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[G.R. No. 2209. January 02, 1907]

SEGUNDO JAVIER, PLAINTIFF AND APPELLANT, VS. LONGINOS JAVIER, ADMINISTRATOR OF THE ESTATE OF MANUEL JAVIER AND PERFECTA TAGLE, DEFENDANT AND APPELLEE.

D E C I S I O N

MAPA, J.:

This action involves the ownership of a house and lot. This property was included in the inventory of the property of the estate of Manuel Javier and Perfecta Tagle, under which the parties to this action claim, and the plaintiff seeks to have the property in controversy excluded from the said inventory, alleging that it belongs exclusively to him. The defendant contends that the property belongs to the said estate, and that it has been, therefore, properly included in the inventory. The defendant filed a counter-complaint praying that judgment be entered against the plaintiff, who is now in possession of the property, for the return of the same, and the payment of the rent received by the said plaintiff from the property, to the administrator of the estate.

The case was decided in the court below in favor of the defendant, the plaintiff excepted to the judgment, made a motion for a new trial on the ground that the judgment was not justified by the weight of the evidence, and has brought the case to this court, by means of a bill of exceptions, for review.

As suggested by the appellant in his brief, the description of the property in controversy is not very clear and definite. This, however, is of no practical importance in this case. No question has been raised upon this point. The parties in discussing their respective rights have assumed that the description was correct.

The evidence introduced as to each of the pieces of property in question being different, we shall now proceed to examine the same separately.

(*a*) *Lot*.—It is beyond dispute that this lot formerly belonged to Manuel Javier, under whom both parties claim. Manuel Javier sold this lot, with another lot, to Ceferino Joven, for the sum of 350 pesos on the 11th of September, 1862, as appears from a public document executed on the same date, and which is a part of the record in this case. The terms of this instrument are conclusive against the assertion of some of the witnesses for the defendant to the effect that the contract between Manuel Javier and Ceferino Joven related to a mortgage only, or perhaps to a sale on condition of redemption. "Having agreed upon the sale," reads the text of the document, "with Ceferino Joven * * * (Manuel Javier) declares that he actually sells and transfers the said two lots to the said Ceferino Joven for the aforesaid sum of three hundred and fifty pesos * * *. In consideration thereof he transfers to the purchaser the title and ownership which he has to the property so that the said purchaser may dispose of and alienate the same, as he may see fit, as his own properly acquired property." According to this, it was a transfer and not a mortgage—an absolute and irrevocable transfer, and not subject to redemption, for there is nothing said in the deed as to such redemption. Such was the contract entered into between Javier and Joven with regard to the lot in question.

This fact is of capital importance in this action, because, it not appearing in any way that Manuel Javier or his wife, Perfecta Tagle, had repurchased, or in any other manner reacquired the ownership of the said lot, it can not be considered as a part of the estate of the said spouses, as contended by the defendant in this case. Such a conclusion could not be arrived at even if we admitted for the sake of argument everything that the witnesses for the defendant said upon this point. These witnesses were Gavina Javier and Romualda Javier, the sisters and coheirs of the parties to this action. They testified that they and their brother, Martin, with their father's consent, repurchased the lot in question, paying therefor the sum of 350 pesos, from their own funds, such being the price formerly paid by Ceferino Joven. If this were true, they and not the estate would be the owners of the lot, since the repurchase was made, as they say, by themselves, on their own account, and with their own funds. In such a case, they, and not the administrator of the estate, would have the right to contest the ownership of the property.

But the fact is that the testimony of these two witnesses was completely contradicted by other evidence in the case, which in our opinion was more conclusive, introduced by the plaintiff. Their testimony is in open conflict with the real facts, for they proceed upon the theory that the property had not been absolutely sold to Ceferino Joven, but simply mortgaged to him, or at most, sold to him on condition of redemption. This theory is plainly and manifestly contrary to the express terms of the deed executed and delivered on the 11th

of September, 1862, to which prior reference has been made.

Moreover, there is nothing other than the testimony of the said witnesses, to show that they had reacquired the property in question from the original purchaser, Ceferino Joven. There is, however, on the other hand, sufficient proof to show that the plaintiff and his brother, Luis, bought from the heirs of the said Joven the property in question, and that Luis subsequently sold to the plaintiff his share in the property, the plaintiff having thus become the sole owner of the land. Aside from the testimony of the latter, who testified as to these facts, we have the sworn statement of the said Luis, which corroborates in its entirety the testimony of the plaintiff. Luis was one of the heirs of Manuel Javier and Perfecta Tagle, and his testimony, in so far as it favors the plaintiff to the prejudice of the estate in which he was interested as such heir is, and should be, above suspicion, unless it is shown that he acted in collusion with the plaintiff, something that the defendant has not even attempted to prove. The testimony of this witness upon this point is as impartial as the testimony of the witnesses, Gavina Javier and Romualda Javier, is improbable, for were it true that they and their brother, Martin, repurchased the property with their own funds, as they claim, it would be exceedingly strange that instead of contending that the property belongs to them exclusively they should consent to its being considered as a part of the estate, thus giving various other heirs, including the plaintiff, an interest in the said property.

But above all this there stands the instrument executed on the 12th of March, 1884, before the *gobernadorcillo* of the district of Malate and attesting witnesses, which was introduced in evidence by the plaintiff. This instrument purports to have been executed by Ceferino Joven, jr., himself and as attorney in fact of his mother, Josefa Casas, and his brothers, Roman and Francisco Joven, and it appears therein that the said Joven in his dual capacities aforesaid sold and transferred to the plaintiff and his brother, Luis, the lot in question, together with another building lot, for the sum of 350 pesos. Whatever probatory force the said document may have in itself, the fact remains that its authenticity was admitted at the trial by the vendor, Ceferino Joven. This, taken together with the fact that the plaintiff was then in the physical possession of the property, and that such possession was recorded in the Register of Property in the plaintiff’s own name, which was admitted by the defendant at the trial, is conclusive evidence of the fact that the plaintiff, and not the estate of Manuel Javier and Perfecta Tagle is the legitimate owner of the property. The conclusion reached by the court below to the contrary upon this point is manifestly erroneous.

(*b*) *House*.—This house, according to the complaint, is built upon land belonging to the estate. The question therefore relates only to the ownership of the building, exclusive of the

land upon which it stands. This house was apparently built in 1880, and it having been almost entirely destroyed by a typhoon in 1882, it was rebuilt while Manuel Javier, the father of the plaintiff, and the owner of the land upon which the said house stands, was still living. It seems that Manuel Javier died in 1885. In 1884 the house was already habitable, although it was not completely finished and painted until the year 1895, the work having proceeded slowly.

The plaintiff alleged in his complaint, and insisted upon it in his testimony, that he built the said house with the knowledge and consent of his father and at his own expense. This statement of the plaintiff is supported by five documents, three of which purport to be signed by Felix Javier on June 1, 1887, November 11, 1900, and January 15, 1903, respectively; and the other two by Martin Javier on April 1 and July 4, 1901, respectively. Felix and Martin Javier are, like the plaintiff in this case, the children and heirs of Manuel Javier, and therefore interested in the latter's estate. The documents above referred to represent receipts for certain sums borrowed by them from the plaintiff as advances upon the lots left by their deceased father, Manuel Javier, *"one of which lots,"* reads each and all the said documents, "being the lot upon which the house of strong materials, No. 520 Calle Real or Cabanas, *the exclusive property of my brother, Segundo Javier* is built." The authenticity of the documents signed by Felix Javier was admitted by him at the trial; and the signatures of Martin Javier appearing thereon, he having died, were identified by his son, Santos Javier, who also had an interest in the estate in question. Those documents constitute an acknowledgment of the fact that the house in controversy belonged exclusively to the plaintiff, and such acknowledgement on their parts is proof all the more appreciable in favor of the plaintiff since it comes from persons who, as heirs of Manuel Javier, had an entirely adverse interest to that of the plaintiff in this case. This proof is further strengthened by the fact that the plaintiff had been continuously in possession of the said house since it was built. Not only the plaintiff, but Romualda Javier, a witness for the defendant as well, testified as to such uninterrupted possession by the plaintiff. Romualda, while testifying upon this point, stated that certain actions had been brought against the plaintiff, but that they never succeeded in taking away from him the possession of the house, the rents for which were always received by him.

An attempt was made by Felix Javier to overcome the probatory force of the documents signed by him, he alleging that he signed the same without first informing himself as to their contents, except that part thereof relating to the sums of money mentioned in the same. We can not give credit to this explanation. The natural presumption is that one does not sign a document without first informing himself of its contents, and that presumption

acquires greater force where not one only, but several documents, executed at different times and at different places, as is here the case, were signed. There is nothing in the record that can in any way overcome this presumption.

The testimony of Romualda Javier and Gavina Javier to the effect that the house in question belonged to the estate of their deceased parents can not prevail against the evidence introduced by the plaintiff. Their testimony is obviously interested, and is absolutely devoid of any corroboration, this aside from the fact that both witnesses have made conflicting statements. Romualda testified that the house was constructed at the expense of herself, her father, and of Gavina, while according to the latter, Romualda, her brother Martin, and herself paid for the construction. Of course, the latter and not the estate would be the owners of the house if Gavina's statement is true, for under such an hypothesis it would appear that her parents did not contribute at all to the expenses of the construction.

The house was built, according to the plaintiff', with the knowledge and consent of his father, to whom the land upon which it was built belonged. This testimony has not been contradicted, but on the contrary is strengthened by the further testimony of the plaintiff to the effect that his father lived with him at that time in the house in question. This fact conclusively shows that he, the father, consented to the construction of the house. Consequently the house was built by the plaintiff in good faith, and article 361 of the Civil Code is perfectly applicable to this case. That article provides that the owner of the land on which building, sowing, or planting is done in good faith shall have a right to appropriate as his own the work, sowing, or planting, after having paid the indemnity therefor as required by articles 453 and 454, or to compel the person who has built or planted to pay to him the value of the land, and to force the person who sowed to pay the proper rent.

Article 453 of the same code provides:

> "Useful expenses are paid the possessor in good faith with the same right of retention, the person who has defeated him in his possession having the option of refunding the amount of the expenses or paying him the increase in value the thing has acquired by reason thereof."

The property in controversy, belonging to the plaintiff as it does, the cross-complaint of the defendant must fail.

The judgment appealed from is hereby reversed and we hold (1) that the house and the lot in question should be excluded from the inventory of the property of the estate of the deceased, Manuel Javier and Perfecta Tagle, and (2) that the latter's heirs have a right to retain the said house after indemnifying the plaintiff in the value thereof, or to compel the latter to pay to them the value of the land occupied by the said house, the plaintiff having the right to retain the same in the meantime until the value of the said land is paid. In view of the fact that there is not sufficient evidence in the case to determine the actual value of the house and lot, the right is reserved to the parties to so determine the value in the manner which they deem best. We make no special provisions as to costs. After the expiration of twenty days from the date hereof let judgment be entered in accordance herewith and ten days thereafter the case be remanded to the court below for execution. So ordered.

Arellano, C. J., Torres, and *Johnson, JJ.,* concur.
Carson, Willard, and *Tracey, JJ.,* dissent from the second paragraph of the adjudging part of the decision.

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