

CHO CHUN CHAC, PLAINTIFF AND APPELLANT, VS. MAXIMO F. GARCIA, DEFENDANT AND APPELLANT.*G.R. No. 23236. March 02, 1925*

Ponente: VILLAMOR, J.

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The record before us shows that the defendant Maximo F. Garcia, according to transfer's certificate of title No. 1507, Exhibit 5, was the owner of a property known as "Varadero de Iloilo;" that on November 28, 1921, he sold said property to Dña. Trinidad Ledesma de Arroyo in the sum of P16,000 with right of repurchase for the term of six months from the date of the document Exhibit L, which might be extended two months, that is, up to July, 1922; that when the period for redemption was about to expire, said defendant sent a telegram to the plaintiff who was then in Manila, asking for money with which to pay the interest due to Dña. Trinidad Ledesma de Arroyo, in order to prevent the consolidation of her title; that the plaintiff, on July 26, 1922, as appears in Exhibit K, redeemed for himself the aforesaid "Varadero de Iloilo," and to that end, certificate of title No. 1985 was issued in favor of the plaintiff Cho Chun Chac under date of August 1, 1922, covering said property which certificate is Exhibit J. That on July 30, 1922, the plaintiff gave his brother, the defendant herein, an option to repurchase from the plaintiff or his heirs and representatives the "Varadero de Iloilo" for the sum of P17,280, for the term of three years to expire on December 31, 1925, as stated in Exhibit G, that is to say, a right of option in favor of the defendant was noted on the back of transfer certificate of title No. 1985, and a notice of lis pendens filed on November 9, 1923.

The plaintiff in his first cause of action alleges himself to be the owner of the personal property described in paragraph 2 of the complaint, and that the defendant was withholding them as mere lessee since August 1, 1922, and has not paid the monthly rent of P200, which amounted to P2,800 on the date of the filing of the complaint; and in the second cause of action the plaintiff alleges that on the back of transfer certificate of title No. 1985 it was noted that said property was subject to an option to repurchase for the sum of P17,280, and that said notation must be cancelled on the ground that the aforesaid deed of option registered as an incumbrance on the back of the aforesaid transfer certificate of title is false, the signature of the plaintiff having been forged; and that he has not executed the aforesaid deed of option in favor of the defendant Maximo F. Garcia.

The defendant in his answer made a general and specific denial of each and every allegation of the complaint and as special defense alleges that he is the owner of the property described in paragraph 2 of the complaint, and that his title appears on transfer certificate of title No. 1507; that on November 28, 1921, the aforesaid property was by him sold with right of repurchase to Dña. Trinidad Ledesma de Arroyo for the sum of P16,000, the period of redemption to expire on January 31, 1922, although the same may be extended up to July 31st of the same year; that before the expiration of the period of redemption, the plaintiff, finding himself without means for repurchasing said property, proposed to, and requested his brother, the herein plaintiff, to repurchase said property from Dña. Trinidad Ledesma de Arroyo, and, once the redemption was effected, that the defendant be granted an option to reacquire the same afterwards, to which proposition and request the plaintiff acceded; that pursuant to

said agreement between the plaintiff and the defendant, the former made the redemption of said property on July 26, 1922, and on the 30th of the same month he executed a document granting the defendant an option to repurchase said property within a period which was to expire on December 31, 1925, for the sum of P17,280; that about the month of August, 1922, the plaintiff, disregarding the deed of option of July 30th of the same year and without knowledge of the defendant, negotiated and obtained from the register of deeds of this province the transfer of said property in his name by cancelling the certificate of title of the defendant; that the defendant is, and has been, in possession of the property in question since he acquired it without having made any contract with anybody for the lease, occupation, and enjoyment of said property.

Upon the allegations of the complaint and the answer and the evidence introduced by the parties, the trial court rendered judgment (a) declaring that the "Varadero de Iloilo" belonged to the plaintiff Cho Chun Chac and that said plaintiff must be restored in the possession of said property; (b) sentencing the defendant Maximo F. Garcia to pay the plaintiff the sum of P160 per month for the use and occupation of the "Varadero de Iloilo," from August 1, 1922, until the possession of the "Varadero de Iloilo" was delivered to said plaintiff; (c) holding the signature of the plaintiff on Exhibit G to be authentic and consequently that the document Exhibit G, the deed of option, was valid and effective and that therefore the defendant has the right to repurchase from the plaintiff the "Varadero de Iloilo" for the sum of P17,280, said right of option being enforceable up to December 31, 1925.

Both parties appealed from this judgment of the trial court, the plaintiff on account of the lower court having declared authentic the signature of the plaintiff on Exhibit G and therefore the defendant had the right to repurchase from the plaintiff the "Varadero de Iloilo" until December 31, 1925; and on account of said court having held that at any rate such right of redemption belonged to the partnership of Cho Chun Yet & Co. in the hypothesis that the document Exhibit G was authentic. The defendant appealed because he was sentenced by the trial court to pay the plaintiff the sum of P160 per month for the use and occupation of the property in question from August 1, 1922, until the same was delivered to the plaintiff.

The fundamental question in this case hinges on the authenticity of the signature of the plaintiff on Exhibit G, that is, the contract of option in favor of the defendant.

We have made a careful examination of the signature of the plaintiff Cho Chun Chac on the aforesaid document Exhibit G and its duplicate Exhibit I; we have compared said signatures between themselves and with the indisputable signatures of the plaintiff on the check Exhibit D and on Exhibit E, as well as the photographic pictures of said signatures on Exhibits H and I, and we have not found any essential difference in said signatures, taking into consideration the manner in which the letters were traced, the inclination of the letters, and the ending of the stroke of the letter C in the surname Chac. There is such identity in the tracing of the letters Ch in Cho Chun Chac in the said six signatures, that there can be no doubt that the same were written by the plaintiff Cho Chun Chac. Moreover, if the document Exhibit G and its duplicate Exhibit I were false, as the plaintiff claims, the fact cannot be explained how the defendant succeeded in having said option noted on the back of the transfer certificate of title of the plaintiff, without having obtained from the latter said certificate and presented it to the register of deeds. There is no allegation nor proof whatever that the defendant is guilty of having fraudulently stolen said transfer certificate No. 1985.

On the other hand, the notary public, who authorized the document Exhibit G and its duplicate Exhibit I, and the witnesses subscribing the same, all affirmed that the plaintiff signed these documents in the presence of said witnesses. Taking into account all the circumstances surrounding the execution of the document Exhibit G and its duplicate Exhibit I, we are of the opinion and so hold that said signatures are authentic signatures of the plaintiff, and this being so, it is evident that the defendant has the right to repurchase the aforesaid property up to December 31, 1925, as was held by the trial court, upon payment of the sum of P17,280.

As to the allegation of the plaintiff-appellant that at all events the right of option belongs to the partnership of Cho Chung Yet & Co., instead of to the defendant Maximo F. Garcia, it must be noted that plaintiff's counsel in his memorandum and oral argument vigorously insists on his second assignment of error. In answer to the arguments of the plaintiff-appellant, it is sufficient to observe that, no parties having appeared in this case except the plaintiff Cho Chun Chac and the defendant Maximo F. Garcia, there is absolutely no reason for making any pronouncement regarding other persons or entities, as the plaintiff contends.

As to the appeal of the defendant, it appears that on July 31, 1922, his right to redeem the property from Dña. Trinidad Ledesma de Arroyo was extinguished, and his right to repurchase it now depends only upon the contract of option evidenced by Exhibit G, the true owner being the plaintiff from August 1, 1922, according to certificate of title No. 1985. Therefore if the defendant is in possession of the property in question, it is clear that he must indemnify the owner for the use and occupation of said property, and we believe that the amount of P160 per month fixed by the trial court is reasonable, especially if it is taken into account that in Exhibit L, that is, in the contract of sale with right of repurchase executed by the defendant in favor of Dña. Trinidad Ledesma de Arroyo, it appears, in one of its clauses, "that in case the vendor should return the stipulated amount of P16,000 and the rents at the rate of P160 within the period of redemption, the purchaser shall execute a deed of resale."

We find the judgment appealed from to be in accordance with law, and it must be, as is hereby, affirmed without special finding as to costs. So ordered.

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

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