

46 Phil. 897

[ G.R. No. 19900. December 15, 1923 ]

**FRANCISCO GUTIERREZ REPIDE, APPLICANT AND APPELLANT, VS. CARMEN SACKERMANN VDA. DE MACLEOD ET AL., OPPONENTS AND APPELLEES. THE MUNICIPALITY OF BAYAMBANG, OPPONENT AND APPELLANT.**

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

**AVANCEÑA, J.:**

Jose C. Macapinlac owned two *haciendas*, one containing 2,099 hectares, situated in Pampanga, and the other 282 hectares, situated in Pangasinan. On August 22, 1916, Macapinlac sold these two *haciendas* to E. M. Bachrach for P12,960 with right of repurchase, the period of redemption to expire October 2, 1917. On the 8th of November, 1917, E. M. Bachrach transferred to Mr. Francisco Gutierrez Repide his rights over said two *haciendas* acquired from Macapinlac.

On June 17, 1920, Francisco Gutierrez Repide filed the herein application for the registration in the registry of property of the *hacienda* in Pangasinan. This application was opposed by Jose C. Macapinlac, Carmen Sackermann, and the municipality of Bayambang. Other oppositions were entered which are not the subject-matter of this appeal.

Jose C. Macapinlac alleges in his opposition that the deed of sale with right of repurchase executed in favor of E. M. Bachrach is void as being fictitious, lacks consideration, is vitiated by an error as to the person in whose favor it was executed, and does not contain the true agreement between the parties, for their intention was that the property, purporting to have been sold, should stand only as security for a debt of P12,960, all of which circumstances the applicant knew before acquiring the rights E. M. Bachrach had over these lands.

Carmen Sackermann, on the other hand, alleges that she is the owner of the land sought to be registered.

The municipality of Bayambang also alleges that the land sought to be registered is its exclusive property.

For the better intelligence of the respective contention of each party in this case, it might be well briefly to anticipate certain collateral facts.

In the proceeding for the registration of the property situated in Pampanga, Jose C. Macapinlac, on February 21, 1916, obtained a decree for the registration thereof in his name, subject to an incumbrance in the sum of P40,000 in favor of the Archbishop of Manila. As the period for redemption fixed in the sale made by him of this property in favor of E. M. Bachrach expired on November 5, 1917, E. M. Bachrach petitioned in that proceeding that his title to said property be held consolidated, attaching to his petition an affidavit of Macapinlac dated November 10, 1917, wherein he made a statement to the effect that this property had been sold by him to E. M. Bachrach, that the period for redemption had expired without having made use of the right of redemption, and that he agreed to the consolidation of the title of E. M. Bachrach to this property. On the 25th of April, 1918, that proceeding came up for hearing upon this petition of E. M. Bachrach and at the hearing Macapinlac testified under oath confirming the statement made by him in his affidavit dated November 10, 1917. In view thereof and of the fact of E. M. Bachrach having transferred to Francisco Gutierrez Repide on November 8, 1917, all the rights acquired by him from Macapinlac over this property, the trial court decreed the registration of the property in the name of said Mr. Francisco Gutierrez Repide.

Later on Mr. Francisco Gutierrez Repide acquired the credit of P40,000 of the Archbishop of Manila, which, as above stated, constituted an incumbrance upon this property, and subsequently instituted an action for the recovery of this credit which was secured by a mortgage. In that action the proper

proceedings were taken, judgment was rendered in favor of Gutierrez Repide and it was petitioned that this property be sold at public auction. But on January 9, 1918, Francisco Gutierrez Repide withdrew his petition for the sale of this *hacienda* on account of having acquired the rights of E. M. Bachrach, as intimated by him in a subsequent pleading dated the 12th of the same month.

With

reference to the opposition of Macapinlac and Sackermann, we may say that whatever might have been the true transaction between Macapinlac and E. M. Bachrach, as it clearly appears from the terms of the contract that it was one of sale and not of mortgage, the question reduces itself to whether or not Gutierrez Repide, in acquiring the rights of E. M. Bachrach under this contract, knew that such a contract was not one of sale with right of repurchase, but of mortgage.

Gutierrez Repide was, as regards this contract, a third person. If he acquired in good faith the rights of E. M. Bachrach under the terms of the contract between E. M. Bachrach and Macapinlac, he cannot be affected by the transaction that might have really been made by E. M. Bachrach and Macapinlac, outside and against the terms of this contract. If he acted in bad faith and knew that the lands had not been sold to E. M. Bachrach by Macapinlac, but simply mortgaged, then he stands in the same situation as E. M. Bachrach, and could not have acquired more than the very rights E. M. Bachrach had really acquired from Macapinlac.

There is evidence in the record which positively shows that Mr. Francisco Gutierrez Repide acquired E. M. Bachrach's rights over these two *haciendas* in the belief that they had in fact been sold with right of repurchase to E. M. Bachrach by Macapinlac, according to the terms of the written contract, and that Macapinlac induced Francisco Gutierrez Repide to entertain this belief. The contract of sale with right of repurchase between Bachrach and Macapinlac was registered in the registry of property. The registration of a document evidencing a contract is a notice to the public of the existence and terms of said contract. Consequently the registration of this contract as one of sale with right of repurchase was, so far as

Bachrach and Macapinlac were concerned, a notice that such was the contract that they had executed and in this sense Macapinlac has, in effect, induced Francisco Gutierrez Repide to believe in the existence and the terms of this contract. Furthermore the affidavit presented by Macapinlac two days after Gutierrez Repide had acquired Bachrach's rights, affirming that the property in Pampanga had really been sold to Bachrach with right of repurchase and that he consented to the consolidation of Bachrach's title to said property in Pampanga and to the registration of his title over said property in the name of Gutierrez Repide, as the latter had, in turn, acquired Bachrach's rights, and finally the declaration of Macapinlac in the same terms given in open court under oath on April 25, 1918, also lead us to the conclusion that Macapinlac has, by his acts, induced Gutierrez Repide to believe that the contract he had executed with Bachrach about these two *haciendas* was one of sale with right of repurchase, and not of mortgage. We may add to all of this the fact proven that subsequently Macapinlac accepted and discharged the duties of an employee of Gutierrez Repide, or his manager of the *hacienda* in Pampanga, performing positive acts that indicated that he regarded Gutierrez Repide to be the owner of the *hacienda* and considered himself as a mere employee.

The contention of the opponents Sackermann and Macapinlac that in acquiring Bachrach's rights over these two *haciendas*, Gutierrez Repide knew that they were simply mortgaged, is based on the following grounds: First, that in the complaint of Gutierrez Repide in the case for the recovery of the mortgage credit, which he instituted for the foreclosure of the mortgage in favor of the Archbishop of Manila transferred to him, he included Bachrach as one of his creditors and in that proceeding, which was commenced after he had acquired Bachrach's rights on November 8, 1917, he has been urging the sale at public auction of the estate in Pampanga for the payment of the mortgage debt; second, that in the record of said estate in the registry appears the partial payment that Macapinlac had made on account of the P12,960, the purchase price therein stated; and third, the declaration given by Macapinlac in this case.

Really it

appears that in the complaint filed by Gutierrez Repide in the proceeding for the recovery of the mortgage credit, he included Bachrach among the defendants as a creditor. This, however, does not indicate that Gutierrez Repide meant that the contract had between Bachrach and Macapinlac was a mere mortgage and not a sale with right of repurchase, for it does not appear that he ever had acquired knowledge thereof. And he could not learn of it unless Macapinlac or Bachrach should have told him. The opponents have not presented any evidence, nor do they claim, that on that date Macapinlac gave Gutierrez Repide such an information. On the other hand he was, at that time, and has for a long period thereafter, been, absent in the United States. So that that complaint prepared by his attorney cannot have the effect that the opponents now attribute to it. The attorney himself who drew that complaint, answering the demurrer interposed thereto, stated to the court that in filing it against those who appeared as creditors, he had no more object than that of complying with the law which required that all the parties who may have an interest in the property mortgaged should be included as parties in the case, said parties interested having the burden of proof in the determination of the nature of their interest.

The point raised upon the fact that after Gutierrez Repide had acquired Bachrach's rights over these two *haciendas*, he still urged, in the action for the recovery of the mortgage credit, that the *hacienda* in Pampanga be sold to enforce payment of his mortgage, is, in our opinion, of no importance. This case was in the hand of an attorney, who had the duty to see that proper proceedings were taken, and undoubtedly Gutierrez Repide had not given his attorney the proper instructions when he acquired Bachrach's rights over the *hacienda* but sometime later, and it was precisely when his attorney petitioned the suspension of those proceedings.

As to the entry in the registry of the partial payment made by Macapinlac on account of the P12,960, neither can we consider it to be of any importance. In this entry it is stated that that payment was made on account of the contract of sale with right of repurchase of the *hacienda* in Pampanga, and not of the mortgage between Macapinlac and Bachrach. A partial payment by the vendor within the period of redemption is not

incompatible with the hypothesis that the contract is one of purchase and sale. It is not strange that the vendor with right of repurchase should, during the period of redemption, advance payment of a part of the price of redemption. The testimony of Macapinlac is, of the grounds of the opposition, the one having the least weight. Macapinlac testified in this case that before Gutierrez Repide acquired Bachrach's rights over these two *haciendas*, he told him that he would question the right of Bachrach. We cannot admit that Macapinlac really told Gutierrez Repide such a thing, for it appears that two days after the contract between Bachrach and Gutierrez Repide, he made that sworn declaration of November 10, 1917, stating that the contract entered into by and between him and Bachrach was one of sale with right of repurchase, that he had not made use of his right of redemption within the period fixed, and that he agreed to the consolidation of Bachrach's title to the *hacienda* in Pampanga and the transfer of his title in the name of Bachrach. In weighing the testimony of Macapinlac, we cannot lose sight of the fact that, notwithstanding having subscribed and sworn to a public document of purchase and sale, registered the same afterwards or consented its registration in the registry of property, affirmed in his sworn declaration of November 10, 1917, and declared under oath before the Court of First Instance that such was the contract he executed, he should now say that this is all false. We may add that, in connection with other incidents of this case which are not the subject of this appeal, he also affirmed having subscribed a deed of sale in favor of Mr. Boomer of the same *hacienda* in Pampanga and admitted that this was only a simulated contract.

It is intimated in the decision of the lower court that the contract between Bachrach and Gutierrez Repide lacks consideration. It is stated in the contract that Gutierrez Repide acquired Bachrach's rights in consideration of a value received. The trial court says that Gutierrez Repide has not explained what and how much this value received was. But this question as to want of consideration of the contract between Bachrach and Gutierrez Repide was not raised in the opposition filed by the opponents. It must also be noted that Gutierrez Repide died before the closing of the evidence in this case and it cannot be said that had

he lived up to that time, he should not have explained this point. At any rate the law presumes a consideration in all contracts and he who denies it has the burden of proof, and the opponents have not proven that it did not exist.

As to the opposition of Carmen Sackermann, it appears from the record that on March 7, 1917, Macapinlac sold this *hacienda* in Pangasinan to John Macleod, and in the original deed of sale the mortgage in favor of Bachrach in the sum of P10,000 was stated as an incumbrance upon this property. This document was corrected on the 23d of April of the same year through another public document registered and signed by John Macleod, wherein it was stated that this *hacienda* had been sold to Bachrach with right of repurchase in the sum of P12,960. In this last document John Macleod stated that the purchase of this estate was subject to said contract of purchase and sale with right of repurchase in favor of Bachrach. Subsequently the rights of John Macleod, acquired by virtue of this contract, were transferred to other persons and lastly to the opponent, his widow Carmen Sackermann. When John Macleod purchased this *hacienda*, the right of redemption of Macapinlac under his contract with Bachrach was still in force, but Macleod did not make use of this right of redemption within the period stipulated. John Macleod having recognized this contract of purchase and sale between Macapinlac and Bachrach, his successor in interest, the opponent Carmen Sackermann, cannot question the rights of the applicant Gutierrez Repide derived from that sale and acquired by Bachrach in good faith.

As to the opposition of the municipality of Bayambang, accepting the findings made by the trial court in the judgment appealed from, we hold that this opposition must be overruled.

For all of the foregoing the judgment appealed from is reversed, the oppositions entered by Jose C. Macapinlac, Carmen Sackermann and the municipality of Bayambang are overruled, and the applicant is declared entitled to have the land described in the application registered, and the registration of said land is ordered

made in his name and the case remanded to the lower court for further proceedings, without special finding as to costs. So ordered.

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

*Street, J., with whom concurs Johns, J., dissenting: I dissent, as the judgment in my opinion should be affirmed.*

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