

LEOCADIO JOAQUIN, PLAINTIFF AND APPELLANT, VS. O. MITSUMINE, DEFENDANT AND APPELLEE.*G.R. No. 10868. August 28, 1916*

Ponente: TORRES, J.

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Appeal filed by the plaintiff, by bill of exceptions, from the judgment of the Court of First Instance of Manila. November 24, 1914, absolving the defendant O. Mitsumine from the complaint, decreeing that the mortgage executed by the plaintiff Leocadio Joaquin to the defendant was valid, and ordering the plaintiff to pay to the defendant the sum of P525, plus P105 for the expenses of collection. It was further ordered that the preliminary injunction issued against the defendant on July 31, 1914, be dissolved, with the costs against the plaintiff.

On July 30, 1914, Attorney Leocadio Joaquin, in his own behalf, filed a written complaint in the Court of First Instance of Manila against the defendant, O. Mitsumine, alleging that on July 3, 1914, the plaintiff executed an instrument whereby he gave a chattel mortgage on certain apparatus for the manufacture of aerated water as security for the payment in two installments of the sum of P525; that the said mortgage deed was entirely null and void for the reason that it had been executed by the plaintiff by mistake, inasmuch as in May, 1914, he had instructed the defendant to acquire the said machine at the request of the plaintiff's client, Macario Vito, and that the latter was responsible for the payment of the said P525; that in spite of the various demands the plaintiff had made upon the defendant to cancel the said mortgage deed, the latter had refused so to do; that as the period for compliance with the mortgage obligation would expire on July 30, 1914, and that notwithstanding it was null and void, the defendant would foreclose the mortgage and damage and prejudice the plaintiff's rights, wherefore he prayed the court to declare the said mortgage deed of July 3, 1914, to be null and void with the costs against the defendant. He further prayed that, in consideration of the bond for P800 furnished for the purpose, a writ of preliminary injunction issue against the defendant, his attorney, agents or mandataries, and to the sheriff of Manila, enjoining them from taking any steps toward the foreclosure of the said mortgage, until the termination of these proceedings.

On August 20, 1914, the defendant answered the above complaint, denying all the allegations therein contained except those that were expressly admitted in his answer and in special defense alleged that on or about April 15, 1914, the plaintiff, in his own name, asked the defendant to import from Japan a machine for the manufacture of aerated waters, the value of which, P725, the plaintiff agreed to pay on the delivery of the machine; that after the defendant had ordered the machine from Japan and delivered it to the plaintiff to his entire satisfaction, plaintiff paid defendant P200 on account and agreed to pay the balance of P525 in two installments; that for this purpose he signed two promissory notes and executed the mortgage deed of July 3, 1914, attached to the complaint as security for the said balance owing; but that the plaintiff failed to comply with the agreement, thereby damaging the defendant in the sum of P200. Defendant therefore prayed the court to absolve him from the complaint and to order the plaintiff to pay him the sum of P525, besides P150, or twenty per cent of the debt, the amount agreed upon for attorney's fees should an attorney's services be required for the collection of the said promissory notes,

the sum of P200 for the losses and damages caused to the defendant, and the legal interest on all the aforementioned amounts, as well as the costs.

After trial and the introduction of evidence by both parties, the court rendered the judgment aforementioned to which the plaintiff excepted and in writing asked for a re-opening of the case and a new trial. This motion was denied, whereupon plaintiff excepted and filed the proper bill of exceptions which was approved and sent up to the clerk of this court.

The question submitted to this court for decision consists of whether attorney Leocadio Joaquin, for himself and for his own account, requested and left an order with the defendant to secure and import from Japan a Suchiro aerated-water machine, and whether or not we should declare null and void the chattel mortgage deed, Exhibit 2, executed by the plaintiff on July 3, 1914, in behalf of the defendant as security for the payment of the amount of the two promissory notes given by the plaintiff on the 2d of July, the first of which, for P275, fell due 13 days after that date, and the second, for P200, 28 days thereafter.

The mortgage deed here claimed to be null and void, which was presented by the defendant as Exhibit 2 and made a part of his answer, was executed on July 3, 1914, by the plaintiff, Leocadio Joaquin, as debtor in favor of the defendant, O. Mitsumine, as mortgage creditor. According to the official certification found at the end of the said instrument, it appears to have been registered in the office of the register of deeds on the 16th of July of the same year. By virtue of the said deed the plaintiff conveyed and mortgaged to the defendant "An aerated-water machine, No. 2, made in Japan by Suchiro & Co., together with its parts, attachments and other accessories," all of which were then at No. 761 Calle Juan Luna, district of Tondo, Manila, in possession of the mortgage debtor Leocadio Joaquin, the contracting parties setting forth that the said mortgage Was made to secure the payment to the defendant of two promissory notes given by Leocadio Joaquin, which are of the following tenor:

"No. 1. P275.—Thirteen days after this date, without grace, for value received, I promise to pay to Mr. O. Mitsumine or to his order the sum of P275, Philippine currency, protest and notice expressly waived; I further bind myself, in case it should be necessary to place this promissory note in the hands of an attorney for collection, to pay to the holder hereof twenty per cent of the principal of the said promissory note, as fees of the attorney who collects the same. Manila, July 2, 1914.—L. Joaquin, Juan Luna. No. 307, Bdo., Manila.

"No. 2. P250.—Twenty-eight days after this date, without grace, for value received, I promise to pay to Mr. O. Mitsumine or to his order the sum of P250, protest and notice expressly waived; and I further bind myself, in case it should be necessary to place this promissory note in the hands of an attorney for collection, to pay to the holder hereof twenty per cent of the principal of the said promissory note, as fees of the attorney who collected the same. Manila, July 2, 1914.—L. Joaquin, No. 307 Juan Luna, Bdo., Manila.

The contracting parties expressly stipulate that:

"The conditions of this obligation are such that, if the mortgage debtor, his heirs, executors or administrators faithfully comply with all of the above-mentioned obligation in conformity with the terms thereof, this obligation shall then be null and void."

But the plaintiff alleges that the said mortgage deed was executed by mistake inasmuch as he gave the order to the defendant in the name of his client, Macario Vito; that the latter should be held responsible for the purchase of the machine in question and therefore the said mortgage deed should be declared to be null and void.

The plaintiff's contention is unsound, because the record shows it to have been duly proven that on April 15, 1914, he signed and forwarded to the commercial establishment of the defendant, Mitsumine, named the Nippon Bazar, Exhibit 1, which was an order to procure a complete machine for the manufacture of aerated waters. This machine was ordered from Japan by the defendant and was delivered to the plaintiff in the month of May or June

of the same year, 1914. At the bottom of the bill, Exhibit A (page 27 of the record), which the Nippon Bazar rendered to Leocadio Joaquin for the sum of P725, the value of the said machine, there appear two unsigned entries, one evidencing the partial payment of P100 on June 15, 1914, and the other of P100 on the 16th of June of the same year; the entries do not however show who made these two payments, though H is to be supposed that it was the debtor.

The validity and authenticity of the said mortgage deed, Exhibit 2, is unquestionable, notwithstanding the alleged error which the plaintiff claims to have committed in the execution of the said contract, for the plaintiff has not explained in what that error consisted, nor has he proved that the real purchaser of the machine was his client Macario Vito; on the contrary, it has been satisfactorily proven that the only person who gave the order for the machine, the person who was interested in its acquisition, the one who signed two promissory notes for the unpaid balance of P525 and guaranteed the payment of this sum by a mortgage of the machine in question, was no other than the plaintiff himself, Leocadio Joaquin, who, being an attorney, cannot set up ignorance on lack of familiarity with the kind of contract to which he bound himself.

Macario Vito, as a witness in plaintiff's behalf, testified that he himself gave the order for the purchase of the machine for the manufacture of lemonade, and had paid P200 on account therefor; that he was given a receipt for the amount mentioned but that he was unable to exhibit it in court because he had not brought it with him; however, the person interested in the exhibition of this receipt did not ask the court that it be presented in evidence in order to prove at least that Macario Vito had had some transaction with the defendant or with his firm.

The defendant, Mitsumine, testified that he was not acquainted with Macario Vito and on testifying as a witness for the plaintiff he stated that, on making delivery of the lemonade machine to the purchaser, he left it in the latter's possession and refused to accept the receipt that the plaintiff gave him because it was signed by Macario Vito, whom the defendant did not know and with whom he had not contracted for the delivery of the machine; that the sum of P200 which was paid on account of the P725, the value of the machine, was paid to witness by the plaintiff, Leocadio Joaquin, and not to Macario Vito.

The foregoing facts lead to the inevitable conclusion that the only person obliged to pay to the defendant the price of the machine imported from Japan is the plaintiff, for the reason that it was he who ordered and contracted for it.

The plaintiff, deliberately and intentionally, by his own acts, induced the defendant to believe that he, the plaintiff, was the real purchaser of the said aerated-water machine. Therefore under section 333, subsection 1, of the Code of Civil Procedure, he is estopped from denying or contradicting his previous acts and statements in regard to the matter.

Furthermore, it was not proven that Macario Vito had taken any part or had any interest in the purchase of the said machine; if he had had, the contract stipulated for its acquisition would naturally have been made with the defendant in Vito's name. Therefore the defendant, Mitsumine, is not obliged to disregard or pass over the plaintiff and to direct his action against the third-party purchaser in order to recover what was due him, the legitimacy of which amount is shown in authentic documents which have not been impugned or assailed as false.

It is a general principle of law that no one may be permitted to disavow and go back upon his own acts, or to proceed contrary thereto. This principle has been recognized in many decisions of the supreme court of Spain, from 1886 to 1906, and by the decisions of the Supreme Court of these Islands, among others, in the case of *Trinidad vs. Ricafort* (7 Phil. Rep., 449) and in that of *Hijos de I. de la Rama vs. Robles and Robles* (8 Phil. Rep., 712). In this latter decision the following principle was laid down:

"Against the validity and efficacy of obligations set forth in authentic documents, whether of a public or a private nature, neither any plea not duly justified nor the testimony given by the parties bound under such

documents can prevail against the contents of the same, because it is not lawful to permit anyone to contradict his own acts in order to deceive himself or to deceive others in whose favor the obligations were created."

If, after a perfect and binding contract has been executed between the parties it occurs to one of them to allege some defect therein as a reason for annulling it, the alleged defect must be conclusively proven, since the validity and fulfilment of contracts can not be left to the will of one of the contracting parties (art. 1256, Civ. Code).

In order that an action to secure the annulment of a contract on account of an error alleged to have been made in its execution may prosper, it is indispensable that the case shall fall within the conditions prescribed in article 1266 of the Civil Code. Attorney Leocadio Joaquin, for himself and in his own name, contracted with O. Mitsumine for the acquisition and purchase of the said machine and received from him the machine so purchased. He therefore cannot be permitted to elude the obligation to pay for it and his temerity is brazen in claiming that the vendor should collect the balance of its price from a third person with whom the vendor did not contract and who did not receive the purchased machine, and in asserting such a claim on the pretext that he, the plaintiff, made a mistake in contracting for himself and not in the name of his client Macario Vito. Such a preposterous claim, put forward solely to avoid the collection of an unquestionable debt, can not be sustained by the corroboration of Vito.

After this suit had been decided by the judge of the Court of First Instance on the grounds contained in the judgment appealed from, the plaintiff must have become morally certain, if not indeed absolutely convinced, of the unreasonableness and temerity of his claims. This is shown by the alleged errors unwarrantedly assigned to the judgment of the trial court, and therefore this court, after due consideration of the record and the merits of these proceedings, deems proper to apply to the plaintiff, who is an attorney, the provision contained in case 2, the last paragraph of section 497 of the Code of Civil Procedure.

For the foregoing reasons, the judgment appealed from should be as it is hereby, affirmed, with double the costs of this instance against the appellant. So ordered.

Johnson, Moreland, Trent, and Araullo, JJ., concur.

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