

ISIDRA DE OCAMPO AND MARIANO G. CUSTODIO, PLAINTIFFS AND APPELLEES, VS. MARIANO LIM, DEFENDANT AND APPELLANT.*G.R. No. 12209. September 09, 1918*

Ponente: AVANCEÑA, J.

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In the year 1904, the plaintiffs sold to Hermogena Romero, under right to repurchase within the period of ten years, four parcels of land, designated in the contract by the letters A, B, C, and D, for which they paid P8,000. Subsequently, Hermogena Romero received from the plaintiffs the sum of P700 on account of the price which these latter were to pay for the repurchase of the land, the price of which was thus reduced to a little less than P7,000. It should be borne in mind that in this contract the contracting parties appraised parcel C at P1,620, and that this parcel is composed of two lots marked 5 and 6, containing an area of 5,018 and 4,782 square meters, respectively.

In 1908, Hermogena Romero, as party of the first part, Mariano Lim, as party of the second part, and Ramon Custodio, in representation of the plaintiffs, as party of the third part, stipulated in another contract that Hermogena Romero should resell to the plaintiffs the lands referred to in the contract of 1904, and that the plaintiffs, in turn, should sell these properties anew to Mariano Lim. As a result of this agreement, Mariano Lim executed a promissory note in favor of Hermogena Romero in the sum of P6,580, payable in installments. This note was afterwards endorsed by Hermogena Romero to Warner, Barnes, & Co. Later, certain troubles arouse among the parties interested in this transaction. Mariano Lim had not gotten the possession of the property, and Warner, Barnes, & Co. had not received from Mariano Lim any payment on that promissory note. Hence, this firm brought suit against Mariano Lim for the collection of the note.

In 1910, and for the purpose of arranging these troubles, the defendant, Hermogena Romero, and Warner, Barnes & Co. executed another contract wherein they set forth that—owing to the discovery that Ramon Custodio, who had represented the plaintiffs in the contract of 1908, had no such power of representation—the promissory note for P6,580, drawn by the defendant in favor of Hermogena Romero, was canceled, and the action brought by Warner, Barnes & Co. against Mariano Lim, for the payment of the note, was withdrawn. That was equivalent, on the part of the defendant, and on that of Hermogena Romero, to a cancellation of the contract of 1908, inasmuch as this promissory note constituted the price in that contract. In lieu of this latter instrument, they agreed that Hermogena Romero should simply transfer all the rights acquired by her, by virtue of the contract of 1904, in the parcels of land A, B, C, and D, without prejudice to the plaintiffs' right to repurchase said properties at the price of P7,000,

The plaintiffs brought this action to compel the defendant to resell to them the four parcels of land mentioned in the contract of 1904, invoking for this purpose the contract of 1910. The defendant, on his part, asks that the plaintiffs be ordered to comply with the undertaking assumed by Ramon Custodio in the contract of 1908. The other prayers in the complaint and in the answer are not concerned in this appeal. After trial and the introduction of evidence, the court rendered judgment, on February 5, 1915, holding that the defendant was obliged to resell to the plaintiffs the four parcels of land, the subject matter of the contract of 1904, at the price of P7,000. As the

defendant, in good faith, had made improvements and erected buildings on lot 6 of parcel C, the court allowed the plaintiffs 30 days within which to decide whether they elected to buy these buildings and other improvements from the defendant, or to compel the latter to buy the land.

The defendant excepted to this judgment.

On February 16, 1915, the plaintiffs presented to the court a writing in which they stated that they had decided to compel the defendant to buy the lot at the price of P3 per square meter. As the defendant did not agree to this price, the court, on July 15, 1915, issued an order appointing three commissioners to inspect and appraise the said lot, and afterwards to render a report on the value of the land and of all their proceedings in the matter.

The defendant, after filing an objection to said order, also excepted to the appointment of these commissioners.

The commissioners appointed, Pedro Teopacio, Felix Dizon, and Servillano Romero, after an inspection of the land, made their written report to the court, the first of them giving it as his opinion that the value of the lot was P1 per square meter; the second, P1.50; and the third, P2. In view of this report, the court, by an order of June 12, 1916, fixed the sum of P1.50 per square meter as the value of the lot.

The defendant likewise appealed from this order.

Two errors are assigned by the defendant, in this appeal, as having been committed by the trial court: (1) For not having ordered the plaintiffs to sell to the defendant the parcel marked C, lots 5 and 6, in fulfilment of the promise made by their son Ramon Custodio—then the plaintiffs' attorney-in-fact—notwithstanding that the plaintiffs had subsequently notified the defendant of said promise by the letter Exhibit 10. (2) In rendering judgment by fixing the value of lot 6 of parcel C in accordance with the opinion of one of the commissioners of appraisal, thus completely ignoring the evidence adduced at the trial, regarding the true and equitable price of this lot.

The defendant bases his first assignment of error on the contract of December, 1908, and on Exhibit 10 presented in this case.

As aforesaid, the contract of 1908 was executed by Ramon Custodio, in representation of the plaintiffs, but the defendant himself admitted in the contract of 1910 that Ramon Custodio was not authorized to bear such representation; consequently, that contract cannot bind the plaintiffs. The defendant cannot now invoke that contract of 1908, which he himself canceled in the contract of 1910.

Exhibit 10 is a letter by the plaintiff Mariano G. Custodio, dated August 1, 1909, which, according to the defendant, is an indirect ratification of the contract of 1908. But whatever be the value of this letter on the date when it was written, it had none after 1910, when the defendant and Hermogena Romero canceled the contract of 1908.

The only right which the defendant has acquired in these lands A, B, C, and D is, according to the contract of 1910, the same and no more than that which Hermogena Romero acquired by virtue of the contract of 1904, without prejudice to the plaintiffs' right to repurchase the lands.

With respect to the second assignment of error, it is necessary to consider the order of the court dated July 5, 1916, whereby commissioners were appointed to appraise the lot 6, parcel C, and that dated June 12, 1916, fixing the value of this lot at P1.50 per square meter. We are of opinion that the court erred in appointing commissioners to appraise this lot 6, against the defendant's objection, and in rendering its decision fixing this value in accordance with the commissioners' report.

The power to judge conferred upon Courts of First Instance essentially implies a duty on their part to consider the evidence which the parties may adduce for the decision of the facts in dispute. This duty cannot be transferred,

nor can its compliance be delegated to another, except in the cases and under the conditions wherein the law expressly so permits. We believe that the appointment of commissioners in this case was not authorized by law. We cannot deem them to be the commissioners which section 243 of the Code of Civil Procedure provides shall be appointed in the extraordinary proceeding of eminent domain, because the action brought in this case is the ordinary one of recovery. Neither can they be deemed to be the referees whose appointment is authorized by section 136 of the same code, for, not only were they appointed on the court's own motion, but were so appointed against the defendant's objection.

If the appointment of these commissioners was illegal, the judgment of the court based on their report fixing the value of the lot in question at P1.50 per square meter is likewise illegal.

We should therefore consider what valuation should be given to this lot, without regard to the commissioners' report, and in view only of the other evidence adduced. The defendant contends that the valuation of P1,620 given to parcel C, in the contract of December 4, 1904, should be the true value of this land. We do not agree with this contention. This valuation was given in that contract which was one of sale under right of repurchase, and we think that it is not necessarily the just value. In these contracts the consideration, on the part of the vendor, that he has a right to repurchase the land sold, generally makes it immaterial to him whether or not the price of the sale be the just value thereof. And the idea on the part of the purchaser, that he does not acquire the thing irrevocably, but subject to repurchase within a stated period, does not induce him to enter the contract except with the hope of acquiring the thing absolutely at a price advantageous to him. The resolutive condition, as imposed upon the purchaser, requires a certain compensation which the purchaser ordinarily seeks in the price of the sale. For this reason, the price in a sale under right of repurchase should not generally be considered as the just value of the thing sold, without other corroborative evidence that it is. But, at all events, the defendant admits that P4,000 would be the reasonable value of parcel C and, in default of evidence to the contrary, we think that we should accept it as such. The obligation to prove the value of the land lies upon the plaintiff who would compel the defendant to buy his property and the plaintiff's failure to present such proof, warrants our favorable consideration of the defendant's claim. Taking this P4,000 as the basis of the valuation of the entire parcel C, the value of lot 6 would be P1,951.52.

For the foregoing reasons, we hold that the defendant is obliged to resell to the plaintiffs the parcels A, B, C, lot 5, and D, referred to in the contract of December 4, 1904; and that the defendant is obliged to buy from the plaintiffs the parcel C, lot 6, of 4,782 square meters, at the price of P1,951.52.

Therefore, the judgment appealed from is affirmed, in so far as it agrees with this decision, and is reversed, in so far as it does not, without special finding as to costs. So ordered.

Torres, Johnson, Street, Malcolm, and Fisher, JJ., concur.

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