

GALO ABRENICA, PLAINTIFF AND APPELLEE, VS. MANUEL GONDA AND MARCELINO DE GRACIA, DEFENDANTS AND APPELLEES.

G.R. No. 10100. August 15, 1916

Ponente: ARAULLO, J.

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ARAULLO, J.:

These proceedings were brought by the plaintiff to compel the defendant to return to him the two parcels of land described in the complaint which he alleges were sold by him under right of repurchase to the defendant on February 21, 1916, for the sum of P75 and for the period of seven years. The plaintiff alleged that the defendant refused to deliver said property to him when, upon the expiration of the period mentioned, he endeavored to redeem the same and tendered payment to the defendant of the sum aforesaid.

The first of the defendants, Manuel Gonda (who had already sold said parcels to the other defendant Marcelino de Gracia, for which reason the latter was also made a party defendant) alleged that about 19 years ago he was the sole possessor and owner of said parcels, and in the course of the trial endeavored to prove that they had been sold to him by the plaintiff and his mother.

The issue presented by the pleadings, therefore, is whether said two parcels of land were sold under right of repurchase by the plaintiff to the defendant for the period of seven years, for the sum of P75, or whether they were conveyed to the defendant in absolute sale by the plaintiff's parents.

The justice of the peace of the provincial capital, who tried the case by assignment of the judge of the Court of First Instance of the same province, heard the evidence introduced by the parties and after making a sufficiently clear summary of and duly considering the same, reached the conclusion that the proofs introduced by the plaintiff were entitled to the greater credit and, on the grounds that the plaintiff had not yet lost his right to recover the lands from the defendant Gonda and that the sale made by this defendant to the other defendant De Gracia, supposing it to be genuine, could have no legal effect as Gonda was not the true owner of the land, entered judgment in behalf of the plaintiff and against the two defendants whereby he ordered each and both of them to return and deliver to the plaintiff the parcels of land claimed by him, after payment to Gonda of the sum of P75 that had been deposited with the clerk of the court, and assessed the costs against the defendants in equal shares. The court made no finding in regard to the damages demanded by the plaintiff as there was no evidence to show that any had been caused. The defendants moved for a new trial. Their motion having been overruled, they excepted to the ruling and, by proper bill of exceptions, appealed to the Supreme Court. In this instance the appellants allege in the first place that the trial judge erred in holding that he had jurisdiction to try the case, and in trying the same in spite of the fact that the Act which authorizes justices of the peace to try by assignment cases filed with the Court of First Instance is unconstitutional.

Before the hearing in first instance, counsel for the defendant did in fact challenge the jurisdiction of the justice of the peace of the provincial capital to try the case at bar, on the ground that Act No. 2041 of the Philippine Legislature is unconstitutional. In deciding this question, said justice of the peace held that he did have

jurisdiction and immediately proceeded to enter judgment in the manner aforestated.

This Supreme Court has held on various occasions, among them in the decision rendered on December 24, 1914, in the case of Calampiano vs. Tolentino (29 Phil. Rep., 116) that said Act No. 2041 is valid and does not conflict with the provisions of the Act of Congress of July 1, 1902; that a justice of the peace, acting under the designation under the law just referred to, acts not as a justice of the peace or holds a justice's court, but acts as a judge of the zone of first instance and holds, in effect, a Court of First Instance; and finally, that for this reason the objection that this case falls within that of Barrameda vs. Moir, 25 Phil. Rep., 44 (which is the one cited by the appellants in their brief to show that the error aforementioned was incurred), is not well taken. This assignment of error cannot, therefore, be sustained.

The second error assigned by the appellants to the judgment of the trial court consists, as they maintain, in that the court founded its judgment on inadmissible and illegal evidence which was rejected by the same court during the course of the trial.

In effect, the plaintiff ought to have proven that on February 21, 1906, he sold, under right of repurchase for the period of seven years, the two parcels of land mentioned in the complaint, or, what amounts to the same thing, that a contract of sale with right of repurchase (or one of pledge or mortgage, as it was improperly called in the complaint and so termed by the plaintiff) was entered into between this latter and the defendant, on the date aforementioned, in respect to said parcels of land.

The plaintiff, testifying at the trial in regard to the existence of the contract, stated that it was a verbal one between himself and said defendant. Assuredly such a contract could not be proven at trial, except by means of some written instrument in accordance with the provisions of subsections 1 and 5, section 335, of the Code of Civil Procedure. The plaintiff, however, having been placed on the stand as a witness by his own attorney, testified at length and answered all the questions asked him with respect to the said contract, the details of the same, the persons who witnessed it, the place where it was made, and various other circumstances connected with its execution. These questions and answers cover six pages of the record, and yet the defendants' counsel raised no objection to the examination, aside from challenging one of the questions as leading and another of them as irrelevant. It seems that only when the examination was terminated did counsel for defendants move to strike out all of the testimony given and statements made by plaintiff in regard to the contract, on the ground that the period for the fulfilment of the contract exceeded one year and that it could not be proven except by means of a written instrument. The court sustained this motion, to which an exception was entered by the plaintiff.

Defendants' counsel moved that the case be dismissed on the ground that, as the aforementioned testimony was stricken out, there was no proof of the contract. This motion being denied by the court, counsel excepted to the ruling and on cross-examination put several questions to the plaintiff relative to the plaintiff's ownership in said parcels of land and the manner in which he acquired it. Among these questions some were asked which bore upon the answers given by the plaintiff on direct examination regarding the existence of the contract by which, according to the plaintiff, the defendant Gonda came to hold said parcels. These questions on cross-examination and their respective answers are as follows:

"CARINGAL: (To the plaintiff). Prior to the day on which the defendant Manuel Gonda went to see you or to visit you in the house of Domingo Tamayo, you had not spoken to him with regard to the pledge of some land of yours, had you?—A. No, sir.

"Q. Did you then take advantage of that circumstance of his having gone to visit you ?—A. Yes, sir.

"Q. You knew then that he was married, did you not?— A. Yes, sir.

"Q. Did you not think it necessary to speak to Manuel Gonda's wife about the mortgage?—A. No, sir, because I considered him as an uncle of mine.

* * * * *

"CARINGAL: So that you knew, did you, that it was Manuel Gonda who paid the land tax?—A. Yes, sir.

"Q. Who paid the land tax before the lands were pledged?—A. I could not declare them before they were pledged. I have not yet paid the land tax, because I have not been able to declare those lands.

* * * * *

"Q. Tell us where Manuel Gonda was living on the date when, as you said, the pledge was made.—A. In the barrio of Moson.

"Q. Of Taal or Bauan?—A. Bauan.

"Q. What is the distance between the then domicile or

residence of Manuel Gonda and the house of Domingo Tamayo in which you were living?—A. I think it is the same as between Bauan and Taal.

"Q. And notwithstanding that distance, Manuel Gonda went purposely to take the money to you?—A. He took the money to the house of Domingo Tamayo.

"Q. Was there no written contract of that mortgage?— A. No, sir.

"That is all."

Continuing to present evidence, the plaintiff put three witnesses on the stand and they were examined.

One of them, Juan Carandang, testified in regard to the plaintiff's ownership and possession of the lands. The court sustained a motion by defendants' counsel to strike out one of the statements made by this witness in which he stated that he knew by hearsay that said lands had been "pledged" (sic).

Another of these witnesses, Domingo Tamayo, testified that he was present at the time the plaintiff asked the defendant for the P75 mentioned in the complaint, and when the agreement was made with regard thereto between the two men in connection with the so-called pledge of the lands in question. He also testified that he received that sum from the defendant, at the plaintiff's suggestion.

And, finally, the third witness, Pedro Mendoza, also the plaintiff's, testified that he was present when the money was tendered by the defendant to the plaintiff, and heard the latter tell the witness Domingo Tamayo to receive it. He stated that Tamayo did in fact take the money.

In the course of the examination of these witnesses, the defendants' counsel moved that their testimony be stricken out. The court sustained one of these motions, while as to the rest of them he said that counsel's motion would be taken under consideration; later, when one of these witnesses, replying to a question by the court, stated that the contract was not executed in writing, the court said that the motion was sustained, but, notwithstanding this ruling, and immediately after it had been made, the defendants' counsel put the following question to this witness on cross-examination:

"Q. Do you remember positively that it was on a Sunday the first time, and on a Tuesday or a Wednesday the second time, that Manuel Gonda went to your house and delivered the money?—A. Yes, sir."

The court finally granted the motion of counsel for defendants to strike out the testimony given by this witness.

Counsel for plaintiff excepted to this ruling.

Now then, it has been repeatedly laid down as a rule of evidence that a protest or objection against the admission of any evidence must be made at the proper time, and that if not so made it will be understood to have been waived. The proper time to make a protest or objection is when, from the question addressed to the witness, or from the answer thereto, or from the presentation of the proof, the inadmissibility of the evidence is, or may be, inferred.

A motion to strike out parol or documentary evidence from the record is useless and ineffective if made without timely protest, objection, or opposition on the part of the party against whom it was presented.

"Objection to the introduction of evidence should be made before the question is answered. When no such objection is made, a motion to strike out the answer ordinarily comes too late." (De Dios Chua Soco vs. Veloso, 2 Phil. Rep., 658).

In the case of Conlu vs. Araneta and Guanko (15 Phil. Hep., 387) in which one of the points discussed was the inadmissibility of parol evidence to prove contracts involving real property, in accordance with the provisions of section 335 of the Code of Civil Procedure, no objection having been made to such evidence, this court said:

"A failure to except to the evidence because it does not conform with the statute, is a waiver of the provisions of the law."

"An objection to a question put to a witness must be made at the time question is asked." (Kreigh vs. Sherman, 105 111., 49; 46 Am. Dig., Century Ed., 932.)

"Objections to evidence and the reason therefor must be stated in apt time." (Kidder vs. McIlhenny, 81 N. C., 123; 46 Am. Dig., Century Ed., 933.)

"It is held in general that by failing to object to the proof of an oral contract a party waives the benefit of the statute and cannot afterward claim it." (20 Cyc, 320, where several decisions on the subject are cited.)

Many rulings have been made in regard to this matter by the courts of the United States, and among them we cite a few found in volume 46 of the American Digest, page 933:

"Where plaintiff without objection proved by parol evidence that certain land belonged to him, defendant cannot afterwards object that the deed should have been produced." (Clay vs. Boyer, 10 111. [5 Gilman], 506.)

"After a question has been repeatedly asked and answered without objection, it is too late to object to its repetition on the ground that the answer is in itself inadmissible." (McKee vs. Nelson, 4 Cow., 355; 15 Am. Dec, 384.)

"An objection to the admission of evidence on the ground of incompetency, taken after the testimony has been given, is too late." (In re Morgan, 104 N. Y., 74; 9 N. E., 861.)

"Plaintiff having testified to conversation between defendant's son and himself until the direct examination extended through about 12 folios, defendant could not sit by and then object to the 'foregoing testimony.' " (Boehme vs. Michael, 5 N. Y. St. Rep., 492.)

The first witness to testify at the trial was the plaintiff himself. From the first question put to him, it clearly appeared, as may be seen in folios 5, 6, and 7 of the stenographic notes, that the contract of pledge or mortgage of the lands, as the plaintiff himself improperly calls it, or the sale of said lands with right of repurchase, between him and the defendant Gonda, was a verbal one and for the period of seven years, made in the course of a conversation between the plaintiff and said defendant in the house of Domingo Tamayo. The defendants' counsel, however, did not endeavor immediately to obtain from the witness a statement as to whether that contract was set

forth in any instrument; he did not object to the witness* continuing to testify in regard to the contract, nor did he in any way object to the questions they continued to ask the witness concerning the matter, though he did object to one question as leading and to another one as irrelevant, thus indicating that he had no other objection to make to those questions. Only after witness, the plaintiff, had finished answering all the questions put to him on the subject of the contract, did counsel for the defendants move that all of his testimony and statements be stricken out. It is obvious that the court should not have granted that motion; but we must also bear in mind that the court did not grant other similar and subsequent motions made during the examination of the other witnesses; he merely said that he would take them under advisement. The fact that the defendants' counsel asked various cross-questions, both of the plaintiff and of the other witnesses, in connection with the answers given by them in their direct examination, with respect to particulars concerning the contract, implies a waiver on his part to have the evidence stricken out.

It is true that, before cross-examining the plaintiff and one of the witnesses, this same counsel requested the permission of the court, and stipulated that his clients' rights should not be prejudiced by the answers of those witnesses in view of the motion presented to strike out their testimony ;. but this stipulation of the defendants' counsel has no value or importance whatever, because, if the answers of those witnesses were stricken out, the cross-examination could have no object whatsoever, and if the questions were put to the witnesses and answered by them, they could only be taken into account by connecting them with the answers given by those witnesses on direct examination.

As no timely objection or protest was made to the admission of the testimony of the plaintiff with respect to the contract; and as the motion to strike out said evidence came to late; and, furthermore, as the defendants themselves, by the cross-questions put by their counsel to the witnesses in respect to said contract, tacitly waived their right to have it stricken out, that evidence, therefore, cannot be considered either inadmissible or illegal, and court, far from having erred in taking it into consideration and basing his judgment thereon, notwithstanding the fact that it was ordered to be stricken out during the trial, merely corrected the error he committed in ordering it to be so stricken out and complied with the rules of procedure hereinbefore cited.

The lower court was guided by the evidence in making that finding, for it was proved that the plaintiff sold to the defendant Gonda for the period of seven years, with right of repurchase, the two aforementioned parcels of land, on February 21, 1906, for the sum of P75, Philippine currency. The testimony of the plaintiff himself and of the witnesses Juan Carandang, Domingo Tamayo, and Pedro Mendoza, of which mention is made in the judgment, proves those facts. As against this testimony, the defendants presented that of one of themselves, Manuel Gonda, who stated that said two parcels of land were sold to him outright by the plaintiff Galo Abrenica and his mother, Mamerta Bonio, more than 19 years ago, for the sum of P75; but this allegation was in no manner proven, for, having stated that an instrument of sale was executed but that it had been lost, he furnished absolutely no proof of the existence of the instrument, nor of any such sale having been made between himself and the plaintiff. This defendant did, indeed, exhibit a copy of the affidavit filed by him on May 26, 1906, in the municipality of Taal, for the purpose of the assessment of a piece of land which he says included the two parcels in question; but the plaintiff has explained why the tax declaration of said parcels was not made by him, but by the defendant Gonda. It is easily understood that the latter might have made this declaration on May 26, 1906, that is, three months after the land had been sold to him by the plaintiff under right of repurchase, inasmuch as said defendant had been the owner of said parcels since the month of February of the same year and, by reason of said sale, was to be their owner for seven years, so long as the plaintiff did not make use of his right to redeem them. On the other hand, the very fact that the defendant Gonda did not declare these parcels of land before May 26, 1906, is proof that he did not purchase them outright from the plaintiff and the latter's mother 19 years ago.

As the plaintiff made use of his right to recover the property within the period stipulated by the contract and which did not exceed ten years, and as he deposited with the clerk of the court the sum of P75, the price of the purchase, in due time, the defendant is not entitled to oppose the recovery, and the said parcels of land must be delivered to the plaintiff, even though they be in the possession of the other defendant, Marcelino de Garcia, to whom they were sold by his codefendant Gonda, for the latter could not sell them to De Gracia except under the condition that they could be repurchased by the plaintiff within the said period of seven years. Even still less right could the defendant De Gracia have to retain possession of these lands, if the contract executed between the plaintiff and Manuel Gonda had been one of mortgage (as it was styled all along by the plaintiff and the defendants at the trial and by the lower court himself in the judgment appealed from) for, as the defendant Gonda was not the owner of the lands, he could not lawfully convey them to his codefendant.

There being no proof that any damage was caused to the plaintiff by the defendants' refusal to return said parcels of land to him, no finding should be made against the defendants with respect thereto.

We therefore affirm the judgment appealed from, with the costs of this instance against the appellants. So ordered.

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

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