1 Phil. 644

[G.R. No. 570. January 23, 1903]

ROBERTO ROA Y ALBURO, PLAINTIFF AND APPELLEE, VS. NICASIO VELOSO, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

In March, 1876, Don Antonio Roa presented to the Court of First Instance in Cebu a petition asking an extension of the time for the payment of his debts. A meeting of his creditors was accordingly called, the written proposition submitted to them by him was accepted by them, and approved by the court. The proceedings were taken in strict conformity with the provisions of articles 506 to 518 of the Ley de Enjuiciamiento Civil of 1855. Although that law was not in force in these Islands the court considered it as legal doctrine. The proposition accepted by the required majority of the creditors provided for an extension for five years; that Don Antonio Samson should guarantee the debts of Don Antonio Roa, and should have the administration of the latter's property during the five years, or such time as might be necessary for the payment of the debts. All of the property both of Roa and Samson was mortgaged to secure the performance of the obligations. The sixth clause of the proposition was as follows: "Don Antonio Samson may acquire for himself, for two-thirds of the estimated value expressed in the preceeding clause, the realty and all other property he may select, and as owner thereof he may convey or mortgage, but shall be a guarantor for the amount thereof and shall be liable to the creditors; whatever may be left over after the payment of all the credits which Samson may guarantee shall belong to Don Antonio Roa, and shall be devoted to the payment of his indebtedness to Dona Francisca Casa de Roa."

The order of the court approving the action of the creditors directed the property to be delivered to Antonio Samson.

Don Antonio Roa died in February, 1886. On May 19 of the same year Don Antonio Samson by a public writing conveyed the estate in question to the defendant. The purchase price

was a debt of the defendant against Roa for $1,800, which amounted at the date of the conveyance, with interest, to $4,800. The estate belonged to Antonio Roa, was included in the inventory of his property which he filed with his petition for an extension, and was appraised therein at $24,809.64.

In 1896 the plaintiff, a grandson and heir of Don Antonino Roa, commenced this action against the defendant, claiming that the conveyance of 1886 was insufficient to pass the title to the defendant, and asking that the estate be delivered to him for himself and his coheirs.

Judgment was rendered in the court below annul ing that conveyance, canceling the inscription, and directing the estate to be delivered not to the plaintiff but to the creditors. From this judgment the defendant appealed.

The determination of the appeal turns, in our opinion, upon the proper construction of clause 6, above quoted. We construe that clause as consisting of two distinct parts. By it Don Antonio Samson was given the right to buy for himself this ar any other property of Roa for two-thirds of the value placed upon it in the inventory. This provision is complete in itself, and it was intended to give Samson a right which otherwise he would not have, no administrator being able to buy for himself the property which he administers, a prohibition now contained in article 1459 of the Civil Code. The remainder of this clause is also complete in itself. It gives to Samson the right to sell, as owner, any of the property, accounting to the creditors for the price received. The construction claimed for by the appellee can not be sustained. He contends that the second part of the clause is a continuation of the first, and that it is only those goods which he has elected to take for himself at two-thirds of their appraised value that he has the right to sell as owner.

(1) Such a construction would render useless the second part of the clause. If he had acquired for himself this or any other estate at two-thirds of its value and had paid for it he would have had the right to dispose of it as owner, and no declaration to that effect was needed in the agreement,

(2) The words "*su importe*" are inconsistent with such construction. If they mean the two-thirds of the appraised value they are unnecessary, for it was of course assumed that Samson must answer to the creditors for said purchase price if he elected to take any property upon those terms. If they refer to the price received in a sale by Samson to a third person they would render the right of purchase given in the first part of no value; for, if

Samson took this estate at two-thirds of its value, that is, $16,000, and afterwards sold it for $20,000, he would have to account to the creditors for the whole $20,000. If he took if for $16,000 and sold it for $8,000 he still would have to account to the creditors for $16,000, for he had no right to take it for himself at all except on the payment of two-thirds of its value. The construction thus eliminates the words "*para si*" from the contract.

(3) The clause requiring what remains to be returned to Roa also indicates that the property was not to be kept intact, but that Samson was to have the right to sell it to pay the debts.

The language of the conveyance of 1886, delivered to the defendant, is entirely consistent with the view which we have taken of this clause. The grantor is therein described as follows:

> "The said Don Antonio Samson in bis said capacity as administrator, liquidator, and surety of the said Antonio Roa,and availing himself of the authority conferred upon him by the sixth clause of the said proposition * * *."

There is nothing whatever in the record to show what the state of accounts is between Samson and Roa or how many of the creditors have been paid. It may be that the plaintiff or the creditors have the right to demand of the heirs of Samson a statement as to his administration of the goods of Roa. But whatever rights of that kind they may have, they can exercise none versus the defendant. Under our construction of clause 6 Samson as administrator had the right to dispose of this estate. The conveyance of 1886 was sufficient at that time to transfer the title to the defendant. He is, therefore, the owner of the property.

The judgment is reversed and the action dismissed without costs.

Arellano, C. J., Torres, Cooper, Mapa, and *Ladd, JJ.,* concur.

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