1 Phil. 647

[G.R. No. 858. January 23, 1903]

FRANCISCO MARTINEZ, PLAINTIFF AND APPELLEE, VS. PEDRO MARTINEZ, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

In the decision in this case it is found as a fact that the titles to the steamer *Balayan* and the coasting vessel Ogoño are registered in the name of the defendant. It must be assumed from this that the defendant has the legal title to the vessels, as without it they could not be so registered.

These facts standing alone show that the defendant is the owner of the property.

Two other facts, however, appear in the decision which the appellee claims warranted the court below in deciding that the defendant was not the owner.

1. That court found that the money with which the vessels were purchased was furnished by the plaintiff, the father of the defendant. Does this fact make him the owner of them, the title having been taken and registered in the son's name?

The various ways in which the title to property may be acquired are stated in article 609 of the Civil Code.

The plaintiff never acquired the title to these vessels in any one of the ways therein described. He did not acquire it by donation or succession. He did not acquire it by means of any contract.

The court does not find that the father and son had between themselves any contract of any kind by virtue of which the son agreed to transfer the title to the father or to hold it for his benefit.

There is an allegation in the complaint that the defendant acted as the agent of the plaintiff in the purchase. This is denied in the answer and there is no finding in the decision which supports this allegation of the complaint.

There is only the bare fact that the price of property which was conveyed to the defendant by a third person was paid by the plaintiff. It can not be said that the law by reason of this fact transfers any title or interest in the thing itself to the plaintiff.

Article 1090 of the Civil Code provides that "obligations derived from the law are not to be presumed. Only those expressly provided for in this Code or in special laws are enforceable."

It is provided in article 161 of the same Code, relating to minors, that "the ownership or enjoyment of property acquired by a minor child with funds of his parents, pertain to the latter." This article does not apply to the present case, for the son was of age.

This is the only provision which we have found anywhere in the laws now in force that declares the property to belong to the person who paid the money,

Nor can such general doctrine be found in the former law. Law 49, title 5, *partida* 5, the effect of which is incorrectly stated in the brief of the appellee, expressly provided that property bought with another's money should not belong to the owner of the money except in certain enumerated cases of which this is not one.

Law 48, title 5, *partida* 5, also expressly provided that where one bought with his own money property the title to which he procured to be transferred to a third" person, such third person had the right to keep it by reimbursing the other for his outlay.

It may be true that the laws in some of the United States would in this case raise a resulting trust in favor of the plaintiff. But such laws are not in force here; and whatever other right the plaintiff may have against the defendant, either for the recovery of the money paid or for damages, it is clear that such payment gave him no title either legal or equitable to these vessels.

If there were evidence in the case which would have justified the court below in finding that the defendant acted as the agent of the plaintiff or that there was some other contract between them, he should have incorporated such findings in his decision.

Article 133 of the Code of Civil Procedure requires the court to file a written decision. If the

facts stated in that decision together with those admitted in the pleadings are not sufficient as a matter of law to support the judgment, it must be reversed, if excepted to.

The record, however, contains all the evidence and an examination of it shows that no such findings would have been warranted. As to the Balayato, it appears that the son had nothing whatever to do with its purchase. It was bought by the father with the money of the conjugal partnership, and the title by his direction placed in the son's name.

As to the Ogoño, the father's intervention in the purchase nowhere appears. He simply testified that it was bought with his money.

It is said that the court below found as a fact that the father was the owner of the vessels and that we can not disturb this finding because there was no motion for a new trial. This contention can not be sustained. The ultimate question in the whole case was: Who owned this property? The resolution of that question depended upon the application of legal principles to the facts connected with its acquisition and subsequent management. Those facts were that the father bought and paid for it, and that the titles to it were taken and registered in the son's name. A statement that by reason of these facts the father is the owner is a statement of law and not a finding of fact.

2. It was found as a fact that the father had exercised acts of ownership over the vessel. That finding is entirely consistent with the legal ownership by the son. The exercise of such acts could not transfer such ownership from the son.
3. There is in the record a letter written by the defendant to the plaintiff in which the latter is asked if he desires to sell the *Balayan*. This letter is not incorporated into the findings and we have no right to consider it. But, if we had, it would not in our opinion change the result. Such a letter might well have been written by a son to a father, both of them recognizing the fact that the son was the owner of the property as to which the inquiry made.
4. In conclusion we may say that even on the supposition that a written and recorded title to vessels may be overcome by parol evidence, that offered in this case was insufficient to accomplish such a result. As to the *Balayan*, there is nothing whatever to show why the father placed the title in his son's name. It may have been either as a gift or a loan. As to the Ogoño, there is the simple declaration of the father that he paid for it. This may have been either a gift or a loan.

The judgment is reversed and a new trial is granted with costs against the appellee.

Torres, Mapa, and *Ladd, JJ,* concur.

Arellano, C. J., did not sit in this case.

DISSENTING

COOPER, J.:

This action was brought by Don Francisco Martinez against Don Pedro Martinez, the appellant, for the recovery as owner of two certain vessels, the steamship *Balayan*, and the schooner Ogoño.

The plaintiff brings the suit for himself and in representation of his deceased wife, alleging that the ships were bought with funds belonging to the community estate.

The defendant in his answer claims that he is the exclusive owner of the ships, basing his right to such ownership upon their registration in his name in the office of the Captain of the Port, and further, that the ships were purchased with his individual money.

The first assignment of error is that "the court erred in adjudging the ownership of the property of the ships *Balayan* and Ogoño to Don Francisco Martinez, the latter not having presented written documents of the acquisition of said ships nor certificates of inscription in the registry."

I. This assignment of error raises the question of the sufficiency of the proof to sustain the judgment of the court below and requires an examination of the evidence taken in the court below and a trial of the questions of fact as to the ownership of the property.

Section 497 of the Code of Civil Procedure provides that in the hearings upon bills of exceptions in civil actions and special proceedings, the Supreme Court shall not review the evidence taken in the court below nor retry the questions of fact except as in that section provided, which are in the following cases:

(1) Where assessors have sat with the judge and both assessors are of the opinion that the findings of, fact and judgment are wrong and have certified their dissent.

(2) Upon the ground of the discovery of new and material evidence.

(3) Where the excepting party files a motion in the Court of First Instance for a new trial upon the grounds that the findings of fact are plainly and manifestly against the weight of evidence and the judge overrules the motion and due exception was taken to his overruling the same.

There was no motion for a new trial in the Court of First Instance, nor is it contended that this case falls within either of the other exceptions.

It is insisted that while this court will not review or retry questions of fact, yet if it appears from the findings of fact as contained in the decision of the lower court that the facts do not justify the judgment or conclusions of law the case will be reversed for a new trial.

There was no exception taken to the judgment, the exception being only such as is inferred from the presentation and allowance of the bill of exceptions.

This is not sufficient to justify this court in entertaining such objection; the rule is that where a judgment is entered not warranted by the findings the proper remedy is by application to the court in which it is entered to correct or vacate the judgment, and unless the action of the court has been thus invoked the petition will not be considered on appeal. (Scott *vs*. Minneapolis R. R. Co., 42 Minn., 179.)

But had the exception been properly taken an examination of the findings clearly shows that the judgment is sustained by them. The following findings of fact were made by the lower court and are contained in the judgment, to wit: “I am of the opinion that Bon Francisco Martinez, for himself and in representation of his wife, is the actual and true owner of said steamship and schooner and has exercised over them acts of ownership and dominion, and that these ships were bought with the funds by him furnished. With respect to the fact that the steamship and schooner may have been registered in the name of the defendant, Pedro Martinez, it is my opinion that this fact can not be considered as prejudicial to the true right of the plaintiff.”

An analysis of this finding will show that it consists of the finding of, first, an ultimate fact, that is, that the plaintiff D. Francisco Martinez is the actual and true owner of the steamship and schooner, the property in controversy; second, the probative fact that he has exercised over them acts of ownership and dominion and that these ships were bought with funds furnished by him, and, third, the probative fact that the ships were registered in the name of the defendant, Pedro Martinez.

The majority of the court regard the first finding—that is, that the plaintiff is the actual and true owner of the property in controversy—as a statement of law and not a finding of fact, and have rejected it as a finding of fact. In reversing the case for a new trial the decision is based upon the finding that the vessels are registered in the name of the defendant, and it is said that it must be assumed that the defendant has a title to the vessels as without it they could not be so registered.

The conclusion I reach is the reverse of that reached by the court. The finding of the plaintiff's ownership of the vessel and schooner is not a conclusion of law, but is the finding of an ultimate fact in the case, and was the proper and the only finding that could have been made. As stated in the opinion, the ultimate question in the whole case was, Who owned this property?

The supreme court of Minnesota has passed upon the precise question in the case of Common *vs*. Grace (36 Minn., 276). The finding of the lower court in that case was that "John Grace was, at the time of his death, the owner in fee simple of the real estate." The appellant made a request in the court below for additional findings. Upon the refusal of the lower court to make such additional findings it was assigned .as error on appeal. Mitchell, J., says: "The facts required to be found are the ultimate facts forming the issues presented by the pleadings and which constitute the foundation of a judgment and not those which are simply evidentiary of them. The court is not required to find merely evidentiary facts or to set forth and explain the means or processes by which it arrived at such findings. Neither evidence, argument, nor comment has any legitimate place in the findings of fact The test of the sufficiency of the findings of fact by a court, we apprehend, is, Would they answer if presented by a jury in the form of a special verdict, which is required to present the conclusions of fact as established by the evidence, and not the evidence to prove them, and to present those conclusions of fact so that nothing remains to the court but to draw from them conclusions of law? In the case at bar the finding of fact that John Grace was, at the time of his death, the owner in fee simple of the real estate in question was the ultimate fact upon which the decision of the case depended. It covered the only issue in the case, and was a sufficient foundation for a judgment in favor of defendants. It could only be arrived at upon the hypothesis that the deeds in dispute were duly executed, and the finding necessarily implied and included this,"

In the case of Daly *vs*. Socorro (80 Cal.,367) it is said:

> "The appellant further contends that the cause should be reversed because the court failed to find upon certain other issues presented. His right to maintain the action was based wholly upon his ownership and right of possession, and these being found against him it is immaterial to him whether the court found as to other facts or not, as the judgment must have been against him whatever the other finding might have been."

The finding of the court that the ships were registered in the name of the defendant is the1 finding only of a probative of evidentiary fact, that is, it is the finding ply of evidence tending to prove the ultimate fact, to wit, the fact of ownership. The various means of proving this ultimate fact is the evidence. Thus, a bill of sale is evidence of ownership. The possession of property is prima fade evidence of ownership, and so perhaps is the registry of ships evidence of the ownership of the person in whose name it is made; but while it is evidence tending to prove ownership, there may be other evidence in the case totally destroying its value, such as a sale and conveyance of the ship by the owner or person in whose name it is registered made subsequent to the date of the registration; title by prescription as against the party in whose name the ship is registered; by proof that the party in whose name the ship is registered held the title simply as agent of the party claiming ownership. For this reason the finding that the vessels are registered in the name of the defendant is inconclusive and is entirely insufficient as a finding of fact. The finding of fact must be such as includes the entire issue or the ultimate fact to be proven, and in this case, as is stated in the opinion, the ultimate question in the whole case was who owned this property. The lower court has responded to this issue by saying that "while the ships are registered in the name of the defendant that this fact can not be considered as prejudicial to the direct ownership of the plaintiff. That D. Francisco Martinez, the plaintiff, for himself and in representation of his wife, is the actual and true owner of said ships and has exercised over them acts of ownership and dominion."

There is no conflict in the findings, for, as stated by the lower court, the ship may be registered in the name of the defendant and still be owned by the plaintiff. But, if any such conflict exists, then the finding of the probative fact that the vessels are registered in the name of the defendant must give way to the .finding of the ultimate fact that the ownership is with the plaintiff.

When the ultimate fact is found no finding of probative facts which may tend to establish that the ultimate fact was found against the evidence can overcome the finding of the

ultimate fact. (Smith *vs*. Acker, 52 Cal., 217; Perry *vs*. Quackenbush, 105 Cal., 299; Smith *vs*. Jones, 131 Ind.)

Not only is the ultimate fact of ownership which is the paramount finding in the case allowed to be overthrown by the less important and subsidiary finding of the evidentiary fact of registration of the ship, but the opinion wholly ignores the other finding of the probative fact, that is, that the plaintiff has exercised acts of ownership and dominion over the property and that the ships were purchased with funds furnished by him.

II. It is said in the opinion in referring to a letter written by the defendant to the plaintiff that this letter is not incorporated in the findings and we have no right to consider it, yet the court in its decision has gone into an examination of the evidence thus improperly brought here.

This ambiguity in the opinion makes it necessary to refer briefly to the evidence. Such review will show that the evidence before the lower court was entirely sufficient to support the finding of ownership in the plaintiff. It consists of letters written to the plaintiff by his agents, Armstrong & Sloan, who acted for him in the purchase of the ship *Balayan*; the testimony of the plaintiff as to his purchase and payment of the price of the ship; proof of witnesses of the acts of ownership on the part of the plaintiff after the purchase of the ships by him; that the defendant resided with the plaintiff, who was his father, and that the defendant had no means with which to make such purchase; various acts of the defendant recognizing the plaintiff's ownership in the vessel; evidence introduced on the part of the plaintiff tending to show his ownership and tending to show that the defendant acted simply as plaintiff's agent in the control which he exercised over the ship.

In one of the letters written by Armstrong & Sloan to the plaintiff dated August 22, 1892, they say:

> "We have credited to your account #18,843.65 which you left before your departure for the cost of the ship bought for you in Hongkong." Also the book entries in the mercantile office of Armstrong & Sloan, in which appear the following:

Cash, August, 1892.	
Aug. 24. Francisco Martinez, received from him account of cost of one launch in Hongkong.....	$18,843.65
Cash, September, 1892.	

Sept. 13. Francisco Martinez to Chartered Bank, remittance to Hongkong account of steam launch, $18,300 at ¾ per cent discount	16,881.75
.....	
Cost of message.....	3.23
Total.....	16,884.98

Another letter is in evidence from the same parties to the plaintiff dated October 13, 1892, in which they say that they had telegraphed the day before to Hongkong for the ship to sail "and we have written that the name *Balayan* be given it."

Several other letters were introduced written by the same parties to the plaintiff concerning the ship *Balayan*, in wljich they say the deal was closed and by which they make arrangements for incidental expenses in the equipment of ship, insurance upon it, and its sailing from Hongkong to Manila,

A letter is also contained in the record written by the defendant to the plaintiff on the 27th of October, 1899, which is as follows:

> "Manila, October 27, 1899. —Esteemed Father: With my kindest regards (beso a V. la mano). With respect to the steamship *Balayan*, Senor Sloan sends word to you that there is an American who wishes to purchase it for 24,000 pesos, and asks whether you desire to sell it or not that you reply because he awaits your answer * * *"

It also appears in evidence that the ship *Balayan* had the initials of the plaintiff "F. M." on the smokestack, and that at som« recent date the defendant had caused these initials to be erased and those of his own substituted.

The defendant for a number of years managed the plaintiff's business under a general power of attorney, and was a member of his family, and such acts of ownership as he exercised over these ships may be properly referred to this authority.

When the relationship of the parties—that is, that of son and father—is considered in connection with other proof in the case, the conclusion is irresistible that the ships are owned by the plaintiff and that there has been a most flagrant abuse on the part of the defendant of a father's confidence.

For the reason above stated I dissent from the decision.

Date created: April 14, 2014