43 Phil. 425

[G. R. No. 17991. June 03, 1922]

CALIXTO D. BERBARI, PLAINTIFF AND APPELLANT, VS. ALFREDO CHICOTE, DEFENDANT AND APPELLEE.

D E C I S I O N

ROMUALDEZ, J.:

The plaintiff bases his complaint upon two causes of action praying that the defendant be sentenced to pay him P46,480 in the first cause of action and P109,500 in the other, plus legal interest on both amounts from the date of the filing of the complaint.

The first amount of P28,000 represents the value of 280 shares of stock of the *Compañia de Aceites de Manila*, which plaintiff claims belongs to him and is payable in cash; P14,000 represents 50 per cent of the value of such shares of stock which plaintiff claims he has a right to collect under the resolution of the corporation to that effect dated October 5, 1918; and the further sum of P4,480 alleged as the total value of these shares of stock at P16 per share, which plaintiff also claims to be due him by virtue of the resolution of said corporation dated December 5, 1918.

The P109,500, which is the subject of the second cause of action, according to the plaintiff, is one-half of the minimum earnings of the partnership which, he alleges, was entered into between him and the defendant for the purpose of purchasing certain lands and machinery for an oil factory. In this second cause of action plaintiff prays for an alternative remedy of either ordering the defendant to render an accounting of his administration and liquidate the business of the aforesaid partnership, or, that he be sentenced to pay the aforesaid amount of one-half of the profits.

As the court *a quo* overruled the complaint as well as the petition in defendant's answer, without the latter having appealed from that judgment, the questions now before us are only the causes of action of the plaintiff-appellant who assigns as errors in the judgment appealed from, the following :

> "First. The court erred in declaring that the plaintiff had agreed to accept the shares of stock of the Oil Manufacturing Company in payment of his shares in the *Compañia de Aceites de Manila*, instead of their cash value, and in not declaring that document Exhibit 4 was fictitious with respect to the plaintiff and that therefore it was not binding as to him and, lastly, in not declaring that the defendant and the plaintiff had a mutual understanding that the shares of stock of the latter should be paid for in cash.
>
> "Second. The court erred in declaring that the evidence does not prove the existence of a partnership between the defendant and the plaintiff for the purchase of lands and machinery, the defendant being the capitalist partner and the plaintiff the industrial partner and that by virtue thereof the plaintiff had the right to receive one-half of the profits.
>
> "Third. The court erred in not declaring that the said partnership between the plaintiff and the defendant had produced a profit and in not ordering the defendant to render an account of the same and in default thereof to declare that the said profits amounted to P219,515, one-half of which, that is, P109,757.50 belongs to the plaintiff, and in not ordering the defendant to pay this amount to the plaintiff.
>
> "Fourth. The court erred in denying plaintiff's motion for a new trial."

Regarding the first assignment of error, the controversy reduces itself to the question as to whether or not the plaintiff agreed to receive shares of stock of the Oil Manufacturing Company, in lieu of cash, in payment of his shares in the *Compañia de Aceites de Manila.*

It is uncontroverted that the plaintiff was the owner of 335 shares of stock of the *Compañia de Aceites de Manila, Incorporated*, until he executed document Exhibit B on March 14, 1918, and ratified it before a notary on April 4th, of that year, by which the plaintiff transferred, conditionally, the said shares of stock to the defendant. The parties question the validity of this transfer, the plaintiff alleging that it was fictitious and that the only purpose for which it was executed was to avoid such shares of stock from being confiscated at the time of the World War, as the owner thereof was a subject of Turkey, an ally of the German Empire, against which the United States of America was at war at that time. In our opinion, the evidence shows that the said transfer was simulated on the part of both the plaintiff and the defendant. The consideration of that contract (P25,000) had been received

from the defendant about six months before, for the account of the Tayabas Land Company and in the document in question the plaintiff personally bound himself and encumbered the said shares of stock owned by him. It is hardly conceivable that he should do so without the Tayabas Land Company taking any collateral therefor, but this is a fact. However, it cannot be said that the plaintiff executed the contract through fraud or error as it appears from his own testimony that he did not believe in the contingency of the confiscation. However it may be, it has not been sufficiently proven that the defendant intended to deceive or prejudice the plaintiff when he suggested to the latter the convenience of such transfer. As it was aptly remarked by the trial court, the object of the defendant was not to prejudice the plaintiff, but, on the contrary, to help and protect the corporation against the possibility of any intervention of whatever nature on the part of the Government.

Coming to the principal point of the first assignment of error, we notice that the plaintiff, together with other stockholders of the aforesaid *Compañia de Aceites de Manila, Incorporated*, on September 24, 1918, subscribed a document, a copy of which is Exhibit 4 (the original is Exhibit R in criminal case No. 18492 in which the plaintiff herein is the accused) in which document the plaintiff and his co-signers agreed to receive shares of stock in the new oil mill that the defendant intended to establish, and which, in fact, was established and known as The Oil Manufacturing Company, in payment of their shares of stock in the former association. Plaintiff alleges that he executed that document with the understanding with the defendant that he, the plaintiff, would not be so obligated and that he signed it as an inducement for the other partners to sign. The proceedings as a whole do not show that there was such an understanding between the plaintiff and the defendant and that the former actually obligated himself, according to the terms of the aforesaid document Exhibit 4, as did the other signers of the document. It is true that the plaintiff in his testimony affirmed such allegation, but he is contradicted by the defendant upon this point. The evidence shows that the plaintiff actually accepted his shares of stock in the new corporation, The Oil Manufacturing-Company, at the time of receiving the profits and dividends for his shares of stock in this company (Exhibits XX and YY), and according to Exhibit QQQ (1) the plaintiff expressed his conformity with such payment in shares of stock of the new corporation, The Oil Manufacturing Company, when he transferred 59 shares of the new stock in favor of the defendant. In view of this evidence it cannot be stated that the preponderance thereof is in favor of the allegation of the plaintiff that he understood that his shares of stock in the *Compañia de Aceites de Manila, Incorporated*, would be paid in cash notwithstanding the fact that he signed the original of document Exhibit 4.

It is a proven fact that the aforesaid 280 shares of the plaintiff in the *Compañia de Aceites*

de Manila, Incorporated, were exchanged for 464 shares of the new corporation, The Oil Manufacturing Company. As has been said, 59 of these shares were transferred to the defendant in payment of P5,900 (Exhibit QQQ [1]).

The court a quo, therefore, did not commit the error first assigned.

Coming now to the second and third assignments of error, we find that the only positive evidence as to the existence of the partnership, without name, that the plaintiff claims to have been formed between himself and the defendant, is the testimony of the former contradicted by that of the latter. The statements of Mr. Sumulong upon this point tending to show an admission on the part of the defendant regarding the partnership in question, are not sufficiently definite and are furthermore contradicted by the testimony of the defendant.

It seems highly improbable that the evidence of a partnership of the importance ascribed to it. by the plaintiff should consist only of some loose rough drafts, such as Exhibits T, NN, OO, PP, QQ, and RR of which the first five are photographic copies of some notes written by the defendant, for the purpose, according to him, of making a memorandum, which is Exhibit 53, admitted in evidence as part of the testimony of the defendant, which memorandum he intended to submit to the Dominican friars in connection with the investment of the credit of P200,000 obtained from the Bank of the Philippine Islands through a guaranty of the said friars. The originals of these notes in fact seem to indicate that they are part of a report or memorandum of a financial statement; but it does not precisely show that there had existed the partnership claimed by the plaintiff. Exhibit RR is a rough draft of the constitution of an oil mill known as The Oil Manufacturing Company, dated May, 1918. The incorporators of this concern are six, all of them being capitalist members. It cannot refer to the partnership alleged by the plaintiff which he claims to have been formed only between himself and the defendant, he being an industrial partner.

The evidence does not sufficiently establish the existence of the partnership upon which the plaintiff bases his second cause of action.

In view of the conclusion at which we have arrived, the last error assigned cannot be considered as having been committed by the court.

We affirm the judgment appealed from with costs against the appellant. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, and *Ostrand, JJ.,* concur.

Date created: June 05, 2014