

JUAN VERCELUZ ET AL., PLAINTIFFS AND APPELLEES, VS. DEOGRACIAS EDANO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 21284. March 12, 1924

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

In this action the plaintiffs seek to annul a deed of sale of a certain land, or, if it is held valid, to have it rescinded, and to compel the defendants to return the land described in the complaint with the fruits received from the institution of the action, with a reservation of their right to file a criminal action against the defendants Deogracias Edano, and Nicolas T. Zamora, with the costs of the suit, and for such other remedy as may be deemed just and equitable.

For answer to the complaint the defendants made a general and specific denial, and set up a special defense, alleging that the plaintiffs, in a public document dated October 11, 1914, sold to the defendants the land described in the complaint; that since the date of said deed the defendants have been in possession of the land quietly, continuously, and peacefully and as owners with the acquiescence of the plaintiffs who never questioned the validity or efficaciousness of the deed of sale; that the latter was signed by the plaintiffs with full knowledge of its nature and contents, the plaintiff Juan Verceluz having afterwards, that is, on April 6, 1916, acknowledged and ratified said sale in an official document and under oath; that by this deed of sale and subsequent acknowledgment, the plaintiffs are in estoppel; that the latter let the period of four years elapse without bringing any action for annulment of such sale, which action has already prescribed. And the defendants prayed that they be absolved from the complaint with the costs against the plaintiffs.

After trial, the lower court rendered decision, decreeing the rescission of the sale, and sentencing the defendants to return to plaintiffs the land in question and to render an account of all the fruits thereof received from the filing of the complaint, or the value of said fruits, without express finding as to costs.

The defendants appeal from this judgment assigning errors thereto:

"1. In holding that the defendants had not paid to the plaintiffs the stipulated price of three thousand pesos (P3,000).

"2. In holding the testimony of the plaintiff and his witnesses on the question of payment to be more credible than that of the defendants.

"3. In holding that the failure of Attorney De Mesa and the defendant Maria Verceluz de Edano to testify is not accounted for, nor justified, and constitutes proof against the defendants.

"4. In decreeing the rescission of the sale evidenced by Exhibit 2, and in ordering the return of the land in question to the plaintiffs.

"5. In holding that the defendants did not possess the land in good faith; in ordering them to render an account of the fruits received from the date of the filing of the complaint, December 12, 1918, until the return of said

land; and in sentencing them to pay the value of the fruits.

"6. In not dismissing the complaint and in not finding that the defendants are the only owners of the land in litigation, first by having purchased the same from, and paid its price to, the plaintiff, and second, because the latter are in estoppel.

"7. In denying the motion for new trial."

In their brief the appellees insist that the aforementioned sale is void on account of fraud. This question cannot now be raised by them after said sale was declared valid by the trial court from whose judgment they did not appeal.

The only principal question in this appeal is whether or not the price of the sale was paid by the defendants. This is the point involved in the first three assignments of error which are argued together by the appellants.

It is a fact admitted by the defendants that, in spite of it being stated in the deed of sale Exhibit 2 that the price of the sale had been paid, such price had not been, and was not, paid on October 11, 1914, the date of the execution of said deed. But they claimed that said price was paid on March 19, 1915.

Against the testimony of the defendant Deogracias Edano, who affirms said payment to have been made, we have that of the plaintiffs who deny it, which is corroborated by Alfonso Recto and Pablo Pajarillo. It appearing without discussion that the price was not paid, even on the date of the deed of sale, it was incumbent upon the defendants sufficiently to show that it was paid on a subsequent date.

The evidence does not sufficiently show such a payment. The fact that the lower court held the sale valid over the claim of the plaintiffs does not operate as a declaration that the latter's testimony is false, to the effect that they have not received the price of the sale. The rule *falsus in uno, falsus in omnibus* is no longer considered invariable. (40 Cyc, 2586-2588.)

We find that the payment of the three thousand pesos purchase price of the land in dispute was not sufficiently proven.

The findings assailed in the fourth assignment of error are a consequence of the holding that the purchase price was not paid, and were made in view of the prayer for rescission contained in the complaint.

The defendant purchasers having violated their obligation to pay the purchase price, the plaintiff vendors have the right to demand either the payment of such a price, or the rescission of the contract. (Arts. 1506 and 1124, Civil Code.)

In the fifth assignment of error it is contended that the defendants possessed the land in good faith and, therefore, should not be required to render an account of the products received from the filing of the complaint.

As a consequence of the rescission of this sale, the defendants are bound to return to the plaintiff the land with its fruits (art. 1295, Civil Code) ; which return must retroact to the date when this action was instituted.

The last two errors are inferences from the preceding ones.

We find in the record no sufficient ground for disturbing the judgment appealed from, which is hereby affirmed in all its parts, with the costs against the appellants'. So ordered.

Street, Malcolm, Avanceña, Ostrand, and Johns, JJ., concur.

Judgment affirmed.

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