

JESUSA LAUREANO, PLAINTIFF AND APPELLANT, VS. EUGENIO KILAYCO, DEFENDANT AND APPELLEE.*G.R. No. 10437. March 07, 1916*

Ponente: MORELAND, J.

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The complaint in this action alleges that on the 12th of July, 1913, the plaintiff executed and delivered to the defendant a conveyance of certain lands described in the complaint, together with 186 shares of common stock of the corporation known as El Hogar Filipino. The consideration stated in the conveyance was P49,550. The complaint also alleges that "not a cent of the said consideration was ever paid to plaintiff or was agreed or intended to be paid; that at the time the conveyance was executed and delivered, and as part thereof and of said transaction, the defendant agreed to hold and administer the property, to make certain payments for and on behalf of the plaintiff out of the rents and profits thereof, and to reconvey the property therein described on demand." Among those which plaintiff alleges defendant agreed to make were certain payments to be made monthly to El Hogar Filipino for the reduction of the debt which plaintiff at that time owed to said corporation; that sometime after the execution and delivery of the conveyance plaintiff demanded of defendant a reconveyance of the property which defendant agreed to execute; that, instead of so doing, he executed and offered to deliver to plaintiff a document entirely different in terms and tenor from that which he had agreed to execute and deliver and which she had demanded; that plaintiff refused to accept such instrument in fulfillment of defendant's agreement; that the defendant has repeatedly promised to reconvey to plaintiff as agreed the property so purchased, but has never complied with his promises. Plaintiff further alleges that the defendant has neglected and refused to make the payments to El Hogar Filipino which he agreed to make and that he has collected the rents, issues and profits of said property and converted them to his own use and benefit in violation of his agreement and to the damage of plaintiff.

On the trial of the action the plaintiff was asked questions tending to bring out the facts alleged in the complaint but objections were interposed to such questions on the ground that the evidence offered was incompetent as it would tend to vary or modify the terms of a written agreement. These objections were sustained and the plaintiff duly excepted. AH evidence tending to establish the cause of action alleged in the complaint having been excluded, the court found in favor of the defendant and dismissed the complaint on the merits. This appeal was taken from that judgment and all of the exceptions taken on the trial are presented by that appeal.

The only question presented for our consideration by the brief of appellant (no brief was filed by the appellee) is whether or not plaintiff had the right to prove the parol agreement existing between her and the appellee by virtue of which defendant agreed to reconvey on demand. It is claimed by the appellant, in accordance with the allegations of her complaint, that she received no consideration whatever for the transfer of the properties described in the conveyance referred to, it being verbally agreed between the parties at the time of the conveyance that the appellee should take possession of and administer the properties, secure such income therefrom as circumstances would permit, and use it to pay the debt which appellant owed to El Hogar Filipino; and that he

should reconvey the property whenever appellant should demand it. Is parol evidence admissible to prove such an arrangement in view of the fact that the original conveyance is in writing, is absolute on its face, and contains no conditions whatever?

We are inclined to the opinion that the question presented for our determination does not involve, strictly speaking, the law relating to the introduction of parol evidence for the purpose of changing or modifying the terms of a written instrument; and that the case does not fall within the prohibitive provisions of section 285 of the Code of Civil Procedure, which lays down the law of the Philippine Islands with regard to that subject. The evidence excluded was not offered for the purpose of varying the terms of the conveyance between the parties. It was offered, rather, to show a contemporaneous collateral agreement by which the conveyance could be defeated and terminated. It is a well known principle of law that oral evidence is admissible to show that a conveyance absolute in form was in fact a mortgage; and in the case of *Reeves vs. Abercrombie* (108 Ala., 535, 539), it was said that "the right to establish by parol [evidence] the defeasible character of an absolute written conveyance is, [however, now] too well fixed [in our jurisprudence] to be questioned." In the case of *Russell vs. Southard* (12 How., 139), the court said:

"It is insisted, on behalf of the defendants, that this question is to be determined by inspection of the written papers alone, oral evidence not being admissible to contradict, vary, or add to, their contents. But we have no doubt extraneous evidence is admissible to inform the court of every material fact known to the parties when the deed and memorandum were executed. This is clear, both upon principle and authority. To insist on what was really a mortgage, as a sale, is in equity a fraud, which cannot be successfully practiced, under the shelter of any written papers, however precise and complete they may appear to be."

The court further said:

"In examining this question it is of great importance to inquire whether the consideration was adequate to induce a sale. When no fraud is practiced, and no inequitable advantages taken of pressing wants, owners of property do not sell it for a consideration manifestly inadequate, and, therefore, in the cases on this subject great stress is justly laid upon the fact that what is alleged to have been the price bore no proportion to the value of the thing said to have been sold."

With respect to the production of parol evidence to show lack of consideration it has been said:

"It is well settled that the true consideration of a deed may be proved by parol evidence, and that a deed absolute on its face may be shown to have been executed in fact as a security for money and for that reason be treated as a mortgage. The rule does not depend upon the manner of statement of the consideration in the deed. The right is a substantial one, not to be varied or defeated by any form of expression or character of recitals contained in the instrument itself." (*McLean vs. Ellis*, 79 Tex., 398; 15 S. W., 394.)

"Parol evidence is admissible in equity to show that a deed of conveyance, absolute upon its face, was intended as a mortgage, and where it is shown that such a conveyance has been executed to secure the payment of money, equity will treat it as a mortgage. The court looks beyond the terms of the instrument to the real transaction, or what was intended to be effected by the parties, and any evidence, whether written or oral, tending to show this, is admissible. The admission of oral testimony for such purpose is not a violation of the rule which precludes such admission for the purpose of varying or contradicting the terms of a written instrument; that rule has reference to the language of which the instrument is the repository, but this permits an inquiry into the objects of the parties in executing and receiving the instrument, and equity exercises its jurisdiction to carry out such object and to prevent fraud and imposition, and to promote justice." (*First Nat. Bank vs. Ashmead*, 23 Fla., 379; 2 So., 657, 665.)

"Within this rule, a grantor may testify as to facts and circumstances showing that the deed was but a mortgage, or that the grantee agreed to resell and reconvey upon the performance of certain conditions."

(Beroud vs. Lyons, 85 Iowa, 482; 52 N. W., 486.)

In this connection it has also been held that while prima facie the consideration clause of a deed names the true consideration, nevertheless, it is always open to explanation for almost every purpose except to defeat the operative words of the transfer (Hamaker vs. Coons, 117 Ala., 603; Hoover vs. Binkley, 66 Ark., 645; Sullivan vs. Lear, 23 Fla., 463; Taylor vs. Crockett, 123 Mo., 300; St. Louis, I. M. & So. Ry. Co. vs. Berry, 86 Ark., 309; Spence vs. Central Accident Ins. Co., 236 111., 444; Ellis vs. Lehman, 48 Tex. Civ. App., 308); and it has been frequently held that although the deed acknowledged the receipt of the consideration, parol evidence is admissible to show that it has not, in fact, been received, if the purpose of the party seeking to introduce the evidence is not to invalidate the deed as a conveyance.

The purpose of the introduction of parol evidence to show a lack of consideration is not for the purpose of showing the invalidity of the conveyance but is, rather, to reinforce the claim that there was an agreement to reconvey, it being urged that, if the transfer was utterly without consideration, it would lend more color to the contention of the appellant that there was an agreement to reconvey.

We are of the opinion that parol evidence should have been admitted to show the contemporaneous oral agreement between the parties set out in appellant's complaint. We make the suggestion that such amendment to the pleadings should be allowed, if requested, as will, in the judgment of the Court of First Instance, serve the ends of justice.

The judgment appealed from is reversed and the cause remanded for further proceedings in accordance with this opinion. So ordered.

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

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