2 Phil. 503

**[ G.R. No. 1170. September 17, 1903 ]**

**VICENTE CRUZ ET AL., PLAINTIFFS AND APPELLANTS, VS. MAXIMO JOAQUIN, DEFENDANT AND APPELLEE.**

**D E C I S I O N**

**WILLARD, J.:**

In this case the plaintiffs rented in November, 1898, two fisheries to the defendant for three years; upon the expiration of that term they brought this action in the court of a justice of the peace to recover possession. The decision of that court and of the Court of First Instance, to which the case was appealed by the plaintiff, were favorable to the defendant.

The plaintiff has brought this case here by bill of exceptions.

There was no motion for a new trial below, and the only question before us is whether the findings of fact made by the judge support the judgment.

In the month of November, 1901, the plaintiff Vicente de la Cruz with his son and coowner, Don Juan Mendoza, and the defendant executed a public instrument, by which the former assigned and transferred to the latter the right of redemption and all other rights, actions, and obligations which they had or could have in the said estates.

The purchase price was f 10,000, $5,500 of which was paid by the defendant to the plaintiff Don Vicente and his son Don Juan, and the balance of $4,500 was to be retained by the defendant with which to repurchase the lands from Dona Josefa.

It is claimed by the defendant that this deed gave him full legal title to all the land in controversy, and that, being now the owner thereof, he can not be evicted by his landlords, who have transferred their title to him.

It is true that the deed from the plaintiff Vicente to the defendant speaks of a repurchase of

the "lands from Dona Josefa, but the only evidence to show that she had any right whatever in this property is found in the contract of partnership between her and her coplaintiff entered into December 6, 1897, and referred to in the decision of the court.

It appears therefrom that the plaintiffs had agreed to form a partnership for the operation of the two fisheries owned by Don Vicente, but it was a condition of this agreement that the partnership should not be formed, until Dona Josefa had advanced to Don Vicente as a simple loan $4,500. This having been advanced, the partnership contract was made.

The sixth, seventh, and eighth clauses of the contract are as follows:

> "Sixth. The title deeds of the property will remain in possession of Dona Josefa, and, although Don Vicente may dispose of or encumber the same, the latter is bound, notwithstanding, to acquaint Dona Josefa therewith. She shall have preference upon conforming to the conditions of said sale or incumbrance; and if she shall not agree thereto, she may demand the profits for the balance of the period of the duration of the partnership upon a basis of what may have been earned in the preceding year, and the partnership shall in consequence be dissolved.
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> "Seventh. For the purposes of the preceding condition, Dona Josefa binds herself to deliver to Don Vicente the title deeds at all times and whenever he may need them to effect the sale or incumbrance of whatever nature.
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> "Eight. Subject to the agreement set forth in the sixth condition, the partnership shall continue eight years from this date, and upon the dissolution thereof Don Vicente shall repay the sum of four thousand five hundred pesos, receipt whereof he acknowledges in this instrument, and the term of the partnership shall in no case be extended."

We do not think that these clauses show a sale with right to repurchase defined in article 1507 of the Civil Code. (1) The transaction by which the money was advanced is called a simple loan. (2) There are no words in the contract showing a transfer of the title to Dona Josef a; the mere delivery of the title deeds did not accomplish this. (3) During the partnership, Don Vicente had the right to sell or encumber the property, which he would not have in an ordinary contract of "*retracto*." The condition that, when the partnership was

dissolved, Don Vicente should repay the sum lent can not be considered as providing that, if he it id not thus repay it, he should immediately lose all interest in the land, an inevitable result under article 1509, if such a contract of sale and repurchase existed.

The contract between the parties was nothing more than one of partnership, and it gave the plaintiff Dona Josefa no right of any kind in the lands themselves, so that when in February, 1900, Vicente de la Cruz and his son sold to the defendant all their interest in the land, he acquired the full ownership thereof. Whatever claims Dona Josefa had or lias against the coplaintiff for the recovery of the loan of $4,500, or for damages for breach of the term of the contract, are purely personal in their character and can not affect the land in controversy. Any right which Dona Josefa or Vicente de la Cruz may have to recover from the defendant the $4,500 retained by him out of the purchase price, is also purely personal in its character and can not affect the said lands or be affected by the result of this suit.

It is claimed by appellant that the deed of February 15, 1900, from Vicente de la Cruz to the defendant is not a conveyance of the lands themselves, but an assignment of a right to redeem. The clause in question is as follows:

> "That they assign and transfer in a strictly legal and valid manner the right of redemption and all other rights, actions, and obligations which they now have or might have in the lands," etc.

This is a conveyance of all their title or interest in the property.

The claim of the appellant that the lands sued for are not the lands bought by the defendant from the plaintiff can not be sustained.

(1) The appeal by the plaintiff from the judgment of the justice of the peace vacated that judgment, and the case stood for trial in the Court of First Instance as if it had never been tried before. (Secs. 75, 88, Code of Civil Procedure.)

The ocular inspection of the premises by the justice of the peace became, therefore, without effect. The justice's certificate as to the result of the inspection was not competent evidence in the trial before the Court of First Instance.

The justice should have been called as a witness. (Ismael *vs.* Ganzon, 1 Off. Gaz., 591.)[1]

(2) The court found in its decision that the fisheries rented by the plaintiff to defendant were the ones which he had bought from the plaintiff Vicente de la Cruz. He says that the defendant claimed that "he had acquired full and absolute ownership of the said lands" and finds that this allegation is true. There is no motion for a new trial, and the only question is whether the judgment is supported by the findings of fact. We can not, therefore, consider whether this finding of fact was supported by the evidence or not.

The judgment of the court below is affirmed, with costs of this instance against appellants, and, after the expiration of twenty days, reckoned from the date of this decision, judgment shall be rendered accordingly, and the case is returned to the court below for compliance therewith.

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

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[1] Page 347, *supra*.

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