

SIMEON A. VILLA, PLAINTIFF AND APPELLEE, VS. JOSE SANTIAGO, ADMINISTRATOR OF THE ESTATE OF MONICA CUENCA, DECEASED, DEFENDANT AND APPELLANT.

G.R. No. 11470. April 04, 1918

Ponente: CARSON, J.

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CARSON, J.:

Plaintiff in this action seeks to recover nine parcels of land situated in and about Bacoor, some of which are salt fields (salinares), some urban lots, and others agricultural lands, together with damages for their detention, from the defendant administrator of the estate of a woman, named Monica Cuenca, who died in April, 1913, leaving behind her minor children, the youngest of whom was about 6 years of age at the time of her death.

Plaintiff bases his action on the terms of an instrument purporting to be a deed of sale of these lands to himself for the sum of P2,000, executed by the widow on December 29, 1911, wherein she reserved a right of repurchase to be exercised on or before December 29, 1913, she to continue in possession of all this property and to pay an annual rental of P300, that is to say, at the rate of 15 per cent per annum on the amount advanced by the plaintiff.

Plaintiff contends that since the widow did not exercise her reserve right to repurchase before her death in April, 1913, and since that right was not exercised by her heirs or legal representatives before the 29th of December, 1913, he became the absolute owner of the property on the latter date, and is entitled to recover possession from the administrator, together with damages for its detention from that date to date of the complaint, October 8, 1914.

It appears that the plaintiff filed, with the committee of claims against the estate, a separate claim for the amount of one year's rent (P300) alleged to be due under the contract with the widow and unpaid at the time of her death.

The circumstances under which this claim was presented are of considerable interest and throw a flood of light on the character of the transactions brought under review on this appeal.

Monica Cuenca died in April, 1913, leaving a will executed in the month preceding her death wherein she set forth the following:

"I declare that I now owe Mr. Simeon Villa, a resident of Manila, the sum of P2,300, Philippine currency, which I have employed in the construction of the Chinese salina, and order that the payments to be made on this debt shall be taken from the product of the said Chinese salina."

This will was offered for probate September 12, 1913, and special letters testamentary were issued to the defendant administrator the following day to take charge of the property pending the proceedings looking to the probate of the will.

The will was probated on December 13, 1913.

On February 14, 1914, a committee of appraisal and claims was appointed to sit for six months from the date of appointment, and to have fifteen days, in addition, to give notice of its sittings and to make its report.

No claim for the amount of the rent was submitted during the period set for the preparation of the report of this committee, but on October 10, 1914, plaintiff appeared, and applied for an extension of the time allowed for the presentation of claims against the estate, in order that he might have an opportunity to file his claim for rent due under the contract; setting forth at the same time, that five days earlier (October 5, 1914) he had procured the entry of an annotation in the registry consolidating his title under the alleged deed of sale, and that two days earlier (October 6, 1914) he had filed his action against the administrator for recovery of the possession of the property in question.

Then, for the first time, did the administrator discover the existence of the alleged deed of sale, and of the claim of ownership by the plaintiff of the property of the estate of the widow.

Counsel for the administrator ask the court to consider the motives which led the plaintiff to keep silent, after the death of the widow and throughout the period allowed for the hearing of the claims against her estate, without attempting to consolidate his title and without setting up his claims for rent, and for damages for the alleged unlawful detention of the property; and it is urged that his conduct in this regard, taken together with all the circumstances as disclosed by the record, justifies the inference that he well knew that despite the execution of the document purporting to be a sale with a reserved right of repurchase, the money was advanced as indicated in the will, by way of a loan at 15 per cent interest per annum, and the deed given merely by way of security therefor, with the understanding that whenever payment should be made of the amount of the indebtedness, the land would be reconveyed to the original owner.

Counsel insist that the attempt of the plaintiff to take from the minor heirs of the deceased property worth more than P10,000 on account of a loan of P2,000 was an afterthought, which only occurred to him when he found that by the death of the widow and the lapse of time it was possible for him to secure the registry of absolute title to the property in his own name, apparently without the possibility of successful challenge of his unconscionable conduct by the heirs of the estate, who seemed to have had no knowledge of the true nature of the original transaction.

Counsel contend that it would be unreasonable and absurd to suppose that the widow would sell the nine parcels of land worth more than P10,000 for P2,000, and then expend the money secured from the purchaser in permanent improvements on the land itself, without some such understanding as that set forth in her will, by virtue of which she was assured that, despite the formalities which marked the execution of the written document, the plaintiff would not attempt to enforce any legal or technical rights in the premises other than those of a creditor for the amount of his advances, holding the paper title to the property by way of security for the repayment of the loan.

Counsel insist that the conduct of the plaintiff himself, taken together with the marked disproportion between the amount of money advanced and the value of the property in question, and having in mind the purpose to which the money was applied, and the fact that there was no physical transfer of the possession of the land at the time of the alleged sale, sustains his contention that the true understanding between the parties was that the money was advanced by way of a loan; and that the property described in the deed would be held by the lender merely as security for its repayment, this property to be sold in the event of failure to repay the loan, and the proceeds to be applied to the repayment of the indebtedness to the extent necessary to reimburse the creditor in full.

We are of opinion that this contention should be sustained, giving as we do, exceptional weight to the circumstances surrounding the transaction and the conduct of the parties themselves, especially that of the plaintiff, in view of the fact that the mouth of one of the parties to the transaction is sealed by death. (Laureano vs. Kilayco, 34 Phil. Rep., 148; Cuyugan vs. Santos, 34 Phil. Rep., 100; and PP. Agustinos Recoletos vs. Lichauco, 34 Phil. Rep., 5.)

In the case of Cuyugan vs. Santos (*supra*), we said by way of answer to contentions substantially similar to those advanced by counsel for the plaintiff in the case at bar:

"In the case of Russel vs. Southard (53 U. S., 138-147), the Supreme Court of the United States dealt with these objections in part as follows:

" 'The first question is whether this transaction was a mortgage, or a sale.

" '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. In *Conway vs. Alexander* (7 Cranch, 238), C. J. Marshall says: "Having made these observations on the deed itself, the court will proceed to examine those extrinsic circumstances, which are to determine whether it was a sale or a mortgage;" and in *Morris vs. Nixon* (1 How., 126), it is stated: "The charge against Nixon is, substantially, a fraudulent attempt to convert that into an absolute sale, which was originally meant to be a security for a loan. It is in this view of the case that the evidence is admitted to ascertain the truth of the transaction, though the deed be absolute on its face." '

" 'These views are supported by many authorities. (*Maxwell vs. Montacute*, Pr. in Ch., 526; *Dixon vs. Parter* 2 Ves., Sen., 225; *Prince vs. Bearden*, 1 A. K. Marsh. [Ky.], 170; *Oldham vs. Halley*, 2 J. J. Marsh. [Ky.], 114; *Whittick vs. Kane*, 1 Paige [N. Y.], 202; *Taylor vs. Luther*, 2 Sumn., 232; *Flagg vs. Mann*, Id., 538; *Overton vs. Bigelow*, 3 Yerg. [Tenn.], 513; *Brainerd vs. Brainerd*, 15 Conn., 575; *Wright vs. Bates*, 13 Vt., 341; *McIntyre vs. Humphries*, 1 Hoffm. [N. Y.], Ch., 331; 4 Kent, 143, note A., and 2 Green. Cruise, 86, n.)

" 'It is suggested that a different rule is held by the highest court of equity in Kentucky. If it were, with great respect for that learned court, this court would not feel bound thereby. This being a suit in equity, and oral evidence being admitted, or rejected, not by the mere force of any State statute, but upon the principles of general equity jurisprudence, this court must be governed by its own views of those principles. (*Robinson vs. Campbell*, 3 Wheat, 212; *United States vs. Howland*, 4 Id., 108; *Boyle vs. Zacharie et al.*, 6 Pet., 658; *Swift vs. Tyson*, 16 Id., 1; *Foxcroft vs. Mallet*, 4 How., 379.) But we do not perceive that the rule held in Kentucky differs from that above laid down. That rule, as stated in *Thomas vs. McCormack* (9 Dana [Ky.], 109), is that oral evidence is not admissible in opposition to the legal import of the deed and the positive denial in the answer, unless a foundation for such evidence had been first laid by an allegation, and some proof of fraud or mistake in the execution of the conveyance, or some vice in the consideration.

" 'But the inquiry still remains, what amounts to an allegation of fraud, or of some vice in the consideration—and it is the doctrine of this court that, when it is alleged and proved that a loan on security was really intended, and the defendant sets up the loan as a payment of purchase money, and the conveyance as a sale, both fraud and a vice in the consideration are sufficiently averred and proved to require a court of equity to hold the transaction to be mortgaged; and we know of no court which has stated this doctrine with more distinctness, than the Court of Appeals of the State of Kentucky. In *Edrington vs. Harper* (3 J. J. Marsh. [Ky.], 355), that court declared: "The fact that the real transaction between the parties was a borrowing and lending, will, whenever, or however it may appear, show that a deed absolute on its face was intended as a security for money; and whenever it can be ascertained to be a security for money, it is only a mortgage, however artfully it may be disguised."

* * * * *

" 'In respect to the written memorandum, it was clearly intended to manifest a conditional sale. Very uncommon pains are taken to do this. Indeed, so much anxiety is manifested on this point as to make it apparent that the draftsman considered he had a somewhat difficult task to perform. But it is not to be forgotten, that the same language which truly describes a real sale, may also be employed to cut off the right of redemption, in case of a loan on security; that it is the duty of the court to watch vigilantly these exercises of skill, lest they should be effectual to accomplish what equity forbids; and that, in doubtful cases, the court leans to the conclusion that the reality was a mortgage, and not a sale. (Conway vs. Alexander, 7 Cranch, 218; Flagg vs. Mann, 2 Sumn., 533; Secrest vs. Turner, 2 J. J. Marsh. [Ky.], 471; Edrington vs. Harper, 3 Id., 354; Crane vs. Bonnel, 1 Green [N. Y.] Ch., 264; Robertson vs. Campbell, 2 Call. [Va.], 421; Poindexter vs. McCannon, 1 Dev. [N. C.] Eq., 373.)

" 'It is true, Russel must have given his assent to this form of the memorandum; but the distress for money under which he then was, places him in the same condition as other borrowers, in numerous cases reported in the books, who have submitted to the dictation of the lender under the pressure of their wants; and a court of equity does not consider a consent, thus obtained, to be sufficient to fix the rights of parties. "Necessitous men" says the Lord Chancellor, in Vernon vs. Bethell (2 Eden, 113), "are not, truly speaking, free men; but, to answer a present emergency, will submit to any terms that the crafty may impose upon them."

" 'The memorandum does not contain any promise by Russel to repay the money, and no personal security was taken; but it is settled that this circumstance does not make the conveyance less effectual as a mortgage. (Floyer vs. Lavington, 1 P. Wms., 268; Lawley vs. Hooper, 3 Atk., 278; Scott vs. Fields, 7 Watts. [Pa.], 360; Flagg vs. Mann, 2 Sumn., 533; Ancaster vs. Mayer, 1 Bro. C. C., 464.) And consequently it is not only entirely consistent with the conclusion that a mortgage was intended, but in a case where it was the design of one of the parties to clothe the transaction with the forms of a sale, in order to cut off the right of redemption, it is, not to be expected that the party would, by taking personal security, effectually defeat his own attempt to avoid the appearance of a loan.'

"Citing and relying upon this case Mr. Justice Field speaking for the Supreme Court of the United States (Brick vs. Brick, 98 U. S., 514) announced the doctrine with relation to transactions in personal property, which is summarized as follows in the head notes:

" 'Parol evidence is admissible in equity to show that a certificate of stock issued to a party as owner was delivered to him as security for a loan of money. A court of equity will look beyond the terms of an instrument to the real transaction, and when that is shown to be one of security and not of sale, it will give effect to the actual contract of the parties.

" 'The rule which excludes such evidence to contradict or vary a written instrument does not forbid an inquiry into the object of the parties in executing and receiving it.' "

In the Cuyugan case (supra) we summarized the doctrine in this jurisdiction as follows:

"* * * there can be no question, in the absence of express statutory prohibition, as to the validity of an agreement or understanding whereby the lender of money, who as security for the repayment of the loan has taken a deed to land, absolute on its face or in the form of a deed reserving a mere right of repurchase to the vendor, obligates himself to hold such deed, not as evidence of a contract of sale but by way of security for the repayment of the debt; and that unless the rights of innocent third persons have intervened, the lender of the money may be compelled to comply specifically with the terms of such an agreement, whether it be oral or written; and further, that he will not be permitted, in violation of its terms, to set up title in himself or to assert a claim of absolute ownership.

"If the parties actually enter into such an agreement, the lender of the money is legally and morally bound to fulfill it. Of course such an oral contract does not give the borrower a real right in the lands unless it is executed in compliance with the formalities prescribed by law. If entered into orally, it creates a mere personal obligation which in no wise affects the lands, and if the lender conveys the lands to innocent third persons, the borrower must content himself with a mere right of action for damages against the lender, for failure to comply with his agreement. But so long as the land remains in the hands of the lender, the borrower may demand the fulfillment of the agreement, and a mere lack of any of the formalities prescribed under the Spanish code for the execution of contracts affecting real estate will not defeat his right to have the contract fulfilled, as the lender may be compelled in appropriate proceedings to execute the contract with the necessary prescribed formalities."

In this connection it may be well to add the following extract from a decision of the supreme court of Spain, dealing with the provisions of articles 1278, 1279 and 1280 of the, Civil Code touching the conditions essential to the validity of contract, and the necessity for the execution of certain contracts, including conveyances of real estate, in public documents:

"Neither this article (1279), nor the one that precedes it (1278), nor the one that follows it (1280) prescribes that the bringing of the action to compel the execution of the formal instrument, shall precede the action arising out of the contract." (Decisions of July 4, 1899, and October 19, 1901.)

We conclude that the judgment entered in the court below should be reversed, without costs in this instance, and the record returned to the court below where judgment will be entered granting the relief to which the plaintiff appears to be entitled upon the pleadings and the proof, that is to say, a judgment for the amount of the indebtedness evidenced by the instrument, and providing for the sale of the property mentioned therein and the application of the proceeds to the payment of the amount of the judgment, unless that amount is paid by the administrator from other available funds in his hands as such administrator, and providing further for the conveyance of the lands described in the complaint from the plaintiff to the person or persons entitled thereto as a result of their sale by order of the court, or of the payment of the indebtedness by the administrator. So ordered,

Arellano, C. J., Torres, Araullo, Street, and Malcolm, JJ., concur.

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