

ELADIO ALPUERTO, PLAINTIFF AND APPELLEE, VS. JOSE PEREZ PASTOR AND MANUEL ROA, PROVINCIAL SHERIFF OF CEBU, DEFENDANTS AND APPELLANTS.*G. R. No. 12794. October 14, 1918*

Ponente: STREET, J.

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The three parcels of real property which constitute the subject matter of the contention in this case formerly belonged to Juan Llenos, and both the interested parties in this action claim title under him, the plaintiff as party in possession under a contract of sale with pacto de retro, and the defendant as purchaser at a public sale under an execution directed against Llenos. The plaintiff, Eladio Alpuerto, asks the court to make a declaration against the defendant, Jose Perez Pastor, to the effect that the plaintiff is the owner thereof in full and absolute dominion. He also prays that the sale of the property effected by the sheriff, Manuel Roa, to said defendant be declared null.

The defendant Pastor denies the right of the plaintiff to the relief sought, and asserts that the transaction by which the plaintiff claims to have acquired title was simulated or fictitious and that the supposed conveyance was effected for the purpose of defrauding the defendant as creditor of Juan Llenos. This defendant therefore in turn prays the court to declare that he himself is the true owner of the property and that a judgment be entered condemning the plaintiff to surrender possession to him. From a judgment entered in the Court of First Instance of Cebu in favor of the plaintiff, the defendants have appealed. It appears that, pending the proceedings, the defendant Pastor has died and an administrator, Eustaquio Lopez, has been substituted in his stead. Throughout the opinion, however, Pastor, the name of the original party defendant, will be used in referring to the interest now represented by the administrator.

The plaintiff claims by virtue of the document (Exhibit A), which purports to be a contract of sale with the privilege of repurchase. It recites a consideration of P2,500 the payment of which is acknowledged; and the stipulated period within which the vendor may repurchase the property is fixed at two years. This document is signed by the two contracting parties (Juan Llenos and Eladio Alpuerto) and is attested by two subscribing witnesses. It purports on its face to have been executed on July 3, 1912; but it was not acknowledged before a notary until December 3, 1914. The property in question is assessed for the purposes of taxation at P5,000 or P6,000; and is worth more than twice the amount which the plaintiff claims to have paid for it.

At the time of the supposed sale to Eladio Alpuerto there had been pending for nearly two years, in the Court of First Instance of Cebu, an action in which Jose Perez Pastor was plaintiff and Juan Llenos was defendant. In this action the plaintiff sought to recover from Juan Llenos a considerable sum of money; and Eladio Alpuerto, as son-in-law of Juan Llenos, was aware of this litigation from the beginning. On January 27, 1913, or about six months after the alleged sale of the property in question to Eladio Alpuerto, judgment was rendered in said action in favor of the plaintiff for the sum of P3,789.13, with interest and costs. This judgment was affirmed upon appeal to the Supreme Court on November 20, 1914.[1] An execution was thereafter issued on April 12, 1915, from the

Court of First Instance upon said judgment and was levied upon the property in question as the property of Juan Llenos. Before the sale was effected the plaintiff herein, Eladio Alpuerto, notified the sheriff that he claimed the property as his own. Nevertheless, the sheriff proceeded under indemnification and sold the property at public sale to Jose Perez Pastor for the sum of P1,100.

The case stated in the cross-complaint as a ground of relief to the defendant has its basis in the rule stated in subsection 3 of article 1291 of the Civil Code, which declares generally that a contract executed in fraud of creditors is subject to rescission; and upon this issue the burden of proof is of course upon Pastor, as the party assailing the transaction, to show that the transfer was fraudulent; though it should here be remembered that proof on this point may be accomplished by the aid of presumptions, as in other cases. (Article 1215, Civil Code.)

The argument against the validity of the conveyance from Juan Llenos to Eladio Alpuerto is based on two propositions, namely: (1) that said conveyance must, under the second paragraph of article 1297, in connection with article 1227, of the Civil Code, be presumed to be fraudulent; and (2) that furthermore the transaction is shown by the evidence to have been fraudulent in fact.

The second paragraph of article 1297 of the Civil Code says that a transfer of property made by one against whom a condemnatory judgment has been pronounced in either instance is to be presumed fraudulent. The cardinal question on this branch of the case is therefore this. Was the transfer in question made after a judgment had been entered against Juan Llenos in either instance? This in turn depends upon the question whether the contract of sale shall be considered effective as from the date upon which it purports to have been executed (July 3, 1912) or from the date when it was acknowledged before a notary public (December 3, 1914), for in the interval between these two dates final judgment had been rendered against Juan Llenos both in the Court of First Instance and in the Supreme Court.

The solution of the problem thus presented requires us to consider the combined effect of articles 1225 and 1227 of the Civil Code. Article 1225 declares that a private document legally recognized shall have, with regard to those who sign it and their privies (causahabientes), the same force as a public instrument.

The expression "legally recognized" (reconocido legalmente), as here used, must be taken to mean recognized, or acknowledged, by the person, or persons, executing or emitting the document—in this case the vendor, Juan Llenos, and the vendee, Eladio Alpuerto. The act of legal recognition occurred, we assume, when the document was signed by the parties and delivered in the presence of the attesting witnesses, who were called upon to bear witness to the transaction.

Concerning the meaning of the expression "privies" (causahabientes), in this article, the following passage is found in the Commentary of Manresa:

"The said word denotes the idea of succession, not only by right of heirship and testamentary legacy, but also that of succession by singular title, derived from acts inter vivos, and for special purposes; hence, an assignee of a credit, and one subrogated to it, etc., will be privies; in short, he, who, by succession is placed in the position of one of those who contracted the juridical relation and executed the private document and appears to be substituting him in his personal rights and obligations, is a privy." (Manresa, *Codigo Civil*, pp. 492 and 493.)

Under the interpretation thus placed upon the meaning of the term "privies," it is clear that Jose Perez Pastor, the purchaser at the public sale under an execution directed against Juan Llenos, must be considered a privy or successor in interest of the execution debtor. He is therefore undoubtedly bound 'by the instrument which conveyed the property to Eladio Alpuerto—and this from the date of the execution of that instrument as a private document— unless this result is prohibited by article 1227 of the Civil Code, which reads as follows:

"The date of a private instrument shall be considered, with regard to third persons, only from the date on which it may have been filed or entered in a public registry, from the death of any one of those who signed it, or from the date on which it may have been delivered to a public official by virtue of his office."

In considering this article it is important to bear in mind that it has reference merely to the probative value of the document with respect to the date of its execution, and is not intended to lay down any rule concerning the efficacy of the act or acts evidenced by the document. (Manresa, *Codigo Civil*, vol. 8, p. 501.) The importance of the rule here declared is therefore most conspicuously revealed in the situation where the document itself contains the only competent evidence before the court bearing upon the date upon which the instrument in question was executed as a private document.

This can be most conveniently exhibited by means of illustrations based on the language of the text itself. For instance, let it be supposed that a document is produced bearing the signatures of the parties who participated in it and purporting to have been executed upon a certain date, prior to the date upon which the document was filed or inscribed in a public register. In such case the instrument can take effect, as against third persons, only from the date when it was so filed or inscribed. Again, let it be supposed, a document is produced bearing the signatures of the parties who participated in it and purporting to have been executed upon a certain date; and it appears that the instrument has at no time been elevated into a public document or filed or inscribed in a public register. It is, however, proved that one of the signatory parties has died upon a certain date subsequent to that upon which the instrument purports to have been executed. In this case the instrument can take effect, as against third persons, only from the date of the death of the deceased signatory party. Again, be it supposed, a document is produced in court bearing the signature[^] of the parties and purporting to have been executed upon a certain date. The instrument has at no time been elevated into a public document and it is not shown that either of the signatory parties is dead. In this case the instrument can take effect, as against third persons, only from the date when the document was filed in court, this being considered to be delivery to a public official by virtue of his office.

All of these illustrations have reference to the situation where the document itself contains the only evidence before the court bearing upon the date of its original execution; and the execution of the instrument is supposed to be proved by force of the act of notarial acknowledgment or by proof that the names of the parties signed to the document are genuine. It must be borne in mind in this connection that article 1227 is not primarily or exclusively concerned with instruments which after being executed originally as private documents are at a later date elevated to the status of public documents. On the contrary, it deals primarily with private documents, and the instrument in question may at all times remain a private document. It is quite obvious for instance that, to use two of the illustrations found in article 1227, a private document is not converted into a public document either by the death of one of the signatory parties or by the fact that it is delivered to a public official by virtue of his office. The due execution of such instruments must therefore be proved when they are introduced in court, if not made self-proving by notarial acknowledgment, which operates to raise them to the status of public documents.

The commentator Manresa, discussing article 1227, observes with discernment that there may be other facts than those mentioned in said article which should be received as determinative of the date from which the instrument should be considered to be effective against third persons. Thus, if it should appear that, subsequent to the date upon which the document purports to have been executed, one of the signatory parties had lost his penhand by amputation, this should be accepted as being fully conclusive that the instrument was in fact executed before such occurrence. (Manresa, *Codigo Civil*, vol. 8, p. 503.) In the same connection Manresa says that if a third person is affected with notice of the existence of a private document or by any act of his own recognizes its existence, it will have effect, as against him, from the date of such notice or recognition. (*Opus citat.*, *id.*) These observations all go to show that article 1227 states a presumption which may be rebutted.

The question then arises. Is there anything in article 1227, or elsewhere, which prohibits the introduction of the testimony of attesting witnesses, or other persons who may be present when a private document is executed, to prove that the act was accomplished upon the date stated therein to be date of its execution? We are of the opinion that such testimony is admissible, even as against third parties.

This conclusion is fully supported by the opinion of the supreme court of Spain in the case of Alvarez vs. Yañez (117 Juris. Civil, 663, decided April 16, 1910). The facts in that case were that by private documents dated respectively August 2 and August 3, 1908, Alvarez purchased four tracts of land. On August 17, of the same year Carlos Vega sold, by public instrument, to Yañez several tracts of land, three of which, each less than a hectare in extent, were adjacent to part of the land purchased by Alvarez who, upon learning of the sale, brought his action, under article 1523 of the Civil Code, to be subrogated to the buyer, exercising his right of retracto legal. The defendant answered that on August 17, 1908, plaintiff was not the owner of any land adjacent to that acquired on that date by defendant, the contention being "that the private documents upon which the complaint was based, in addition to the fact that they are not proof of ownership, were not presented at any public office until September 1, 1908, when they were presented for the payment of the tax on real estate, which was fourteen days after defendant purchased the properties in contest * * *."

The trial court permitted plaintiff to produce witnesses for the purpose of proving that the private documents relied upon by him were in fact executed and delivered upon the dates therein recited and that plaintiff went into possession under them, and upon that evidence made finding in accordance with plaintiff's contentions, and held that the right to take over the purchase retracto existed. The defendant appealed to the supreme court of Spain, and argued that by its ruling the Audiencia had disregarded article 1227 of the Civil Code, the specific contention being that as against persons who are not parties to them private documents must be treated as though their existence commenced only from the date upon which they are made of public record. This contention was overruled, the Court saying:

"It cannot be denied that the appellant Constantino Vega is to be regarded as a third person, because he was not a party to the two contracts of sale by virtue of which Vicente Alvarez acquired from Ildefonso Alvarez the ownership of the three tracts of country real estate from which he derives his right to be subrogated as purchaser of four other tracts adjacent thereto sold, with others, by Carlos Vega to the defendant by public instrument dated August 17, 1908. Nevertheless, it is not to be inferred from this fact, as appellant contends, that the legal dates of the two first contracts, evidenced by private documents, are not those which are recited therein, but that as regards third persons, in accordance with Art. 1227 of the Civil Code, they must be regarded as dated on the day * * * on which they were noted in the tax office. That article establishes a legal presumption which must yield to contrary evidence, and the trial court, basing its conclusion on the testimony of the witnesses, has established the finding, which we cannot disturb, that the dates recited in these documents are the true dates upon which the contracts were made."

Clearly articles 1225 and 1227 should be construed in such manner as to harmonize with each other and to give effect, so far as possible, to the legislative intent expressed in each; and the only interpretation of article 1227 which can be adopted consistently with the meaning of article 1225 is that the rule announced in article 1227 has reference exclusively to the situation where there is no accredited evidence before the court, independent of the recitals of the document itself, showing the date upon which it was in fact executed.

It has been settled in many decisions that a document which originates as a private document and never rises above that status will, under article 1225, be given full effect as such. (Samson vs. Salvilla and Sierra, 12 Phil. Rep., 497, 505; Taguinot vs. Municipality of Tanay, 9 Phil. Rep., 396, 401; Guillermo vs. Matienzo, 8 Phil. Rep., 368, 372; Irureta, Goyena vs. Tambunting, 1 Phil. Rep., 490, 493.) It follows that article 1227 does not, as against

the signatory parties and their successors in interest, postpone the operation of an instrument, proved as a private document, if it is shown by competent evidence that it was in fact executed upon the date recited therein as the date of its execution. If this were not true, the result would be that a person having rights under an instrument, provable as a private document, might lose those rights by reason of the happening of some one of the occurrences mentioned in article 1227. The contrary conclusion is evidently the proper one, that is, that if a party has rights under an instrument, provable as a private document, and it is so proved, it will prevail from the true and proven date of its execution with all the effect attributable to it under article 1225.

The expression "third parties" (*terceros*) as used in article 1227, evidently means persons who have not intervened in the execution of the document. It has been so interpreted by the supreme court of Spain and by this court. (*Lao Simbieng vs. Palencia*, 18 Phil. Rep., 325, 328; *Easton vs. E. Diaz & Co. and Sheriff of Albay*, 32 Phil. Rep., 181; decision of the supreme court of Spain of April 16, 1910, already cited.) *Manresa* is therefore in error in supposing that it has the more limited meaning of persons who have not intervened in the execution of the document and are neither heirs nor successors in interest of those who signed the same. (*Manresa*, *Codigo Civil*, vol. 8, p. 501.)

In the case now before us the two witnesses examined with reference to the execution of the document in question testify that it was originally executed and delivered on July 13, 1912, the date stated upon its face. For the purpose of disposing of this branch of the case without further discussion, we provisionally accept this statement as true and deduce the conclusion that the presumption stated in paragraph 2 of article-1297 of the Civil Code is not applicable.

This brings us to the question whether the transaction evidenced by Exhibit A should be pronounced fraudulent in fact. Upon turning to the evidence for the purpose of determining this question, the following circumstances are revealed, namely: (1) The grantee is the son-in-law of the grantor; (2) at the time conveyance is made an action is pending against the grantor to recover several thousand pesos of money; and of the pendency of this action the grantee has full knowledge; (3) the debtor has no other property out of which the judgment, if recovered, can be satisfied; (4) the consideration for the transfer is less than half of the value of the property in question. These circumstances are familiar badges of fraud, and their combined effect is such, we think, as to raise a presumption of fraud, even apart from the legal presumption expressed in article 1297, and to impose upon the vendee the burden of proving the bona fides of the transaction by a preponderance of evidence and to the satisfaction of the court.

We are of the opinion that the proof adduced not only fails to remove the imputation of fraud thus cast upon the transaction but strongly tends to engender the suspicion that the transaction was wholly fictitious. It is true that both the plaintiff himself and Simon Batuigas, one of the subscribing witnesses, declared in the clearest terms that the transaction took place on July 3, 1912, as claimed; that two thousand pesos of money changed hands in the act; and that the balance of the consideration consisted in the satisfaction and release of a debt for five hundred pesos owing from Juan Llenos to Eladio Alpuerto. It should not escape notice that neither Juan Llenos nor the other attesting witness, Geronimo Godinez, were examined as to the circumstances attending the transaction; and no explanation is given as to why these witnesses were not produced.

Where the law imposes the burden of proof upon a party to establish the bona fides of such a transaction as this, against a presumption of fraud, it is his duty, if he expects to be believed, to lay before the court, so far as is within his power, a complete and true revelation of all circumstances surrounding the affair; and where he suppresses evidence or negligently fails to call a witness supposed to know the facts, it may be presumed that the testimony of the witness, if adduced, would be unfavorable.

The plaintiff did not try to show where or how he acquired the two thousand pesos of ready money with which the purchase was made, and it does not appear that his resources are sufficient to enable him readily to command that sum. The proof of the existence of the debt of five hundred pesos which Juan Llenos is supposed to have owed to the plaintiff and which constituted the balance of the purchase price over and above the amount which was paid in cash rests almost exclusively on the statement of the plaintiff himself. Upon these important points the testimony of Juan Llenos, if adduced, might possibly have shed some light; and the latter might in addition have explained something about what became of the money. The effect of these observations cannot be evaded by saying that the defendant might himself have summoned Juan Llenos and examined him in court. The burden of proof was on the plaintiff; and the defendant could not be expected to call one of the principles in the transaction which was impeached.

It is of course somewhat perplexing to a court to weigh the uncontradicted testimony of a witness against mere presumptions ; but it should not be forgotten that a presumption of fraud stands as a witness, though mute, pointing the finger of denunciation at the questioned transaction, and the imputation thus cast upon it can only be removed by a full and honest revelation sufficient to convince the court that the fraudulent intent did not exist.

It is not to be denied, that the secrecy of a transaction like that now under consideration, arising from the fact that the conveyance was effected by a private document, is a circumstance tending to cast suspicion upon it. Strong considerations of public policy require that in such case the parties should be held to strict proof of good faith; and this court cannot give its approval to a doctrine which would permit the property of a failing and impleaded debtor to be put beyond the reach of his creditors by a trick such as we believe was attempted in this case. When a legal proceeding is ended and the sheriff goes to take the property of the debtor in execution, he is not infrequently met with the story that the property now belongs to some other person ; and a document is produced to prove it which nobody, except the immediate parties, ever heard of before. The courts must be excused if they refuse to listen with childish credulity to pretensions of this character.

We do not overlook the circumstance that the supposed sale in this case was effected by a contract with pacto de retro; and where such a sale is made, as frequently occurs, to secure money intended as a mere loan, the consideration is naturally less than the true value of the property. In such case, if the bona fides of the original contract is not under suspicion, the fact that the consideration for the sale is less than the value of the property is not indicative of fraud. But where the original sale is presumptively tainted with fraud, the entire transaction from the time of the making of the contract until the consolidation of the title in the purchaser should be considered as a whole, and as having about the same effect as if the title had been absolutely transferred at once. Otherwise the contract of sale with pacto de retro could be used as an instrument to shield parties in their efforts to defraud creditors. This cannot be permitted.

In this connection reliance is placed by the appellee upon the case of Chiong Veloso vs. Roa and Levering (37 Phil. Rep., 63) ; and it is urged that said decision affords support for the view that the transaction in question, having been accomplished by means of a contract of sale with pacto de retro, cannot be considered fraudulent. It must be remembered, however, that the original sale by contract of pacto de retro was made in the case last cited to a purchaser who was admittedly a purchaser for value and in good faith; and the question was not so much whether the original transaction was fraudulent as whether the failure of the debtor to redeem was fraudulent, it being the theory of the defendant that the plaintiff had colluded with the debtor (who was a sister) and had redeemed the property with her money or for her benefit. Moreover, it was found in that case that at the time of the original conveyance the debtor had other property more than sufficient to satisfy any judgment that might be recovered in the pending action.

The conclusion to which we come is that the questioned transaction, if not actually simulated, was made in fraud

of creditors and must be annulled. The judgment entered in this cause in the court below must accordingly be reversed; and judgment will be here entered dismissing the complaint of Eladio Alpuerto and requiring him to surrender the three parcels of property described in the complaint to Eustaquio Lopez, as administrator of the estate of Jose Perez Pastor, deceased. It is also declared that the document (Exhibit A), purporting to be a contract of sale conveying the property in question from Juan Llenos to Eladio Alpuerto, acknowledged before a notary public upon December 3, 1914, was executed in fraud of creditors and the same is hereby annulled. No special adjudication as to costs will be made. So ordered.

Torres, Johnson, Carson, and Avanceña, JJ., concur.

Fisher, J., dissents with whom concurs Malcolm, J.

[1] R. G. No. 9221, not published.

DISSENTING OPINION

FISHER, J., dissenting:

While we concur fully with the views expressed in the majority opinion concerning the interpretation of articles 1225 and 1227 of the Civil Code, we are unable to agree with the conclusion that the transaction here in dispute is fraudulent in fact. Assuming for the sake of the argument that the circumstances surrounding the transaction, if unexplained, would warrant the presumption of fraud, we consider that the presumption has been overcome in this case by the positive and uncontradicted testimony of the plaintiff and of Batuigas that the money was in fact paid as recited in the deed. The record shows that plaintiff was possessed of sufficient means to permit him to make such a purchase; and while it is true that the consideration named was less than the full value of the property, the difference is no greater than is usual in sales under pacto de retro such as this purports to have been. This difference in value, rather than tending to show a fraudulent intent, tends to negative it. During the period within which the right to repurchase is reserved, which in this case was two years, any judgment creditor of the vendor may exercise the right to redeem. Consequently, in case of the simulation of a sale of this kind, it is rather to be expected that the value will be inflated than understated.

As regards the failure to call the other subscribing witnesses, this court, following the general trend of judicial opinion, has held that no unfavorable presumption arises in such a case when it appears that the witnesses were equally available to both parties. The fact that a party refrains from cumbering the record with merely corroborative evidence should not be considered to his prejudice.

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