

ASKAY, PLAINTIFF AND APPELLANT, VS. FERNANDO A. COSALAN, DEFENDANT AND APPELLEE.*G. R. No. L-21943. September 15, 1924*

Ponente: MALCOLM, J.

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The plaintiff in this case is Askay, an illiterate Igorrote between 70 and 80 years of age, residing in the municipal district of Tublay, Province of Benguet, who at various times has been the owner of mining property. The defendant is Fernando A. Cosalan, the nephew by marriage of Askay, and municipal president of Tublay, who likewise has been interested along with his uncle in mining enterprises.

About 1907, Askay obtained title to the Pet Kel Mineral Claim located in Tublay, Benguet. On November 23, 1914, if we are to accept defendant's Exhibit 1, Askay sold this claim to Cosalan. Nine years later, in 1923, Askay instituted action in the Court of First Instance of Benguet to have the sale of the Pet Kel Mineral Claim declared null, to secure possession of the mineral claim, and to obtain damages from the defendant in the amount of P10,500. Following the presentation of various pleadings including the answer of the defendant, and following trial before Judge of First Instance Harvey, judgment was rendered dismissing the complaint and absolving the defendant from the same, with costs against the plaintiff. On being informed of the judgment of the trial court, plaintiff attacked it on two grounds: The first, jurisdictional, and the second, formal. Both motions were denied and an appeal was perfected.

Two questions are suggested by the assignments of error. The first is whether Judge George R. darvey had jurisdiction to try the case. The second is whether the plaintiff has established his cause of action by a preponderance of the evidence.

1. On April 16, 1923, as appears from the Official Gazette, the Secretary of Justice authorized and instructed the Honorable George R. Harvey, Judge of First Instance of the Ninth Judicial District, to hold a special term of court in the City of Baguio, Mountain Province, beginning May 2, 1923. (Administrative Order No. 43, 21 Off. Gaz., p. 893.) Acting under the authority granted by the order of the Secretary of Justice, Judge Harvey proceeded to hear the case of Askay vs. Cosalan, without protest from anyone until after an adverse decision for the plaintiff and until after Judge Harvey had left the district.

The point which plaintiff now presses is that Act No. 3107, amendatory of section 156 of the Administrative Code, which authorizes a Judge of First Instance to be detailed by the Secretary of Justice to temporary duty, for a period which shall in no case exceed six months, in a district or province other than his own, for the purpose of trying all kinds of cases, excepting criminal and election cases, was not in force until fifteen days after the completion of the publication of the statute in the Official Gazette, or not until August 3, 1923. Plaintiff relies on section 11 of the Administrative Code, which in part reads: "A statute passed by the Philippine Legislature shall, in the absence of special provision, take effect at the beginning of the fifteenth day after the completion of the publication of the statute in the Official Gazette, the date of issue being excluded."

Now turning to Act No. 3107, its final section provides that "This Act shall take effect on its approval." The Act was approved on March 17, 1923. Obviously, therefore, there being a special provision in Act No. 3107, it applies to the exclusion of the general provision contained in the Administrative Code.

Recalling, therefore, that Act No. 3107 went into effect on March 17, 1923, and that it was subsequent thereto, on April 16, 1923, that Judge Harvey was authorized to hold court at Baguio, beginning with May 2, 1923, appellant's argument along this line is found to be without persuasive merit. We pass to the material issue which is one of fact.

II. Plaintiff contends that the sale of the Pet Kel Mineral Claim was accomplished through fraud and deceit on the part of the defendant. Plaintiff may be right but in our judgment he has failed to establish his claim. Fraud must be both alleged and proved.

One fact exists in plaintiff's favor, and this is the age and ignorance of the plaintiff who could be easily duped by the defendant, a man of greater intelligence. Another fact is the inadequacy of the consideration for the transfer which, according to the conveyance, consisted of T1 and other valuable consideration, and which, according to the oral testimony, in reality consisted of P107 in cash, a bill fold, one sheet, one cow, and two carabaos. Gross inadequacy naturally suggests fraud and is some evidence thereof, so that it may be sufficient to show it when taken in connection with other circumstances, such as ignorance or the fact that one of the parties has an advantage over the other. But the fact that the bargain was a hard one, coupled with mere inadequacy of price when both parties are in a position to form an independent judgment concerning the transaction, is not a sufficient ground for the cancellation of a contract.

Against the plaintiff and in favor of the defendant, we have the document itself executed in the presence of witnesses and before a notary public and filed with the mining recorder. The notary public, Nicanor Sison, and one of the attesting witnesses, Apolonio Ramos, testified to the effect that in the presence of the plaintiff and the defendant and of the notary public and the subscribing witnesses, the deed of sale was interpreted to the plaintiff and that thereupon he placed his thumb mark on the document. Two finger print experts, Dr. Charles S. Banks and A. Simkus, have declared in depositions that the thumb mark on Exhibit 1 is that of Askay. No less than four other witnesses testified that at various times Askay had admitted to them that he had sold the Pet Kel Mine to Fernando A. Cosalan.

Having in mind all of these circumstances, how can the plaintiff expect the courts to nullify the deed of sale on mere suspicion? Having waited nine years from the date when the deed was executed, nine years from the time Fernando A. Cosalan started developing the mine, nine years from the time Askay himself had been deprived of the possession of the mine, and nine years permitting of a third party to obtain a contract of lease from Cosalan, how can this court overlook plaintiff's silent acquiescence in the legal rights of the defendant? On the facts of record, the trial judge could have done nothing less than dismiss the action.

We conclude, therefore, that Judge Harvey had jurisdiction to try this case, that his findings of fact are in accordance with the evidence, that no prejudicial error was committed in the trial, and that the complaint was properly dismissed. As a result, judgment is affirmed with costs against the appellant. So ordered.

Johnson, Street, Avancena, Villamor, Ostrand, and Romualdez, JJ., concur.

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