

BERNABE ALCERA, PLAINTIFF AND APPELLEE, VS. SATURNINO NERY, DEFENDANT AND APPELLANT.

G.R. No, 4474. January 27, 1909

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

From the documents presented by both parties in this case it appears:

(1.) That on March 22, 1905, Benito Nova sold to Macario Samson, for the sum of P350, two parcels of land, one of which, the first one described in the document, according to the agreed statement of facts, is the subject-matter of the complaint. It was expressly stipulated in the contract that the purchaser, and his heirs and assigns became the owners of the above-mentioned lands by virtue of this sale, they being entitled to exercise the rights pertaining to them as owners. It was also expressly stipulated that, at any time the seller should repay the amount received, the said lands would be returned to him, provided not more than three months after each crop had elapsed. This contract was ratified before a notary on the same date.

(2) That on May 12, 1906, the said Benito Nova sold to Saturnino Nery, for P900, the two parcels of land which had been sold on pacto de retro to Macario Samson, in accordance with the foregoing document, this sale being absolute, and the following declaration of the seller being set up in the deed, viz, that the said lands were sold on pacto de retro to Macario Samson, under a deed executed on March 22, 1905, and that they were redeemed by the purchaser Nery; that they are not encumbered, and he binds himself to answer to any claim that may be presented, as well as to be responsible for the eviction and warranty. This deed also was ratified before a notary public on the same date.

(3) That, at the foot of the foregoing document of sale with pacto de retro in favor of Macario Samson, there is the following note:

"I indorse this document in favor of Saturnino Nery, on account of the above-mentioned lands having been redeemed.-Camalig, May 12, 1906.-Macario Samson.-Signed in the presence of Benito Nova and another witness."

(4) That on June 7, 1905, the said Benito Nova pledged the land in question to Bernabe Alcera for the sum of P300, under the following conditions: that the period fixed for the redemption should be eighteen months from that date, but, should this period elapse without the redemption being effected, the pledge was to continue for a further period of eighteen months. There is also the following clause:

"I hereby declare that the said late (field) is pledged from this date forward to my creditor, and he is the one who has the right to collect the fruits thereof until such time as I redeem it; I also declare that, at the expiration of the period fixed, I will redeem the said land, and he shall not make any objection, provided the amount is in order and the period has expired."

This document, executed in the Bicol dialect, is purely a private one.

(5) On August 31, 1906, the said Benito Nova sold with pacto de retro, to Bernabe Alcera, the land here in question, for the sum of P300 and for the period of eighteen months from June 7, 1905, the date on which he received the money, according to a document in Bicol attached to the deed, and he, on that date, still claimed that the land was his exclusive property, and both of the parties agreed in the deed that, upon the payment of the sum of P300, Bernabe Alcera was to be the absolute owner of the property described until the date fixed for the redemption in the said deed, and that he might exercise his right to transfer the same to a third party.

If we note the context of the deeds, the land was apparently delivered to Alcera on June 7, 1905, but on the other hand it appears that, inasmuch as it was redeemed on May 12, 1906, it ought to have been in Samson's possession from the month of March; and, since it is claimed from Nery in this suit, it must at present be in the possession of the latter. Bernabe Alcera claimed it on March 18, 1907, pretending to be the owner thereof.

The parties set out the facts in the contention in an agreement that was produced at the trial. Therein appears an article (the 8th), of the following tenor:

"That the fruits collected by the defendant from the land in question amount to the sum of P30."

By virtue of the agreement, there were introduced and admitted the following documents:

"Evidence of the plaintiff: Exhibit A, with a translation into Spanish, which is a deed of the land in controversy executed by Benito Nova in favor of the plaintiff; Exhibit B, which is another deed of the same land executed by the said Benito Nova in favor of the plaintiff on the 31st day of August, 1906."

"Evidence of the defendant: Exhibit No. 1, which is a document executed by Benito Nova in favor of Macario Samson, the first parcel of land therein described being the land in litigation; and Exhibit No. 2, which is another document executed by the said Benito Nova in favor of Saturnino "Nery, the defendant, the first parcel of land therein described being the land in question, the same which had been sold to Macario Samson,"

By virtue of these proofs the Court of First Instance of Albay, on April 24, 1907, entered judgment in favor of the plaintiff holding that the ownership of the land, at the time of the filing of the complaint, belonged, and actually, now belongs, to said plaintiff, ordering that the possession thereof be restored by the defendant to the plaintiff, with the costs against the defendant. The latter appealed from this judgment, as did also the plaintiff in so far as it disregarded the payment of the sum of P30, as agreed, according to article 8 cited above. Tin's appeal is presented without the corresponding bill of exceptions. The appeal being now before us, we hold:

First. That the land having been sold on March 22, 1905, to Macario Samson, although with pacto de retro in favor of the vendor, the ownership and possession of said land were transferred to the purchaser, inasmuch as the contract of purchase and sale transferred the ownership and possession of the thing sold and delivered.

Second. That from the date of the sale, the vendor Nova had only the right to repurchase the land, according to the conditions stipulated in the said contract of purchase and sale.

Third. That, therefore, the pledge of the land made by Nova to Alcera on June 7, 1905, before said land was repurchased from Samson, was not properly a contract of pledge, because the question at issue is one of realty, nor was it even valid as a mortgage, not being the property of the mortgagor, inasmuch as the then true owner was Samson.

Fourth. That Samson continued to be the owner of the land until the 12th of May, 1906, on which date Nery, by agreement with Nova, repurchased it from Samson; the right of repurchase in favor of Nova stipulated in the deed of March 22, 1905, thereupon became extinguished.

Fifth. That the land being at once sold by Nova to Nery, the ownership thereof was transferred to Nery on the

same day, May 12, 1906, by virtue of the contract of purchase and sale.

Sixth. In consequence, Nova, on the 31st, of August, 1906, neither had land to sell nor any right of ownership that he might transfer to Alcera, as both of them appeared to believe when they executed the instrument of that date; the sale made by Nova is therefore of no effect or value, as he sold something which then was no longer his property.

Seventh. If the object of the document executed by Nova on June 7, 1905, in favor of Alcera, instead of being a pledge or mortgage had been the sale of his right to repurchase stipulated with Samson on March 22, 1905, its effect would have been to nullify the repurchase and the absolute sale effected by Nova on May 12, 1906, in favor of Nery, as an act and a contract executed by one who, in 1906, no longer had either a right to repurchase, or a right to sell, because he had parted with such rights in 1905.

Therefore, he who was defrauded by the contracts of June 7, 1905, and August 31, 1906, was Alcera, who accepted as security, and later under a sale with pacto de retro, land which on that date did not belong to Nova, and he can not blame anyone else for his own fault.

By virtue thereof, with an entire reversal of the judgment appealed from, we absolve the defendant from the complaint, and hold that he is entitled to the ownership and the possession of the land in question. The plaintiff is sentenced to pay the costs of first instance, without any special ruling as to costs in this instance.

Torres, Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

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