47 Phil. 951

[G.R. No. 20132. September 22, 1923]

JUAN DALAY, PLAINTIFF AND APPELLANT, VS. BERNARDO AQUIATIN AND PROCESO MAXIMO, DEFENDANTS AND APPELLEES.

D E C I S I O N

ROMUALDEZ, J.:

Ciriaco Villarin, being the owner of six parcels of land described in the complaint, executed on July 4, 1917, a document (Exhibit A) in favor of Eugenio Gomez, acknowledging a debt, one of whose clauses is as follows:

> " * * * and if I cannot pay the aforesaid amount, when the date agreed upon comes, the same shall be paid with the lands given as security,—the lot and house and lands described in the aforesaid seven documents."

As the period so stipulated elapsed without Ciriaco Villarin having paid the debt, Eugenio Gomez believing himself entitled to do so, executed a document Exhibit C on September 30, 1917, in favor of Juan Dalay, where the transfer is stated as follows:

> "I hereby state that I have received from Mr. Juan Dalay, of the municipality of Paete, the sum of P2,300; and for this reason I hereby transfer and sell to him the lands to me paid by Ciriaco Villarin in accordance with the foregoing document and the title deeds of the aforesaid lands hereto attached.—Dated and signed at Pagsanjan, Laguna, September 30, 1917, Eugenio Gomez.—Acknowledged before a notary public on January 1, 1919."

By virtue of this conveyance, Juan Dalay, on the same date it was executed, entered upon the possession of these lands and is now still in possession thereof.

On October 10, 1917, Ciriaco Villarin, in an affidavit Exhibit B, acknowledged that the title to, and possession of, the aforesaid lands had been transferred in a real and absolute sale to Eugenio Gomez.

Fifteen days later, that is, on October 25, 1917, Ciriaco Villarin contracted a debt in favor of Bernardino Aquiatin for which he gave the note set forth in the latter's complaint, filed November 7, 1917, in civil case No. 2536 of the Court of First Instance of Laguna.

After the judgment rendered in that case in favor of Bernardino Aquiatin became final, execution was issued and levied upon the six parcels aforementioned, among other properties.

Juan Dalay brought this action against Bernardino Aquiatin and the deputy sheriff, Proceso Maximo, to have himself declared owner of said lands, to forever prohibit the defendants, their agents and other persons acting in their behalf, from performing any act tending to carry out the attachment and execution sale of said realties, and to recover the costs.

The answer of the defendant Aquiatin is a general denial and a special defense wherein he alleges that the sale upon which the plaintiff Dalay relies is simulated and fraudulent, and that said plaintiff had not had exclusive possession of, nor title to, said lands.

After trial, the court found that the plaintiff had no cause of action for the reason that he was not, nor could he have been, the owner of the properties given to him as security of the debt, and dismissed the complaint, ordering the execution to be carried out upon the lands in question, and sentencing the plaintiff to pay the costs.

From this judgment, Juan Dalay appeals, assigning as errors the failure of the court to hold the documents Exhibits A and B effective as a transfer and absolute waiver of the title to the lands, and its failure to hold that the plaintiff is the absolute owner thereof and of the improvements thereon.

This being the issue raised, the question to be decided is whether or not by virtue of the transfer hereinabove mentioned, Juan Dalay became the owner of the parcels of land in dispute.

There is no question that Ciriaco Villarin was the original owner of these realties. Let us see whether the contract executed by the latter in favor of Eugenio Gomez (Exhibit A), and the transfer made afterwards by the latter in favor of Juan Dalay (Exhibit C), and the declaration

made later on by Ciriaco Villarin (Exhibit B) had the legal effect of transferring to Juan Dalay the full title to these lands.

The document Exhibit A contains, as above stated, the clause which we again quote as follows:

> " * * * and if I cannot pay the aforesaid amount, when the date agreed upon comes, the same shall be paid with the lands given as security,—the lot and house and lands described in the aforesaid seven documents."

Is this stipulation violative of the provisions of article 1859 of the Civil Code? Two things are prohibited by this article, to wit, (a) the appropriation by the creditor of the properties pledged or mortgaged; and (6) the disposition thereof by the same creditor.

The stipulation above set forth does not authorize either one or the other. Of course it is clear that it does not authorize the creditor to dispose of the properties mortgaged.

Neither do we find that it authorizes him to appropriate the same. What it says is merely a promise,to pay the debt with such properties, if at its maturity it is not satisfied. It is merely a promise made by the debtor to assign the property given as security in payment of the debt, which promise is accepted by the creditor.

There is no doubt that a debtor may make an assignment of his properties in payment of a debt. (Art. 1175, Civil Code.) And the assignment is not made unlawful by the fact that said properties are mortgaged, because the title thereto remains in the debtor; nor is a promise to make such an assignment in violation of the law.

We are, therefore, of the opinion that this case does not come under the provisions of article 1859 of the Civil Code, and therefore said article is not applicable to the stipulation in question.

Upon the expiration of the period for the payment of the debt without the same having been paid, Eugenio Gomez did not wait nor require Ciriaco Villarin to make a formal assignment of the mortgaged property in payment of the debt, and transferred the same to Juan Dalay in the document Exhibit C. And in doing so, Eugenio Gomez did not dispose of property merely mortgaged, but of property promised to be assigned in payment of the debt which had not been paid at the expiration of the period fixed for its payment.

Gomez had not, by virtue alone of the promise of assignment of said property, any real right thereon, but he did have a personal action against Villarin to compel him to execute the proper deed of assignment. For this reason the conveyance made by Gomez in favor of Dalay was defective, it having been made in advance of the actual assignment of said property in his favor.

This transfer, however, is not void *per se* inasmuch as Villarin consented to the said property passing to Gomez in payment of the debt after the expiration of the period for payment, if the debt was not paid. There is no question as to the concurrence of the other elements of this contract made in favor of Dalay, the defect consisting in Villarin not having previously executed the deed of assignment he had promised.

This defect, which would have been a ground for annulling this transfer made by Gomez in favor of Dalay, had Villarin brought the proper action, was cured by the act of said Villarin in executing the document Exhibit B, wherein he acknowledged that the title to, and possession of, said lands were transferred to Gomez as in a real and absolute sale. This confirmation, valid and effective under the provisions of article 1311 of the Civil Code, gave full effect to the transfer of these properties made by Gomez in favor of Dalay.

The allegation of the defendant Aquiatin that this sale in favor of Dalay is simulated and fraudulent cannot be held proven. It does not appear that when he executed the document Exhibit A, Ciriaco Villarin was indebted to anybody with the exception of Gomez, nor that he owed anything to anybody when he executed the document Exhibit B, which cured the defect of the transfer in favor of Dalay.

As appears from the complaint of Bernardo Aquiatin himself, the debt of Ciriaco Villarin, which is the subject matter of the aforecited case No. 2536, was contracted by Villarin on October 25, 1917, about fifteen days after the execution of said document Exhibit B.

We do not find, therefore, in the record sufficient ground for holding fraudulent the transfer of the lands in question in favor of the herein plaintiff Juan Dalay, who by virtue of said sale became the absolute owner of these lands before Villarin contracted his debt in favor of Aquiatin and of course before the filing of the complaint for the recovery of such debt and therefore before the rendition of the judgment in that case No. 2536; so that when the execution involved in this action was levied, Ciriaco Villarin, the judgment debtor, was no longer the owner of said parcels of land.

The judgment appealed from is reversed and the plaintiff Juan Dalay is adjudged the sole and absolute owner of the lands described in his complaint, and it is ordered that the defendants, their agents, and other persons acting in their behalf, abstain forever from performing any act whatsoever tending to carry out the attachment and execution sale complained of, or to enforce either one in any manner whatsoever.
No special finding as to costs is made. So ordered.

Araullo, C. J., Johnson, Malcolm, Avancena, and *Villamor, JJ.,* concur.

Johns, J., concurs in the result.

D I S S E N T I N G

STREET, *J.,*

I wish to record an earnest dissent from the doctrine stated in this case. In an instrument intended to operate as mortgage of seven parcels of land executed by the debtor, Ciriaco Villarin, in favor of his creditor, Eugenio Gomez, a stipulation was inserted to the effect that in case the specified date should arrive and Villarin should be unable to pay the amount due, it should be paid with the land given as a guaranty. By virtue of this stipulation the debtor was bound, so the court in effect holds, to transfer the property to the creditor in satisfaction of the mortgaged debt, the mortgagor being unable at that time to pay the same. Said stipulation in the opinion of the undersigned should be declared invalid, as being contrary to the spirit, if not the letter, of article 1859 of the Civil Code, as well as directly contrary to the general principles of jurisprudence applicable to the relation of mortgagor and mortgagee. If a stipulation of this kind is valid, every mortgage in which such stipulation is inserted will become self-executing, and the debtor, upon making default in the payment of the debt, will be bound to transfer the property in satisfaction of the mortgage, with the result that the right of redemption is lost from the mere fact that the debtor is unable to pay at the date stipulated.

There is a maxim long recognized by the equity courts of England and America to the effect that “Once a mortgage, always a mortgage.”

This means that if an instrument is in its origin a mortgage, it will be treated as such by the

courts until it is satisfied or foreclosed by some legal process; and the courts will not recognize a stipulation inserted in the instrument creating the mortgage which is intended to vest the property in the creditor upon failure of the debtor to pay the mortgage debt. Nor will they recognize any waiver of the equity of redemption inserted in the contract. This doctrine is based upon a recognition of the inequality of the position of the debtor and creditor respectively. It recognizes the fact that the creditor necessarily has a power over his debtor which may be exercised inequitably, and that the debtor is liable to yield to the exertions of such power. The doctrine embodied in the maxim referred to protects the debtor absolutely from the consequences of his inferiority and of his own act done through infirmity of will.

In discussing this doctrine Mr. Pomeroy, author of the leading American treatise on the subject of Equity Jurisprudence, says:

> ” * * * The doctrine has been firmly established from an early day that when the character of a mortgage has attached at the commencement of the transaction, so that the instrument, whatever be its form, is regarded in equity as a mortgage, that character of mortgage must and will always continue. If the instrument is in its essence a mortgage, the parties cannot by any stipulations, however express and positive, render it anything but a mortgage, or deprive it of the essential attributes belonging to a mortgage in equity. The debtor or mortgagor cannot, in the inception of the instrument, as a part of or collateral to its execution, in any manner deprive himself of his equitable right to come in after a default in paying the money at the stipulated time, and to pay the debt and interest, and thereby to redeem the land from the lien and encumbrance of the mortgage; the equitable right of redemption, after a default is preserved, remains in full force, and will be protected and enforced by a court of equity, no matter what stipulations the parties may have made in the original transaction purporting to cut off this right.” (Pomeroy’s Equity Jurisprudence, 4th ed., sec. 1193, vol. 3, p. 2825.)

Opposed as I am to the doctrine stated by the court with reference to the legality of the’ stipulation above referred to, I also differ from the court with respect to the effect of Exhibit B. In this connection it appears that about ten days after Gomez had transferred the property to the plaintiff Dalay, Ciriaco Villarin, the debtor, made an affidavit in which he recites the fact that he had failed to comply with his obligation to pay the debt which had

been contracted by himself to Gomez and that he therefore recognized that the ownership and possession of the property in question was to be considered as transferred in absolute title to said Gomez, in accordance with the stipulation contained in the original contract obligating him to transfer the property as already stated. This admission on the part of Villarin was merely a recognition of the validity of the stipulation in question and such an admission could not impress validity upon a stipulation of the character referred to.

It is not to be denied that a mortgagor of property may transfer the mortgaged property to the creditor in satisfaction of the mortgage debt after the mortgage has fallen due. But such a transfer implies the independent exercise of the power vested in the mortgagor, as owner, and the affidavit in question is nothing more than the recognition of a situation which was supposed by the debtor to be an accomplished fact, namely, that the property in question had passed to the creditor upon the debtor’s failure to pay the debt when due. No legal efficacy can be conceded to such an admission.

The judgment should in my opinion be affirmed.

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