

VICENTE SANTANDER, ET AL., PLAINTIFFS AND APPELLANTS VS. PACIFICO DE LA SERNA, DEFENDANT AND APPELLEE.*G.R. No. L-5739. June 30, 1954*

Ponente: PARAS, C.J.

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On May 19, 1950, the plaintiffs, Vicente Santander and the children of the deceased Fortunata Villiniso, named Constancio, Matias, Jose, Genoveva, Anatolia, Paz and Irineo, all surnamed Santander, filed a complaint in the Court of First Instance of Cotabato against the defendant, Pacifico de la Serna, alleging in substance (1) under the first cause of action, that they are the owners of a parcel of land situated in Midsayap, Cotabato, which they acquired from the Government as homestead, the patent having been issued on July 26, 1937; that on April 30, 1940, Vicente Santander and his wife Fortunata Villiniso obtained from the defendant a loan in the sum of P370, payable within five years, and as security for its payment they mortgaged all the improvements existing on a portion of the homestead containing an area of 12,406 square meters; that by reason of the last war the plaintiffs were not able to pay the loan, but the defendant has never foreclosed the mortgage; that in 1947, the plaintiffs offered to redeem the mortgage but the defendant refused to receive payment; (2) under the second cause of action, that by means of fraud the defendant caused Vicente Santander to execute on March 2, 1946 a deed of sale in favor of the defendant covering a portion of plaintiff's homestead containing an area of some 15,000 square meters (the same portion included in the mortgage of April 30, 1940), the purported consideration being the sum of P470; that said sale was inoperative for lack of approval by the Secretary of Agriculture and Natural Resources; (3) under the third cause of action, that the defendant has been in possession of 14,365 square meters of plaintiffs' homestead, or 1,859 square meters in excess of the mortgaged portion; that, assuming the deed of sale of March 2, 1946 to be valid, it cannot affect the rights of the children of Fortunata Villiniso, because it was executed by Vicente Santander alone, after Fortunata Villiniso had already died; that the plaintiffs suffered a damage in the amount of P600 for having been deprived of said excess. The complaint prays that judgment be rendered in favor of the plaintiffs and against the defendant, ordering the defendant to receive the sum of P370 in complete satisfaction of the mortgage and to return the land in question to the plaintiffs; ordering the annulment of the deed of sale of March 2, 1946, or allowing the plaintiffs to repurchase the land in accordance with the provisions of Act No. 141; and ordering the defendant to pay damages in the sum of P500.

On June 6, 1950, the defendant filed an answer denying specifically the allegations contained in paragraphs 3 to 18 of the complaint and, as special defense and by way of counterclaim, alleging that in 1940, the plaintiff Vicentem Santander and his wife Fortunata Villiniso obtained from the defendant a loan of P370, secured by a mortgage over the improvements on a portion of plaintiffs' homestead; that five years thereafter, the plaintiffs offered to sell the mortgaged portion, and although the defendant refused to buy the land, the plaintiffs insisted, with the result that on March 2, 1946, a deed of sale was executed by Vicente Santander in favor of the defendant who thereupon took possession of the lot sold and introduced thereon improvements worth P30,000; that the land in question has grown in value and is now worth P15,000; that in the belief that he could speculate, plaintiff Vicente Santander desired to get back the property; that said plaintiff had disposed of the greater part of his

homestead at extraordinarily high prices in favor of several innocent purchasers; that he cannot be allowed to repurchase in virtue of section 119 of Act No. 141 because he had violated said law by engaging in speculative ventures. The defendant prayed that the complaint be dismissed; that the deed of sale of March 2, 1946, be declared valid, and the plaintiffs required to surrender their owner's duplicate certificate of title to the Register of Deed of Cotabato for the corresponding annotation of the sale; that should the court allow the plaintiffs to repurchase the land in question, the repurchase price should be fixed at P15,000; besides the payment of the sum of P30,000, value of the improvements introduced by the defendant.

No evidence was presented by either party, and the case was submitted on the basis of the complaint and the answer. On September 25, 1951, the Court of First Instance of Cotabato rendered a decision ordering the cancellation of the deed of sale of March 2, 1946; ordering the plaintiffs to pay to the defendant the sum of P30,000 for the improvements made in good faith by the defendant; and recommending to the Director of Lands that steps be taken with a view to canceling the homestead patent issued to plaintiff Vicente Santander, and that the buyers of portions of his homestead be given preferential right to acquire the same if they are qualified under the Public Land Law. From this decision only the plaintiffs have appealed, and their sole assignment of error refers only to that part of the appealed decision ordering the plaintiffs to pay to the defendant the sum of P30,000, alleged value of the improvements introduced on the land in question by the defendant.

Appellants' assignment of error is well taken. Under section 8, Rule 9, of the Rules of Court, "material averment in the complaint, other than those as to the amount of damage, shall be deemed admitted when not specifically denied" and under section 1 of Rule 11, if the plaintiff fails to make a reply, all the new matters alleged in the answer are deemed controverted. Under either reglementary provision, the appellants cannot be considered as having admitted the appellant's allegation as to the value of the improvements claimed by him. Certainly the amounts of P30,000 is being sought in the nature of damages for losing the alleged improvements as a result of the cancellation of the deed of sale and the return of the property to the plaintiffs. In the absence, as in this case, of any proof of the amount thereof, the defendant is not therefore entitled to a judgment for damages.

Although the appealed decision did not order the appellants to pay the amount of the loan of April 30, 1940, or the price of the sale of March 2, 1946, the appellants in their brief admit their liability for the payment of P470 in consideration of the cancellation of the sale and the return to them of the land in question. In appellee's brief, it is claimed that the deed of sale should be declared valid, and that, in ;case the plaintiffs should be allowed to repurchase, they should be sentenced to pay not the sum of P470, the price stated in the deed of sale of March 2, 1946, but the sum of P15,000, the current market value of the land. Appellee's contention cannot now prosper, since he had not appealed from the decision of the lower court

Appellants have called attention to the following observations made by the trial court in the appealed decision: "The plaintiff Vicente Santander is motivated by avarice and greed for money. He victimizes innocent people who, in good faith, have purchased portions of his homestead. The plaintiff Vicente Santander now is taking advantage of the provisions of section 118 of Act 141 to attain that despicable objective of victimizing innocent buyers in good faith." We agree with the appellants that said observations are not supported by any evidence and therefore out of place.

Wherefore, it being understood that the appealed judgment is modified by eliminating therefrom the directive for the payment by the plaintiffs of the sum of P30,000, and by ordering the plaintiffs to pay to the defendants the sum of P470, the said judgment is in all other respects affirmed without costs. So ordered.

Pablo, Bengzon, Padilla, Montemayor, Reyes, A. Jugo, Baustista Angelo, Labrador and Concepcion, JJ., concur.

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