2 Phil. 592

[G.R. No. 1256. October 23, 1903]

VICENTE W. PASTOR, PLAINTIFF AND APPELLANT, VS. MANUEL GASPAR ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

WILLARD, J.:

There was no motion for a new trial in this case.

From the facts admitted by the pleadings and those found by the court, it appears that in November, 1900, there existed in Manila a partnership composed of Macario Nicasio and the defendant Gaspar under the name "Nicasio & Gaspar." It owned the steam lauch *Luisa*, and its only business was that relating to this launch.

Desiring to increase this business, on the 24th day of November, 1900, a contract was made between the firm of Nicasio & Gcaspar on the one side, and on the other side the plaintiff, the defendants Eguia, Iboleon, and Monserrat, and one Hermoso. This contract recites that Nicasio & Gaspar, by a writing of the same date, have enlarged the business of their partnership; have bought six lorchas, which are named, and that, needing money with which to pay for the lorchas and the necessary repairs thereon, the parties of the second part have furnished them 28,000 pesos as a loan, the amount furnished by each being named. The firm of Nicasio & Gaspar then acknowledges the receipt of these amounts. The fifth clause of the contract is as follows:

> "Fifth. The partnership of Nicasio & Gaspar undertakes to return to the said Eguia, Monserrat, Ibole6n, Pastor, and Hermoso the said total sum of 28,000 pesos within the period of ten years from the date of this instrument, and to guarantee the fulfillment of said payment they pledge to said parties the said lorchas *Pepay, Lola, Consuelo, India, Niceta,* and *Castellana*, in the sums

> respectively which said parties have furnished for the purchase and repair of said vessels, as before stated, ceding and assigning to said parties, in like proportions, the profits and gains which may be realized from the exploitation of said vessels; the said vessels to be the property of said Eguia, Monserrat, Ibole6n, Pastor, and Hermoso, and of the parties of the first part, proportionate with the sums which the said parties have invested in said vessels; the management of said vessels during the time in which said debt remains unpaid to remain with the partnership of Nicasio & Gaspar, with the understanding that whatever may be the result of the business of said vessels, neither the said partnership nor the parties of the first part shall become responsible for the payment of said debt, except in so far as the said vessels shall respond therefor, and in no event shall they respond therefor with any other property; injuries to and all losses of said lorchas to be shared by all the parties hereto, as well as crews' expenses and other outlays necessary for the preservation of said vessels, in the proportion which corresponds to each party hereto according to his investment; the"parties of the first part binding themselves not to encumber or pledge said vessels while said debt remains unsatisfied to the parties of the second part."

It was provided in the seventh clause that the launch *Luisa* was not included in this contract.

It is alleged in the complaint, and not denied by the answer, that the contract thus entered into on November 24, 1900, was in July, 1901, dissolved and termimated. and the lorchas sold by mutual consent, ,

The cause of action set forth in the complaint is that there was actually a partnership between the parties to the contract of November 24, and that the consent of the agent of the plaintiff to its dissolution and the sale of the lorchas was obtained by fraud of the defendants. The prayer of the complaint is that this dissolution of the partnership and the sale of the lorchas be declared null, and that the plaintiff be restored to his rights therein; and if this can not be done that he recover of the defendants damages in the sum of 42,500 pesos.

1. The plaintiff, who was defeated in the court below and who has appealed, claims that the contract of November 24, 1900, created a partnership between the parties to it.

While all of the court are of the opinion that the judgment should be affirmed, we are not

agreed as to the proper construction to be put upon this document. The opinion of the writer is that held by the court below, viz, that upon the face of the contract the plaintiff was a creditor and not a partner. The contract is not clearly drawn, but the following seem to indicate that the transaction
was rather a loan than a contract of partnership: (1) In the beginning it is twice stated positively that Nieasio & Gaspar are the only partners and the only persons interested in the partnership of Nicasio & Gaspar. These statements the plaintiff assented to when he signed the document. (2) In the second paragraph, and again in the fourth, it is stated, also, distinctly and positively, that the money has been furnished *as a loan*. (3) In the fifth paragraph, hereinbefore quoted, Nicasio & Gaspar bind themselves to repay the amount, something that they would not be bound to do were the contract one of partnership. (4) In the same paragraph Nicasio & Gaspar create in favor of the plaintiff and his associates a right of pledge over the lorchas, a thing inconsistent with the idea of partnership. This paragraph should not be construed as transferring the ownership of the lorchas themselves to the second parties. Although the words "las cuales" would grammatically refer to the preceding word "embarcaciones," yet such a construction would be inconsistent with what has been before stated in the same paragraph as to the pledge. (5) By the same paragraph Nicasio & Gaspar are to be considered consignees only as long as they do not pay the debt. This indicates that they had a right to pay it. (6) By the last clause of this paragraph they bind themselves not to alienate the lorchas until they had paid the debt, indicating clearly that by paying the debt they could do so, a thing inconsistent with the idea of a partnership. (7) By the seventh paragraph of this contract it is stated that the launch *Luisa* is not included in the contract.

The claim of the plaintiff that by this document he became a partner in the firm of Nicasio & Gaspar can not in any event be sustained. That firm was engaged in business with the launch *Luisa*. With this the plaintiff and his associates had nothing to do.

It appears, also, from this contract that when Nicasio & Gaspar enlarged their business they could devote themselves not only to the launch Luisa and the six lorchas in question but also to other craft. With such other business the plaintiff would have nothing to do. The most that he
can claim is not that he was a partner in the firm of Nicasio & Gaspar, but that he and his associates, in connection with that firm, had formed another partnership to manage these lorchas. The fact that the plaintiff was to share in the profits and losses of the business and that Nicasio & Gaspar should answer for the payment of the debt only with the lorchas, and not with their own property, indicates that the plaintiff was a partner. But these provisions

are not conclusive. This is a suit between the parties to the contract. The rights of third persons are not concerned. Whether the plaintiff would be a partner as to such third persons is not to be determined. As between themselves the parties could make any contract that pleased them, provided that it was not illegal (art. 1255, Civil Code). They could, in making this contract, if they chose, take some provision from the law of partnership and others from the law of loans. Loans with a right to receive a part of the profits in lieu of interest are not uncommon. As between the parties, such a contract is not one of partnership.

The question on this branch of the case is whether the contract on its face creates a partnership or not. The court finds that the plaintiff believe that he could not be a partner because he was a Spanish subject. There can therefore be no doubt as to his intention in signing this contract. He did not believe that on its face it made him a partner. If he had so believed, he would not have signed it. If he was willing to sign a contract which on its face made him a partner, he and his associates would have joined with Nicasio & Gaspar in the amended articles of partnership which they signed on this very day, and this second document would have been entirely unnecessary. The inference from these facts is so strong that it can not be overcome by the fact that in subsequent dealings the parties called themselves partners. The plaintiff undoubtedly wished to secure, as far as he could, the rights of a partner without making himself one.

The contract, in the opinion of the writer, was that NicV sio & Gaspar should take the money of the other parties to the contract, manage the business as they saw fit, pay the investors their share of the profits as long as the business continued, and not to sell the lorchas until they had been so repaid. Anything more than this would have made the impostors partners according to the instrument itself, the one thing which they were seeking to avoid. It may be added that, in a similar contract which the plaintiff made with Nicasio in April, 1900, he in 1902 considered himself a creditor and made a demand on Nicasio for the payment of the debt.

It is claimed by the plaintiff that even if the transaction was a loan, it could not be terminated without his consent until the expiration of the period of ten years. Article 1127 of the Civil Code does not say that the period allowed for the performance of an obligation is for the benefit of the creditor as well as the debtor. It says that it shall be so presumed unless the contrary appears. In this case the contrary does appear in the two clauses hereinbefore cited under (5) and (6). Upon paying the loan at the end of ten years, they would have had the undoubted right to mortgage or sell the lorchas, and then by the mere

act of payment would have ceased to be consignees thereof. No declaration of that kind in the contract was at all necessary. These rights would result as a matter of law. The insertion of these clauses can only be explained on the theory that the period was for the benefit of the debtors alone, and that they would be at liberty at any time, even before the expiration of ten years, to sell the property, provided they repaid the loan.

2. It is further claimed by the plaintiff that, even if the contract itself did not make them partners, there was a verbal agreement that they should be partners. The court refused to allow him to ansAver certain questions relating to this matter. His exception is stated as follows in the bill of exceptions:

   "The plaintiff in his first testimony attempted to set forth the verbal agreements by virtue of which he was in reality a partner in the firm of Nicasio & Gaspar. The court ruled this evidence out for the reason that the name of the plaintiff does not appear in the articles of partnership of Nicasio & Gaspar. The plaintiff excepted to the ruling."

There are several reasons why the court was correct in its ruling.

(1) Although the offer was to show that he was a partner in the firm of Nicasio & Gaspar—something not claimed in the complaint— it is probable that the purpose was to show a contract of partnership between Nicasio and Gaspar on the one hand and the plaintiff and his associates on the other. The statements at the trial indicate this. The bill of exceptions does not show what verbal agreements the plaintiff .would have testified to if he had been allowed to do so. But in his brief in this court he says:

> "(*b*) That the firm was organized verbally on said date for a period of ten years; (c) that the rights and obligations of the partners were set forth in document No. 945 of the said date, although it may be stated in said document that the contract in reference was a contract of pledge."

If, as thus appears, all the rights and obligations which were verbally agreed to were aftewards embodied in a written instrument which was offered in evidence, the plaintiff has not been prejudiced by not being allowed to testify that these agreements were first made verbally. All of them having been included in the written document, he could testify to nothing more. If all the agreements as to the rights and obligations of the parties were embodied in the written contract, the additional verbal agreement that they should be

partners would be but their opinion as to the nature of the said written contract and would add nothing to it.

(2) The parties made a verbal agreement which they afterwards reduced to writing. Section 285 of the Code of Civil Procedure prohibits any parol evidence as to other terms not contained in the writing. Under this section, even if there had been agreements other than those contained in the instrument and inconsistent therewith, the plaintiff could not testify to them. The plaintiff claims that this section does not prohibit evidence as to the surrounding circumstances. This is true, and the plaintiff was at the trial allowed to testify that he bought the lorchas himself in Iloilo; that he was paid $500 for so doing; that $20,000 was borrowed from the Banco Espanol-Filipino for the purpose of paying for them; and as to other details. There was no intrinsic ambiguity in the contract which required explanation. VWhen a written contract is vague and indefinite, it can be explained by showing what the surrounding circumstances were (sec. 289), but not by showing by parol what the prior agreement in fact was.

3. The court refused to receive in evidence a letter written by Hermoso to the plaintiff, and the latter excepted. There was no error in this ruling. The plaintiff could not prove the facts stated in this letter in this way. He should have called Hermoso or other persons as witnesses to do so, and given the defendants the right to cross-examine them. (Sec. 381, Code of Civil Procedure.)
4. The following exception appears in the record:

> "During the examination of Lino Eguia, he was asked by the plaintiff to state, either by means of the document or the answer to the complaint, who was intrusted with the purchase of the lorchas. The court ruled out the question and the plaintiff excepted."

This ruling was correct for two reasons: (1) The documents themselves showed the facts. (2) The plaintiff had already testified without objection that he bought the lorchas in Iloilo by direction of Nicasio & Gaspar. The refusal to allow this witness to testify, on a matter as to which there was no dispute, could not have prejudiced the plaintiff.

5. Nicasio was asked if the capital in Nicasio & Gaspar which stood in his name was all his own. This question was ruled out and the plaintiff excepted. If the question referred to the original contract of partnership, and the plaintiff desired to show that

he had contributed money thereto, he could not have been prejudiced by the ruling because the witness had already testified that it was contributed in fact by the plaintiff. This fact also appeared during the trial from the document No. 325 of April 26, 1900, between the witness and the plaintiff. If he wished to show that a part of the capital standing in the name of Nicasio, in the amended articles of partnership, was furnished by the plaintiff and others, he was not prejudiced by the ruling, for this all appeared from the contract of November 24, 1900, so many times referred to. If he desired to show that Mcasio had borrowed a part of his capital from some person not connected with this suit, the question was immaterial and was properly excluded. In such a case it would be no concern of the plaintiff whose money this was.

6. The following exception appears in the record:

> "During the examination of the witness Joaquin Salvador, he was asked on cross-examination by plaintiff to state if he, as attorney in fact of the partner Hermoso in the meetings of the partners preliminary to the sale of the lorchas, would have consented to the dissolution of the partnership had he known that the partnership would be immediately reorganized with the same lorchas and the same partners with the exception of Nicasio, Hermoso, and Pastor. The court ruled the question out and the plaintiff excepted."

This ruling was correct What Salvador would have done was of no importance. The plaintiff's agent was allowed to testify that he would not have given the plaintiff's consent if he had known that the defendants intended to continue the business.

7. The assignment of error as to the bills of Warner, Barnes and Co. is not sustained by the bill of exceptions. It is stated therein (fol. 25) that these documents were admitted.
8. The question as to whether the power of attorney given by the plaintiff to Nicasio was sufficient to authorize the latter to consent for the plaintiff to the cancellation of the contract was not raised by any exception at the trial and is not the subject of any assignment of error in this court.
9. The claim of the plaintiff, as has been said before, was (1) that he was a partner, and (2) that the cancellation of the agreement of partnership had been procured by fraud. The judge made a finding upon the first claim, but not upon the second; although the finding that he made was sufficient to determine the case before him, yet he should have found upon all the issues presented by the pleadings. But this omission does not

require a reversal of the judgment. If the court below was right in the construction of the document, it of course does not, for the decision would then contain facts sufficient to justify the judgment. But even if it were not, the same thing would result. It is a fact clearly admitted by the pleadings, and therefore not required to be stated in the decision, that this contract of November 24, 1900, was canceled and the arrangement, whatever it was, dissolved. To this dissolution the plaintiff through his agent consented. This is alleged in the complaint, although it is there stated that such consent was obtained by fraud. The facts admitted in the pleadings and stated in the decision showing, therefore, that the plaintiff had surrendered his rights, and there being no finding that such surrender was obtained by fraud, the defendants are, on such admissions and findings, entitled to judgment. We reach this conclusion the more Avillingly because a majority of the court is of the opinion that the evidence in the case was not sufficient to show any fraud on the part of the defendants.

The judgment is affirmed, with the costs of this instance against the appellant. Judgment will be entered accordingly twenty days after the filing of this decision.

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

CONCURRING

COOPER, J.:

The cause of action set forth in the complaint is that there was a partnership between the plaintiff and the defendants, which was, in July, 1901, dissolved and terminated between the parties thereto, the plaintiff acting through his agent in said dissolution; that the consent of the agent to the dissolution was obtained by the fraud of the defendants, and the prayer of the complaint is that this dissolution of the partnership and the sale of the lorchas be declared null and that the plaintiff be restored to his rights therein; and he prays in the alternative that, if this can not be done, he recover of defendants damages in the sum of 42,500 pesos. The issues thus made were
determined against the plaintiff by the judgment of the Court of First Instance. It is asked that we review the evidence taken in the court below and retry the questions of fact involved in the decision of the case—that is, whether the dissolution was obtained by the fraud of the defendants.

It is expressly provided by section 497, Code of Civil Procedure, that in hearings upon bills of exceptions the Supreme Court shall not review the evidence taken in the court below, nor retry the questions of fact except in certain cases, one of which is: “If the excepting party filed a motion in the Court of First Instance for a new trial, upon the grounds that the findings of fact were plainly and manifestly against the weight of evidence, and the judge overruled said motion and due exception was taken to his overruling same, the Supreme Court may review the evidence and make such finding upon the facts and render such final judgment as justice and equity require.” There was no motion of this character, for a new trial in the Court of First Instance, nor upon the other grounds mentioned in section 497; consequently we can not review the evidence contained in the bill of exceptions. Upon this ground I concur in the decision.

I am of the opinion that the fifth clause of the agreement entered into on the 24th day of November, 1900, set forth in the majority opinion, is sufficient to show that a partnership existed between Nicasio & Gaspar, Eguia, Monserrat, Iboleon, Pastor, and Hermoso.

A partnership is defined in article 1665 of the Civil Code as “a contract by which two or more persons bind themselves to place money, property, or industry in common with the intention of dividing the profits among themselves.”

The fact that the plaintiff was to share in the profits and losses of the business indicates that the plaintiff was a partner in the business. It was expressly provided in this clause of the contract that the parties thereto should be entitled “in like proportion to the profits and gains which may be realized from the exploitation of said vessels” and that “the injuries to and all losses of said lorchas to be shared by all the parties hereto, as well as the crew’s expense and other outlays necessary for the preservation of said vessels, in the proportion which corresponds to each party, according to his investment.”

The fact that the lorchas were to remain the property of Nicasio & Gaspar, and that these lorchas were pledged for the return of the 28,000 pesos denominated as a loan, would not have the effect of changing the nature of the agreement.

The stipulations contained in the contract were such as might be lawfully made between the parties themselves, though they may not have been binding with respect to third persons.

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