

SANTIAGO GOCHANGCO ET AL., PLAINTIFFS AND APPELLANTS, VS. R. L. DEAN, DEFENDANT AND APPELLANT.

G.R. No. 23109. March 20, 1925

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The plaintiffs seek to recover of the defendant the sum of P17,655 as the value of 5,885 coconut trees, plus P1,000 as attorney's fees.

The defendant answered with a general denial and a counterclaim for the sum of P1,914 paid by the defendant and which must be paid by the plaintiffs.

The Court of First Instance of Manila, where the action was instituted, rendered judgment absolving the defendant from the complaint, and the plaintiffs from the cross-complaint and counterclaim of the defendant.

Both parties have appealed, the plaintiffs assigning the following errors:

- The denial of the two motions of the plaintiffs dated January 3 and 7, 1924, praying that the defendant be adjudged in default on the ground of not having appeared nor answered the complaint within the period fixed by the law, the court knowing, as it very well knew, that said denial openly and manifestly violated the statutes and jurisprudence of this high court on the matter (pp. 7-17, plaintiffs' B. of E.).
- The finding that the plaintiffs seek to annul the contract of exchange in order to recover from the defendant the property exchanged (p. 28, Id.).
- The finding that it was one Thompson who induced the plaintiffs and defendant to exchange their respective lands (p. 24, Id.), and not the defendant himself, or at least by express order of the latter.
- The finding that it was not proven that the defendant committed fraud and that he had never had the intention to deceive the plaintiffs (p. 30, Id.), when, as a matter of fact, the contradictory and improbable testimony of the defendant clearly shows the falsity, bad faith or fraud committed by him, and the preconceived intention to secure the making of the exchange by fraudulent means.
- The finding that the defendant did not positively say (p. 26, Id.) that there were on the lands exchanged more, but not less, than 6,000 coconut trees, instead of finding that said defendant did so affirm, with full knowledge of the non-existence of said number of trees, and that such existence of said number was the primary consideration of the contract of exchange, without which the plaintiffs would not have accepted the carrying out of the transaction between them.
- The failure to hold, as shown by the record, that while the defendant attempted to establish or has established the fact that there were on his lands more than 6,000 coconut trees, according to his estimate, statement or belief, yet the fact is that not all of said coconut trees belong to him exclusively.

- The admission of Exhibits 1 to 13 of the defendant upon which its findings immaterial to this case are based, taking into account that, aside from the fact that said exhibits have no bearing at all on the instant case, they were not even identified.
- The unjust finding against the preponderance of the evidence of the plaintiffs, apparently reconciling it with the evidence of the defendant, and the absolution of the latter from the complaint.

The defendant, in turn, assigns the following as error:

- The failure to render judgment in his favor and against the plaintiffs for the sum of P414.

We find no merit in the first assignment of error made by the plaintiffs. The defendant's default is made to consist in the fact of the latter not having furnished the plaintiffs a copy of his appearance and answer. Such a fact cannot in itself alone constitute sufficient cause for adjudication of default. The record shows that said appearance and answer were filed with the court in due time, although the plaintiffs aver that they did not receive any copy thereof.

We find no error, much less injustice, in the denial of the motion for adjudication of default based on such a defect.

The other assignments of error go to the merits of the case.

The plaintiffs had purchased a land of the Pasay Estate by installments. The defendant was the owner of two parcels of land situated in Masbate. The plaintiffs and defendant agreed to exchange their respective properties, but before the final execution of the contract of exchange, the plaintiff Gochangco went to Masbate to make an examination of the parcels of land offered for exchange by the defendant.

The contract of exchange (Exhibits D and 1) was later executed. In the deed Exhibit D, the defendant stated, among other things, the following:

"It is also declared that the said described property is sold with all coconut trees growing on it, and I declared that I believe there are more than 6,000 coconut trees so growing, together with any and all improvements of any kind whatsoever existing on the said land including all movable goods, chattel, etc., found thereof."

The plaintiffs allege that defendant made them false and fraudulent representations as to the existence of 6,000 coconut trees on his lands in Masbate offered for exchange. This was not proven. It does not appear in the record that the defendant deliberately violated the truth in stating his belief that there were such a number of coconut trees on said lands. Furthermore, it was shown that the plaintiff viewed the lands and himself estimated that there were there more than six thousand coconut trees.

The facts herein proven, considered in the light of the provisions contained in article 1484 of the Civil Code, made applicable to this case by article 1541 of said Code, prevent us from holding the action brought by the plaintiffs to be of any merit. They have not established their alleged right to the judgment prayed for in their complaint.

As to the cross-complaint and counterclaim of the defendant, we find that in the deed Exhibit 1 executed by the plaintiffs in favor of the defendant, the former agreed to reimburse the latter what he might pay in connection with perfecting his title to the property in Pasay, exchanged for that of the defendant in Masbate, provided that the sum thus spent should exceed P1,500.

This was admitted by the plaintiffs in their reply to the cross-complaint and counterclaim of the defendant, where they also admitted the fact that for perfecting his title to the property, the defendant had spent the total sum of

P1,914; there being, therefore, an excess of P414 which the plaintiffs are under obligation to pay unto the defendant.

Wherefore the judgment appealed from is affirmed so far as it absolves the defendant from the complaint, but reversed so far as it dismisses the cross-complaint and counterclaim, and it is ordered that the plaintiffs pay the defendant the sum of P414, with legal interest thereon from January 3, 1924, when the cross-complaint and counterclaim was filed, without special finding as to costs. So ordered.

Johnson, Malcolm, Villamor, Ostrand, and Johns, JJ., concur.

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