

**CONRADO MAKILING, COMPLAINANT, VS. PEDRO J. CALLEJO, JR.,
MUNICIPAL JUDGE OF BROOKE'S POINT, PALAWAN,
RESPONDENT.**

Adm. Mat. No. OCA-69 (2438-MJ). March 30, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

On February 13, 1976, respondent judge, as an ex-officio notary, notarized a deed of sale in English wherein Conrado Makiling, a widower, the owner since 1961 of a homestead with an area of more than five hectares (as shown in Original Certificate of Title No. P-4254), located at Barrio Saraza (Taniongbobog), Brooke's Point, Palawan, purportedly sold the homestead to his son, Eduardo Makiling, in consideration of four thousand pesos cash and Ediiardo's assumption of his father's mortgage debt to the bank (p. 3, Rollo).

The sale was made with the conformity of Egleceria Makiling. The instrumental witnesses were Yvonne Setias and another person whose signature is illegible.

More than three years after that alleged sale (which was not registered), or on August 31 or September 2, 1979, Conrado Makiling and Aida L. Makiling, the widow of Conrado's deceased son Eduardo (the vendee in the sale), had a confrontation regarding the sale before respondent Judge Pedro J. Callejo, Jr. According to the judge, Aida had "referred" to his court Conrado's "attempt to redeem and probably dispose of" the homestead (p. 13, Rollo).

Conrado Makiling claimed that he never appeared before Judge Callejo, Jr., to ratify the sale. So, he charged the judge with falsification of a public document but an assistant provincial fiscal dismissed the charge on the ground that the issue of falsification could be resolved in the case for annulment of sale filed by Conrado on September 11, 1979 against his daughter-in-law, Aida, in the Court of First Instance of Palawan, Civil Case No. 1330.

Conrado Makiling alleged in his complaint in that case that his signature to the deed of sale was fraudulently obtained by the spouses Eduardo Makiling and Aida L. Makiling, that he did not know that what he signed was a deed of sale and that he did not receive any monetary consideration for the sale (p. 17, Rollo).

On the other hand, Aida L. Makiling sued Conrado Makiling and the Rural Bank of Brooke's Point for the recovery of the owner's duplicate of the title covering the homestead. Aida claimed to be the vendee of the homestead and to have paid the debt to the bank (Case No. 411). The case was filed in the municipal court of Brooke's Point, the court of respondent Judge Callejo, Jr.

Conrado Makiling filed a certiorari action in the Court of First Instance wherein he assailed the jurisdiction of the municipal court to entertain the replevin case filed by Aida L. Makiling against him (Civil Case No. 1381). The case is still pending.

In his verified complaint in this case dated May 2, 1980, Conrado Makiling alleged that he never sold the homestead to anybody, that he never appeared before Judge Callejo, Jr. to ratify the sale and that he had always resided in the homestead until the judge harassed him (p. 2, Rollo).

Marianito Dar, a tenant of Conrado since 1971, swore that he had not known nor heard of Conrado Makiling's alleged sale of the homestead (p. 4, Rollo).

Judge Callejo, Jr. in his comment said that he sent a letter to Conrado Makiling dated August 31, 1979 asking him for a conference regarding the homestead which had been sold to Eduardo Makiling whom the judge regarded as a "close friend and scoutmaster".

Judge Callejo, Jr.'s statement in that letter that Aida L. Makiling had "referred" to his court Conrado Makiling's "attempt to redeem and probably dispose of" the homestead (p. 13, Rollo) shows that Judge Callejo, Jr. has an erroneous understanding of the propriety of his intervention in the controversy over the homestead between Conrado Makiling and his daughter-in-law.

Respondent judge stated further in his comment that Conrado Makiling did not deny that he signed the deed of sale but he claimed that his wife was not present at the execution thereof (p. 12, Rollo).

Disciplinary action may be taken against a municipal judge for improper performance of his official duties or for being unfit for that office (Sec. 97, Judiciary Law).

We hold that Conrado Makiling's complaint against Judge Callejo, Jr. is premature. It is in the pending case for annulment of contract where it would be established whether Judge Callejo, Jr. committed a grave misconduct in the performance of his duties as an ex-officio notary for notarizing a deed of sale in spite of the fact that the vendor did not appear before him. Hence, the final outcome of that case should be awaited.

WHEREFORE, the complaint is dismissed. A copy of this resolution should be attached to respondent's personal record.

Barredo (Chairman), Concepcion Jr., Fernandez[*] and De Castro, JJ., concur.
Abad Santos, J., is abroad.

[*] designated to sit in the Second Division

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