MARCOSA ABELLANA, PLAINTIFF AND APPELLANT, VS. FORTUNATA OBIAS, ACCOMPANIED BY HER HUSBAND, ALBERTO YLAYA, DEFENDANTS AND APPELLEES.

G.R. No. 22462. November 24, 1924

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced in the Court of First Instance of the Province of Cebu on the 20th day of February, 1922. Its purpose was to recover the possession of a certain piece or parcel of land, known as lot No. 1311 in a certain cadastral survey. The conditions upon which the plaintiff, claims the right to recover said parcel of land are mentioned in the complaint, and will be referred to later. The defendants interposed a general and special defense, together with a counterclaim.

The important facts as gathered from the record, and necessary for the decision of the present appeal, may be stated as follows:

First. On the 27th day of October, 1907, Marcosa Abellana was the owner of a lot located in the municipality of Cebu, Province of Cebu, which lot in a cadastral survey was numbered 1311.

Second. That on the 27th day of October, 1907, Dalmacia Abella was the owner of an adjoining lot, which in a cadastral survey later made, was known as lot No. 1309.

Third. That Dalmacia Abella later died, and the defendant Fortunata Obias, her daughter, became the owner of said lot No. 1309 by inheritance.

Fourth. On the 27th day of October, 1907, Marcosa Abellana sold, under a pacto de retro, her lot now known as 1311, the lot now in question, for the sum of P54, upon the following conditions: That the vendor Marcosa Abellana might repurchase said lot on the 27th day of October, 1920, by returning to the purchaser the sum of P54; and that during the period from the date of said contract up to the 20th day of October, 1920, the purchaser should pay to the vendor P.50 per month.

Fifth. That later, the exact date not appearing of record, a cadastral survey was presented in the Court of First Instance of the City of Cebu for the registration of a large number of lots, including said lot No. 1311.

During the consideration of that action (the cadastral survey), Marcosa Abellana, the herein appellant, laid claim to said lot and represented to the court that there was a mortgage existing against it in favor of Fortunata Obias, one of the appellees herein; and, in accordance with her representation, a notation was made upon the certificate of title, which was later issued in the name of Marcosa Abeliana, to that effect. The certificate of title was issued at Manila on the 21st day of February, 1921. The decree for the registration of said parcel of land seems to have been issued on the 29th day of April, 1916.

The conditions under which the plaintiff claims her right to recover said lot (No. 1311) are, first, by paying to the

defendants the amount of said mortgage (P54) and, second, that the defendants shall pay to her P10 a month as rent for said lot, from the commencement of the present action (February, 1922).

The defendants in fact admit all of the allegations of the plaintiff, except the allegation that the contract called a mortgage is in fact a pacto de retro and not a mortgage, and their obligation to pay the P10 a month. They insist that the title to said lot (No. 1311), by virtue of the lapse of time, had been consolidated in them and that they were therefore the owners.

The contention of the defendants that the contract for the payment of the P54 was a pacto de retro and not a mortgage is not now tenable for the reason that, whatever the contract was before the issuance of the certificate of title No. 5848 in favor of the plaintiff under the Torrens system, it was noted upon said certificate of title, as a part of the decree, as a mortgage and not a pacto de retro, with the full knowledge and consent of the defendants. That being true, they cannot now show that said contract was not a mortgage. By virtue of said decree and notation, which constituted a part of the decree, the contract between the plaintiff and the defendants is a mortgage, and if no other facts exist, the plaintiff is entitled, upon the payment of the amount due under said mortgage, to the possession of the land, or to maintain an action to foreclose said mortgage.

There exist, however, other facts clearly established in the record, which fully justify the contention of the defendants. They are: That after the registration of said lot (No. 1311) and before the commencement of the present action, the defendants and the plaintiff entered into a contract, by virtue of which the defendants were permitted to build a house upon said lot, which is alleged to be of the value of P4,500 and to buy said lot and to pay therefor the sum of P200 at any time the plaintiff might demand payment; and that the defendants stand ready and willing to pay the said P200 and, naturally, 'during the trial offered to pay the same.

While that contract was verbal, no objection was made during the trial to the proof, as to its form, showing the existence of said contract. Another fact is important, in our opinion, which supports the contention of the defendants, and that is, that they were the owners of the adjoining lot No. 1309, and that the said house which had been built at great cost, was constructed in a way so as to be located upon both lots (Nos. 1311 and 1309). Evidently, the defendants would not have built their residence so as to occupy both lots except in good faith, believing that their contract of purchase of lot No. 1311 was a valid and subsisting contract. The defendants are still willing and ready to comply with their contract of purchase of lot No. 1311 and to pay to the plaintiff the said sum of P200.

Considering all of the facts of record, we are of the opinion and so decide, that the judgment of the lower court should be affirmed, with the condition that the defendants shall, within the period of ten days after the return of this record to the lower court, pay to the plaintiff the sum of P200, and when said sum is paid they shall be entitled to a new certificate of title under the Torrens system in their names. And, without any finding as to costs, it is so ordered.

Street, Avancena, Villamor, Ostrand, and Romualdez, JJ., concur.

Malcolm, J., concurs in the result.

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