nais ipatala sa bisa ng Batas Blg. 3344, at sinusugan.

"SA KATUNAYAN NG LAHAT KONG IPINAHAYAG SA DOKUMENTONG ITO, ay inilagda ko ang aking pangalan at apelyedo dito sa Lunsod ng Maynila, Pilipinas, ngayong ika _____ ng Hunyo 1958, sa harap ng dalawang saksi.

(Thumbmark)
JOSE AGUINALDO
Nagsangla

SUMASANGAYON SA MGA ALINTUNTUNIN:

(Sgd.) JOSE ESTEBAN
Pinagsanglaan

(Sgd.) FRANCISCA SARMIENTO
Pinagsanglaan

MGA SAKSI:

(Sgd.) Illigible (Sgd.) Eugenia S. Relon

ACKNOWLEDGMENT"
(pp. 7-10, Record on Appeal)

There is merit in the appeal.

On the issue as to whether or not the subject contract is one of sale or of mortgage, an inquiry into the surrounding facts would disclose the intention of the parties and thereby determine the truth of plaintiff-appellant's allegation that his father, Jose Aguinaldo, was misled into affixing his thumbmark on the said contract.

Plaintiff-appellant, Juan Aguinaldo, is the son of Jose and it is indeed intriguing why defendants-appellees, who are not related at all to the old man, would give him fifty centavos (P0.50) everyday beginning May 26, 1955. The contract in question

Supreme Court E-Library

was executed in June 1958, or after three (3) years from the time the daily amount of half-a-peso was given the old man. Thereafter, the defendants-appellees' saw to it that the recipient of the money would execute the contract, entitled: "Sanglaan ng isang lupang-canaveral na Patuluyang Ipaaari."

It is significant to note that herein plaintiff-appellant was not even a witness in the document when his father who is of low intelligence, illiterate and could not even sign his name, affixed his thumbmark in the document in question. It would appear that the execution of the contract was made behind his back and/or without giving notice to him. Stated differently, if the transaction was on the level, why was not plaintiff-appellant asked to sign as a witness to the document. It may be true that the contract was read to the old man but it is doubtful if he understood the meaning of its contents. The contract was so written that anyone could believe he was only giving his property by way of mortgage, not as a sale. For instance, in paragraph 2 thereof, it reads "x x x ay isinasangla at patuloyan ipaaari ko sa nasabing magasawa ang lupang nabanggit ko sa itaas, x x x." In some Tagalog provinces the word "Sangla" means "Bilihan Mabibiling Muli" or "Pacto de Retro." By this contract, the vendee-a-retro takes possession of the property as owner until the same is repurchased or redeemed. On the other hand, mortgage is understood as "Prenda."

In the case at bar, defendants-appellees took possession of the property on March 26, 1955 when they started giving Jose Aguinaldo the fifty centavos (P0.50) a day. It would appear then that the money which he has been receiving from the Estebans come from his own property. In effect, there was no consideration for the transfer of the property - be it sale, mortgage or *Pacto Comisario*.

WHEREFORE, the decision of the trial court, dated August 16, 1966, is REVERSED and the contract "Sanglaan ng Isang Lupa-Canaveral na Patuluyan Ipaaari" is declared null and void, and the deceased plaintiff Juan Aguinaldo is declared as the true and lawful owner of subject property.

Supreme Court E-Library

Further, defendants-appellees are hereby ordered to transfer and deliver the possession of subject property to the said deceased plaintiff Juan Aguinaldo's heirs, Marina Aguinaldo and Primitivo Aguinaldo, who substituted him as plaintiffs in this case and/or their respective heirs and successors; and the Provincial Assessor of Rizal is directed to cancel Tax Declaration No. 10725 (Rizal) in the name of defendants-appellees, Jose Esteban and Francisca Sarmiento, and in lieu thereof issue another in the name of the deceased plaintiff Juan Aguinaldo's heirs, Marina Aguinaldo and Primitivo Aguinaldo.

SO ORDERED.

Teehankee, (Chairman,) Plana, Gutierrez, Jr., de la Fuente, and *Alampay, JJ.*, concur.

Melencio-Herrera, J., no part.

FIRST DIVISION

[G.R. No. L-43795. April 15, 1985]

JOSE NEGRE, *petitioner, vs.* WORKMEN'S COMPENSATION COMMISSION and MAXIMA VDA. DE SOLIVIO, for herself and in behalf of her minor children, namely, VIVIAN, MIGUEL, JR., and LEONARDO, all surnamed SOLIVIO, *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATIONS; WORKMEN'S COMPENSATION ACT; CLAIM FOR DEATH COMPENSATION BENEFITS; DECEASED AN EMPLOYEE OF PETITIONER, NOT AN INDUSTRIAL PARTNER; CASE AT BAR.**— We have defined an employee to be "x x x any person in the service of another under a contract for hire, express, or implied, oral or written." (Uy *v.* Workmen's Compensation Commission, 97 SCRA 255, and cases