

MARIANO CABANOS, PLAINTIFF AND APPELLEE, VS. THE REGISTER OF DEEDS OF LAGUNA AND CIRILO OBIÑANA, DEFENDANT. CIRILO OBIÑANA APPELLANT.*G.R. No. 14857. December 20, 1919*

Ponente: TORRES, J.

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This suit was instituted upon a complaint filed by Mariano Cabanos in the Court of First Instance of Laguna on January 12, 1918, who alleges under oath that he is the exclusive owner of the lands described therein, which were sold to him by the defendant Cirilo Obinana under pacto de retro, as evidenced by a document executed by the latter in his favor on March 10, 1913; that the sale has become absolute and binding for failure of the defendant Cirilo Obinana to exercise his right of repurchase within the period marked by law; that without plaintiff's knowledge and consent the defendant under the Torrens Act petitioned for, and obtained in his name from same court, a decree of registration upon said lands in the Registry of Property; that the corresponding certificates of title to these lands, except that which is about to be issued, have been already issued to the defendant by virtue of a decree recently directed by said court; and that the defendant refuses to deliver to him said lands in spite of the demands he has made Upon him to that effect, thereby causing the plaintiff damages amounting to four hundred and fifty pesos (P450) for every year that has passed and will pass from March 10, 1913, until the delivery of said realty. Plaintiff prayed that upon the approval of the bond accompanying the complaint, a preliminary injunction be directed against the defendant Cirilo Obinana and all the persons under him enjoining them to refrain from disposing of the above realty until new orders of the courts; that another injunction of the same kind be directed against the Register of Deeds enjoining him not to annotate in the certificates of title any alienation, transfer or burden upon the aforementioned lands and not to issue the certificate which is about to be issued in favor of the defendant Cirilo Obinana, until the court orders otherwise; that, upon due hearing, sentence be rendered declaring the lands subject of the complaint to be the exclusive property of the plaintiff, condemning said Cirilo Obinana to deliver them to him and to pay him four hundred and fifty pesos (P450) for every year that has elapsed and will yet elapse from March 10, 1913, until their delivery to the plaintiff, and ordering the cancellation of the certificates of title already issued to the defendant; and that the court proceed to issue in favor of the plaintiff the corresponding certificates of transfer and the certificate of title which is yet to be issued, with costs against the defendant, Cirilo Obiñana.

The preliminary injunctions prayed for in the complaint were granted.

In his answer to the complaint, the defendant Cirilo Obinana set up a general denial of all its essential allegations and, as special defense, alleged that the pacto de retro sale mentioned in the complaint does not express the true intention of the parties, the sum mentioned in the document of sale as the purchase price of the lands being fictitious, and that said document has been executed only with the object of hiding and giving legal appearance to a usurious contract; and, as a counterclaim, stated that the issuance of the preliminary injunction has caused him damage in the sum of two hundred pesos (P200), and that therefore he be absolved from the complaint and the

defendant be sentenced to pay him two hundred pesos as indemnity and to pay the costs.

After the trial of the case and the hearing of the evidence adduced by the parties, the court rendered, its decision declaring the plaintiff the exclusive owner of the lands in question and condemning the defendant Cirilo Obinana to deliver them to him and to pay the costs. The court further ordered the cancellation of the certificates of title which have already been issued in favor of the aforesaid defendant and the issuance of new ones in favor of the plaintiff for all the lands described in the complaint.

To this judgment, the defendant Cirilo Obinana excepted. A new trial having been asked for and denied with his exception, he then filed in due time the corresponding bill of exceptions, which was approved and forwarded to the clerk of this Supreme Court with all the records.

From the foregoing allegations it is certain that the document of sale with pacto de retro, whereby the lands in question were transferred by the defendant Cirilo Obinana to the plaintiff Mariano Cabanos, was executed on March 10, 1913, as it appears in the same document Exhibit A (rec, 2 of exh.) ; and was ratified before the Notary Public, Simeon A. Cabreira, on September 30, 1913 (Exhibit A, rec, 3 of exh.).

It appears in the registry proceeding No. 85 that on January 27, 1915, there was filed in the Court of First Instance of Laguna a petition dated in Manila on December 17, 1914, praying for the registration in the name of the defendant Cirilo Obinana of several parcels of land some of which are those claimed in this case, according to the allegation in the complaint of the plaintiff Mariano Cabanos and the admission of same defendant (rec, 12).

On January 26, 1916, judgment was rendered on the aforesaid registry proceeding No. 85 adjudicating the lands in question to the defendant Cirilo Obinana and decreeing their registration in his name.

On February 29, 1916, the Court of First Instance of Laguna ordered the registration of said lands in the name of Cirilo Obinana and his wife (Reg. Proc, 93), and on August 8 of the same year the decree of registration was issued. From this fact, it follows that the present civil action was instituted nearly two years after the judgment in the registry proceeding (No. 85) has become final, for the complaint in this action is dated January the 12th, 1918. And, inasmuch as either in the decree of registration or in the judgment rendered in the registry proceeding No. 85 no burden is mentioned except that lot No. 2 in proceeding No. 85 is sold to Jesus Cosio and his wife Juana Ramos with pacto de retro, land which, according to its description therein, is not comprised in any of the three parcels claimed in the present case, or is pretended to be one of them, it follows that, according to section 39 of Act No. 496, the lands now disputed between the plaintiff and the defendant actually belongs, by virtue of that final judgment, to the latter (Cirilo Obinana) and must be registered in his name free of all encumbrance except those noted in said section 39 of Act No. 496; and that the decree of registration aforesaid cannot be annulled nor can any registration that had already been entered be cancelled for the reason that, even granting that the defendant Cirilo Obinana has fraudulently acted in said proceedings, the present action having been instituted beyond the period of one year fixed in section 38 of said Act No. 496 for the cancellation of decrees of registration obtained by fraud, it is no longer proper to order the cancellation of said decree.

Counsel for the plaintiff appears to have understood it so, for the complaint prays for the transfer of the certificates of title issued and the issuance of certificates pending registration in favor of the plaintiff. Therefore, the question to be decided is whether the plaintiff has acquired rights of ownership over the lands in question after the date of the decree of registration.

The only right which the plaintiff alleges over these lands is that which he has acquired by virtue of the document Exhibit A. This document is written in Tagalog and no translation is submitted with it.

The plaintiff claims this document is one of sale with pacto de retro of these lands executed in his favor by the

defendant Cirilo Obinana (folio 2) ; and counsel for the latter, judging from his question propounded to his client, admits said document as truly expressive of a sale with pacto de retro (folios 10, 11), Without denying that such was the content of the document or that he has read same before subscribing it (folios 14-15) said defendant claims that, of the sum of one thousand one hundred and seventy pesos (P1,170) mentioned therein as the price of the sale, he legitimately owes the plaintiff only six hundred pesos (P600); but that to said debt has been added its interests corresponding to four years at the rate of 24 per cent per annum and thus the purchase price amounted to one thousand one hundred and seventy pesos (P1,170) ; and that from the execution of Exhibit A he has never delivered the lands in question to the plaintiff, neither did the latter request him to do it nor did he enter into a contract of lease of said realty with said plaintiff (folios 11-12). From these allegations the defendant tries to show that the document in question is fictitious and that the real contract entered into between them is that of mortgage.

On the other hand, however, the plaintiff testified that after the execution of the document Exhibit A, he counted the money in the presence of the defendant; that when he was about to gather the fruits on the lands, the defendant entered into a contract with him by virtue of which said defendant would take care and possession of the lands, and the fruits thereon would be divided afterwards between them, to wit, f for the plaintiff and £ for the defendant (folio 3) ; that when he demanded from Cirilo Obinana his share of the fruits, the latter always answered him not to worry since he liad the documents in his hands and if he, Cirilo should take all fruits and thus he would pay the plaintiff his share in money; that four years passed by without the plaintiff receiving any benefit from these lands and for that reason he asked the advise of a counsel. The plaintiff further stated that if during the four years that the defendant failed to deliver him the possession of the lands, he made no efforts to protect his right, it was because he and the defendant were very good friends and had a very close intimacy.

Testifying for the plaintiff, his client, attorney Gertrudo de los Reyes said that in an interview he had with the defendant, Cirilo Obinana, for the purpose of settling this case, the latter admitted that in fact he has received from the plaintiff the sum of one thousand one hundred and seventy pesos (P1,170) mentioned in document Exhibit A, and that if he has not repurchased the lands during the four years that have elapsed, it was because he believed that, as no period for repurchase was fixed in the document, he could repurchase the lands at any time. With the foregoing allegations the question is reduced to, who has told the truth?

The trial judge, who saw and observed the manner these witnesses testified, declared that the plaintiff acquired the lands in question from the defendant, Cirilo Obinana, by virtue of a contract of sale with pacto de retro executed by said defendant in favor of said plaintiff. Therefore, said judge gave more credit to the testimony of the witnesses for the plaintiff (bill of excep. p. 14), a finding which is not devoid of foundation.

In fact, the testimony of the defendant Cirilo Obinana, that the sum of one thousand one hundred and seventy (P1,170) mentioned in the document of sale consists of his debt of six hundred pesos (P600), plus its interests corresponding to four years at the rate of 24 per cent per annum, is not true because said interests amount to five hundred and seventy six pesos (P576) and, adding to them six hundred pesos (P600), the sum total would be one thousand one hundred and seventy-six pesos (P1,176) and not one thousand one hundred and seventy pesos (P1,170).

Furthermore, defendant insisted during cross-examination that Exhibit A was not executed before his petition for the registration of the lands in question (folio 15). But here again he failed to tell the truth because Exhibit A was ratified on September 30, 1913, and his petition for registration was filed with the Court of First Instance of Laguna on January 27, 1915 (7 Reg. No. 85). His own answer to the complaint says that said document was executed on March 10, 1913, as is shown in the last paragraph of Exhibit A (folio 2 of exhibits).

Moreover, in Exhibit A it is said that the lands sold therein were acquired by the defendant Cirilo Obinana from

one Eugenia Penis (folio 2 of exhibits). On page 21 of the registration proceeding No. 85 appears a document written in Tagalog, translated on page 69, and signed by Eugenia Penis wherein the latter appears to have sold certain lands to Cirilo Obinana, and in order to make the court believe that the plaintiff was aware of the registration proceedings, the defendant testified that before filing said document (marked Exhibit F in the registration case No. 85 and Exhibit 1 in this case) he asked it from the plaintiff who had it in his care, telling the plaintiff that he was going to register the lands (folio 12). From this testimony, defendant tried to show that when the Exhibit A was executed, he also delivered to the plaintiff said Exhibit 1. But then, either his testimony that this Exhibit 1 was in the hands of the plaintiff before the filing of the petition for registration was false or his testimony that Exhibit A was not executed before the filing of said petition for registration in the lower court was not true. In both cases defendant does not deserve any credit.

Plaintiff's credibility is assailed because in the beginning he said that the additional contract of lease was executed when the coconut fruits on the lands were about to be gathered (folio 3), while in another place he testified that this additional contract was executed at the same time as Exhibit A (folio 5). But even if this is taken against the plaintiff's veracity, nevertheless the contents of Exhibit A, which is a public document whose authenticity is recognized by the defendant (folios 14-15), still subsists in its literal sense and meaning inasmuch as the defendant's evidence has not sufficiently established that the parties had had other intention than that gathered from the words therein written.

It follows, therefore, that the contract mentioned in Exhibit A is that of sale with pacto de retro wherein the parties have not fixed any period for repurchase according to defendant's confession to the plaintiff's counsel, and consequently the right to repurchase could only be exercised within four years to be counted from March 10, 1913, according to article 1508 of the Civil Code. Said period expired on March 10, 1917, that is to say about 10 months before the filing of the complaint in this case and about 7 months after the issuance of the decree of registration of the lands in question in the name of the defendant.

On the date when the contract of sale with pacto de retro was perfected, i. e., on March 10, 1913, the plaintiff acquired a true ownership, although revocable, over the lands in question. Although the plaintiff's ownership became consolidated for failure of the defendant to exercise his right of repurchase, plaintiff's right of ownership does not thereby become effective nor can he claim the possession of said realty as owner inasmuch as in the decree of registration of said lands or in the certificate of title issued, it does not appear that said lands were then sold to the plaintiff with pacto de retro prior to the date of the petition for their registration in the registry.

Section 6 letter (e) of Act No. 1108 authorizes the vendor who executed the pacto de retro sale to apply for the registration of the realty thus sold in the same manner as mortgagors are authorized to file a petition for the registration of the realty mortgaged. In the decree of registration of the realty mortgaged as well as in the certificate of title which its owner may secure, the mortgage or burden upon the land or realty for which the mortgaged debtor has applied for registration must precisely appear. And it should be so for, if the realty was in fact mortgaged, the mortgage must necessarily be registered in the registry of property, because if the mortgage or burden were not registered, then there would not be a true and lawful mortgage.

The document Exhibit A, evidencing the sale executed by Cirilo Obinana of several pieces of land belonging to him in favor of the plaintiff Mariano Cabanos, does not appear registered in the registry of property, so that the defendant Obinana obtained the decree of registration and the certificate of title without the knowledge of Mariano Cabanos, the purchaser of said lands.

After the expiration of the decisive year mentioned in section 38 of Act No. 496, the decree of registration obtained by Obinana essentially and efficaciously affects the right acquired by the plaintiff Cabanos over the

lands in question by virtue of a prior pacto de retro sale; because, after the absolute and exclusive ownership of a realty is decreed by the court in favor of a person, if a right, whatever its nature is, born before the judicial decree of registration, can afterwards be exercised in an ordinary suit instituted beyond the period fixed by the aforesaid section 38 of the Land Registration Act No. 496, then all the provisions and decrees of said Act would be useless inasmuch as the holder and possessor of the title which, according to the Act, is indefeasible and binding would never be secure in his possession and enjoyment of his property, for he would always be exposed, for one motive or another, to lose his right over the realty of which he has a special title in accordance with said Land Registration Act.

The decree of registration and the certificate of title have not rescinded the former contract of pacto de retro but have rendered ineffective the consolidation of the right of the purchaser Cabanos, inasmuch as before September 30, 1917 when said consolidation should have taken place for failure of the vendor Obinana to exercise his right of repurchase, the latter applied for the registration of the lands he had sold to the plaintiff Cabanos and secured the certificate of title over said lands on August 8, 1916, or one year and several days before the right of repurchase as result of the lapse of four years.

In legal strictness said consolidation could not take place in spite of the failure to exercise the right of repurchase, inasmuch as the vendor Obinana, who ought to have lost his right by prescription, obtained without the knowledge of Cabanos, who had a defeasible ownership over the lands claimed, a certificate of title over them, which, by the expiration of the period fixed by the Act, cannot be reviewed and became indefeasible and absolutely binding as against the whole world.

From what has been said, however, it results that the contract of sale entered into between the parties still subsists without any alteration nor has it been rescinded by the certificate of title subsequently obtained by the Vendor over the lands sold, inasmuch as the issuance in his favor of said title does not destroy the validity of the executed contract and does not exempt him from the obligation of complying with it in accordance with the provisions of articles 1445 et seq. of the Civil Code (which deals with purchase and sale) for it would then be highly unjust that the defendant, who received the price of the sale of the lands in question, would still retain said lands thereby enriching himself at the expense and to the great prejudice of the plaintiff.

Article 1445 of the Civil Code says:

"By the contract of purchase and sale one of the contracting parties binds himself to deliver a specified thing and the other to pay a certain price therefor in money or in something representing the same."

Article 1461 of same Code provides:

"The vendor is bound to deliver and warrant the thing which is the subject matter of the sale."

And article 1500 of said Code orders:

"The vendee is obliged to pay the price of the thing sold at the time and place stipulated in the contract."

Granting that the contract of sale of the lands in question is valid and binding since it has not been annulled or rescinded by the subsequent decree of their registration in favor and in the name of the vendor without the purchaser's consent and knowledge and that it has been fully proven at the hearing that the latter had paid the former the purchase price, vendor cannot avoid compliance with the obligation of delivering to the purchaser the lands sold and placing him in the control and possession thereof as article 1462 of the Civil Code provides.

In a decision of May 19, 1896, rendered in an appeal for the violation of the above-quoted article 1461, the supreme court of Spain has held that even though the vendor of a realty under pacto de retro sale might have

continued exercising acts of ownership thereof, the contract entered into in a public instrument cannot be thereby modified or extinguished.

The contract of the sale of the lands in question under pacto de retro is ratified before a notary public and even though the vendor Obinana apparently continued exercising acts of ownership thereon—for in truth he continued administering them by virtue of an agreement entered into with the purchaser Cabanos—these, as well as the registration in his name of said realty, perhaps fraudulently secured, cannot serve as a ground for asking from the courts the extinguishment or even the modification of said contract of sale of the realty claimed. The registration of the lands in question cannot serve as a protecting mantel to cover and shelter bad faith, above all when it is sought to the great damage and prejudice of an innocent third party.

The plaintiff Cabanos cannot institute a real action for the recovery of said lands based upon the consolidation of his ownership thereof due to defendant's failure to exercise the right of repurchase; but said purchaser has a subsisting personal action, also based upon same contract, to ask for its compliance in spite of the title obtained by the vendor, i. e., for the delivery of the lands sold after the execution of a document of their absolute sale, inasmuch as the vendor has already received the price since March, 1913, and there is no lawful or just reason authorizing him to retain in his hands said lands after having received their purchase price against the right of the purchaser, who claims them with more than sufficient title.

The new deed, which the defendant-vendor should execute, must be an absolute sale because the four years fixed by article 1508 of the Civil Code have already expired without the vendor having accomplished the stipulated repurchase; for instead of doing it within said period by returning the price received, he petitioned for the registration of the lands he had sold as if he was their absolute owner, without the knowledge of the legitimate and true owner and with the object, undoubtedly, of being relieved from making the delivery of the lands registered in his name and of securing their legitimate possession. The aforesaid deed, which defendant should execute, must furthermore produce a retroactive effect from the date the former Exhibit A was ratified before a notary public, because the action for the repurchase, which belongs to and was not exercised by the defendant, has already prescribed.

This court believes that it is also in accordance with strict justice that the vendor be obliged to deliver to the purchaser two thirds of the fruits which the former has gathered from the aforementioned lands from March 1913 according to their agreement or, the value or price thereof, according to expert appraisal.

From these considerations whereby the assignments of errors Nos. 1, 2 and 4 alleged to have been committed in the judgment appealed from are refuted, it follows that we must declare, as we hereby declare, that the defendant Cirilo Obinana must deliver and place in the possession of the plaintiff, Mariano Cabanos, the lands he had sold to the latter, according to a public instrument Exhibit A, after the execution of the corresponding instrument of absolute sale with a retroactive effect from March 10, 1913; that the price to be mentioned therein must be that received by the vendor on March 10, 1913; that this absolute sale must be annotated in the duplicate certificates of title issued to the vendor who is hereby ordered to deliver all the titles of the realty sold to the purchaser to whom its ownership has hereby been transferred; that the defendant must deliver to the plaintiff two-thirds of the fruits by him gathered from the lands in question or pay for their current price from March 10, 1913, without any special finding as to the costs. So much of the judgment appealed from as is consistent with this decision is affirmed and so much thereof as is inconsistent with this decision is reversed. So ordered.

Arellano, C.J., Johnson, Street, and Avanceña, JJ., concur.

CONCURRING

ARAULLO, J.,

I concur in the foregoing decision except where it says that the decree of registration, with the certificate of title issued in favor of the defendant, has rendered ineffective the consolidation of the right of the purchaser Cabanos, for it is precisely because in fact and in law the ownership of the purchaser Cabanos over the lands in question has been consolidated (in spite of the certificate of title issued in favor of the defendant-vendor) and because the latter's obligation contracted in Exhibit A still subsists (wherein appears the contract of sale under pacto de retro which continues valid and binding), that the defendant Obinana is obliged to deliver, as the aforementioned decision says, and to put in the possession of the plaintiff Cabanos the lands he had sold to him. The same decision recognizes this fact when it says that the decree of registration, with said certificate of title, has not rescinded the pacto de retro sale and that the issuance of the certificate of ownership in favor of the defendant Obiñana does not destroy the validity of the contract (already mentioned) entered between him and the plaintiff Cabanos.

I also believe that the defendant, having proceeded in this case with notorious temerity and without a reasonable ground, must bear the costs of the lower court as well as those of this instance not only because he has been the appellant but also because of the provision of section 487 of the Code of Civil Procedure, in view of the facts proven at the trial.

CONCURRING
MALCOLM, J.,

I concur in the result, and on the main questions am in accord with the views of the principal decision as qualified in the concurring opinion of Justice Araullo.

Judgment modified.

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