

JULIAN ASIDO, PLAINTIFF AND APPELLANT, VS. MACARIO GUZMAN, ROSALIA REYES AND JACINTO BATTUNG, DEFENDANTS AND APPELLEES.

G.R. No. 11827. February 15, 1918

Ponente: CARSON, J.

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CARSON, J.:

Plaintiff in this action prays for a judgment of possession of a small parcel of land, and in support of his allegation of ownership submitted a duly executed deed of sale to himself from one Federico Comin, dated October 24, 1914, and a duly executed deed of sale to Comin from the former owner of the land, Domingo Mallillin, deceased, dated April 24, 1900, and registered at or about the same time in the proper land registry.

The principal defendant, Rosalia Reyes, the widow of Domingo Mallillin, deceased, the former owner of the land, alleges that the deed of sale from her husband to Comin, although executed in due form, does not evidence a genuine sale of the property. She claims that at the time of its execution it was understood and agreed that the title to the land should not pass to Federico Comin, the sole object of the execution of the deed being to make it appear that Comin was the owner, in order that he might secure possession, on behalf of her husband, from a tenant who refused to give up possession, and against whom her husband was afraid to assert his rights on account of the unsettled conditions existing in the community at that time. She further relies upon the admitted fact that she and her husband continued in possession of the land from the date of the execution of the deed in 1900 to the date of his death in 1911, under claim of exclusive ownership, as she alleges, and that she herself has continued in possession since the death of her husband.

In explanation of the continued possession of the land by the defendant and her husband, plaintiff alleges that after the sale to Comin, the vendor and his wife were left in possession as tenants under an agreement to turn over one-third of the fruits of the land to Comin by way of rent for its use and occupation, and that they did in fact continue to turn over the rent in kind down to the date of the death of the husband.

The widow flatly denied the payment of any rental, in kind, by herself or her husband, but the plaintiff's allegations in this regard are supported by the testimony of several reputable witnesses. The trial judge was evidently in doubt as to the probative value of the testimony, and on this point said in his opinion:

"The court confesses itself confronted by a problem which it is unable to solve, but inclines to the belief that the evidence predominates in favor of the defendants."

There is no evidence in the record other than the testimony of the widow herself, in support of her claim as to the fictitious character of the transaction set forth in the instrument dated April 24, 1900, purporting to be a deed of sale of the land in question. Her testimony in many important details is flatly contradicted by the testimony of the witnesses for the plaintiff, and from a review of all the testimony we can readily understand the manifest hesitation with which the trial judge finally accepted the testimony of the widow and rejected the conflicting testimony of the witnesses called by the plaintiff. We think that the failure of the widow or her husband to

demand the return of the document and the cancellation of its registry in the land record, during the years which elapsed before this plaintiff bought the land in question from the vendee mentioned in the document, stamps her entire story with an air of improbability which weakens very materially the probative value of the direct evidence by which she seeks to establish its truth.

But admitting that the testimony slightly preponderates in favor of the contention of the widow, we do not think that this testimony is sufficient to sustain a judgment declaring void and of no effect a deed of sale executed in a duly registered public instrument, which had been solemnly executed before a notary public many years prior to the date of the judgment. Such a ruling would tend to destroy all confidence in the efficacy of the execution and registration of public document affecting the title to real estate. A mere doubtful preponderance of the oral evidence is not sufficient to overcome the presumption of validity and genuineness which attaches to a public document duly executed and registered in the proper registry. For that purpose the oral evidence must be clear and convincing, and should be sustained by proof of facts or circumstances connected with the execution of the instrument which, in themselves, tend to disclose a reasonable probability that the attack upon its genuineness or its efficacy is well founded.

We conclude that the judgment entered in the court below should be reversed, without costs in this instance, and that the record should be returned to the court below wherein judgment will be entered in favor of the plaintiff in accord with the prayer of the complaint, except as to the prayer for alleged damages which must be denied, the evidence of record not being sufficient to sustain a definite finding in this regard. So ordered.

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

Avanceña, and Fisher, JJ., did not take part.

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