

[ G.R. No. 3097. January 05, 1907 ]

**RAFAEL MOLINA Y SALVADOR, PLAINTIFF AND APPELLEE, VS. ANTONIO DE LA RIVA, DEFENDANT AND APPELLANT.**

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

**WILLARD, J.:**

On the 4th day of June, 1903, the parties to this suit made a contract by the terms of which the plaintiff agreed to sell to the defendant the business in which he was engaged in the Province of Albay, it being agreed that an inventory should at once be made for the purpose of determining what the property to be conveyed was and the price to be paid therefor. It was provided in the fifth, sixth, and eighth paragraphs of this agreement as follows:

“Quinta.—El Sr. de la Riva no podra disponer la venta del negocio antes de terminar el pago del ultimo plazo, a no ser que este quede garantizado al Sr. Molina por los Sres. Gutierrez Hermanos.

“Sexta.—Si a D. Antonio de la Riva se le presentara ocasion propicia de realizar dicha negocio, queda desde luego autorizado para hacerlo, pero con la condicion de que sobre las utilidades que obtenga la venta, la tercera parte de las mismas se entenderan de cuenta de D. Rafael Molina, a quien se le entregaran en el acto de formalizar la venta.

“Octava.—En el caso de que durante el termino de tres años a contar desde la fecha del documento de venta de dicho negocio, se hicieran al Sr. de la Riva proposiciones de compra del negocio de referencia y a dicho señor conviniera enajenarlo y traspasarlo, queda en este caso obligado a dar la preferencia en la venta del mismo al Sr. Molina, quien podra adquirirlo en las mismas condiciones que ofrezca la persona que trata de comprarlo.”

The inventory having been made, afterwards, on the 27th of July, the parties executed another contract by which the plaintiff sold to the defendant property which was described in the agreement as follows:

“\* \* \* el negocio de abaca, coprax, mercaderias y demas que tiene establecido en los pueblos de Calolbon, Pandan, Viga, Bato, Virag, y Payo de la Isla de Catanduanes, incluyendose en dicha venta dos cascos, tres botes, varias cabezas de ganado, varios muebles y enseres, mercaderias, una prensa para enfardar abaca, una casa de materiales fuertes con muros de piedra y techo de goma, con su solar, situada en la *visita* de Cabugao de la jurisdiccion del pueblo de Bato, un camarin con dos bodegas pequeñas, tambien con un solar, situados en la expresada *visita* de Cabugao del mencionado pueblo de Bato, una casa de materiales ligeros y un camarin de materiales fuertes con sus respectivos solares, situados en el pueblo de Calolbon, un solar situado en el pueblo de Virac, un camarin de materiales ligeros con un solar situados en la *visita* de Babaguan de la jurisdiccion del pueblo de Payo, varios terrenos abacales y arrozales situados en el pueblo de Bato y los creditos contra varios deudores; cuyos bienes muebles, inmuebles, semovientes y creditos constan relacionados en el inventario de referencia, \* \* \*.”

The purchase price of the property was fixed at 134,736.12 pesos and the defendant paid to the plaintiff at the time of making the contract 33,659.03 pesos—that is, a fourth part of the price—and agreed to pay the remainder, one-third thereof within one year from the date of the contract, one-third thereof within two years from that date, and one-third thereof within three years from that date. The provisions of the fifth, sixth, and eight paragraphs of the preliminary contract were by reference made a part of this final contract of sale.

An action to recover that part of the purchase price due within one year from the date of the sale—that is to say, due on the 27th of July, 1904—was before this court in the case of *Rafael Molina vs. Antonio de la Riva*,<sup>[1]</sup> No. 2721, decided March 22, 1906 (4 Off. Gaz., 417).

The present action was brought for the purpose of collecting the second installment, due two years from the date of the sale—that is to say, due on the 27th of July, 1905. The plaintiff in this action, after stating the contracts that had been made, alleged that they created a mortgage upon the property in question in favor of the plaintiff; that the defendant, De la Riva, was insolvent, and that there was danger that the property would

deteriorate unless a receiver was appointed in accordance with the provisions of section 174 of the Code of Civil Procedure. It alleged also that the plaintiff by virtue of the said contracts had a lien upon the property in question and that unless a receiver was appointed there was danger that the property would deteriorate. The plaintiff asked that a receiver be appointed in accordance with the provisions of section 174 above cited.

The complaint also contained the following prayer:

“XII.—Pide tambien el demandante que se dicte sentencia contra el demandado por las dichas cantidades, a saber: 33,659.03, 4,500 y 4,500 pesos, moneda mejicana, haciendo un total de P42,659.03, cambiado en moneda legal insular segun la ley, con los intereses antedichos y con las costas: que despues de dictarse tal sentencia y si el demandado no las pagare, en tal caso, que se vendiesen los dichos bienes bajo tales condiciones como el Juzgado pudiera estimar convenientes y segun la ley, y pide el demandante tal otro remedio que fuere justo y necesario para hacer justicia entre las partes.”

On the 21st of August, 1905, the court below made an order appointing a receiver, which is as follows:

“Procediendo el nombramiento de un depositario en este asunto:

“Por la presente queda ordenado, adjudicado y decretado por este juzgado que Joaquin Navarro y Royo, sea y se le nombra depositario para encargarse de la administracion de los bienes mencionados y descritos en las alegaciones en este asunto, previa la prestacion de una fianza en la cantidad de P50,000, moneda filipina, con fiadores a ser aprobadas por este juzgado, y la prestacion del juramento de su cargo prescrito por el articulo 178 delCodigo de Procedimiento Civil; y que acto seguido dicho depositario proceda a la formacion de un inventario de todos los bienes que lleguen a su poder y presente un informe cumplido de dicho activo a este juzgado.

“Ademas queda ordenado por este juzgado que el demandado o cualesquiera otros individuos que tuvieren en su poder los bienes mencionados o parte alguna de los mismos, hagan entrega de los mismos al dicho depositario.”

To this order the defendant duly excepted and his exception was allowed and noted.

In the same order in which a receiver was appointed, a demurrer interposed by the defendant to the complaint was overruled. The defendant thereafter answered, the case was tried, and on the 22d of November, 1905, final judgment was entered ordering that the plaintiff recover of the defendant the sum of P38,159.03, Philippine currency, with interest at the rate of 5 per cent from the 27th of July, 1903, and the costs. It was further ordered that if the defendant failed to pay the amount specified within ten days from the date of the judgment, the receiver should sell the property in his hands, or enough thereof to pay the amount of the judgment. To this judgment the defendant duly excepted and his exception was allowed and he has brought the case here by bill of exceptions. No motion for a new trial was made in the court below.

The exception to the order overruling the demurrer to the complaint can not be sustained. So far as that demurrer is based upon the provisions of the contract that all judicial proceedings relating thereto should be had in the pueblo of Bato in the Island of Catanduanes, it is disposed of by the decision in the case of *Molina vs. De la Riva* above cited, in which the same point was made and decided adversely to the defendant. The demurrer was also based upon the ground that this was an action to foreclose a mortgage and by the provisions of sections 254 and 377 of the Code of Civil Procedure it should have been brought in the Province of Albay where the property was situated. The action is clearly an action to foreclose a mortgage, lien, or incumbrance upon property, but it will be noticed that section 254 relates only to mortgages on real estate. This contract covered both real and personal property, and while, perhaps, an action could not be maintained in the Court of First Instance of Manila for the foreclosure of the alleged mortgage upon the real estate situated in Albay, yet so far as the personal property was concerned, we know of no law which would deprive that court of jurisdiction.

The exception, however, to the order appointing a receiver must, we think, be sustained. Whether the parties could, in any event, by means of contracts similar to the ones in evidence have created a mortgage or lien upon the personal property involved, we need not consider, because we think a fair construction of such contracts shows that it was not the intention of the parties to impose any lien at all upon any of the property involved. The contract is one of absolute purchase and sale. If it had been the intention of the parties that the vendor should retain a lien upon the property sold, undoubtedly use would have been made of some one of the various well-known forms for expressing such intention. Instead of doing that, the vendor contented himself with the insertion in the contract of the three

paragraphs—fifth, sixth, and eighth—which we have above quoted. Even if the fifth paragraph stood alone, it would not, in our opinion, show the creation of any lien or *gravamen* upon the property, but would indicate a mere personal obligation resting upon the purchaser, a violation of which would subject him to an action for damages. As has been seen, the property sold consisted of boats, live stock, furniture, merchandise, and other articles of personal property. If by these contracts a lien was created upon the property, it would extend to every one of the articles included therein and would prevent for three years the purchaser from selling any part of the merchandise which he had on hand, or any of the stock or furniture or other articles above-mentioned. Such could not have been the intention of the parties.

Whatever may have been their intention in inserting the fifth paragraph in the contract, that intention is modified and controlled by the idea expressed in the sixth and eighth paragraphs. In the sixth paragraph the purchaser is expressly authorized to sell the property at any time without the consent of the vendor, subjecting himself in that case only to a personal obligation to pay the vendor one-third of the profits which he may realize from the sale. The eighth paragraph also indicates that if the purchaser sells the property without giving the vendor preference in the purchase, he simply subjects himself to an action for damages, the paragraph not imposing any lien or *gravamen* upon the property conveyed.

The contracts in question were, therefore, simply contracts of purchase and sale. The ownership of the property described therein was completely transferred to the purchaser and the seller retained no interest therein nor lien thereon. In relation to this property he stood as any other creditor of the purchaser so far as this kind of an action is concerned. Being a simple creditor of the defendant, with no lien or interest upon any specific property of the debtor, none of the provisions of section 174 of the Code of Civil Procedure relating to the appointment of receivers apply.

This has already been held in the cases of *Bonaplata vs. Ambler* (2 Phil. Rep., 392) and *Rocha & Company vs. Crossfield*<sup>[1]</sup> (No. 3430, decided Aug. 7, 1906, 4 Off. Gaz., 569). It will be noticed that these two cases were original actions brought in this court on the theory that the court below had no jurisdiction at all to appoint a receiver, while this action comes here by an appeal from the order of the court making such appointment.

The order of the court below made on the 21st day of August, 1905, appointing a receiver is hereby reversed. The dispositive part of the judgment entered in the court below on the 22d of November, 1905, is hereby modified so as to provide only that the plaintiff, Rafael Molina

y Salvador, have and recover of the defendant, Antonio de la Riva, the amount of P38,159.03, Philippine currency, with interest at the rate of 5 per cent per annum from the 27th of July, 1903, and the costs of this suit. No costs will be allowed to either party in this court. After expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the record remanded to the court from whence it came for proper action. So ordered.

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

*Tracey, J., concurs in the result.*

*Carson, J., reserves his vote.*

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<sup>[1]</sup> 6 Phil. Rep., 12.

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