

AGUSTIN LAZARTE, PLAINTIFF AND APPELLEE, VS. THE DIRECTOR OF LANDS ET AL., DEFENDANTS. BIBIANA YAPTINCHAY AND THE SHERIFF OF LAGUNA, APPELLANTS.*G.R. No. 11532, February 21, 1917*

Ponente: TORRES, J.

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On July 18, 1914, the plaintiff Agustin Lazarte applied to the Court of First Instance of Laguna for a writ of injunction against Bibiana Yaptinchay, the Director of Lands and the sheriff of the Province of Laguna. His complaint alleged that he was the owner of two parcels of land belonging to the Hacienda of Santa Rosa, Laguna (Insular Government property according to Exhibit A filed with his complaint), through purchase on August 8, 1912, under pacto de retro, from Celerino Tiongco; that said right of repurchase expired in December, 1912, as shown in the attached document (Exhibit E); that nevertheless the defendant Bibiana Yaptinchay filed a complaint against the said Celerino Tiongco in the Court of First Instance of Laguna to recover a certain sum of money; that she later obtained a judgment in her favor; that same was afterwards ordered executed; that, when levying execution against the judgment debtor Celerino Tiongco, the defendant sheriff illegally and with violation of the plaintiff's rights proceeded to attach said two parcels of land that had been sold to the plaintiff under pacto de retro, to sell same at public auction, on July 18, 1914, to said Yaptinchay, and to issue to her the corresponding certificate of sale; that the Director of Lands, the Insular Government's representative and agent in charge of the management of the said Santa Rosa Hacienda to which the lands in question pertain, was about to grant the required permit to convey said two parcels of land to the defendant Yaptinchay, notwithstanding the fact that the plaintiff had purchased for P4,585.88, all rights and interest in them held by their vendor Celerino Tiongco who only reserved the right of repurchase up to the end of December, 1914; that the defendants intended to oust the plaintiff from the parcels of land he had purchased; that such action would occasion him great and irreparable injury, unless a writ of preliminary injunction, afterwards to be made perpetual, should issue against the defendants to restrain them from the performance of the acts complained of. Therefore plaintiff prayed the court to render judgment against all the defendants (1) enjoining them from carrying out their purpose of ousting plaintiff from the aforementioned parcels of land; (2) enjoining the Director of Lands from recording the conveyance in favor of the defendant Yaptinchay and from issuing to her the required deed of sale of said lands of the Santa Rosa Hacienda; (3) declaring the plaintiff to be the owner of the lots of land in question, subject to the condition of the right to redeem; and (4) canceling the certificate of sale issued by the defendant sheriff to his co-defendant Yaptinchay and, in place thereof, ordering the issue of another deed of sale conveying to Yaptinchay the mere right, pertaining to Tiongco, to repurchase from the plaintiff the parcels of land in question by the month of December, 1914, for P4,585.88 with the costs against the defendants.

The demurrers interposed by Yaptinchay and the sheriff of Laguna to the aforementioned complaint having been overruled, the latter filed an answer wherein he admitted the fact of the sale of the plaintiff's property in satisfaction of a judgment rendered against said plaintiff and alleged that in so doing he had acted in his capacity

of sheriff and solely in the performance of his official duties. He therefore asked to be absolved from the complaint without costs.

The defendant Yaptinchay admitted that Tiongco was the owner of the two parcels of land in dispute, by purchase from the Insular Government, as well as the facts that she had obtained a judgment against him and that these two parcels of land were judicially sold in satisfaction of her claim. In special defense she set forth that Tiongco was indebted to her in the sum of P2,000, and that he owed a further sum to Julia Yaptinchay; that these two creditors filed suit against Tiongco in August, 1912, to recover the amounts owing them; that thereupon, on the 7th and 8th of August, 1912, the debtor Tiongco, for the purpose of defrauding his creditors, feigned and simulated two sales of the said parcels of land to the plaintiff Lazarte; that on July 11, 1914, she applied to the court for an attachment of the parcels of land described in the complaint filed in civil case No. 1297, instituted by her against Tiongco for the recovery of her credit, but that on June 13 of the same year this debtor maliciously and fraudulently executed another instrument, in behalf of the plaintiff, reducing the period for the redemption to two years and four months, for the same purpose of defrauding his creditors; that, as a result of the attachment the said two parcels of land were sold at public auction and were awarded to her, the defendant Yaptinchay; that on July 18, 1914, the sheriff delivered to her the proper certificate of sale of the lands in litigation; and that the sales made by Tiongco to plaintiff were null and void, having been made in fraud of Tiongco's creditors without the consent or approval of the Director of Lands. By way of counterclaim she alleged that by reason of the complaint in this case she had been injured in the sum of P500, and therefore prayed the court to order the said Lazarte to pay her the sum of P500 and to absolve her from the complaint filed by the plaintiff, with the costs against him.

The case came to trial and on July 6, 1915, the court rendered judgment in accordance with the plaintiffs petition, without special findings as to the costs; he held that the plaintiff was not the owner of the lots of land in question, but merely the holder thereof, having a preferred right to finally purchase them from the Government—subject however to the governing condition of the pacto de retracto.

From this judgment the defendants Yaptinchay and the sheriff of the Province of Laguna appealed to this court and made the following assignments of error—(1) the overruling of the demurrer to the complaint; (2) the holding that the sales made by Celerino Tiongco of the two parcels of land in question to Agustin Lazarte were not fraudulent; and (3) the rendering of judgment in accordance with the plaintiff's claims.

There was no dispute whatever with respect to the identity of the two pieces of land in litigation, for all the documents and evidence of record clearly and exclusively relate to lot No. 907 situated in the barrio of Poblacion of the municipality of Santa Rosa, Laguna, to lot No. 1620 situated in the same barrio and municipality, and to the fact that on January 30, 1909, the Director of Lands, pursuant to Act No. 1120, granted these lots to Tiongco under an option for final purchase within the following nineteen years after payment of the amounts fixed. Both these sales were recorded in certificates of sale Nos. 715 and 716 filed in the record as Exhibits C and D.

From the evidence introduced by the Director of Lands (Exhibit A-1) it appears that up to April 20, 1915, the purchaser or grantee, Tiongco, had been able to pay only P517.14 of the price of lot 907, and P484.08 of lot 1620 (these sums represent seven annual payments), leaving therefore unpaid the installments of twelve years necessary for the purchaser Tiongco to become the exclusive owner of the said two disputed lots or parcels of land, wherefore the grantee Tiongco held the right to occupy and possess the land only so long as he should punctually pay the annual installments as they fell due, and the preferred right for final purchase after he should have completed the nineteen annual partial payments.

Now then, according to the defendant's Exhibits Nos. 1 and 2, it appears that on August 7, 1912, Tiongco filled out two blanks or forms of the Bureau of Lands, setting out therein that he had sold, ceded and conveyed the said lots

907 and 1620 to the plaintiff. On that same day these deeds were ratified before a notary and on the following day, August 8, 1912, Tiongco, reserving the right of repurchase within ten years, sold to Lazarte the same parcels of land for P3,650 (Exhibits A and E). On August 10 of the same year this transaction was ratified before a notary (Exhibit E). By a notarial instrument of June 13, 1914, and for the consideration of P935.88 paid by Lazarte to Tiongco (Exhibits B and F), the aforesaid instrument of August 8, 1912, was amended by shortening the period for the redemption, so that if the vendor, Tiongco, did not pay Lazarte the said sum of P935.88 by December of that year (1914) Tiongco would lose all his right to repurchase the parcels of land whereby the ownership thereof would be consolidated in Lazarte.

However the record shows that prior to these transactions the vendor Tiongco owed Julia Yaptinchay the sum of P900; that this debt was secured by the mortgage of lots Nos. 907 and 1620; that on August 12, 1912, Julia Yaptinchay sued Tiongco for the recovery of this debt (Exhibits 3 and 4); and that, by a judgment entered on August 20, 1913, the debtor Tiongco was ordered to pay to Julia Yaptinchay the sum of P900, with interest and costs (Exhibit 15). Prior to this time on August 8, 1912, Julia Yaptinchay had requested the Director of Lands to suspend approval of the conveyance of the two lots of land by Tiongco to Lazarte for the reason that same had been made in fraud of Tiongco's creditors (Exhibit 6). Therefore the Director of Lands refrained from approving the said conveyance to Lazarte until such time as the debt to Julia Yaptinchay should have been paid (pars. 1, 2, Exhibit 8 and Exhibits L and M), this being the reason why (according to Exhibit B which is the same as Exhibit F) Tiongco, on June 13, 1914, shortened the period of his right to redeem the two parcels of land sold to Lazarte on August 8, 1912, receiving from the latter the sum of P935.88 which, as stated in that document, "was to pay Julia Yaptinchay" (record-sten. notes, p. 12). The amount owing Julia Yaptinchay was in fact paid by Lazarte in Tiongco's name and on June 9, 1914, Julia's attorney, Jose del Castillo, received the amount of the debt, P896, as proven by the receipt Exhibit N. For this reason, on July 14, 1914, the Court of First Instance of Laguna dismissed the action filed by Julia Yaptinchay and dissolved the attachment on the defendant Tiongco's property (Exhibit 11).

The foregoing statements regarding Julia Yaptinchay's credit in nowise concern the defendant Bibiana Yaptinchay. It has been necessary to make them, however, as this defendant's principal exception consists in the claim that the conveyances made by the debtor Tiongco to Lazarte were made for the purpose of defrauding his creditors.

With respect to Bibiana Yaptinchay the record shows as fully proven that, prior to the aforementioned conveyances to Lazarte, the vendor Tiongco was indebted to the defendant Yaptinchay, wherefore the latter, on August 12, 1912, brought suit in the Court of First Instance of Laguna (Exhibit 5) against Tiongco to recover the sum of P2,000.. That suit was docketed in that court under No. 1297. During the month of July of the same year this same Bibiana Yaptinchay filed another suit (Exhibit 10) against the same debtor to recover from him another debt of P820. In case No. 1297 judgment was rendered against Tiongco, on August 21, 1913, the court ordering him to pay Yaptinchay the sum of P3,000 (Exhibit 16).

By a written complaint of June 11, 1914 (Exhibit 9), Yaptinchay alleged that the house mortgaged to her was insufficient to cover the sum specified in the judgment rendered against Tiongco and therefore asked that the attachment be amplified so as to include the lots 907 and 1620, the property in litigation. In accordance with that petition a writ of execution was issued which was amplified on June 18, 1914 (Exhibit G). As a result the said two parcels of land, lots 907 and 1620, were levied upon and, their sale at public auction having been duly announced for the 18th of July of the same year (Exhibit H), they were sold at public auction and awarded to Bibiana Yaptinchay to whom the proper certificate of sale was furnished (Exhibit J), notwithstanding that on July 9, 1914, Lazarte filed with the defendant-sheriff a third-party claim for these two parcels of land on the ground that he had

purchased them from the debtor Tiongco for P4,585.88.

For the foregoing reasons the intervener Lazarte brought these proceedings to recover possession of the aforesaid two lots of land and to be declared entitled to purchase them from the Government, in due season, in substitution of Celerino Tiongco. The record shows that the lot No. 1620 had been previously mortgaged to Julia Yaptinchay who is not a party to this suit; but that neither this lot nor lot No. 907 was mortgaged or otherwise encumbered in favor of the defendant creditor Yaptinchay, nor were they mortgaged at the time of the execution of the sale under pacto de retro by Tiongco to Lazarte on August 6, 1912. For this reason this sale cannot, without proof to the contrary, be qualified as fraudulent for the purpose of withdrawing these two lots from the action of the debtor Tiongco's creditors (especially from Yaptinchay's action), and for the purpose of defrauding them, for the evidence shows that Tiongco came to owe the plaintiff, Lazarte, P4,585.88, part of which sum was spent in the payment of the annual installments owing the Government on the purchase price of the said lands and part in the payment of his debts to Julia Yaptinchay and to the defendant Bibiana Yaptinchay. These debts, however, were not totally paid, as the debtor Tiongco's uncontradicted reply to the question of Bibiana's counsel made clear (record, p. 15), in reply to a question by the defendant Yaptinchay. If the proceeds from this alienated property and rights were distributed by the debtor among his creditors, although these latter did not succeed in recovering the total amount of their credits, as the latter amounted to more than the price of the sale, we cannot hold on that account that the sale was fraudulent or that it was simulated in order to prejudice the creditors.

This court, always taking account of all the special circumstances of each individual case, held that there were certain rules to determine whether certain transfers or sales were or were not fraudulent and that the courts have denominated the following as being fraudulent; (1) a fictitious or inadequate consideration for the conveyance; (2) a transfer made by a debtor after legal proceedings have been brought against him and while the same are still pending; (3) a sale on credit by an insolvent debtor; (4) evidence of large indebtedness or complete insolvency; (5) the transfer by a debtor, of all or nearly all of his property, especially if he is insolvent or greatly embarrassed financially; (6) a transfer between father and son, when some of the above circumstances are present; and (7), the failure of the vendee to take exclusive possession of all the property. (*Oria vs. McMicking*, 21 Phil. Rep., 243.)

It was not shown that the sale of the said two parcels of land made by the debtor Tiongco to the plaintiff fell within any of the cases just above cited, nor that it was subject to any of the vices that affect the validity and force of the conveyance of the said properties.

Neither was it proven that the vendor Tiongco acted in bad faith or with intent to defraud his creditor Yaptinchay when he sold the said two lots of land under pacto de retro—they were not mortgaged or otherwise encumbered in favor of the said defendant-creditor and she filed her claim several days after the said sale had been made. Moreover, as aforesaid, the record shows that a part of the sum paid to the vendor Tiongco was used to pay part of the debt owing to Bibiana Yaptinchay.

Aside from the foregoing facts it is positive and certain that, when the said lots of land were levied upon to meet one of Tiongco's debts, Tiongco was no longer the owner of them; he had already disposed of them, though merely under pacto de retro, to Lazarte. The latter is the true owner of the right to acquire the said properties and, as he was not liable for the debt contracted by the vendor Tiongco, the levy upon and the sale of the said lots to secure the payment of a debt not contracted by the owner are entirely null, void, and without effect, inasmuch as neither the lands sold nor the right to buy them from the Government pertained to the debtor Tiongco, nor could any levy be directly made upon them for the payment of the money which Tiongco owed to Bibiana Yaptinchay.

In a decision of July 12, 1904, the supreme court of Spain laid down the following rule:

"It being conditional in attachments of all kinds that the thing attached must be the property of the debtor, from no

provision of the Mortgage Law can a conclusion be derived contrary to such principle, simply because the name of the debtor appears in the registry as the owner of property which does not actually belong to him, and much less when it happens that the entry in his name was made in order to record the attachment after the property was no longer owned by him."

In the decision of the case of *Lopez vs. Alvarez* (9 Phil Rep., 28) this court applied the principle just enunciated and repeated it in the case *Alvaran vs. Marquez* (11 Phil Rep., 263):

"The doctrine has been established in the decision of the case of *Lopez Villanueva vs. Alvarez Perez et al.* (9 Phil. Rep., 28), and is a settled rule that it is a legal condition in attachments of all kinds that the thing attached must be the property of the debtor, and from no provision of the Mortgage Law can a conclusion be derived contrary to such principle."

No evidence was adduced at the trial to show that the vendor *Tiongco* acted in bad faith and with intent to defraud his creditor *Yaptinchay* when he sold under *pacto de retro* the said two parcels of land or the right to acquire them from the government, for neither the parcels themselves nor the right to acquire them after their price had been paid to the Director of Lands are mortgaged or otherwise encumbered in favor of the said creditor; nor does the record disclose that the debtor *Tiongco* did not possess any other kind of property, or that he was absolutely insolvent and entertained no hope of being able to pay the rest of his debt to the defendant *Yaptinchay* to whom, as aforesaid, *Tiongco* had paid a part of his debt with the money derived from the said sale to the plaintiff of the said parcels of land or of his right to acquire them from the Government.

With respect to the error assigned to the judgment appealed from with regard to the overruling of the demurrer interposed to the complaint by the defendant *Yaptinchay*, we hold that the same was very properly overruled inasmuch as the contract of sale executed between *Tiongco* and the plaintiff *Lazarte*, once approved and consented to by the Director of Lands, is neither contrary to law, nor in conflict with any provision of law; and that the same neither makes any conveyance to the prejudice of the creditor *Yaptinchay* who has no real right whatever in the two parcels of land in question, nor is the said land mortgaged in favor of *Yaptinchay*, who can only exercise a personal right against her debtor *Tiongco*.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, the said judgment should be, as it is hereby, affirmed, with the costs against the appellant. So ordered.

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

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