

SEBASTIANA MARTINEZ ET AL., PLAINTIFFS AND APPELLANTS, VS. CLEMENCIA GRANO ET AL., DEFENDANTS AND APPELLEES.*G. R. No. 16709. August 08, 1921*

Ponente: STREET, J.

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Juan Martinez and his wife, Macaria Ticson, both now deceased, were owners in their lifetime of seven parcels of land of considerable value, located in the municipality of San Pablo, in the Province of Laguna, which property, upon the death in 1910 of the last of the two spouses abovementioned, devolved by inheritance upon their numerous living children and the descendants of such as were dead. In due time partition was effected, with the approval of the Court of First Instance of Laguna, and appropriate portions were assigned to the several heirs. To this end it was necessary that the seven parcels of which the property was composed should be subdivided into numerous smaller parcels, as was in fact done.

The persons participating in this division, according to the project of partition approved by the court on July 7, 1915, were, first, the four children, Sebastiana Martinez, Julio Martinez, Isidro Martinez, and Benedicto Martinez, to each of whom was assigned a child's part. Three other brothers, Inocente, Eleuterio, and Apolonio had meantime died. Of these, Inocente Martinez left a widow, named Rosario Ebron, and four children named respectively Alfredo, Florinio, Maria-Salome, and Maria-Jacobe. To these accordingly was assigned in common the portion which would have pertained to their father, Inocente. The second deceased brother, Eleuterio Martinez, also left four orphan children, named respectively Leoncio, Ulpiano, Zosima, and Maximo, his wife having died about the same time as himself or soon thereafter. To these four children, therefore, was assigned in common the portion that would have pertained to their father, Eleuterio. The third deceased brother, Apolonio Martinez, was survived by his widow, Clemencia Grano, and by their only child, a boy named Jose, to whom was assigned the portion that would have pertained to Apolonio. There was still another brother of the Martinez family, named Ciriaco, but as he died without issue no account need be taken of him.

All of the nine grandchildren whose names have been given were minors when partition was effected, and they were still such at the time the present cause was tried in the Court of First Instance, being represented respectively as follows: the four children of Inocente Martinez, by their mother Rosario Ebron, as guardian; the four children of Eleuterio Martinez, by their uncle Isidro Martinez, as guardian; and Jose, son of Apolonio Martinez, by his mother Clemencia Grano, as guardian.

At the time of the division aforesaid and apparently for a number of years prior thereto, the property comprising the estate of the deceased spouses, Juan Martinez and Macaria Ticson, was encumbered with indebtedness, and the parties in interest had long since been compelled to resort to the dangerous expedient of selling their inheritance under a contract of sale with pacto de retro. Thus, we find that, prior to the year 1911, one W. W. Robinson had acquired title to the property under such a contract; and on October 11 of that year the property was again sold under pacto de retro to Alfonso Tiaoqui, of Manila, for the sum of P12,000, apparently in order to get the means to redeem the property from Robinson.

The period for redemption specified in the sale to Tiaoqui was three years, which expired in October, 1914. When this date arrived it was still found impossible for the parties in interest to redeem the property; and apparently by the indulgence of Tiaoqui, the time for redemption was extended to September 28, 1916, upon which date still another contract of sale with pacto de retro was executed in favor of the same Tiaoqui, and approved by the court as regards the minor persons in interest. The price stated in this contract was P20,000, and the period for redemption was limited to one year, "extendible to another with the consent of the parties."

Once more, as the date thus fixed for the expiration of the time for redemption approached, it was found that the parties in interest would again be unable to redeem; and it was then becoming very evident that unless a large loan could be secured under more favorable terms than had been hitherto obtained, the property would soon be totally lost to its former owners. In this extremity inquiry was made of "El Hogar Filipino," a mutual building and loan association of Manila, to ascertain whether the necessary loan could be obtained from it. In response to this inquiry it was found that said association was prepared to advance, upon comparatively favorable terms, the capital necessary to redeem the property, provided that a small additional amount of security could be supplied. One obstacle, however, to the consummation of this loan was found in the fact that the parties in interest were numerous and many were minors. This made it inconvenient for "El Hogar Filipino" to handle the business, in view of the peculiar obligations which would devolve upon the borrower by contract with it.

In view of this difficulty, the adult parties in interest were advised, and decided, to allow a single individual to effect the redemption from Alfonso Tiaoqui, thus placing the documentary title exclusively in this one person, who, as was intended, could then deal directly with the association. The person chosen as the repository of this trust was Clemencia Grano, the widow of Apolonio Martinez and mother and guardian of Jose.

As the purpose in obtaining the loan from "El Hogar Filipino" was to get the means to redeem the property from Alfonso Tiaoqui, it was necessary that the redemption from the latter should be effected contemporaneously with the securing of the loan from the building and loan association; and this double transaction was accomplished in the city of Manila on December 19, 1917, when the proper representative of "El Hogar Filipino" made out and delivered to Clemencia Grano a check for the sum of P24,759.61, which was thereupon immediately indorsed and delivered by her to Alfonso Tiaoqui, in satisfaction of the stipulated price of repurchase (P20,000), together with rents in arrears, due from the Martinez heirs, and the amount of P4,759.61, including interest.

Upon this occasion the following documents were executed and duly acknowledged by the parties respectively concerned therein:

- (1) A deed of sale from Alfonso Tiaoqui, conveying to Clemencia Grano all the property which had been sold to him by the Martinez heirs under contract of sale with pacto de retro, dated September 28, 1916;
- (2) A mortgage of real estate from Clemencia Grano, conveying to "El Hogar Filipino," in consideration of a loan of P30,000, all of the seven parcels pertaining to the Martinez estate which had been obtained by her under the deed of purchase from Alfonso Tiaoqui, together with four additional parcels, to one of which, the parcel (k), more particular reference will be made in the next succeeding paragraph hereof.
- (3) A notarial declaration, signed and acknowledged by Clemencia Grano, in which she states, among other things, that she had intervened in the aforementioned transactions in behalf of all the Martinez heirs and that the seven parcels of property proceeding from the Martinez estate which had been mortgaged by her to "El Hogar Filipino" belonged to said heirs. She also states in the same declaration that the parcel (k), included in the mortgage to "El Hogar Filipino," is the property of Julio Martinez, which had been conveyed to her in order that it might be included in the mortgage as additional security.

It is a matter of common knowledge that a building and loan association, such as "El Hogar Filipino," upon making a loan, requires the borrower to become subscriber to a sufficient number of shares of the stock of the association to amortize the loan upon maturity of the shares; and the borrower is further required to make certain payments upon these shares contemporaneously with the payment of interest upon the loan, subject to fine in case of delinquency in meeting either of these obligations, and subject also to foreclosure of the mortgage in case delinquency should be extended beyond a stated period. It is therefore of the utmost importance that the borrower from such a society should be prompt in meeting all the obligations imposed on him by the contract with it.

In consideration of the responsibility thus to be assumed by Clemencia Grano, as borrower, all of the adult Martinez heirs personally and the guardians of the minor heirs executed a document jointly with Clemencia Grano, personally and as guardian of her own minor son Jose, in which it was agreed that Clemencia Grano should have exclusive possession of all the land pertaining to the Martinez estate and administer the same for the purpose of raising the necessary revenue to meet her obligations to "El Hogar Filipino." In this contract the heirs all agreed that Clemencia Grano, as their attorney in fact, should be respected by them in all matters relating to the administration of the property and they obligated themselves, one and all, to abstain from interfering with her in the slightest degree in said administration. The contract to which reference is here made is dated November 7, 1917, that is to say, several weeks before the loan from "El Hogar Filipino" was finally obtained; but it was made in contemplation of said loan, and in it the transaction with "El Hogar Filipino" is mentioned as if already consummated.

There is still another document, bearing the signatures of Isidro Martinez, Julia Martinez, Sebastiana Martinez, Rosario Ebron, and Clemencia Grano, and acknowledged before a notary public on December 17, 1917, which defines in the fullest and most satisfactory way the interests of all the parties in the property derived from the Martinez estate, which two days later was to become the subject of the mortgage to "El Hogar Filipino." Furthermore it explains clearly the function to be undertaken by Clemencia Grano in respect thereto. In this document it is stated, among other things: (1) that, although the period for repurchase under the contract of sale to Alfonso Tiaoqui had expired on September 28, 1917, he had nevertheless been extending the time until then; (2) that a mortgage of the property which had been sold to Tiaoqui was under contemplation to "El Hogar Filipino," as a means of raising the money to pay off Tiaoqui; but that (3) it had been found impossible, owing to the continued absence of a judge of First Instance from the Province of Laguna, to obtain judicial approval of the mortgaging of the minors' interest; wherefore the parties in interest had decided to permit the property to be consolidated in Tiaoqui, to the end that he might convey the same absolutely to Clemencia Grano.

On the part of the latter the same document contains the declarations set forth in the fourth paragraph thereof, as follows:

"4. I, Clemencia Grano, solemnly and under oath, state that I ratify all the contents of this contract and although I will in reality purchase in my own name, from the spouses Tiaoqui the coconut lands mentioned in the document of September 28, 1916,¹ declare that I cannot be the definitive owner of said lands; that said sale which is to be executed in my favor is effected with the sole object of obviating the necessary proceedings in order to gain time and realize the mortgage in favor of the 'Hogar Filipino' for the sum heretofore mentioned; that said sale will take legal effect and will be subsisting only during the time that the mortgage in favor of the 'Hogar Filipino' lasts, upon the expiration of which, said sale in my favor shall be rendered null and of no value or legal effect with respect to the ownership of all the lands sold by the Tiaoqui spouses to me; that after the expiration of the period of the mortgage to the 'Hogar Filipino' and the payment of all sums owing to it, with interest, I, Clemencia Grano, my heirs and successors-in-interest, in the proper case, bind ourselves to deliver said lands to the heirs, according to their respective shares, in accordance with the partition made by us on April 9, 1915, duly approved by the Court of First Instance of Laguna, in its judgment of July 7, 1915, as may be seen from civil case No. 846 of said court and my intervention as Clemencia Grano from the moment of the

absolute sale which the Tiaoqui spouses shall make to me shall be without effect upon the expiration of the period of the mortgage to the 'Hogar Filipino' during which period I bind myself to administer all of said lands and to answer for the faithful and exact compliance with all the obligations and conditions stipulated in favor of the 'Hogar Filipino' in the mortgage of said lands and until the full payment of said sum, with interest, within said period of five years, after which I, Clemencia Grano, in delivering to each heir the portion corresponding to him according to said judicial partition, shall render an account of all the income and expenses occasioned during the five years that the properties were mortgaged to the 'Hogar Filipino' in order that each heir may know the result of my work, the amount of the income and expenses and the portion thereof corresponding to each of them after the termination of the five-year period of the mortgage in favor of the 'Hogar Filipino.' "

Now, notwithstanding the very clear statements contained in the documents acknowledged respectively on November 7 and December 17, 1917, and the notarial declaration of December 19, 1917, all stating in unequivocal terms that Clemencia Grano had intervened in behalf of all persons in interest in effecting the repurchase from Tiaoqui and the making of the mortgage to "El Hogar Filipino," she nevertheless now asserts that she is the sole and absolute owner of all the property obtained by her from Tiaoqui and denies that the Martinez heirs have any interest whatever therein.

In view of the hostile attitude thus assumed by Clemencia Grano, as well as in view of certain acts of maladministration attributed to her in respect to the application of the income derived from the property in question, the Martinez heirs, who are named as plaintiffs herein, instituted the present action in the Court of First Instance of Laguna against Clemencia Grano, both in her own right and as guardian of Jose Martinez, and against "El Hogar Filipino."

The ultimate and main object of the action is of course to obtain a judicial declaration to the effect that the Martinez heirs are the real owners of the parcels of property respectively apportioned to them under the partition of 1915, and that the title vested in Clemencia Grano is held by her in trust for all the Martinez heirs as their respective interests appear, subject to the mortgage in favor of "El Hogar Filipino." In this connection the plaintiffs pray that the agreement under which Clemencia Grano had been made administrator of the property and had been allowed to acquire the legal title in her own name should be rescinded for her manifest failure to comply with the trust reposed in her. In view also of the hostility of Clemencia Grano and the consequent loss of confidence in her by the adult parties in interest, the plaintiffs ask that another person be appointed temporary receiver, in order that, pending the litigation, the proceeds of the property may be properly applied to the satisfaction of the obligations incurred by Clemencia Grano under the contract with the building and loan association.

In paragraph 5 of the petitory part of the amended complaint the plaintiffs ask that they be awarded the sum of P2,000 by way of reimbursement of the expenses of litigation, as stipulated in the final clause of the document acknowledged by Clemencia Grano and others on December 17, 1917, to which reference has already been made. (Exhibit E of plaintiffs.)

In view of the interest of "El Hogar Filipino" in the property which is the subject of the litigation, said association is named as a defendant in the action, and the plaintiffs ask that the association be required to recognize the interest of the Martinez heirs, but no effort is made to disturb the rights of the association under its mortgage.

Upon the filing of the complaint as aforesaid in October of the year 1919, the Honorable Isidro Paredes, as presiding judge, granted the plaintiffs' motion for the appointment of a receiver, and Benedicto Martinez was duly appointed and qualified as such receiver. Thus the situation remained until final judgment in the trial court was rendered by the same judge on April 30, 1920. By this decision Clemencia Grano was declared to be the sole and

exclusive owner of all the property in question, subject to the mortgage to "El Hogar Filipino." As a consequence she was ordered to be restored to possession, the receivership was declared to be dissolved, and all the defendants were absolved entirely from the complaint. From this judgment the plaintiffs appealed.

The conclusion reached by his Honor, the trial judge, rests upon the very simple and undeniable fact that the defendant, Clemencia Grano, is the holder of the legal title to the questioned property by the deed of conveyance directly from Alfonso Tiaoqui, dated December 19, 1917; and the three several documents wherein Clemencia Graiio had recognized that she was to acquire, or had acquired, said property in behalf of all the Martinez heirs were rejected by his Honor as of no weight. This conclusion is in our opinion quite without support either in the evidence of record or the law applicable to the case.

In this connection it may be noted that Clemencia Grano is an illiterate person and hence she was unable to place her formal signature in writing to the documents of November 7, December 17, and December 19, 1917, so often mentioned, but she admits that her thumb mark is genuine, and in order to evade the full legal effect of those documents she pretends that she did not understand their actual purport. This pretension is in our opinion absolutely and transparently false. The first in point of time of the documents referred to was acknowledged November 7, 1917, before Mr. Benito G. Zoboli, an attorney and notary public of Santa Cruz, in the Province of Laguna. Mr. Zoboli appeared as a witness at the hearing of this cause, and he testified that the contents of the document was explained by him to Clemencia Grano in the Tagalog language, that she indicated her conformity with it, and that she executed the same voluntarily. It is true that this witness is not a master of the Tagalog tongue, having been brought up in Iloilo, but he commands it sufficiently to enable him to communicate reasonably well with persons who speak Tagalog ; and we do not hesitate to hold that Clemencia Grano fully understood the document to which her mark was then placed and that she is bound by it. The next in point of time of the documents referred to is that actually bearing the date of December 16, but acknowledged on December 17, 1917, before E. P. Virata, a notary public of the city of Manila. Clemencia Grano does not deny having placed her mark on this document, but she evasively asserts that it does not contain a true statement of the agreement which was in fact made. A perusal of her testimony is convincing of the falsity of this pretension, even if there were nothing else for the guidance of the court. But again, there is the document executed by Clemencia Grano, among others, on December 19, 1917, and acknowledged before J. W. Ferrier, an attorney and notary public of Manila. All three of the notarial documents mentioned tell the same story and in our judgment conclusively show that Clemencia Grano intended to act for all the Martinez heirs in repurchasing the questioned property from Alfonso Tiaoqui. Her assertion that she has been deluded into signing successively three notarial documents all of which, though consistent among themselves, are different in their contents from what had been actually agreed upon seems to us to be preposterous and puerile in the extreme. A reasonable supposition is that if the parties opposed to her in interest had intended to perpetrate a fraud upon her in the manner supposed, they would have been content when they had secured her acknowledgment to the first document, without subjecting their scheme to the danger of discovery upon going before a new notary a second and third time.

In addition to the conclusive proof supplied by the three notarial documents to which reference has been made, we may add that an examination of the entire history of the efforts of the parties in interest to recover the property from Alfonso Tiaoqui, as revealed in other evidence, both oral and documentary, is convincing that the intention of everybody concerned was that when the property was finally recovered and disencumbered—if fortunately this could be accomplished—it should belong to all the Martinez heirs in the respective proportions indicated in the judicial partition.

It should not pass unnoticed that a strong motive on the part of Clemencia Grano to act for the Martinez heirs in the matter of taking over the property from Alfonso Tiaoqui is to be found in the fact that her own minor son, Jose

Martinez, was himself one of those heirs; and there can be no doubt that at the time the agreement was made she had a natural desire to assist all her relatives, as well as her own son, in recovering the property. This circumstance adds weight to the antecedent probability that she would have entered into the exact agreement which she now seeks to evade.

The decision in the court below was in part, if not chiefly, based on the circumstance that the time for redemption stated in the contract of sale with pacto de retro to Alfonso Tiaoqui had already passed when the repurchase was effected by Clemencia Grano, with the consequence that, in the opinion of the trial judge, the property had already consolidated in the purchaser. But it can be readily demonstrated that the consolidation of the property had not taken place, for this, among other reasons, that by virtue of a stipulation contained in the contract between Tiaoqui and the Martinez heirs consolidation was not to take place until the fact that the vendors had failed to redeem the property should be noted in the registry of titles of Laguna. No such annotation was in fact made at any time.

Moreover, upon examining the proof relative to the efforts of the Martinez heirs to redeem the property, and considering the just attitude of continuous indulgence exhibited by Tiaoqui, it is entirely clear that all he wanted was to get back the money which had been advanced by him, together with the stipulated rent. He at no time showed any desire to keep the property or assert title as owner by purchase otherwise than as was necessary to secure the money which he had advanced upon the property. In other words, the sale with pacto de retro to him involved a mere loan to the Martinez heirs, secured by that form of conveyance. This being true, the property had not consolidated in him; and the heirs could still have enforced the right of redemption.

As the Martinez heirs thus demonstrably retained their redemptionary interest in the property in question at the time it was acquired by Clemencia Grano, the latter was unquestionably bound by the stipulations contained in the documents in which she had recognized their rights and had agreed to hold and administer the property for the common benefit of all. Those stipulations are not mere nuda pacta, but are supported by a sufficient consideration in law, which is found in the circumstance that by virtue of those agreements Clemencia Grano was able to acquire, and did acquire, the legal title to property in which others had a subsisting interest, whereby she became entitled to use and administer the same for the purpose and to the end contemplated. Nor is the situation in anywise changed by the circumstance that when the property in question was hypothecated to "El Hogar Filipino," a few other parcels, some of which belonged exclusively to Clemencia Grano, were included in the mortgage.

The point being determined that Clemencia Grano is bound by the stipulations contained in the documents so often alluded to, it results that, but for her renunciation of the trust, she would have been entitled to retain possession and administer the property for the purpose of liquidating the loan from "El Hogar Filipino." In such case she would have remained in the position of an active trustee, with a duty to administer the property and liquidate the mortgage for the benefit of all concerned. But when a person thus circumstanced assumes an attitude hostile to the real parties in interest, this necessarily operates as a renunciation of the trust; and this is sufficient to justify the court in displacing such unfaithful trustee. Speaking in terms of the doctrine of the civil law, we may say that the failure of the trustee in the present case to administer the property for the benefit of all persons in interest entitles the plaintiffs in this action to have the contract of agency and administration rescinded; and if necessary to the accomplishment of justice, we should not hesitate to make such disposition. However, we think that the object aimed at in this case can be more conveniently accomplished by the device of reinstating the temporary receivership, as will be ordered in the dispositive part of this decision.

As to the rights of "El Hogar Filipino," it is evident that this association is an innocent purchaser which has lent its money in good faith upon the security of the mortgage covering the property here in question as well as the three additional parcels belonging to Clemencia Grano and another, parcel (k), belonging to Julio Martinez already

referred to. The present litigation therefore must not be allowed to prejudice the substantial rights of the building and loan association.

The premises considered, we hereby declare that the title acquired by Clemencia Grano by purchase, on December 19, 1917, from Alfonso Tiaoqui of the property which had been acquired by him under the contract of sale with pacto de retro dated September 28, 1916, from the heirs of Juan Martinez and Macaria Ticson, was acquired and is now,, held in trust by the said Clemencia Grano for the benefit of the said heirs in the manner indicated in the judicial partition approved by the Court of First Instance of Laguna on July 7, 1915, subject, however, to the mortgage in favor of "El Hogar Filipino" executed by Clemencia Grano on December 19, 1917. The plaintiffs are, furthermore, entitled to have an accounting from the said Clemencia Grano of all the proceeds obtained by her from the property in question during the period of her administration, or which might have been obtained by her in the exercise of reasonable diligence; and if it should appear that any part of said proceeds have been appropriated or squandered by her, instead of being applied to the debt due to "El Hogar Filipino," she will be required to pay the same into court. Again, it being manifestly improper that a person in the hostile attitude occupied by Clemencia Grano towards the Martinez heirs should be allowed to administer the property in question, it results that the receivership should be reinstated; and a proper receiver shall be appointed who, under the orders and supervision of the Court of First Instance, will proceed to administer the property in a faithful and husbandly way for the speedy liquidation of the debt to "El Hogar Filipino." When said debt shall have been liquidated, the receiver shall be required to render his final account and the receivership shall be discharged; after which Clemencia Grano shall be required by proper order in this cause to execute such documents and do such other acts as may be necessary to place the title of the different parcels of property concerned in this litigation in the particular persons to whom it beneficially belongs. And for the further assuring of the purposes of this decree, the said Clemencia Grano and her successors in interest are hereby enjoined from alienating or encumbering any part of the questioned property during the pendency of this litigation without an order of court permitting the same. The court of origin is also directed to assess the damages, fees, and costs which the plaintiffs are entitled to recover of Clemencia Grano in accordance with the final stipulation expressed in the document dated December 16, 1917, and acknowledged on December 17 of the same year before the notary E. P. Virata; and to this end additional proof may be submitted by the respective parties if they so desire.

It must not be overlooked that, after the debt to "El Hogar Filipino" shall have been liquidated, the owners of the four parcels of land—belonging, one to Julio Martinez, and the other three to Clemencia Grano—which were hypothecated to "El Hogar Filipino" in conjunction with the property which is the subject of the present controversy, should be reimbursed to the extent that the income from those four parcels may have contributed to the satisfaction of the debt to "El Hogar Filipino;" and the amount thus to be returned to the owners of said four parcels shall be paid to them before Clemencia Grano shall be required to execute the documents of conveyance hereinabove referred to.

In accordance with the foregoing the judgment appealed from will be reversed and the cause remanded to the court of origin for further proceedings in conformity with this opinion, with costs against the appellee Clemencia Grano. So ordered.

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

CONCURRING

VILLAMOR, J., concurring:

I concur. I only desire to add that in my opinion even granting that the ownership of the lands in question had been consolidated in the vendor Alfonso Tiaoqui, the appellants nevertheless have the right to participate, in the proportion agreed upon, in the properties bought by the appellee by virtue of the contracts executed between the parties on November 7, 1917 and December 19, of the same year, in accordance with the provisions of article 1091 of the Civil Code.

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