MIGUEL CORDOVERO AND AMBROSIA ALCAZAR, PLAINTIFFS AND APPELLANTS, VS. JOSE VILLARUZ AND MARCIANO BORROMEO, DEFENDANTS AND APPELLEES.

G.R. No. 21586. November 08, 1924

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

It might be well to remember that on September 13, 1911, the spouses Miguel Cordovero and Ambrosia Alcazar, plaintiffs herein, sold in a public document to Januario Borromeo an hacienda known as San Jose composed of Cordovero and Alcazar vs. Villaruz and Borromeo three parcels, one of which is known as Camalignon, and is the subject-matter of this case. The price stipulated for the Hacienda de San Jose, with the improvements described in the deed of sale was P31,000 payable as follows: P10,000 at the signing of the document; P5,000 in April, 1912; P10,000 in July, 1913, and P6,000 in July, 1914.

On the 12th of October, 1912, Marciano Borromeo was subrogated into the rights and obligations of his father Januario Borromeo under the contract of sale of the hacienda; and none of the three installments of the price having been paid, the aforesaid spouses, the sellers, brought suit against Marciano Borromeo and the administrator of the estate of Januario Borromeo, then deceased, for the rescission of the contract of purchase and sale of the hacienda.

That case was adjudicated by the Court of First Instance of Capiz on February 3, 1919, holding: (a) That the obligation arising from the purchase of the property described in the complaint, contracted by Januario Borromeo with the plaintiffs, was novated by substitution of the original purchaser or debtor, and transmitted to the defendant Marciano Borromeo; (b) that the latter has not paid to the plaintiffs the twenty-one thousand pesos (P21,000) balance remaining of the stipulated price of the sale; (c) that the plaintiffs are entitled to rescind said sale and to recover the realty described in the complaint; (d) that the sale and conveyance of said realty to the claimant Jose Araneta is void and of no effect as against the plaintiff sellers; (e) that the defendant Marciano Borromeo should return to the plaintiffs the aforesaid realty, and he was thereby prohibited to make any contract that might affect the said property to the damage of the plaintiffs; (f) that the sale and conveyance of the chattels and cattle are effective and binding against the plaintiffs; (g) that the defendant must pay interest upon the unpaid price of twenty-one thousand pesos (P21,000) at the stipulated rate of ten per cent (10%) until the return to the plaintiffs of the property ordered returned, and the payment of the various amounts included in the aforesaid sum at which the chattels and cattle described in the complaint were valued; and that said interest shall be in lieu of the indemnity for damages; (h) that the plaintiffs shall return to the defendant Marciano Borromeo the sum of ten thousand pesos (P10,000), which Januario Borromeo had paid them, with the right to retain and apply the same upon the payment of such property as the defendant may fail to return, or the value thereof as he cannot pay to the plaintiffs, or upon the stipulated interest already due; (i) that the defendant Marciano Borromeo shall pay the costs to the plaintiff spouses. On appeal, this judgment was affirmed by this court in its entirety in a decision rendered November 20, 1920 (R. G. No. 155021 [1]).

The record having been remanded to the court of origin for the execution of the judgment, two parcels of the San Jose estate were returned to the spouses Cordovero and Alcazar, but the parcel in Camalignon was not, on account of an opposition presented by the herein defendant Jose Villaruz, who asserted title thereto for having acquired the same from the defendant Marciano Borromeo on December 23, 1913, by exchange with other parcels pertaining to him, situated in the sitio of Manamok.

These are the facts from which this case arose, wherein the plaintiffs seek to recover the land in Camalignon described in the complaint, which is now in the possession of the defendant Jose Villaruz, who alleges, as above stated, that he has acquired it from his codefendant Marciano Borromeo by exchange.

The court below rendered judgment on February 15, 1923, adjudging and decreeing: (a) That the plaintiffs Miguel Cordovero and Ambrosia Alcazar are the absolute owners of the parcel of land in Camalignon, hereinbefore described, and are entitled to recover possession thereof and the title thereto; (b) that the defendants Jose Villaruz and Marciano Borromeo are under the obligation to return and deliver the aforesaid land in Camalignon to the plaintiffs, with the exclusion of the improvements which belong to the first named defendant; (c) that the document evidencing the contract between the defendants Marciano Borromeo and Jose Villaruz, whereby Borromeo exchanged the land in Camalignon with that of Villaruz in Manamok, is null and void and of no effect as against the plaintiffs Miguel Cordovero and Ambrosia Alcazar; and (d) that the defendants shall pay the costs of the suit.

Both parties took an exception to this judgment and moved for new trial on the ground that the judgment was against the law and the weight of the evidence. And on March 10, 1923, the trial court rendered an amended decision, the dispositive clause of which is as follows:

"For the foregoing reasons, the court believes that in justice it must reconsider its decision entered February 15th of this year, and render this one, holding that the exchange made in the month of December, 1913, between the lands in Manamok and Camalignon is valid and effective against the plaintiffs; that the defendant Jose Villaruz is not affected by the judgment entered in case No. 875 as to his title and possessory rights over the lands in litigation; that he is not affected either by the notice of litis pendentia given by the plaintiffs, inasmuch as said notice was given after the acquisition by said defendant Jose Villaruz of his rights over the property in question.

"Wherefore, the defendant Jose Villaruz is absolved from the complaint with the costs against the plaintiffs; and with regard to the defendant, Marciano Borromeo, the court is also of the opinion that he did not incur any liability by the execution of the contract of exchange evidenced by Exhibit 8, and, consequently, he is also absolved from the complaint."

Under the first assignment of error, the appellants maintain two propositions: First, that the trial judge, the Honorable Fernando Salas, had no jurisdiction, having rendered his amended decision during vacation, as at that time the Honorable Francisco Santamaria was on duty as vacation judge, in the court of Capiz. This proposition is untenable. Under section 13 of Act No. 867, the judges of first instance have the power to render and sign their decisions after the holding of the trial and after hearing the parties and their attorneys in the respective province, provided that the judge rendering the decision signs it within the jurisdiction of the Philippine Islands. Furthermore, according to section 129 of the Administrative Code, in order to collect their salaries the judges of first instance must certify to having dispatched and decided all "the cases submitted for judgment within the period of ninety days, without excluding from the computation the vacation period, as was held by this court in the case of In re Impeachment of Judge Flordeliza (44 Phil., 608).

The second proposition maintained by the appellants is that, after a motion for new trial is presented under section 145, subsection 3, of the Code of Civil Procedure, the court below cannot enter an amended decision. This

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proposition is also untenable. The filing of said motion does not deprive the court of the power granted by section 11 of the same Code to alter, modify or change its decrees and decisions, as law and justice may demand, provided that said decisions and decrees have not become final. As a matter of fact, what the appellants seek in the motion of February 21, 1923, is that "the part of the decision of February 15, 1923, be reconsidered which denies the allowance of damages to the plaintiffs, and a new trial be granted in this respect on the ground that the evidence does not justify the decision of the court in not allowing damages to the plaintiffs." Simultaneously with the foregoing motion, the defendants filed a separate motion for new trial on the ground that the judgment of December 15, 1923, was against the weight of the evidence of record and the law. After a hearing upon these motions, the court rendered the amended decision here in question.

It does not appear that the trial court has expressly passed upon the plaintiff's motion, but in its order of August 11, 1923, whereby the bill of exceptions was ordered amended, it is stated that its amended decision of May 10, 1923, was in effect a ruling upon the motion for new trial of the plaintiffs. Under such circumstances it clearly appears that the lower court reconsidered its original decision, as prayed for in the motion of the plaintiffs, which is perfectly within the power and authority of the court below, and after reconsidering it, that court deemed it necessary to amend the same as it did. The court did not grant a new trial, and we believe this was no error, since by the very terms of the motion of the appellants, no evidence was offered outside of the evidence already in the record, and the whole thing was merely a question as to whether or not such evidence was sufficient to justify the awarding of damages.

Section 145 of the Code of Civil Procedure, as amended by Act No. 2347, provides:

"Within thirty days after notice of a decision rendered by a Court of First Instance, the judge thereof may at the petition of the party aggrieved, and after due notice to the adverse party, set aside the judgment and grant a new trial, provided the petition is based on any of the following causes materially affecting the legitimate rights of the petitioner:

"1. Accident or surprise which ordinary prudence could not have guarded against and by reason of which the party applying has probably been impaired in his rights.

"2. Newly discovered evidence, material to the party mak- ing the application, which he could not, with reasonable diligence, have discovered and produced at the trial.

"3. Because the judge has become satisfied that excessive damages have been awarded, or that the evidence was insufficient to justify the decision, or that it is against the law."

Said section 145 enumerates the cases wherein a new trial may be granted. Section 146 provides that the ruling granting or denying this motion for new trial cannot be the subject of an exception, it being considered to be a matter addressed to the discretion of the judge, as stated in the second part of section 141. However, said section 146 provides also that if the motion for new trial is on the ground that the evidence does not sufficiently justify the decision of the court, an exception may be taken to the order overruling said motion, as in other cases (Vergara vs. Laciapag, 28 Phil., 439), and this is so in order that this court may have jurisdiction to review the evidence in case of appeal.

In the case of Soriano vs. Aquino (31 Phil., 176), this court held: "Counsel for the applicant moved for a new trial on the ground that said judgment of September 3, 1912, was not in accordance with the facts and the law, and, as this is one of the cases in which, according to section 145 of the Code of Civil Procedure, the judge may, on petition of the party aggrieved, set aside the judgment and grant a new trial when he has become satisfied that the evidence was insufficient to justify the decision or that it is contrary to law, the trial judge acted in conformity

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with the provisions of said section in setting aside the first judgment rendered by him and in ordering or granting the taking of new evidence when he declared the trial again open, for otherwise such trial would have had no object, since the setting aside of the judgment rendered in the previous trial was necessarily a condition precedent to declaring the case to be reopened." According to this, the granting of new trial for the introduction of further evidence necessarily requires the previous revocation of the prior decision. The doctrine laid down does not, however, mean that in revoking its original decision by amending the same, upon the motion of a party, or upon its own initiative, the court must necessarily order the holding of a new trial. Under section 145 of Act No. 190, the judge may correct errors in his decision. (Palomata vs. Villareal, 40 Phil., 641.)

In the instant case, the amendment of the original decision was a correction of an error in the weighing of, the evidence introduced by the parties. The holding of a new trial was useless inasmuch as the appellants had not suggested or proposed any other evidence to be presented at the new trial, and it does not appear, on the other hand, that the court was in need of any further evidence in order to establish the conclusion it reached. The discretionary power granted to judges by section 145 of the Code of Civil Procedure to revise or amend their decisions before they have become final may be exercised upon a motion based on the third paragraph of section 145, either separately from, or jointly with, the power to grant a new trial; but the exercise of the power to grant new trial requires the revocation of the former decision.

Let us now discuss the question on its merits. By virtue of that judgment of the lower court, affirmed by this court, about the rescission of the contract of purchase and sale of the San Jose estate, the defendant Borromeo was under the obligation to return the San Jose estate to the plaintiffs, including the land in Camalignon, and consequently the right of the plaintiffs to have said lands returned to them was sanctioned. Hence the action brought by the plaintiffs to recover the land in Camalignon. But Jose Villaruz, one of the herein defendants, alleges having acquired the land in Camalignon from his codefendant Marciano Borromeo by exchange with his lands in Manamok. And this was in December, 1913, according to the notarial document Exhibit 8, of which a precautionary note was made in the registry of property on November 22, 1916.

The record shows certain facts which raise serious suspicion that such a contract of exchange was simulated. Such facts are: (a) The execution by Borromeo of mortgages in favor of Siuliong & Co. on July 15, 1924, and in favor of Jose Araneta on September 4, 1915, and the making of the sale in favor of Jose Araneta on November 1, 1916 (Exhibit X-2), all of which included the land in Camalignon; (b) the filing of the claim (Exhibit A) of February 17, 1917, by Jose Araneta, wherein he alleges himself to be the owner of the land in Camalignon; (c) the silence of the defendant Jose Villaruz in the case for the rescission of the purchase and sale of the San Jose estate, knowing that the land in Camalignon was included in the litigation, for on October 17, 1916, a note was made in the registry of property of the litis pendentia concerning the San Jose estate; and (d) the fact that the consent of the plaintiffs does not appear in the document Exhibit 8. It is indeed difficult to understand how Borromeo could have mortgaged, and even sold the San Jose estate with the land in Camalignon after the alleged exchange with the land in Manamok, if said exchange was effective. Jose Araneta intervened as a third party claimant in the case for rescission of the sale of the San Jose estate, claiming the estate as his, of which the land in Camalignon is a part. And yet the defendant Jose Villaruz did not attempt to defend his alleged right under the supposed exchange.

But supposing that said contract of exchange was really executed by and between tlie two defendants, whereby Borromeo transferred the-land in Camalignon to Villaruz in exchange of the lands of Villaruz known as Manamok, such a contract, which does not appear recorded in the registry of property, cannot prejudice third persons, like the plaintiffs. And it is no argument against this that a precautionary note was made in the registry of property of the contract of exchange on November 22, 1916, for aside from the fact that said notation was subsequent to the note of lis pendens in this case, which was made on December 27, 1916, it does not appear that

the defect of the document noted by the registrar of deeds was straightened up, and therefore that precautionary notation has lost its effect after the sixty days following the date thereof under article 104 of the Mortgage Law.

Article 1295 of the Civil Code provides:

"Rescission makes necessary the return of the things which were the subject-matter of the contract, with their fruits, and of the price paid, with interest thereon. Therefore, it can only be effected when the person who seeks the rescission is able to return that which, on his part, he is bound to restore.

"Neither shall rescission take place when the things which are the subject-matter of the contract are lawfully in the possession of third persons who have not acted in bad faith.

"In such case, damages may be recovered from the person who caused the lesion."

Commenting on this article, Manresa says, among other things:

"The acquisition by a third person is an obstacle to the efficaciousness of the action for rescission, where the following two circumstances are present, to wit, that such third person is in lawful possession of the realty, that is to say, that he is protected by the law against said action by the registration in the registry, and that he did not act in bad faith."

Not having registered the right he alleges to have over the land in Camalignon, Villaruz cannot be protected against the effects of the judgment rendered in the action for rescission, not precisely for having been a party to that action, but by reason of the principle that res ubicumque sunt pro domino suo clamant. And this is not affected by the fact that the plaintiffs have no registered title, because section 194 of Act No. 2711, as amended by Act No. 2837, provides:

"No instrument or deed establishing, transmitting, acknowledging, modifying or extinguishing rights with respect to real estate not registered under the provisions of Act Numbered Four hundred and ninety-six, entitled 'The Land Registration Act,' and its amendments, shall be valid, except as between the parties thereto, until such instrument or deed has been registered, in the manner hereinafter prescribed, in t!he office of the register of deeds for the province or city where the real estate lies."

In his answer to the complaint, the defendant Villaruz alleges that by their coetaneous and subsequent acts, the plaintiffs have given their consent to said contract. But after examining the evidence, we are convinced that such consent was not given. The most conclusive proof that it was not is Exhibit 8 itself, wherein it appears that the plaintiffs did not intervene in the contract of exchange. The record discloses circumstances which apparently tend to indicate the plaintiffs' consent, but which in fact cannot mean any such consent. For instance, the defendant Borromeo filed an application in the Court of First Instance of Capiz on December 22, 1915, for the registration of a parcel of land in the barrio of Lugtugan, municipality of Capiz, acquired by purchase from Januario Borromeo, according to said application, and mortgaged to Jose Araneta. As appears in Exhibit A, said application was opposed by the plaintiffs Cordovero and Alcazar, alleging themselves to be the owners of the lands sought to be registered, as they had not received complete payment therefor from the purchaser Januario Borromeo. The appellants say in their brief that there is nothing in the application for registration that tends to indicate that the land in Manamok was included, and accepting this statement as true, we believe that the opposition of the appellants to said application does not mean their assent to the exchange in question, although later on the land in Manamok proved to have been included in the plan Exhibit 7.

It is further argued that Cordovero knew that Jose Villaruz was in possession of the land in Camalignon and Borromeo of that in Manamok. Granting this as a fact, it does not mean that the appellants gave their consent to

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the contract of exchange, for until the rescission of the sale of the San Jose estate, Cordovero could not intervene in the management thereof. While the contract of purchase and sale of the hacienda subsisted, Borromeo could. of course, exchange, mortgage, or lease it, subject to the action for rescission of the vendors in case of non-payment of the installments of the price.

It is no argument against Cordovero that he redeemed from the Government the San Jose estate which had been confiscated with the land in Manamok for non-payment of the land tax by the defendant Borromeo. This was the condition of the estate at the time of the execution of the judgment rendered in the aforesaid case for rescission, and Cordovero could not redeem only what was his, but had to redeem the whole parcel which appeared declared in the name of Borromeo and seized from him for non-payment of the land tax. And if subsequently a new tax declaration was made of all the parcel in which the land of Manamok appears to have been included, it was done by the provincial assessor and not by Cordovero. We hold that the redemption made by Cordovero of the land in which the land in Manamok was included and the new tax declaration do not prove that the appellants consented to the contract of exchange in dispute. It is said, and that seems to be true, that Cordovero caused an attachment to be levied on the palay planted by Borromeo in Manamok, This does not, however, prove his consent, for the object of the attachment was to collect a debt of Borromeo.

Moreover, the record contains circumstantial proof of the fact that the defendant Villaruz knew or ought to have known that the right of his codefendant Borromeo over the land in Camalignon was subordinate to the payment of the price at the time of making the exchange.

The validity and efficaciousness of the exchange necessarily depends upon the respective right of the parties to the contract over the things exchanged.

Our conclusion, therefore, is that the exchange of the land in Camalignon and Manamok, not having been registered in the registry of property, cannot prejudice the right of the plaintiffs to recover said land in Camalignon as a part of the San Jose estate, the sale of which had been rescinded by a final judgment.

As to the damages claimed by the appellants, it must be noted, in the first place, that their assignment of error has reference to the original judgment of the lower court, which is not in question in this appeal, and secondly, that the witness Lazaro Talamillo intimated that one Engilberto Cabanus, nephew of the plaintiff Cordovero, sowed palay in 1922 on the land in Manamok, the person being unknown from whom he obtained permission for doing so. At any rate, it appears that the evidence presented by the appellants as to the amount of the damages claimed are of a speculative nature, and is not therefore sufficient to justify a judgment for damages.

For all of the foregoing, the judgment appealed from is reversed, and the defendants Jose Villaruz and Marciano Borromeo are hereby sentenced to deliver to the plaintiffs the land in Camalignon described in the complaint, without special pronouncement as to costs. So ordered.

Johnson, Street, Malcolm, and Romualdez, JJ., concur.

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[1] Cordero and alcazar vs. Lopez Vito, not reported.

DISSENTING OPINION

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OSTRAND, J.:

I am unable to give my assent to the disposition made by the court of the present case. It is not disputed that at the time the exchange was made, Marciano Borromeo held the legal title to Camalignon and had a right to dispose of the same and that the possession given Jose Villaruz was legal. The second paragraph of article 1295 of the Civil Code reads as follows:

"Neither shall rescission take place when the things which are the subject-matter of the contract are lawfully in the possession of third persons who have not acted in bad faith."

Under this paragraph it is clear that the right of Cordovero to rescind the sale to Borromeo could not affect the rights of Villaruz, if the latter acted in good faith in regard to the contract of exchange of the Camalignon land for Manamok.

As far as I can see there is no evidence of bad faith on Villaruz' part. The two parcels exchanged were about of equal value, Manamok being slightly larger than Camalignon. The former was well adapted to the production of sugarcane, which suited Borromeo's purpose as a sugar planter; Camalignon was better adapted to rice cultivation and therefore suitable for Villaruz, who is a rice grower. Borromeo went into possession of Manamok and in having the San Jose Plantation surveyed for land registration, he included Manamok in the plan as part of the plantation and excluded Camalignon. That he cultivated Manamok and that Cordovero knew that he was doing so, ,is shown by the fact that Cordovero caused the crop on the land to be levied upon under an execution against Borromeo.

Villaruz remained in possession of Camalignon for nine years before the present action was brought and kept the land under cultivation, built houses on it and made other valuable improvements. What better evidence of the exchange being a bona fide transaction can be required?

That Borromeo in executing the mortgage on the plantation included Camalignon in the description of the land may have been purely accidental; the description of the land in the' mortgage may have been taken from the title papers antedating the exchange and in which the land description naturally would embrace Camalignon. In any event, Villaruz had nothing to do with the execution of the mortgage and the bad faith, if any, in that connection cannot be laid at his door.

The bad faith in this case, seems to me, to be on Cordoverb's side. He knew that Villaruz was in possession of Camalignon but did not make him a party to the action of rescission brought in 1916. He stood by and saw Villaruz make valuable improvements on the land, yet gave no indication that he intended to lay claim to the same for himself. Under the circumstances, he should be held estopped from bringing the present action.

The judgment appealed from should have been affirmed.

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