

NATIVIDAD HERRERA, ETC., ET AL., PLAINTIFFS AND APPELLANTS, VS. LUY KIM GUAN, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 17043. January 31, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal from the decision of the Court of First Instance of Zamboanga City (a) dismissing plaintiff-appellant's complaint for the recovery of three (3) parcels of land and their produce in the sum of P320,000.00; and (b) instead, sentencing plaintiff to pay P2,000.00 for attorney's fees and P1,000.00 for expenses of litigation, to defendant Lino Bangayan, and P2,000.00 as attorney's fees and P500.00 as expenses of litigation, to the other defendant Luy Kim Guan.

The pertinent facts as found by the trial court and upon which its decision was predicated are set forth in the following portion of the decision appealed from:

"The plaintiff Natividad Herrera is the legitimate daughter of Luis Herrera, now deceased and who died in China sometime after he went to that country in the last part of 1931 or early part of 1932. The said Luis Herrera in his lifetime was the owner of three (3) parcels of land and their improvements, known as Lots 1740, 4465 and 4467 of Expediente No. 5, G.L.R.O. Record 477 and the area, nature, improvements and Boundaries of each and every of these three (3) lots are sufficiently described in the complaint filed by the plaintiffs.

"Before leaving for China, however, Luis Herrera executed on December 1, 1931, a deed of General Power of Attorney, Exhibit 'B', which authorized and empowered the defendant Luy Kim Guan, among others to administer and sell the properties of said Luis. Herrera.

"Lot 1740 was originally covered by Original Certificate of Title 8601 registered in the name of Luis Herrera, married to Go Bang. This lot was sold by the defendant Luy Kim Guan in his capacity as attorney-in-fact of the deceased Luis Herrera to Luy Chay on September 11, 1939, as shown in Exhibit '2', the corresponding deed of sale. Transfer Certificate of Title No. 3162, Exhibit '3', was issued to Luy Chay by virtue of said deed of sale. On August 28, 1941, to secure a loan of P2,000.00, a deed of mortgage to the Zamboanga Mutual Building and Loan Association was executed by Luy Chay, Exhibit '4'. On January 31, 1947, the said Luy Chay executed a deed of sale, Exhibit 'E', in favor of Lino Bangayan. By virtue of this sale, Transfer Certificate of Title T-2567 was issued to Lino Bangayan on June 24, 1949, Exhibit '1'.

"Lots 4465 and 4467 were originally registered in the name of Luis Herrera, married to Go Bang, under Original Certificate of Title No. O-14360, Exhibit '5'. On December 1, 1931, Luis Herrera sold one-half (1/2) undivided share and to Luis .Herrera and Go-Bang, the other half (1/2), as shown Exhibit '12' and Exhibit '12-A', the latter an annotation made by the Register of Deeds of the City of Zamboanga, in which it is stated as follows:

'Cancelado el presente Certificado en virtud de una escritura de traspaso y en su lugar se ha expedido el Certificado de Titulo No. 494-(T-13045) del Tomo 2 el Libro de Certificados de Transferencias.'

(Fdo.) R. D. MACROHON

Registrador de Titulos

Ciudad de Zamboanga'

"On July 23, 1937, Luis Herrera thru his attorney-in-fact Luy Kim Guan, one of the defendants, sold to Nicomedes Salazar his one-half 1/2 participation in these two (2) lots, as shown in Exhibit 'C', the corresponding deed of sale for P3,000.00. Transfer Certificate of Title No. T-494-(T-13045) was issued to Nicomedes Salazar and to the defendant Luy Kim Guan, Exhibit '7'. On August 4, 1936, the defendant Luy Kim Guan and Nicomedes Salazar executed a deed of mortgage in favor of the Bank of the Philippine Island to secure a loan of P3,500.00, Exhibit '6'. On August 17, 1937, the defendant Luy Kim Guan and Nicomedes Salazar sold Lot 4465 to Carlos Eijasantos for the sum of P100.00 as shown in Exhibits '9', corresponding deed of sale, and Transfer Certificate of Title No. T-2653 was issued on September 7, 1939 to Carlos Eijasantos Exhibit '10'. Nicomedes Salazar sold his half 1/2 interest on Lot 4467 to the defendant Lino Bangayan for P3,000.00 on February 22, 1949, Exhibit 'B', and the corresponding Transfer Certificate of Title T-2654 was issued to Lino Bangayan and to Luy Kim Guan, both are co-owners in equal shares, Exhibits '8'. opinion of the City Attorney, Exhibit 'p', and an affidavit of Atty. Jose T. Atilano, Exhibit 'O', state that Lino Bangayan is a Filipino citizen.

"As admitted by both parties (plaintiffs and defendants) Luis Herrera is now deceased, but as to the specific and precise date of his death the evidence of both parties failed to show."

It is the contention of plaintiff-appellant that all the transactions mentioned in the preceding quoted portion of the decision were fraudulent and were executed after the death of Luis Herrera and, consequently, when the power of attorney was no longer operative. It is also claimed that the defendants Lino Bangayan and Luy Kim Guan who now claim to be the owners of Lots Nos. 1740 and 4467 are Chinese by nationality and, therefore, are disqualified to acquire real properties. Plaintiff-appellant, in addition, questions the supposed deed of sale allegedly executed by Luis Herrera on December 1, 1931 in favor of defendant Luy Kim Guan, conveying one-half interest on the two lots, Nos. 4465 and 4467, asserting that what was actually executed on that date, jointly with the general power of attorney, was a lease contract over the same properties for a period of 20 years for which Luy Kim Guan paid the sum of P2,000.00.

We find all the contentions of plaintiff-appellant untenable. Starting with her claim that the second deed executed on December 1, 1931 by Luis Herrera was a lease contract instead of a deed of sale as asserted by defendant Luy Kim Guan, we find that the only evidence in support of her contention is her own testimony and that of her husband to the effect that the deceased Luis Herrera showed the said document to them, and they remembered the same to be a lease contract on the three properties for a period of 20 years in consideration of P2,000.00. Their testimony was sought to be corroborated by the declaration of the clerk of Atty. Enrique A. Fernandez, who allegedly notarized the document. Outside of this oral testimony, given more than 23 years after the supposed instrument was read by them, no other evidence was adduced. On the other hand, defendant Luy Kim Guan produced in evidence a certification^[1] signed by the Register of Deeds of Dipolog, Zamboanga (Exh. 11) to the effect that a deed of sale, dated December 1, 1931 executed by Luis Herrera in favor of Luy Kim Guan and entered in the primary Book No. 4 as duly registered on September 30, 1936 under Original Certificate of Title No. 14360. It is to be noted that the deed of sale was registered shortly after the issuance in the name of Luis Herrera of Original Certificate of Title No. 14360 pursuant to Decree No. 59093, covering the two lots, Nos. 4465 and 4467 (Exh. 5), dated April 7, 1936. In virtue of said deed of sale of December 1, 1931, Original Certificate of Title No. 14360 was cancelled and Transfer Certificate of Title No. 13045 (Exh. 12) in the names of the conjugal partnership of the spouses Luis Herrera and Go Bang, one-half share, and Luy Kim Guan, single, one-half share, was issued on September 30, 1936. Later, or on July 23, 1937, Luy Kim Guan, in his capacity as attorney-in-fact

of Luis Herrera, sold the half interest of the latter in the two parcels of land, in favor of Nicomedes Salazar, whereupon TCT No. 13045 was cancelled and TCT No. RT-657 (494-T-13045) (Exh. 7) was issued in the names of Luy Kim Guan and Nicomedes Salazar in individual equal shares. On August 4, 1937, both Luy Kim Guan and Nicomedes Salazar mortgaged the two parcels in favor of the Bank of the Philippine Islands for the sum of P3,500.00 (Exh. 6). On August 17, 1937, Nicomedes Salazar and Luy Kim Guan sold their respective shares in Lot No. 4465 to Carlos Eijansantos (Exh. 9), subject to the mortgage, resulting in the issuance of TCT No. 2653 (Exh. 10) covering the entire lot No. 4465 in the name of said Carlos Eijansantos. On February 23, 1949, Nicomedes Salazar sold his half share in Lot No. 4467 to Lino Bangayan, as a consequence of which, TCT No. 2654 (Exh. B) was issued covering said Lot No. 4467 in the names of Luy Kim Guan and Lino Bangayan in undivided equal shares.

With respect to Lot No. 1740, the same was sold by Luy Kim Guan, in his capacity as attorney-in-fact of Luis Herrera, on September 11, 1939 to Lui Chay (See Exh. 2) who, in August, 1941, mortgaged the same (Exh. 4) to the Zamboanga Mutual Loan and building Association (See TCT No. 3162 [Exh. 3] issued in the name of Lui Chay). Later on, Lui Chay sold the entire lot to defendant Lino Bangayan by virtue of the deed of sale dated January 31, 1947 (Exh. E), and as a consequence thereof, TCT No. 2567 was issued in the name of said vendee. (See Exh. 1). As a result of these various transactions, duly recorded in the corresponding office of the Register of Deeds, and covered by appropriate transfer certificates of title, the properties are now registered in the following manner: Lot No. 1740, in the name of Lino Bangayan; Lot No. 4465, in the name of Carlos Eijansantos; and Lot No. 4467, in the names of Lino Bangayan and Luy Kim Guan in undivided equal shares.

In the face of these documentary evidence presented by the defendants, the trial court correctly upheld the contention of the defendants as against that of plaintiff-appellant who claims that the second deed executed by Luis Herrera in 1931 was a lease contract. It is pertinent to note what the lower court stated in this regard, that is, if the second deed executed by Luis Herrera was a lease contract covering the 3 lots in question for a period of twenty (20) years, there would have been no purpose for him to constitute Luy Kim Guan as his attorney-in-fact to administer and take charge of the same properties already covered by the lease contract.

Coming now to the contention that these transactions are null and void and of no effect because they were executed by the attorney-in-fact after the death of his principal, suffice it to say that as found by the lower court, the date of death of Luis Herrera has not been satisfactorily proven. The only evidence presented by the plaintiff-appellant in this respect is a supposed letter received from a certain "Candi", dated at Amoy in November, 1936, purporting to give information that Luis Herrera (without mentioning his name) had died in August of that year. This piece of evidence was properly rejected by the lower court for lack of identification. On the other hand, we have the testimony of the witness Lu Chung Lian to the effect that when he was in Amoy in the year 1940, Luis Herrera visited him and had a conversation with him, showing that the latter was still alive at the time. Since the documents had been executed by the attorney-in-fact one in 1937 and other in 1939, it is evident, if we are to believe this testimony, that the documents were executed during the lifetime of the principal. Be that as it may, even granting *arguendo* that Luis Herrera did die in 1936, plaintiffs presented no proof and there is no indication in the record, that the agent Luy Kim Guan was aware of the death of his principal at the time he sold the property. The death of the principal does not render the act of an agent unenforceable, where the latter had no knowledge of such extinguishment of the agency.[2]

Appellants also raise the question of the legality of the titles acquired by Lui Chay and Lino Bangayan, on the ground that they are disqualified to acquire real properties in the Philippines. This point is similarly without merit because there is no evidence to support the claim. In fact, in the deed of sale as well as in TCT No. 3162 issued to Lui Chay, the latter was referred to as a citizen of the Philippines. Nevertheless, the lower court acknowledged the

probability that Lui Chay could have been actually a Chinese citizen.[3] At any rate, the property was subsequently purchased by Lino Bangayan, as a result of which TCT No. 3162 in the name of Lui Chay was cancelled and another certificate (TCT No. T-2567) was issued in favor of said vendee.

As to Bangayan's qualification, the lower court held that said defendant had sufficiently established his Philippine citizenship through Exhibit P, concurred in by the Secretary of Justice. We find no reason to disturb such ruling.

With respect to Luy Kim Guan, while it is true that he is a Chinese citizen, nevertheless, inasmuch as he acquired his one-half share in Lot No. 4467 in 1931, long before the Constitution was adopted, his ownership can not be attacked on account of his citizenship.

Appellants, in this appeal, contest the judgment of the court a quo awarding defendants Lino Bangayan and Luy Kim Guan attorney's fees in the sum of P2,000.00 each, and expenses of litigation in the amounts of P1,000.00 and P500.00, respectively. We agree with the appellant in this regard.

This Court has laid down the rule that in the absence of stipulation, a winning party may be awarded attorney's fees only in case plaintiff's action or defendant's stand is so untenable as to amount to gross and evident bad faith.[4] The same thing, however, can not be said of the case at bar. As a matter of fact, the trial court itself declared that the complaint was filed in good faith. Attorney's fees, therefore, can not be awarded to defendants simply because the judgment was favorable to them and adverse to plaintiff, for it may amount to imposing a premium on the right to redress grievances in court. And so with expenses of litigation. A winning party may be entitled to expenses of litigation only where he, by reason of plaintiff's clearly unjustifiable claims or 'defendant's unreasonable refusal to his demands, was compelled to incur said expenditures. Evidently, the facts of this case do not warrant the granting of such litigation expenses to defendants. In the absence of proof, that the action was intended for reasons other than honest, we may agree with the trial court that the same must have been instituted by plaintiffs in their belief that they have a valid cause against the defendants.

Wherefore, and with the above modification, the decision appealed from is hereby affirmed in all other respects, without prejudice to appellants' right to demand from the agent (Luy Kim Guan) an accounting of the proceeds of the agency, if such right is still available. No costs. So ordered.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, and Dizon, JJ., concur.

[1] The corresponding deed in the office of the Register of Deeds was destroyed during the war.

[2] Art. 1738, old Civil Code, Buason, et al., vs. Panuyas, 105 Phil. 795; 56, Off. Gaz. 6925.

[3] At the date of the hearing, Lui Chay was believed to be already dead, hence, he was not presented in court.

[4] Jimenez vs. Bucov. 103 Phil., 40; 54 Off. Gaz., [32] 7560; Castillo vs. Samonte, 106 Phil., 1023.

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