7 Phil. 390

[G.R. No. 3191. January 26, 1907]

LADISLAO PATRIARCA, PLAINTIFF AND APPELLEE, VS. JUANA ORATE, DEFENDANT AND APPELLANT.

D E C I S I O N

ARELLANO, C.J.:
This case having been duly submitted to this court, it appears:

That the plaintiff alleges (1) that he was the lessee of a certain tract of land requiring 3 *cavanes* of seed to plant, the boundaries of which are described in the complaint, the land being situated in the barrio of San Juan of the town of San Francisco de Malabon, Province of Cavite; (2) that "the improvements upon the said land had been mortgaged by him to Inocencio Olimpo and his wife Juana Orate, the former having since died, * * * which said mortgage was for the purpose of securing a loan of 323 pesos;" and (3) that "when he, the plaintiff, attempted to redeem the said land prior to the death of the said Olimpo, the latter refused to consent to it, making various pretexts for such refusal."

The defendant answered as follows: (1) "That she admits the first paragraph of the complaint and alleges that since the year 1860 the lease of the land described in the complaint was taken from the tenant, Ladislao Patriarca, and given to Inocencio Olimpo and his wife, the defendant Juan Orate, by the administrator of the *hacienda*;" (2) that she denies the second paragraph of the complaint for the reason that the improvements upon the land held under lease (it is not known what the improvements were) can not be mortgaged; and (3) that she also denies the allegations contained in paragraph 3 of the complaint, for the reason that in the deposition referred to in the complaint as having been made by Inocencio Olimpo on the 22d of June, 1900, the latter asserted that he had purchased the improvements on the land in question, paying to the plaintiff the sum of 323 pesos in consideration thereof, and denied the existence of the alleged mortgage referred to in the complaint.

It seems that the finding of the court below upon this point is not altogether in harmony with the foregoing facts. The court found as follows: “Both parties have admitted that the land in controversy is within the boundaries of the *hacienda* of San Francisco de Malabon, which formerly belonged to the friars, and that the plaintiff, while a tenant thereof, mortgaged to the defendant and her deceased husband, for the purpose of securing a loan of 323 pesos, Philippine currency, the land and the improvements thereon, such as the buildings and crops thereon.” (Bill of exceptions, pp. 12, 13.)

The first part of the foregoing conclusion was, in fact, admitted by both parties, but not so the latter part thereof. What the defendant contends is, that her husband had been in possession of the land since 1860 under and by virtue of the contract of lease made by the administrator of the *hacienda*, and that the *improvements* thereon he acquired by purchase from the plaintiff for 323 pesos. The second error assigned by the appellant should therefore be sustained.

There should be excluded, therefore, in the consideration of this case, the question as to the land itself, as the subject of the controversy is the *improvements* thereon.

What such improvements, thus transferred, either by mortgage or by sale, were, has not been shown. One of the witnesses for the plaintiff, Melecio Valbuena, was asked: “Do you know what the improvements consisted of?” He answered: “In the extension, in the crops, according to my best knowledge and understanding.” (Record, p. 6.) According to the judgment, these improvements consisted of buildings and crops standing upon the land. (Bill of exceptions, pp. 12, 13.) But no evidence has been introduced upon this point which would enable us to form an opinion as to the nature of such improvements, and the rights which might arise therefrom. Consequently the seventh error assigned by the appellant should be sustained.

The defendant has shown by the testimony of Pedro Portugal, Manuel Columna, and Ignacio Astaño, whose statements have not been contradicted, that Olimpo had been in possession of the land since 1859 or 1860; that the owner of the land was Vicente Aviles, who was the former owner of the *hacienda* now belonging to the Augustinian Friars; that Olimpo was the lessee of the said land, and by the testimony of Quiterio Olimpo, a man 43 years of age, the defendant proved that the said Quiterio was the son of Inocencio Olimpo, by his wife Juana Orate (p. 9); that Inocencio Olimpo, the father, had been in possession of the land since the witness had reached the age of discretion, and that the land had been sold by the plaintiff to his father (p. 10).

It is evident from the complaint itself, as well as from the evidence of record, that the property sought to be recovered in the complaint does not consist of land, but of the improvements thereon alleged to have been transferred by the plaintiff to the deceased husband of the defendant; that the land which the defendant is required in the judgment of the court below to return to the plaintiff constitutes a part of the *hacienda* which belongs to a third party and consequently is not the property of either plaintiff or defendant; and that the land referred to in this action had been occupied by Inocencio Olimpo for about forty years, not by virtue of a sublease of the same to him by Ladislao Patriarca, but under a lease obtained by him directly from the owner of the *hacienda* himself. However that may be, it has not been shown of what the said improvements consisted, nor how the right thereto arose.

To direct this lessee to deliver to another person the land of which he has been in possession with the consent of the owner, is equivalent to depriving him of the civil right which can not be taken from him except by the person who conferred it upon him. It would be equivalent to disposing of property belonging to one person so that another might use it and enjoy it, without the knowledge or consent of the owner, and without giving the latter an opportunity to be heard. The owner would be deprived of his property as a result of such an order, said order implying a right to dispose of the property. Such a right appertains exclusively to the owner, who, on the other hand, has given no cause for such an essential right being abridged or interfered with by the court. The third and sixth errors assigned by the appellant should therefore be sustained.

The delivery of property by virtue of a judicial order can only be the result of an action *in rem* or an action for possession, while the delivery ordered in the judgment here appealed from as a consequence of the right to redeem can only be the result of an action *in personam*, the consequence of a stipulation, the effects of which can only affect the legitimate owner of the property who, as in this case, was not a party to such a stipulation, not a party to the proceedings, and was not affected by the judgment.

This action *in personam* if it existed at all, and were still enforcible, was not directed against the immediate successor to the obligation, against whom it should have been directed, and against whom the judgment rendered in these proceedings in favor of the mother of such successor can not be enforced. The mother as a coparticipant in the use of the land can not be bound by the said judgment, as would be the case here if she waived her entire rights in favor of the plaintiff, as a result of the judgment of the court below. The direct successor of the obligation which is legally presumed to exist had nothing to do with the acts imputed to

his mother and was not a party either to the proceedings in this case or to the judgment rendered therein. The result would be that his rights would be jeopardized without his having first had an opportunity to be heard and defend such rights. Therefore, the fifth assignment of error should be sustained.

The improvements referred to are considered as having been transferred to Olimpo under a contract which it may be said constituted a mortgage in so far as it was intended to secure the performance of an obligation and a contract of *antichresis* in so far as it provided for the delivery of the fruits of the real property. But the mortgage and *antichresis* relate to real property presumed to belong to the debtor, and to be sufficient in itself or with the products thereof to secure the payment of the debt, and in the present case the real property which it is sought to recover in the complaint did not belong to the plaintiff and there is no means of ascertaining what the alleged improvements thereon were for the purpose of determining whether they could give rise to an action *in rem* or a mere action *in personam*.

However it may be, that contract in regard to the so-called improvements on the land, different in its effects from those contracts of security mentioned in the present Civil Code, must depend for its existence upon some local custom, and a local custom as a source of right can not be considered by a court of justice unless such custom is properly established by competent evidence like any other fact, which has not been done in this case, where neither the nature, the effects, nor the extent of that singular contract was proved. That contract, as has been said before, was neither a mortgage nor an *antichresis*, nor a purchase on condition of redemption.

These being the only contracts relating to real property in the nature of contracts of security, known to the Civil Code, and prior to the promulgation of the Civil Code there was some similar contract with the same effect mentioned in the judgment of the court below, different, however, from the contracts of mortgage and purchase and sale, such contracts could not be enforced at this time, as article 1976 of the Civil Code repealed all laws, *usages and customs* which constituted the common civil law in all matters which are the subject of this code.

For the reasons hereinbefore set out, and not considering errors 1, 4, 8, and 9 set out in the appeal, the judgment appealed from is reversed, without special provision as to the costs of this instance. After the expiration of ten days from the entry of final judgment the case will be remanded to the court below for execution. So ordered.

Torres, Mapa, Carson, Willard, and *Tracey, JJ.,* concur.

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