

ANTONIO M.A BARRETTO, PLAINTIFF AND APPELLANT, VS. TOMAS CABREZA ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 10318. January 03, 1916

Ponente: TORRES, J.

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TORRES, J.:

This is an appeal by bill of exceptions, filed by counsel for plaintiff from the judgment of November 30, 1913, whereby the Court of First Instance of Laguna absolved the defendants from the complaint, without special finding as to costs.

By a written complaint of August 28, 1912, subsequently twice amended, Antonio M.a Barretto brought suit in the Court of First Instance of Laguna, alleging that, by virtue of a writ of execution issued by the Court of First Instance of Manila in civil case No. 7757 between Antonio M.a Barretto, plaintiff, and Vicenta Limjuco and Vicente Pamatmat, defendants, the sheriff of the Province of Laguna attached a tract of coconut land belonging to Vicenta Limjuco, situated in the barrio of Alipit of the pueblo of Santa Cruz, the area and boundaries whereof were set forth in the complaint; that on October 31, 1910, the said land was sold at public auction to the plaintiff, to whom the proper certificate of title was issued at the expiration of the legal period of one year allowed for redemption; that when plaintiff attempted to take possession of the land purchased, the defendant Cabreza objected to his so doing on the ground that it belonged to him, Cabreza; that the titles on which the latter and his codefendants based their claim of ownership were simulated and fictitious and therefore ineffective, null and void; and that by the detention of the said land plaintiff was caused damages in the sum of P1,000, the value of the income from the 521 coconut trees thereon planted. Counsel therefore prayed that judgment be rendered ordering defendants to restore to plaintiff "the parcel of land in question and to pay him, besides, the sum of P1,000 per annum, reckoned from October 31, 1911, together with legal interest thereon, and to pay the costs.

On October 5, 1912, the defendant Tomas Cabreza answered the complaint and denied all the allegations thereof. In special defense he alleged that prior to the issuance of the writ of attachment of the land in question he and Ponciano Llamas had been the owners and were in possession thereof, as they had purchased it from Vicenta Limjuco. He therefore asked that he be absolved from the complaint, with the costs against the plaintiff.

On the same date Ponciano Llamas prayed to be allowed to intervene; he also filed an answer to the complaint in which he made the same allegations as Tomas Cabreza.

On motion of these defendants the court ordered the inclusion of Vicenta Limjuco, the vendor of the land, as a defendant herein, by reason of her warranty of the sale.

After trial and hearing of evidence adduced by both parties, the court rendered the judgment mentioned, to which the plaintiff excepted and moved in writing for a rehearing and a new trial. This motion was overruled, the appellant excepted, and the proper bill of exceptions was filed, approved, and transmitted to the clerk of this court.

The question to be decided in this case is whether the land belonged to the judgment debtor, Vicenta Limjuco, at

the time of its attachment on October 12, 1910, and if it did, whether the execution sale thereof, made by the sheriff to the herein plaintiff, is legal and valid. There is no question as to the identity of the land whose recovery is sought by plaintiff. It consists of a parcel, 4 hectares, 82 ares, and 71 centiares in area, situated in the barrio of Alipit of the municipality of Santa Cruz, Laguna. The plaintiff, Barretto, claims this land as his property by reason of his having purchased it at public auction on October 31, 1910; while the defendants Tomas Cabreza and Ponciano Llamas allege that it is their exclusive property because they purchased it from Vicenta Limjuco on January 3, 1910.

The indisputable facts are that in case No. 7757 of the Court of First Instance of Manila, brought by Antonio M.a Barretto against Vicenta Limjuco and Vicente Pamatmat to recover the sum of P554, the Honorable A. S. Crossfield, judge, on July 7, 1910, issued a writ of execution, in order that the sum specified in the judgment rendered in Barretto's favor might be collected from defendants' property. Although the judgment debtor Vicenta Limjuco had assured the provincial sheriff of Laguna that she was insolvent and had no attachable property, the sheriff after making a thorough investigation succeeded in discovering four parcels of land belonging to her, which he therefore attached on October 12, 1910. The first of these parcels, or the land herein concerned, was sold at public auction, on October 31, 1910, to the judgment creditor Barretto for the sum of P677.67, according to the bill of sale, Exhibit C. After the lapse of the legal period of one year for redemption, and as the judgment debtor had not redeemed the property sold in the manner mentioned, the sheriff of Laguna, on February 19, 1912, issued the proper certificate of title to the vendee Barretto. (Exhibits B and D.)

The attachment and sale of this land are recorded in the property registry of the Province of Laguna, and it is shown by the certificate Exhibit H and by the testimony of the witness Sarlabus that the final registration of the land in Barretto's name was entered in the registry of deeds on March 23, 1912.

When, as the new owner, Barretto attempted to take possession of the land, the defendant Tomas Cabreza objected to his so doing, alleging that he and his father-in-law, Ponciano Llamas, were the joint owners of the said property, for the reason that they had purchased it from its original owner, Vicenta Limjuco, on January 3, 1910, for the sum of P3,700, as shown in the deed of sale, Exhibit 2.

The vendee, Antonio M.a Barretto, brought the present action to set aside the sale of the land in question, recorded in Exhibit 2, and to regain possession thereof.

As no claim of intervention with reference to the said land was presented by those who now allege they are its owners, and as its sale, to Antonio M.a Barretto was recorded in the property registry of Laguna under date of March 23, 1912, it is to be presumed that the plaintiff is the absolute owner of the land purchased by him at public auction on October 31, 1910; but the defendants aver that when this real estate was attached and sold, they could not file a claim of intervention for the reason that they had no knowledge of the proceedings then had, and they added furthermore that this land had been sold by its owner Vicenta Limjuco to Petrona Lim on August 14, 1906, for the sum of P500, on the condition that Limjuco should have the right to redeem it within two years from that date (Exhibit 4) ; that subsequently the owner, Limjuco, requested Mauricio Capistrano to look for a purchaser of the land in question and the latter found as purchasers the husband and wife, Ponciano Llamas and Agapita Rivera; that on May 22, 1909, that is, nine months after the expiration of the period of two years stipulated in the deed of sale, Exhibit 4, Vicenta Limjuco and Petrona Lim went to the house of the Llamas couple, in Pagsanjan, on which date the land was sold to these latter for the sum of P2,500, with right of repurchase within the term of three years; that the proper deed of sale was executed (Exhibit 1) and that, out of the said P2,500 there in hand paid to the vendor Vicenta Limjuco, the latter delivered P500 to Petrona Lim for the redemption of the land that had been sold to Lim in 1906 under right of repurchase.

Petrona Lim corroborated all the statements made with respect to her, but said that she did not remember the date for the redemption of the land, nor the date when she went with Vicenta Limjuco to Pagsanjan. She added that she gave no receipt or document whatever for the sum paid by Limjuco for the repurchase, that is to say, no instrument whatever of resale was executed. (See Petrona Lim's deposition, Exhibit 3, record.) The real-estate agent Mauricio Capistrano also corroborated the fact that he took part in the sale of the land in question to the husband and wife, Llamas and Rivera, but he could not state positively in what year it occurred.

The defendant Tomas Cabreza testified (p. 12, record) among other things, that, since May 22, 1909, when the deed of sale, Exhibit 1, was executed, he and his father-in-law Ponciano Llamas had been in possession of the disputed land as joint owners thereof in equal parts, and added that on January 3, 1910, the owner of this property, Vicenta Limjuco, conveyed it by absolute sale to the defendants for the consideration of P3,700, as proven by the notarial instrument of purchase and sale, Exhibit 2.

This evidence of the defendants apparently tends to demonstrate that Ponciano Llamas had in fact acquired the land in question from Vicenta Limjuco on January 3, 1910, as set forth in the notarial instrument, Exhibit 2.

But the defendants' Exhibit 2, wherein it appears that Limjuco sold the land involved in this suit outright to Ponciano Llamas, was attacked by the plaintiff as being false and simulated. This document, which was introduced in evidence by the defendants, bears date of January 3, 1910, and was executed by Vicenta Limjuco and Antonia Calacalzada, as vendors, though but one of them executed it, she who received the money and made the statements contained in the document and in its certification, and it is not expressly stated which of the two it was. It appears that Limjuco affixed his mark to this instrument above the names of the witnesses, Isidro Maceda and Lupo F. Umale. It was certified before the notary T. Kalambakal in the municipality of Pagsanjan and the name of Antonia Calacalzada appears to have been crossed out; no mark appears beside it. The record (p. 74) discloses that this notary is a son of Antonia Calacalzada, a grandson of Vicenta Limjuco, and a nephew of the real estate agent Mauricio Capistrano.

Now, then, the clerk of the Court of First Instance of Laguna testified that his records contained copies of all the documents signed before the notary, Teodoro Kahimbakal, transmitted by the latter himself to the clerk's office, and that, among the documents certified before this notary on January 3, 1910, was one which is a copy of that attached to the record as Exhibit J (p. 75, record), and is identical with defendants' Exhibit 2. Defendants' original document Exhibit 2, whereby one of the two women, Vicenta Limjuco and Antonia Calacalzada, sold the land in question to Ponciano Llamas, and Exhibit J, the copy thereof transmitted by the notary Kalambakal to the clerk of the Court of First Instance of Laguna, are substantially the same, but differ from each other in form, for while Exhibit 2, which is mostly printed, appears to have been signed before Isidro Maceda and Lupo F. Umale as witnesses, Exhibit J, which is a copy of Exhibit 2, kept among the files of the clerk of the court, is not attested by anybody. Exhibit J states that Cosme Sotomayor is the owner of adjoining property on the north, but Exhibit 2 does not say so. Exhibit J, executed in Pagsanjan, was certified in the municipality of Santa Cruz, Laguna, while Exhibit 2 appears to have been certified in the municipality of Pagsanjan. None of the defendants explained the reasons for these inaccuracies and differences in form.

There is, then, a discrepancy between the title of ownership presented by the defendants and the copy of this same instrument on file in the official records of the Court of First Instance of Laguna.

Article 1223 of the Civil Code reads:

"An instrument which is defective by reason of the incompetency of the notary or by reason of any other fault in its form shall be considered as a private instrument when signed by the parties who executed the same."

In connection with this article, articles 22 and 28 of the Notarial Law, which was promulgated in these Islands and

published in the Official Gazette of April 7, 1889, and went into effect on July 1st of the same year, are hereinbelow transcribed.

"ART. 22. No notary can authenticate a contract which contains a provision in his favor, or to which any of the parties interested is a relative of his within the fourth civil degree or second of affinity."

"ART. 28. Provisions in favor of relatives of the person who authenticated the document containing the same, within the degree previously mentioned, shall have no effect."

With respect to this latter article, the supreme court of Spain in its decision of February 12, 1869, held that an instrument or document executed by a notary who is the son-in-law of one of the parties interested therein is null and void, because it violates the provisions of that article 28 of the said Notarial Law.

The provision of the Notarial Law, relative to the capacity and incompatibility of notaries, cannot be held to have been repealed by section 791 of Act No. 190 and by Act No. 2035 of the Philippine Legislature, as these Acts refer to the requisites and formalities to be observed in the drawing up and execution of the documents referred to.

Even supposing that the defects mentioned and the incapacity of the notary before whom the deed of sale was certified do not avoid the deed of sale Exhibit 2 presented by defendants, still, as evidence, this document can only adversely affect plaintiff's rights from the 28th of July, 1913, when it was presented, as shown by the memorandum made in connection therewith on page 12 of the stenographic notes.

Article 1227 of the Civil Code prescribes as follows:

"The date of a private instrument shall be considered, with regard to third persons, only from the date on which it may have been filed or entered in a public registry, from the death of any of those who signed it, or from the date on which it may have been delivered to a public official by virtue of his office."

So, the fact that the said deed of Bale was apparently executed before a notary on January 3, 1910, could in no wise affect the rights of the judgment creditor, Antonio M.a Barretto, in the property of the judgment debtor, Vicenta Limjuco, except from July 28, 1913, when it was introduced in evidence at the trial; nor could the said document Exhibit 2 produce any legal effect whatever on October 12, 1910, the date of the levy of attachment on the real estate, which then belonged to Vicenta Limjuco.

The record contains other facts which support the conclusion that in October, 1910, Vicenta Limjuco was the only real owner of the land in question, for, notwithstanding her assurance to the sheriff that she had no attachable property, this officer after investigation succeeded in discovering that she, the judgment debtor, did own four parcels of land in the municipality of Santa Cruz, which were attached on October 12, 1910; and notwithstanding the sale of this property the defendants who now allege that it is theirs filed no claim of intervention, nor did they take any steps to oppose the legal proceedings had until after the lapse of one year and some months, that is, until 1912, when the plaintiff Barretto attempted to take possession of his newly acquired property and then learned that the defendants claimed to have been the owners of this land from January 3, 1910.

That the land in dispute belonged to Vicenta Limjuco at the time of the execution is proved by the testimony of Ramon Perez, an employee of the office of the registry of deeds of Laguna, who testified that according to the assessment books the said real estate had been registered in the name of the judgment debtor, Vicenta Limjuco, until November 11, 1910, subsequent to the attachment, when the property was transferred to Tomas Cabreza. (See also the affidavit, Exhibit G, p. 69, record.) It is to be observed that this land was transferred to the name of Tomas Cabreza, though, according to defendants' own documents, Cabreza took no part in the transaction of purchase and sale of the land. Furthermore, according to the uncontradicted testimony of plaintiff's counsel, the judgment debtor, Limjuco, was in this attorney's office on or about January 20, 1910, and told him then among

other things that she owned some land in Santa Cruz which she rented for P200 a year (p. 2, sten. notes).

It is strange that, as Vicenta Limjuco had sold the real estate in question, on May 22, 1909 (Exhibit 1), to Ponciano Llamas and his wife Agapita Rivera for P2,500, under right of repurchase within a period of three years, she should have decided scarcely eight months afterwards to sell it outright to Ponciano Llamas alone for the sum of P3,700, an excessively high price, inasmuch as the land with its improvements was worth only P1,404, according to Exhibits E and F, and this exaggeration in the price is also shown by the result of the auction sale in which no bidder was willing to offer more than P677.67 therefor (Exhibit C).

All this indicates that the alleged sale of the real estate in question to Ponciano Llamas was made subsequent to the execution of the judgment against Vicenta Limjuco, if, indeed, it was not simulated in order to prevent the execution from being carried out; and this sale might have been simulated by the help of the notary Teodoro Kalambakal, a near relative of the alleged vendor, who, on account of the irregularities he committed in the discharge of his duties as a notary public, was forced to resign his position as such.

For the foregoing reasons we are of opinion that the property purchased by the plaintiff at the auction sale held on October 31, 1910, belonged to his debtor Vicenta Limjuco and, therefore, that the said sale was legal and valid.

As to the damages, estimated in the complaint at P1,000, no assignment of error was made with respect thereto in the brief filed on appeal, and as the payment of this claim was not insisted upon, it would not be proper to make any finding as to whether any or all of the defendants should be obliged to pay it.

For the foregoing reasons, the judgment appealed from should be reversed and we hereby decree that Antonio M.a, Barretto is the exclusive owner of the land described in the complaint. The defendants will restore and deliver possession of the same to plaintiff and pay the costs of both instances. So ordered.

Arellano, C. J., Johnson and Araullo, JJ., concur.

Carson, J., concurs in the result.

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