

**CLARA RODRIGUEZ, JULIANA ASBAN, AND DEMETRIO MIRANDA.
PLAINTIFFS AND APPELLEES, VS. CATALINO PAMINTUAN AND
MANUELA DE JESUS, DEFENDANTS AND APPELLANTS.**

G.R. No. 12045. March 22, 1918

Ponente: CARSON, J.

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CARSON, J.:

On the 21st of March, 1903, the defendant, Manuela de Jesus, the owner of the three parcels of land and the sugar mill described in the complaint, executed a power of attorney in favor of her husband Catalino Pamintuan, authorizing him to borrow money in such amount and upon such terms and conditions as he might deem proper, and to secure payment of the loan by a mortgage on her property. On the 1st day of June, 1903, the husband executed in favor of Pedro Rodriguez (since deceased, leaving the plaintiffs as his testamentary heirs) an instrument duly acknowledged before a notary public, purporting on its face to be a deed of sale of the lands described in the complaint, for the sum of P5,000 with a reserved right in the vendor to repurchase these lands at any time within ten years from the date of the deed, and to continue occupying them under an annual rental of 120 pilones of sugar. This action was instituted on the 2d day of September, 1914, to recover possession of the land and payment of the annual rental due thereon.

The defendant husband admitted the execution of the document purporting to be a deed of sale, but alleged that the real purpose and intent of the parties in the execution of the document was to secure payment of the indebtedness by a mortgage upon the lands mentioned therein, and that it was understood and agreed between the parties that the instrument would not be enforced as a deed of sale; this instrument, together with deeds in favor of his wife and the power of attorney executed by her, having been delivered to the lender of the money merely for the purpose of binding his wife and her lands for the payment of the indebtedness.

The defendant, Manuela de Jesus, entered a general denial of all the allegations of the complaint, and on her behalf it was alleged by her attorney ad litem that she was of unsound mind at the time when the various transactions evidenced by these instruments are alleged to have taken place.

Before the case came on for trial, the plaintiffs filed an amended complaint, wherein they abandoned the position taken by them in their original complaint, and alleged that the true intention and understanding of the parties in the execution of the instrument purporting to be a deed of sale with the right to repurchase reserved in favor of the vendor was to provide written evidence of a loan of P5,000 and to furnish security for its repayment from the properties mentioned therein. The prayer of the amended complaint is for the amount of the loan, P5,000, and interest thereon at the rate of P900 per annum, the equivalent of 120 pilones of sugar at the rate of P7.50 the pilon, less the sum of P300, the total amount paid on account of interest during the life of the loan; and further that appropriate relief be granted the plaintiffs providing for the recovery of the loan as a debt secured by a mortgage on the lands described in the contract.

The trial judge held that although the defendant, Manuela de Jesus, was shown to be an ignorant old woman, the

evidence failed to establish the allegations of her attorney ad litem as to her unsoundness of mind at the time of the execution of the power of attorney in favor of her husband. He also held that the evidence of record conclusively establishes the execution of the power of attorney, and of the instrument purporting to be a deed of sale with the right of repurchase reserved to the vendor, and further that the defendants have repaid neither the principal (P5,000) received by the husband at the time of the execution of the instrument, nor any part of the annual payment of 120 pilones of sugar provided for in the contract, nor its equivalent in money, except only the sum of P300, payment of which is admitted by the plaintiffs.

Upon these findings of fact, after authorizing the plaintiffs to amend their amended complaint and substitute there for the original complaint setting up the purchase by Rodriguez of the lands in question with the right to repurchase reserved to the vendor, the trial court gave judgment in favor of the plaintiffs for the recovery of the possession of the land in question and for the recovery of 1,440 pilones of sugar which he took to be the total amount due under the contract for the twelve full years which had expired from the date of the contract to the date of the judgment, less 50 pilones of sugar which he found to be the equivalent of P300 admittedly paid on account thereof, at the rate of P6 a pilon.

We find nothing in the record which would justify us in disturbing the findings of fact by the trial judge as to the execution of the instruments relied upon by the plaintiffs; the receipt by the defendant of the sum of P5,000 mentioned therein; and their failure to repay that amount or any sum whatever under the terms of the contract except the sum of P300, the equivalent in cash of 50 pilones of sugar at the rate of P6 the pilon.

We are of opinion, however, that plaintiffs are not entitled to a judgment for a recovery of the lands in question, but that judgment should be entered in their favor for the sum of P5,000 together with interest thereon at the rate of P720 a year from the date of the execution of the document purporting to be a deed of sale, until paid, less P300, receipt of which is acknowledged by the plaintiffs.

The power of attorney from the defendant wife in favor of the defendant husband authorized merely:

"By means of a mortgage of my real property, to borrow and lend sums in cash, at such interest and for such periods and conditions as he may deem proper, and to collect or to pay the principal and interest thereon when due."

This language cannot be construed as sufficient authority to sell the real estate of the wife, and there is nothing in the record which even tends to disclose that she did in fact authorize her husband to sell her lands, or ratified his action in executing a deed of sale therefor. It follows that neither she nor her lands would be bound by the instrument purporting on its face to be a deed of sale of these lands, if that instrument set forth the true nature of the transaction.

We are well satisfied, however, upon a review of the whole record, that, acting under and by virtue of the powers conferred upon him by his wife, the husband did in fact borrow P5,000 from Rodriguez, the plaintiffs' predecessor in interest, and that he executed a public instrument purporting to be a deed of sale, with a reserved right of repurchase, by way of security for the repayment of the loan, with the understanding that although title to the land had been conveyed to him he would hold the land merely as security, and would reconvey it upon receipt of payment. The conduct and testimony of both the husband and wife support our ruling as to the true nature of the transaction, and the filing of the amended complaint by the plaintiffs, setting forth this version of the transaction in full detail, greatly strengthens our confidence in its truth and accuracy.

The instrument was not recorded in the mortgage registry, and it cannot therefore be given the effect of a legal mortgage, but we are of opinion that the contract which is proved to have been entered into by the husband acting

by authority of, and on behalf of his wife, may be and should be enforced in accordance with the real intent of the parties so far as innocent third persons are not adversely affected thereby; that is to say, that it should be deemed to be a valid instrument, evidencing the loan of the money mentioned therein and binding the property for the payment of the indebtedness, but without prejudice to the right of "third persons," including innocent purchasers for value. The doctrine in this regard is quite fully set forth, with extensive citation of authority in the case of *Cuyugan vs. Santos* (34 Phil. Rep., 100), and reference to that case renders extended discussion of the principles involved unnecessary at this time. We insert, nevertheless, an extract from that opinion wherein, after a review of American and Spanish authorities, we summarized the doctrine in two short paragraphs:

"In the light of these elementary and basic principles of the code 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 contracts, and the necessity for the execution of certain contracts, including conveyances of real estate, in public documents:

"Neither this article, the preceding one, nor the following one requires that the exercise of the action to compel the execution of the deed must precede the bringing of the action derived from the contract." (Decisions of July 4, 1899, and October 19, 1901).

Twenty days hereafter let judgment be entered reversing the judgment entered in the court below without costs in this instance, and ten days thereafter let the record be returned to the court below where judgment will be entered in favor of the plaintiffs and against the defendants, for the sum of P5,000 together with interest thereon at the rate of P720 a year from the 1st of June, 1903, until paid, less P300, and providing for the sale of the land in question and the application of the proceeds of the sale, so far as may be necessary to the judgment indebtedness. So ordered.

Arellano, C. J., Johnson, Araullo, Street, Malcolm, and Fisher, JJ., concur.

Avanceña, J., did not take part.

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