

[G.R. No. 10462. March 16, 1916]

**ANDREA DUMASUG, PLAINTIFF AND APPELLEE, VS. FELIX MODELO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

An appeal raised, by bill of exceptions, by counsel for defendant from the judgment of September 21, 1914, in which the Court of First Instance of Cebu held to be null and void the document, marked as Exhibit 1, executed by the plaintiff Andrea Dumasug, by virtue whereof defendant claims that the lands and carabao, the subject matter of the complaint, were conveyed to him. The said judgment further declared the plaintiff to be the exclusive owner of said lands; ordered defendant to deliver and restore the same to the plaintiff and, moreover, to pay her the sum of P120, the value of her carabao unlawfully sold by him, and likewise P75 as rent for the use and occupation of the lands in question during the time they were in defendant's possession, and to pay the costs.

On June 17, 1912, counsel for Andrea Dumasug filed a written complaint in the Court of First Instance of Cebu, in which he alleged that about the month of November, 1911, defendant persuaded plaintiff to sign a document by falsely and maliciously making her believe that it contained an engagement on plaintiff's part to pay defendant a certain sum of money as expenses occasioned the latter by reason of a lawsuit in which plaintiff Dumasug was one of the parties and was protected and aided by defendant; that this document, plaintiff, who does not know how to write, signed by affixing her mark thereto, believing in good faith that defendant had told her the truth and that said document referred to the expenses incurred by defendant; but that three months after the execution of said document, defendant took possession of a carabao belonging to plaintiff and also of two parcels of land, likewise belonging to her, situated in the barrio of Katang, pueblo of Argao, Cebu, the area and boundaries of which are specified in the complaint, and notified plaintiff that she had conveyed to him by absolute sale said parcels of land and the plow carabao;

that in spite of plaintiff's opposition and protests, defendant took possession of said property and, up to the date of the complaint, continued to hold possession thereof and to enjoy the products of the lands and of the labor of the carabao; and that, by reason of such acts, defendant had caused loss and damage to plaintiff in the sum of ₱1,000. Said counsel therefore prayed the court to render judgment by declaring null and void and of no value whatever the alleged contract of purchase and sale of the carabao and the two parcels of land described in the complaint, to order defendant to restore to plaintiff said work animal and lands, and, besides, to pay her the sum of ₱1,000 for the loss and damage caused her, in addition to the costs of the suit.

The demurrer to the aforementioned complaint having been overruled, counsel for defendant in his answer denied each and all of the facts alleged in the complaint, and in special defense set forth that if defendant had in his possession the property described in the complaint, it was due to the fact that plaintiff sold it to him, which sale was recorded in a public instrument duly executed and signed by plaintiff in the presence of witnesses. Defendant's counsel therefore prayed the court to absolve his client from the complaint and to hold defendant to be the absolute owner of the disputed property, and to sentence plaintiff to hold her peace for ever and to pay the costs.

After trial and the hearing of evidence by both parties, the court rendered the aforementioned judgment, to which defendant excepted and by written motion asked for a reopening of the case and a new trial. This motion was denied, exception to this ruling was taken by defendant and, upon presentation of the proper bill of exceptions, the same was approved and transmitted to the clerk of this court.

The sole question to be resolved in this litigation is whether or not the instrument of purchase and sale of two parcels of land and a plow carabao, Exhibit 1, is null and void. The defendant alleges that by means thereof he acquired the possession and ownership of the said property, while the plaintiff, in turn, sets forth in her complaint that the said instrument is of no value whatever, as her consent thereto was obtained by means of fraud and deceit on the part of defendant.

The instrument, the annulment whereof is requested by the plaintiff, is Exhibit 1 (p. 27 of the record). It sets forth that on November 3, 1911, plaintiff Andrea Dumasug, in consideration of the sum of ₱333.49 which she received from defendant, Felix Modelo, sold and conveyed to the latter outright two parcels of land and the plow carabao which are the subject matter of the complaint, and furthermore bound herself to warrant and defend the

title thereto. This contract of sale appears to be authorized by the vendor, Andrea Dumasug, by means of a cross placed between her Christian name and surname in the presence of the witnesses Mariano Abear and Apolinar Miñosa, and certified before a notary on the very date of its execution.

In regard to the events leading up to the said contract, it ought to be stated that on October 12, 1910, Andrea Dumasug filed suit in the justice of the peace court of Argao against Rosales Albarracin and Gaudencio Saniel, for the recovery of a parcel of land belonging to plaintiff, measuring two *gantas*, on which were growing seven clumps of bamboo. Judgment was rendered for the plaintiff and the usurped land was ordered restored to her. (See case No. 1211, p. 1, record.) But subsequently, on March 2, 1911, these former defendants, Rosales Albarracin and Gaudencio Saniel, commenced proceedings in the Court of First Instance of Cebu against the said Andrea Dumasug in which they prayed for the annulment of the judgment rendered in the court of the justice of the peace of Argao. In that case Andrea Dumasug, through her attorney, Andres Jayme, appeared in the said Court of First Instance and demurred to the complaint.

Before this demurrer had even been ruled on, counsel for plaintiff moved the court to dismiss their complaint, and this was done by an order of October 2, 1911, in which ruling attorney Jayme acquiesced. (Pages 1 to 13, record, case No. 1211.) The defendant in the case at bar, Felix Modelo, is neither an attorney nor a *procurador judicial*, and the record does not show that he acted as an attorney, *procurador judicial*, or friend of Andrea Dumasug in the case brought by the latter in the justice of the peace court of Argao, or in the said case No. 1211, prosecuted in the Court of First Instance of Cebu.

Probably all that Andrea Dumasug did was to ask the advice of Felix Modelo about what she ought to do in view of the infringement of her rights on the part of Saniel, and defendant probably advised plaintiff to bring the matter before the authorities; and so far as defendant's direct intervention in those cases was concerned it was limited to engaging the services of the attorney Andres Jayme to represent plaintiff in the Court of First Instance.

The defendant Felix Modelo stated in his sworn testimony that the sale of the parcels of land and the carabao was in payment of a debt of ₱333.49 which the plaintiff was owing him for money he had advanced her to maintain two actions against Albarracin and Samel, which sum plaintiff had borrowed of him in small amounts, first ₱101.87, afterwards ₱184.85 and finally ₱46.77, making a total of ₱333.49; and that these sums of money were expended by plaintiff in the payment of attorney's fees, traveling expenses for herself and her witnesses

and for their expenses while in Cebu. The witness Mariano Abear corroborated defendant's testimony to the effect that the document Exhibit 1 was signed by mark of plaintiff before the notary public Anselmo S. Legaspi, after the latter had explained to her that it was a conveyance by absolute sale of the lands and carabao now in question. It would be improper to give credence to the testimony of the justice of the peace Antonio Minosa, of the pueblo of Argao, with respect to the expenses which plaintiff had to pay on account of her trips to Cebu, because, as he was a party defendant in case No. 1211, brought to secure the annulment of the judgment rendered by him, it is incredible that the other defendant, Andrea Dumasug, should have defrayed Minosa's expenses in Cebu, allowing him to board in restaurants, to amuse himself in the cinematographs and to remain four days in that city each time that he went there—all at the expense of his codefendant, Andrea Dumasug—when the proceedings in the case had not gone beyond the filing of a demurrer and the principal defendant went to Cebu only twice, staying there one day each time.

Plaintiff testified that one day in the month of November, 1911, defendant sent for her and after she was inside defendant's house he told her to sign a document acknowledging that she owed him the sum of ₱101 for the work he had performed in her behalf in the two actions she had brought to recover her land; that she did not object to so doing and signed said document by mark in the presence of the defendant while they were alone and without any attesting witness and that when she was afterwards taken by defendant to the house of the notary Anselmo Saniel y Legaspi the latter said nothing to her about the pretended sale of her properties. She added that she had never sold her lands or her carabao to defendant; that she neither offered to sell them to defendant, nor did the latter offer to buy them from her; that if defendant was now in possession of her two parcels of land and her carabao, it was due to the fact that three months after she had signed that acknowledgment of indebtedness defendant took possession of said property by intimidation and force; and that since then defendant had been harvesting the products of her lands and benefiting himself by the labor of her plow carabao. She also stated that she signed only one document in favor of the defendant Felix Modelo, which was that in which she acknowledged she owed him the sum of ₱101.

It is inconceivable that, in order to recover possession of a parcel of land measuring two *gantas*, containing seven clumps of bamboo, by commencing proceedings therefor in the justice of the peace court in Argao (where Andrea Dumasug lived) ; and that, in order to defend herself by filing a demurrer in a suit instituted in the Court of First Instance of Cebu (which suit was not continued because plaintiffs themselves moved its dismissal), the defendant in that suit scarcely commenced, now plaintiff in the case at bar, had already

incurred expenses amounting to more than P333. It would have been preferable to have left the small portion of usurped land in the possession of the deforciant, than to have maintained, in order to defend herself from such usurper, an unterminated suit which might have resulted in the entire loss of all the aggrieved party's properties by their being kept, not by the usurper, but by her adviser, a sort of *hombre bueno*.

The evidence discloses that the only great expense which Andrea Dumasug could have incurred was the sum that as fees she had to pay the attorney Andres Jay me for filing a demurrer in the Court of First Instance. Said attorney testified that he received from Andrea Dumasug only P80 or P90, the only large sum which the latter had to expend. Therefore if plaintiff finally had to admit that she was owing Felix Modelo the sum of P101, and if for this reason she had to execute the receipt to which she referred in her testimony, it is not unreasonable to suppose that said sum was the principal expense she incurred, in addition to P20 or P30 for her traveling expenses from Argao to Cebu, the two times that she made that trip, and for her stay in the latter city. Defendant's allegation that the traveling expenses of the witnesses taken to Cebu amounted to the large sum of P333.49 cannot be credited, inasmuch as the proceedings in the Court of First Instance were dismissed before the complaint was answered and the trial was held, so no witnesses were examined.

The lower court held that the statements of Andrea Dumasug were well worthy of credence, and, taking into consideration the merits of the case, reached the conclusion that the sole document which plaintiff signed about the month of November, 1911, related to the sum of P101 which she acknowledged she was owing to Felix Modelo, and not to the sale of all her properties. The record shows plaintiff to have stated that she received an offer of P120 for her carabao, but that she did not wish to sell the animal as she rented it for fifty centavos per day, her only means of livelihood.

It is, then, perfectly evident that the document Exhibit 1, by means of which defendant made himself the owner of the properties in question is not the instrument of debt which Andrea Dumasug had signed, and if it is the same one its contents were not duly and faithfully explained to plaintiff in the act of its execution. In either case, the consent said to have been given by Andrea Dumasug in said document Exhibit 1 is null and void, as it was given by mistake (arts. 1265 and 1266, Civil Code). This error invalidates the contract, because it goes to the very substance of the thing which was the subject matter of said contract, for, had the maker thereof truly understood the contents of said document, she would neither have accepted nor authenticated it by her mark.

If Exhibit 1 is the document signed by her, it is undeniable that she was deceived in order to obtain her consent thereto, and if the document which she signed is different from the one now presented as Exhibit 1, then this latter has no value whatever, for the reason that it is not the one which, of her own free will, she authenticated with her mark.

The consent given by plaintiff being null and void, the document Exhibit 1 is consequently also null, void, and of no value or effect. Article 1303 of the Civil Code is therefore, applicable, which prescribes that: "When the nullity of an obligation has been declared, the contracting parties shall restore to each other the things which have been the object of the contract with their fruits, and the value with its interest." In accordance with this legal provision defendant must return and deliver to plaintiff the two parcels of land in question with their fruits, the subject of the complaint, or the value thereof collected by him, which value was justly estimated by the trial judge at ₱75.

With respect to the plow carabao that died while in defendant's possession, the value of which is ₱120, (record, p. 31) defendant is obliged pursuant to the provision of article 1307 of the same code (to pay and deliver to plaintiff the value of said animal, with interest as an indemnity for the detriment caused to its owner.)

Defendant has made no claim whatever for reimbursement of the sum of money which he paid to the attorney Andres Jayme for defending plaintiff in the Court of First Instance of Cebu. It would therefore be improper to decide in the present case whether he is or is not entitled to such reimbursement. (Secs. 95-97, Code of Civ. Proc.)

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, said judgment should be as it is hereby, affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Johnson, Moreland, Trent, and Araullo, JJ., concur.