

HERMOGENES DE JESUS, PLAINTIFF AND APPELLANT, VS. G. URRUTIA & CO. ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 10863. January 11, 1916*

Ponente: MORELAND, J.

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On October 18, 1906, Diego Linan, the son-in-law of the appellant, executed a mortgage to the defendant company, appellee, on certain lands then belonging to the mortgagor to secure the payment of the sum of P12,591.35, which, by the terms of the mortgage, was to be paid 3 years from the date thereof, with interest at 9 per cent annually. The mortgage was not paid and judgment of foreclosure was obtained on July 5, 1911, the principal, interest and costs amounting, on that date, to P14,224.53. The property was duly sold pursuant to the judgment of foreclosure, there resulting a deficiency of P7,874.97, for which the mortgagee was given a judgment. An execution was issued thereon and, on the 28th of July, 1913, the lands described in the complaint were levied upon for the satisfaction of said deficiency judgment. The appellant, claiming to be the owner of the lands levied on, presented to the sheriff who made the levy a claim in pursuance of section 451 of the Code of Civil Procedure. The appellee insisted on the sale of said lands and gave the bond required in that section. The sheriff thereupon proceeded with the execution of the judgment and, on the 22d of September, 1913, sold the land for the sum of P4,700. This action was thereupon begun for the recovery of the land so sold. The trial court found in favor of the appellee and dismissed the action. This appeal is taken from that judgment.

The claim of appellant to the lands in question is based on certain conveyances made by Diego Linan at various times from 1906 to 1908. The judgment of the trial court was based on the ground that the sales by which the lands described in the complaint were transferred to the appellant were made to defraud the appellee. The court in its decision says:

"In the years 1908 to 1910 the said Diego Linan, well knowing that the property mortgaged to G. Urrutia & Co. was insufficient to pay the mortgage debt, and with the intention and for the purpose of defrauding the said G. Urrutia & Co., showed himself to be insolvent by executing the conveyances marked Exhibits A, B, C and D, which together appeared to be a sale of the lands in question to his father-in-law, which, with the same fraudulent intent, he caused to be registered in the registry of property of the Province of Ambos Camarines.

"The said conveyances were simulated and fictitious and without any consideration and pursuant to a conspiracy between Diego Linan and his father-in-law to place said lands beyond the reach of G. Urrutia & Co. and thereby defraud them by preventing the collection of the debt which said company held against said Linan."

A careful examination of the record leads us to the conclusion that this finding is not supported by a fair preponderance of the evidence. We are satisfied that the evidence clearly and unmistakably discloses that there was no active fraud by Diego Liñan at the time the mortgage was executed or by Diego Liñan and Hermogenes de Jesus at the time the lands in dispute in this case were sold by the former to the latter.

While the conveyances by which the lands in controversy were transferred to the plaintiff were not acknowledged before a notary public, they were in fact executed and delivered before the existence of the mortgage. In fact, we do not find in the decision of the trial court a direct statement or finding that the documents or transfers were not executed on the dates alleged by appellant. It does not appear anywhere in the case, and we do not understand that the appellee claims, that at the time the transfers were made to appellant either he or Liñan was aware of the fact that appellee would, within a short time, insist on a mortgage to secure the debt which it held against Liñan. There was, therefore, at that time, no actual fraud, no intention to deprive a creditor of an opportunity to collect his debt, or to remove from the hands of the debtor property necessary for the fulfillment of his obligation to his creditor.

Moreover, it is clearly established by the evidence that, at the time the mortgage was executed in favor of appellee, Linan was the owner of a considerable number of parcels of land in addition to those mortgaged; and that the mortgagor and the mortgagee mutually agreed on the lands which should be encumbered; and that it was believed at the time by both parties to the instrument that the lands so hypothecated would be sufficient on sale to cover the mortgage debt and interest. There is strong evidence to the effect that the company would, for the asking, have included in the mortgage more lands than were actually included. There being credible testimony to the contrary, we cannot accept the claim of appellee that it was deceived into accepting the lands mortgaged as, at that time, reasonably sufficient security for the mortgage debt. The claim of appellee's representative, who had lived in that locality for five years and during that time was the manager of appellee's business at that place, that he did not know the market value of lands in that community and that he was deceived by the representations of the mortgagor as to the value of the lands mortgaged, is, it seems to us, unreasonable. We cannot believe that he was permitted to manage appellee's business in that locality for five years and, during all that time, be wholly ignorant of the value of real estate, a subject-matter with which he was constantly dealing. Besides, the value of the lands as assessed on the assessment roll of the locality was taken and accepted by the parties as an expression of their fair market value. At that time their value was sufficient to cover the mortgage debt, with something left over, and, taken together with the launch which was also included in the mortgage at a valuation of P2,500, as to which valuation appellee's representative makes no claim of ignorance or deception, were reasonably sufficient to guarantee, at the moment, the complete payment of the mortgage debt. Furthermore, the judgment and experience of appellee's representative was reinforced by that of its attorney, who was sent by the appellee to assist its representative in the mortgage transaction.

Neither the appellant nor Linan is responsible for the fall in the market value of these lands which apparently occurred between 1906 and 1909. Linan, in giving the mortgage, evidently acted in entire good faith and the same may be said with respect to his sales to the appellant. He continued his business thereafter, was the owner and possessor of a number of parcels of land in addition to those mortgaged and those sold to appellant. Not only this, but he voluntarily paid P1,600 on the mortgage debt and improved the mortgaged lands to the same amount.

Nor do we believe the evidence sufficient to sustain the finding that the conveyances which are the object of this controversy were without consideration. During the trial appellant was called as a witness for appellee. As such witness he testified that, prior to the sales in controversy, Linan had borrowed of him a considerable sum of money, to pay which he made the transfers referred to. This testimony was corroborated and supported by that of Rosario de Jesus, another witness for the appellee, who testified that the transfers of the land in question were made to the plaintiff to satisfy a preexisting obligation arising from money loaned. It thus appears from appellee's own evidence that there was a valuable consideration for the sales in suit and that, consequently, there was neither fraud nor intention to defraud.

However, the motives which impel one to a sale or purchase are not always the consideration of the contract as that term is understood in law. One may purchase an article not because it is cheap, for in fact it may be dear, but

because he may have some particular use to which it may be put, because of a particular quality which that article has, or the relation which it will bear to other articles with which it will be associated. These circumstances may constitute the motive which induces the purchase, but the real consideration of the purchase is the money which passed. Whatever may have been the motive which impelled Liñan to transfer the properties in question to appellant, the consideration of the sale was a debt due and owing from him to the former. With one's motives the law cannot deal in actions of this character; while with the consideration the law is always concerned.

We do not believe that article 1297 of the Civil Code is applicable to the facts of this case. That article provides:

"Contracts by virtue of which the debtor alienates property gratuitously are presumed to be executed in fraud of creditors.

"Alienations for valuable considerations, made by persons against whom a condemnatory judgment, in any instance, has been previously rendered, or a writ of attachment of property has been issued, shall also be presumed fraudulent."

The first paragraph does not apply for the reason that the sale was not gratuitous.

The second paragraph is equally inapplicable as the transfers were made before a judgment had been obtained or a writ had been issued for the seizure of Linan's property.

We do not understand that it is the law that, after a person has given a mortgage on his real estate to secure the payment of the mortgage debt, he is prohibited from handling the balance of his property as his needs and his business require.

Moreover, as we have already said, it appears from the testimony of appellee's own witness that, as late as 1909, Linan was solvent as he was still the owner of various parcels of land and of considerable other property; and there is no evidence in the record that he was insolvent at the expiration of the time limited in the mortgage. The latter was given on October 18, 1906, and fell due on October 18, 1909. It does not appear from the record when the foreclosure action was commenced but it does appear that there was no defense to the action and that judgment herein was entered on the 5th of July 1911, almost two years after the mortgage became due. It is disclosed by the evidence that Linan was solvent in 1909 and, in the absence of proof to the contrary, we assume him to have been solvent in 1910. His insolvency was not demonstrated until after the judgment was obtained in 1911.

Finally, it is the undisputed evidence in the case, for that evidence was presented by two of the witnesses for the appellee, that appellant, in consummation of the sales, took immediate possession of the lands sold to him by Linan and continued in possession thereof until the sale by the appellee. Although these witnesses were interested in the result of this action, they were witnesses for the appellee; and it cannot now be heard to say that their testimony is worthless because of that interest.

The case of *Oria vs. McMicking* (21 Phil. Rep., 243), relied on by appellee, is not applicable to the facts in this case, as will be seen by referring thereto.

The plaintiff not having proved any damages, none can be allowed.

The judgment appealed from is reversed and the cause remanded to the court whence it came with instructions to enter a judgment declaring appellant to be the owner of the lands in question and annulling the levy made thereon under the deficiency judgment. Without costs in this instance. So ordered.

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

Carson and Trent, JJ., dissent.

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