

JUAN BUENCAMINO ET AL., PETITIONERS AND APPELLEES, VS. NICASIA VICEO ET AL., RESPONDENTS AND APPELLANTS.

G.R. No. L-4929. March 05, 1909

Ponente: WILLARD, J.

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WILLARD, J.:

This is an appeal from the Court of Land Registration. Nicasia Viceo and Anselmo Sabat, hereinafter called the defendants, opposed the granting of the petition. Their claims were rejected by the court below and they have appealed.

1. The claim of Anselmo Sabat was based upon the theory that his father Anastasio Sabat was the owner of the land described in the petition, and that the transactions between himself and the mother of the petitioners constituted a mortgage which has never been foreclosed, and, consequently, that the petitioners are not the owners in fee of the property.

Anastasio Sabat became the owner of the land described in the petition by virtue of a patent issued to him by the Spanish Government on the 13th day of April, 1894, which patent was recorded in the registry of property on the 1st day of May, 1894, and again on the 15th day of June, 1896.

On the 28th day of April, 1898, he sold and conveyed the land to Dofia Manuela Talla David, the mother of the petitioners, for 3,500 pesos. The deed of conveyance contained an agreement that the vendor might repurchase the same within three years from the date thereof. The land described in the patent consisted of two parcels, the second lying to the west of the first and adjoining it in its southerly portion. There is no evidence in the case that Anastasio Sabat ever repurchased the property during his lifetime, he having died in 1902, nor any evidence that the defendant, Anselmo Sabat, one of his children, or any of his other heirs, have ever repurchased the property or made any offer to do so. That the contract of the 28th of April, 1898, was a sale with the right to repurchase, is apparent from the terms thereof. The claim made by the appellant, Sabat, that the sale was never perfected because the land was never delivered to the purchaser, is sufficiently answered by reference to article 1462 of the Civil Code. The contract in question being evidenced by a notarial document, its execution was a sufficient delivery of the property, passing for the present the question of the actual delivery of the possession thereof by the vendor to the vendee.

It is claimed, however, by this appellant, that the contract evidenced by this notarial document was afterwards changed by the parties, and to prove this claim there was received in evidence a document signed by Anastasio Sabat and now in the possession of the petitioners, which document is as follows:

"At San Miguel de Mayumo, Province of Bulacan, this 30th day of June, 1901, I, Anastasio Sabat, married, a native of the pueblo of Gapan (Nueva Ecija), in the presence of these two witnesses, Don Vicente Morales and Don Apolonio Maniquis, declare that I mortgage my three parcels of rice land in the barrio of San Roque, of the pueblo of Gapan, to guarantee the payment of my debt amounting to P4,500 in favor of Dona Manuela T. David y de Leon; I have received the said amount in legal silver coin, and on account of the same debt I deliver

also to the said Doña Manuela the ten folios of the title deed of two parcels of the above lands; but the title deed relating to the third one can not be delivered to her because it is attached to the deed of Doña Anatalia Pangilinan, which is at present in the possession of Don Valentin Viola; so that I have delivered to the said Doña Manuela only a receipt therefor, which receipt was given to me by Don Valentin; and with regard to the above-cited lands, I hereby deliver to my above creditor the full possession, administration and intervention as well as of all trees planted thereon, and she shall be recognized as the true owner until I have paid the full amount mentioned on the other side of this (document).

"And I ratify the above forever, and in witness thereof I have signed the same, as well as the two other witnesses above mentioned."

It will be observed that this private instrument mentions three tracts of land, while the notarial document of 1898 mentions only two tracts. The third tract of land mentioned in the private document is not involved in this case and the petitioners do not here claim to be the owners of it. The theory of the appellant, Sabat, is that this agreement constitutes a mortgage and annuls the previous purchase made by Doña Manuela in 1898. That document of 1898 conveyed the ownership of the property to the mother of the petitioners. No repurchase having been made within three years from this date, the purchaser was, on the 30th day of June, 1901, the absolute owner of the property. It can not be presumed that, being the absolute owner of the property, she gave up that ownership and accepted the position of a mere mortgagee. It is to be considered, on the contrary, as held by the court below, that the purpose of this document was to give Doña Manuela an additional tract of land as security for her debt which had increased from 3,500 pesos in 1898, to 4,500 pesos in 1901, and the most that can be claimed is that this instrument was intended not to change the nature of the contract previously made between the parties, which was that of a sale with a right to repurchase, to an entirely different kind of contract, namely a mortgage, but rather to continue the relation previously existing between them as to the two tracts of land included in the deed of 1898, and to make that contract extensive to the third tract of land. This view would give to the contract of 1901 the nature of a sale with the right to repurchase. That it is such a contract is evidenced by the statement in the latter part of it to the effect that Doña Manuela is to be considered as the true owner as long as the amount due was not returned. A somewhat similar document was held to evidence a sale with the right to repurchase in the case of *Albert vs. Punsalan* (9 Phil. Rep., 294). See also *Espiritu vs. Luis* (5 Phil. Rep., 482).

Considering it as a sale with the right to repurchase, no time being mentioned therein for the exercise of the right to repurchase, it lasted only for four years, which had expired prior to the commencement of this proceeding. (Art. 1508, Civil Code; *Alano vs. Babasa*, 10 Phil. Rep., 511; *Garcia vs. Diamson*, 8 Phil. Rep., 414.)

This view of the nature of the relations between the parties is borne out by the evidence in regard to the possession of the land. Although the defendant Sabat testified that he had been in possession of the property until 1905, the evidence of the petitioners satisfies us that they and their mother had been in possession since 1901, and probably since 1898. Gelasio Buencamino testified that he went to see Anastasio Sabat in 1901 to tell him that the time to repurchase had expired and that Sabat then told him that the purchaser should continue in possession because he, Sabat, had no money with which to repurchase the property.

The judgment of the court below in reference to the claim of this appellant must be affirmed,

2. The appellant Nicasia Viceo claims title to only a part of the property described in the petition. She bases her claim upon a private document signed by Anastasio Sabat on the 1st of October, 1893, which contains the following statements:

"I hereby declare that I own a rice field in the sitio of Tagulod, San Roque, within the limits of the pueblo of Gapang, of 11 cavanos of seed, which land I bought from Lakan-ilaw, De los Reyes, and Sankal, bounded on the east and south by lands also belonging to me, on the west by the lands of Don Damaso Lakan-ilaw, and on

the north by the lands of Marcelo Yuson, as shown in the document consisting of 12 folios and made a part of the present instrument on this date; I have agreed to sell the said land with pacto de retro to Doña Nicasia Viceo, of San Rafael, for the sum of 1,000 pesos which I have duly received in legal currency from her, and in consideration thereof I have transferred to the said Nicasia Viceo the possession and enjoyment of that property; I have, however, requested her, and we so agreed, that I would work and cultivate said land for the sum of 200 pesos which I will pay her annually as rent beginning this day, and I hereby promise, and we have so agreed, that I should not redeem the said land except after the expiration of four years, which is the period above stipulated; notwithstanding this proviso, in case that, during the existence of the lease, I fail to pay the 200 pesos agreed upon, she shall have the right to oust me from the land the first year of such default without any further claim on my part, and I also promise to deliver to Doña Nicasia the title deed of the lands in Tagulod, as soon as I can get it from the Government. In testimony whereof I signed this instrument in the presence of the witnesses Don Ramon Ilusorio and Don Pedro Guinegundo."

This, being a private document, never was recorded in the registry of property. The court below held that the land described in this document was not included in the land described in the petition and this finding of fact must, in our opinion, be sustained. Emiliano Tecson, a witness for this appellant, and Gelasio Buencamino, the guardian of the petitioners, agreed that the land now occupied by Tecson as the tenant of Nicasia, and the land claimed by her are situated in the second parcel described in the patent issued by the Government to Anastasio Sabat, and toward the west. It would therefore be bounded both on the east and west by the land of the petitioners, but the document of 1893 names as the boundary upon the west the land of Damaso Lakan-ilaw, and the answer presented by this defendant in this proceeding names as the adjoining proprietor on the west Andres Lakan-ilaw. It is impossible to fit this description to the land claimed by Doña Nicasia, for if the boundary on the west is not the land of the petitioners, it certainly would be the land at the extreme west of the land of the petitioners, which is land not owned by any of the family of Lakan-ilaw, but on the contrary owned by other persons. Moreover, it is entirely improbable that Anastasio Sabat owning a tract of land 19 hectares in extent would have sold 14 hectares out of the middle of the tract, leaving two narrow portions one to the east and the other to the west.

The evidence in regard to the possession also satisfies us that the land described in the appellant's document of 1893 is no part of the land described in the petition. It is true that Emiliano Tecson testified that he had been in possession of the land for fourteen years, but the testimony in favor of the petitioners, which strongly preponderates, is to the effect that he had been in possession only since the year 1906, and that the petitioners and their mother had been in possession at least since 1901 and probably since 1898.

The judgment of the court below as to this parcel must also be affirmed.

The result of the whole case is that the judgment of the court below in its entirety is affirmed, with the costs of this instance against the appellants.

Arellano, C. J., Torres, Johnson, and Carson, JJ., concur.

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