

PANG LIM AND BENITO GALVEZ, PLAINTIFFS AND APPELLEES, VS. LO SENG, DEFENDANT AND APPELLANT.*G. R. No. 16318. October 21, 1921*

Ponente: STREET, J.

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For several years prior to June 1, 1916, two of the litigating parties herein, namely, Lo Seng and Pang Lim, Chinese residents of the City of Manila, were partners, under the firm name of Lo Seng & Co., in the business of running a distillery, known as "El Progreso," in the Municipality of Paombong, in the Province of Bulacan. The land on which said distillery is located as well as the buildings and improvements originally used in the business were, at the time to which reference is now made, the property of another Chinaman, who resides in Hongkong, named Lo Yao, who, in September, 1911, leased the same to the firm of Lo Seng & Co. for the term of three years.

Upon the expiration of this lease a new written contract, in the making of which Lo Yao was represented by one Lo Shui as attorney in fact, became effective whereby the lease was extended for fifteen years. The reason why the contract was made for so long a period of time appears to have been that the Bureau of Internal Revenue had required sundry expensive improvements to be made in the distillery, and it was agreed that these improvements should be effected at the expense of the lessees. In conformity with this understanding many thousands of pesos were expended by Lo Seng & Co., and later by Lo Seng alone, in enlarging and improving the plant.

Among the provisions contained in said lease we note the following:

"Know all men by these presents:

* * * * *

"1. That I, Lo Shui, as attorney in fact in charge of the properties of Mr. Lo Yao of Hongkong, cede by way of lease for fifteen years more said distillery 'El Progreso' to Messrs. Pang Lim and Lo Seng (doing business under the firm name of Lo Seng & Co.), after the termination of the previous contract, because of the fact that they are required, by the Bureau of Internal Revenue, to rearrange, alter and clean up the distillery.

"2. That all the improvements and betterments which they may introduce, such as machinery, apparatus, tanks, pumps, boilers and buildings which the business may require, shall be, after the termination of the fifteen years of lease, for the benefit of Mr. Lo Yao, my principal, the buildings being considered as improvements.

"3. That the monthly rent of said distillery is P200, as agreed upon in the previous contract of September 11, 1911, acknowledged before the notary public D. Vicente Santos; and all modifications and repairs which may be needed shall be paid for by Messrs. Pang Lim and Lo Seng.

"We, Pang Lim and Lo Seng, as partners in said distillery 'El Progreso,' which we are at present conducting, hereby accept this contract in each and all its parts, said contract to be effective upon the termination of the contract of September 11, 1911."

Neither the original contract of lease nor the agreement extending the same was inscribed in the property registry, for the reason that the estate which is the subject of the lease has never at any time been so inscribed.

On June 1, 1916, Pang Lim sold all his interest in the distillery to his partner Lo Seng, thus placing the latter in the position of sole owner; and on June 28, 1918, Lo Shui, again acting as attorney in fact of Lo Yao, executed and acknowledged before a notary public a deed purporting to convey to Pang Lim and another Chinaman named Benito Galvez, the entire distillery plant including the land used in connection therewith. As in case of the lease this document also was never recorded in the registry of property. Thereafter Pang Lim and Benito Galvez demanded possession from Lo Seng, but the latter refused to yield; and the present action of unlawful detainer was thereupon initiated by Pang Lim and Benito Galvez in the court of the justice of the peace of Paombong to recover possession of the premises. From the decision of the justice of the peace the case was appealed to the Court of First Instance, where judgment was rendered for the plaintiffs; and the defendant thereupon appealed to the Supreme Court.

The case for the plaintiffs is rested exclusively on the provisions of article 1571 of the Civil Code, which reads in part as follows:

"ART. 1571. The purchaser of a leased estate shall be entitled to terminate any lease in force at the time of making the sale, unless the contrary is stipulated, and subject to the provisions of the Mortgage Law."

In considering this provision it may be premised that a contract of lease is personally binding on all who participate in it regardless of whether it is recorded or not, though of course the unrecorded lease creates no real charge upon the land to which it relates. The Mortgage Law was devised for the protection of third parties, or those who have not participated in the contracts which are by that law required to be registered; and none of its provisions with reference to leases interpose any obstacle whatever to the giving of full effect to the personal obligations incident to such contracts, so far as concerns the immediate parties thereto. This is rudimentary, and the law appears to be so understood by all commentators, there being, so far as we are aware, no authority suggesting the contrary. Thus, in the commentaries of the authors Galindo and Escosura, on the Mortgage Law, we find the following pertinent observation : "The Mortgage Law is enacted in aid of and in respect to third persons only; it does not affect the relations between the contracting parties, nor their capacity to contract. Any question affecting the former will be determined by the dispositions of the special law [i. e., the Mortgage Law], while any question affecting the latter will be determined by the general law." (Galindo y Escosura, *Comentarios a la Legislation Hipotecaria*, vol. I, p. 461.)

Although it is thus manifest that, under the Mortgage Law, as regards the personal obligations expressed therein, the lease in question was from the beginning, and has remained, binding upon all the parties thereto—among whom is to be numbered Pang Lim, then a member of the firm of Lo Seng & Co.—this does not really solve the problem now before us, which is, whether the plaintiffs herein, as purchasers of the estate, are at liberty to terminate the lease, assuming that it was originally binding upon all parties participating in it.

Upon this point the plaintiffs are undoubtedly supported, *prima facie*, by the letter of article 1571 of the Civil Code; and the position of the defendant derives no assistance from the mere circumstance that the lease was admittedly binding as between the parties thereto.

The words "subject to the provisions of the Mortgage Law," contained in article 1571, express a qualification which evidently has reference to the familiar proposition that recorded instruments are effective against third persons from the date of registration (*Co-Tiongco vs. Co-Guia*, 1 Phil., 210) ; from whence it follows that a recorded lease must be respected by any purchaser of the estate whomsoever. But there is nothing in the Mortgage Law which, so far as we now see, would prevent a purchaser from exercising the precise power conferred in

article 1571 of the Civil Code, namely, of terminating any lease which is unrecorded; nothing in that law that can be considered as arresting the force of article 1571 as applied to the lease now before us.

Article 1549 of the Civil Code has also been cited by the attorneys for the appellant as supplying authority for the proposition that the lease in question cannot be terminated by one who, like Pang Lim, has taken part in the contract. That provision is practically identical in terms with the first paragraph of article 23 of the Mortgage Law, being to the effect that unrecorded leases shall be of no effect as against third persons; and the same observation will suffice to dispose of it that was made by us above in discussing the Mortgage Law, namely, that while it recognizes the fact that an unrecorded lease is binding on all persons who participate therein, this does not determine the question whether, admitting the lease to be so binding, it can be terminated by the plaintiffs under article 1571.

Having thus disposed of the considerations which arise in relation with the Mortgage Law, as well as article 1549 of the Civil Code—all of which, as we have seen, are undecisive—we are brought to consider the aspect of the case which seems to us conclusive. This is found in the circumstance that the plaintiff Pang Lim has occupied a double role in the transactions which gave rise to this litigation, namely, first, as one of the lessees; and secondly, as one of the purchasers now seeking to terminate the lease. These two positions are essentially antagonistic and incompatible. Every competent person is by law bound to maintain in all good faith the integrity of his own obligations; and no less certainly is he bound to respect the rights of any person whom he has placed in his own shoes as regards any contract previously entered into by himself.

While yet a partner in the firm of Lo Seng & Co., Pang Lim participated in the creation of this lease; and when he sold out his interest in that firm to Lo Seng this operated as a transfer to Lo Seng of Pang Lim's interest in the firm assets, including the lease; and Pang Lim cannot now be permitted, in the guise of a purchaser of the estate, to destroy an interest derived from himself, and for which he has received full value.

The bad faith of the plaintiffs in seeking to deprive the defendant of this lease is strikingly revealed in the circumstance that prior to the acquisition of this property Pang Lim had been partner with Lo Seng and Benito Galvez an employee. Both therefore had been in relations of confidence with Lo Seng and in that position had acquired knowledge of the possibilities of the property and possibly an experience which would have enabled them, in case they had acquired possession, to exploit the distillery with profit. On account of his status as partner in the firm of Lo Seng & Co., Pang Lim knew that the original lease had been extended for fifteen years; and he knew the extent of valuable improvements that had been made thereon. Certainly, as observed in the appellant's brief, it would be shocking to the moral sense if the condition of the law were found to be such that Pang Lim, after profiting by the sale of his interest in a business, worthless without the lease, could intervene as purchaser of the property and confiscate for his own benefit the property which he had sold for a valuable consideration to Lo Seng. The sense of justice recoils before the mere possibility of such eventuality.

Above all other persons in business relations, partners are required to exhibit towards each other the highest degree of good faith. In fact the relation between partners is essentially fiduciary, each being considered in law, as he is in fact, the confidential agent of the other. It is therefore accepted as fundamental in equity jurisprudence that one partner cannot, to the detriment of another, apply exclusively to his own benefit the results of the knowledge and information gained in the character of partner. Thus, it has been held that if one partner obtains in his own name and for his own benefit the renewal of a lease on property used by the firm, to commence at a date subsequent to the expiration of the firm's lease, the partner obtaining the renewal is held to be a constructive trustee for the firm as to such lease. (20 R. C. L., 878-882.) And this rule has even been applied to a renewal taken in the name of one partner after the dissolution of the firm and pending its liquidation. (16 R. C. L., 906; Knapp vs. Reed, 88 Neb., 754; 32 L. R. A. [N. S.], 869; Mitchell vs. Reed, 61 N. Y., 123; 19 Am. Rep., 252.)

An additional consideration showing that the position of the plaintiff Pang Lim in this case is untenable is deducible from articles 1461 and 1474 of the Civil Code, which declare that every person who sells anything is bound to deliver and warrant the subject-matter of the sale and is responsible to the vendee for the legal and lawful possession of the thing sold. The pertinence of these provisions to the case now under consideration is undeniable, for among the assets of the partnership which Pang Lim transferred to Lo Seng, upon selling out his interest in the firm to the latter, was this very lease; and while it cannot be supposed that the obligation to warrant recognized in the articles cited would nullify article 1571, if the latter article had actually conferred on the plaintiffs the right to terminate this lease, nevertheless said articles (1461,1474), in relation with other considerations, reveal the basis of an estoppel which in our opinion precludes Pang Lim from setting up his interest as purchaser of the estate to the detriment of Lo Seng.

It will not escape observation that the doctrine thus applied is analogous to the doctrine recognized in courts of common law under the head of estoppel by deed, in accordance with which it is held that if a person, having no title to land, conveys the same to another by some one or another of the recognized modes of conveyance at common law, any title afterwards acquired by the vendor will pass to the purchaser; and the vendor is estopped as against such purchaser from asserting such after-acquired title. The indenture of lease, it may be further noted, was recognized as one of the modes of conveyance at common law which created this estoppel. (8 R. C. L., 1058, 1059.)

From what has been said it is clear that Pang Lim, having been a participant in the contract of lease now in question, is not in a position to terminate it: and this is a fatal obstacle to the maintenance of the action of unlawful detainer by him. Moreover, it is fatal to the maintenance of the action brought jointly by Pains Lim and Benito Galvez. The reason is that in the action of unlawful detainer, under section 80 of the Code of Civil Procedure, the only question that can be adjudicated is the right to possession; and in order to maintain the action, in the form in which it is here presented, the proof must show that occupant's possession is unlawful, i. e., that he is unlawfully withholding possession after the determination of the right to hold possession. In the case before us quite the contrary appears; for, even admitting that Pang Lim and Benito Galvez have purchased the estate from Lo Yao, the original landlord, they are, as between themselves, in the position of tenants in common or owners pro indiviso, according to the proportion of their respective contribution to the purchase price. But it is well recognized that one tenant in common cannot maintain a possessory action against his cotenant, since one is as much entitled to have possession as the other. The remedy is ordinarily by an action for partition. (Cornista vs. Ticson, 27 Phil., 80.) It follows that as Lo Seng is vested with the possessory right as against Pang Lim, he cannot be ousted either by Pang Lim or Benito Galvez. Having lawful possession as against one cotenant, he is entitled to retain it against both. Furthermore, it is obvious that partition proceedings could not be maintained at the instance of Benito Galvez as against Lo Seng, since partition can only be effected where the partitioners are cotenants, that is, have an interest of an identical character as among themselves. (30 Cyc, 178-180.) The practical result is that both Pang Lim and Benito Galvez are bound to respect Lo Seng's lease, at least in so far as the present action is concerned.

We have assumed in the course of the preceding discussion that the deed of sale under which the plaintiffs acquired the rights of Lo Yao, the owner of the fee, is competent proof in behalf of the plaintiffs. It is, however, earnestly insisted by the attorney for Lo Seng that this document, having never been recorded in the property registry, cannot, under article 389 of the Mortgage Law, be used in court against him because as to said instrument he is a third party. The important question thus raised is not absolutely necessary to the decision of this case, and we are inclined to pass it without decision, not only because the question does not seem to have been ventilated in the Court of First Instance but for the further reason that we have not had the benefit of any written brief in this case in behalf of the appellees.

The judgment appealed from will be reversed, and the defendant will be absolved from the complaint. It is so ordered, without express adjudication as to costs.

Johnson, Araullo, Avancena, and Villamor, JJ., concur.

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