

**MARTINA YACAPIN AND HER HUSBAND RAMON NERI LIÑAN,
PLAINTIFFS AND APPELLEES, VS. FAUSTINO NERI, DEFENDANT AND
APPELLANT.***G.R. No. 13591. September 04, 1919*

Ponente: MOIR, J.

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The plaintiffs were the owners of various parcels of land situated in the Province of Misamis, Mindanao, which they sold with the right of repurchase within six years from the 10th of August, 1911, to defendant herein for P5,500, agreeing to pay quarterly an enormous "rental" for the property. (See Exhibit 1.) As this rental was not paid in full, the parties made a second document on February 6, 1912, covering the same property but increasing the amount of the loan to P9,000. Plaintiffs received P2,650 in money at this time with which they bought other lands. (See Exhibit 2.)

The plaintiffs still paid what they could on this last sum of P9,000, but as the rental was equivalent to an interest charge of about 50 per cent per annum, they were soon behind P5,000, and on the 3rd of October, 1913, they made a third document, recognizing the debt due as P14,000. (See Exhibit 3.)

The plaintiffs again paid part of the rent or, more truthfully speaking, interest on this loan, which grew faster than the crops on the land, and on the 13th of July, 1914, plaintiffs found their debt to be P19,000, whereupon they executed Exhibit 4, which on its face is an absolute sale of the property to defendant for a sale price of P1,000, represented however, as the evidence shows, by P8,150 of principal and P10,850 in rent or interest, not to mention the amount of interest or rent actually paid to defendant by plaintiffs, and therefore not included in the document.

When the parties executed Exhibit 4 on the 13th of July, 1914, defendant agreed that he would execute another document stating that the absolute sale was "simulated," and that plaintiffs still had the right to redeem the property.

The defendant delayed and finally refused to make the document, giving plaintiffs the right to redeem and, because of his refusal, Ramon Neri and Faustino Neri came to blows, and Ramon Neri was put off the land, and he then brought this action, joining with him his wife who was the real owner of the property by inheritance from her father. In his petition they prayed the court to declare null and void the absolute sale of the property, and that the right to redeem still existed in favor of plaintiffs, and for damages in the sum of P50,000."

The defendant answered, denying generally the allegations of the complaint, and, as a special defense, set up the first sale with right to repurchase at a rental of 55 piculs of copra every three months; that plaintiffs asked him to increase the loan to P9,000 which was done, and P3,500 paid plaintiffs on February 6, 1912, and they agreed to pay 90 piculs of copra every three months as rent; that on the 9th of October, 1913, he again gave the plaintiffs P5,000 and increased the rental to 120 piculs of copra every three months. That the plaintiffs could not pay the rent agreed, and they sold the property to him, with all the improvements, for P19,000 the 13th of July, 1914.

After hearing the evidence the Honorable J. P. Weissenhagen, judge, held that Exhibit No. 4 was null and void as not containing the true agreement between the parties, and ordered it annulled. The court extended the time to repurchase, and further held that defendant's possession was in bad faith, and ordered him to account for the rents and profits from the land, and in subsequent orders found the amount due for this use and occupation by the defendant, and ordered it paid to plaintiffs.

The defendant excepted to the judgment and all orders and decrees subsequent thereto, and brought the record to this court by bill of exceptions, setting up that the court erred—

- In declaring that Exhibit 4 was made without any consideration;
- In declaring null and without legal effect said absolute sale;
- In dictating the dispositive part of its decision.

We agree that the court erred as stated by the appellant. The document, Exhibit 4, is valid and legal.

The sale of the property was made, as Exhibit 4 shows it was made, but this final contract did not embody in it all the terms and agreements between the parties at that time.

As part of the consideration, the real inducement on plaintiffs' part for making that contract, defendant agreed to execute another document giving plaintiffs the right to redeem the property.

The defendant is a nephew of plaintiffs, he is a man of education, and he told them he did not want to figure as a money lender; that he had no license for conducting such business, and that, in order to keep from paying such license, it would be best for them to execute Exhibit 4, and that he would execute and deliver to them the agreement, permitting them to repurchase.

The plaintiffs testify that the property was worth sixtyfive thousand pesos; that they had been offered P31,000 for it, and the treasurer's testimony shows it was assessed at nearly P26,000, but the plaintiffs did not want to sell the property without a right to redeem it, and refused to sell, but they made the sale to defendant in consideration of the P19,000 due, and the further consideration of defendant's agreement to execute the document referred to giving them the right to repurchase. The plaintiffs in the meantime were to live on the property and manage it for defendant, and receive a part of the crops.

Defendant claims that he paid plaintiffs P5,000 at the time of the execution of Exhibit 4, but the trial court held this statement to be absolutely false, and after a study of the evidence there can be no doubt that the trial court was correct. It seems to have escaped defendant's attention that in his answer he did not pretend that this P5,000 was paid plaintiffs, though he did allege a cash sum was paid when the other documents, increasing the loan at different times, were made, which the evidence shows to be untrue, except as to Exhibit 2.

The court held that the sale with right of repurchase, Exhibit 3, was the only subsisting contract between the parties.

This is not correct. All former contracts must be considered as merged in the contract, Exhibit 4, made on the 13th of July, 1914, and the verbal agreement to execute the contract in favor of plaintiffs, which was part of that transaction.

The defendant perpetrated a fraud on his kinsmen when he failed and finally refused to put into writing the other contract made at the same time as Exhibit 4. We are not unmindful of the fact that we may seem to be modifying this written contract. But the evidence shows overwhelmingly that we are simply forcing the defendant to live up to his contract in its entirety, and preventing him from committing a fraud.

The Encyclopedia of United States Supreme Court Reports, vol. 6, p. 417, says:

"The most solemn transactions and judgments may, at the instance of the parties, be set aside or rendered inoperative for fraud. The fact of being a party does not estop a person from obtaining in a court of equity relief against fraud. It is generally parties that are the victims of fraud. The court of chancery is always open to hear complaints against it, whether committed in pais or by means of judicial proceedings. (Johnson vs. Waters, 111 U. S., 640, 667; 28 L. ed., 547.)"

And in 12 R. C. L., p. 258, it is said:

"One who holds out inducements to another, whose estate is largely encumbered, that he will furnish means for him to redeem, and thereby prevents him from looking elsewhere, and in the mean time purchases such encumbrances himself and cuts off the redemption, is guilty of fraud, and will not be allowed to enforce his advantage.

"So, too, a purchaser at a tax sale to whom the owner tenders the proper amount for an assignment of the certificate of sale, and who orally agrees to make such assignment to the owner within a few days and receive the money, but in fact obtains a tax deed after the owner, relying upon this promise, has allowed the time for redemption to expire, and refuses, upon tender of the amount of his bid, with interest and charges, to convey to the owner, is guilty of a fraud upon the owner, cannot avail himself of the statute of frauds as a defense, and will be compelled by equity to convey to the owner."

In *Lain vs. McKee* (13 Mich., 124; 87 Am. Dec. 738), Justice Cooley said: "It is objected on the part of defendant that the agreement of his part was a parol contract in relation to lands, and therefore void under the statute of frauds, and that there has been no such part performance of it as will entitle complainant to have it specifically performed.

"We do not think this case is to be put on the ground of specific performance solely. The facts charged and established show that complainant, relying upon the promise of defendant to assign, neglected to exercise his legal right to redeem, and defendant was thereby enabled to obtain a deed of the lands. It sufficiently appears that complainant would have made the redemption but for the assurances thus made to him, and a fraud has thus been perpetrated upon him, against which he is entitled to relief. It is a matter of no moment whether the fraud was perpetrated by means of a promise upon which he relied, and which the defendant did not intend to keep, or by untrue statements as to existing facts. And it is not necessary for us to decide, in this view of the case, whether the agreement to assign the certificate was or was not void under the statute of frauds."

In the case of *Government of Philippine Islands vs. Philippine Sugar Estates Development Co.* (30 Phil. Rep., 27), where plaintiff alleged the contract failed to express the true intent and agreement of the parties, this court said:

"Parol evidence is not admissible to vary or contradict the terms of a written contract. A reservation of exception cannot be introduced into a written conveyance of real estate by parol evidence."

This case was reversed on appeal to the United States Supreme Court (247 U. S., 385), the court saying:

"It is well settled that courts of equity will reform a written contract, where owing to mutual mistake, the language used therein did not fully or accurately express the agreement and intention of the parties. The fact that interpretation or construction of a contract presents a question of law and that therefore the mistake was one of law is not a bar to granting relief.

"* * * It is settled that relief by way of reformation will not be granted, unless the proof of mutual mistake be of the clearest and most satisfactory character."

The case we are considering is much stronger than any of the foregoing. It is not a question of mutual mistake, but of a clearly established promise on the part of the defendant to give a counter contract expressing the plaintiffs'

right to redeem, and that this promise was part of the consideration, inducing the plaintiffs to execute Exhibit 4, which is an absolute sale of the property to defendant.

The defendant was guilty of a fraud in procuring the 'absolute deed to the property, and he should be compelled to perform the full terms of his contract.

The time within which plaintiffs could redeem the property was not fixed.

In the absence of such agreement the trial court should have fixed the time in accordance with article 1128 of the Civil Code. (See *Yu Chin Piao vs. him Tuaco*, and cases cited, 33 Phil. Rep., 92.)

We think that one year from the date of this decision should be granted plaintiffs during which to redeem. The redemption price is that fixed by Exhibit 4; i. e., nineteen thousand pesos.

The trial court made various orders and decrees subsequent to its original decision based on the theory of the bad faith of defendant. The proven fraud of the defendant should not operate to deprive him of the fruits of the property during his occupation under Exhibit 4, as the agreement was that he should have the use of the property.

All such subsequent orders and decrees of the trial court are set aside and annulled, and the original decision is modified, and the defendant herein is ordered to immediately execute an agreement setting out plaintiff's right to redeem the property with all its improvements at any time within twelve months from the date of this judgment, and upon the previous payment to defendant of the sum of nineteen thousand pesos.

The defendant will pay the costs of both instances. So ordered.

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

Judgment modified.

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