

MERCEDES GUSTILO ET AL., PLAINTIFFS. MERCEDES GUSTILO AND HER HUSBAND LEOPOLDO JEREZA, APPELLANTS, VS. HERMINIO MARAVILLA, DEFENDANT AND APPELLANT.*G.R. No. 23386. December 12, 1925*

Ponente: OSTRAND, J.

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It appears from the record that one Antonia Gustilo was originally the owner of the Malago or Mercedes plantation in the municipality of Sarabia, Occidental Negros, under Torrens transfer certificates of title Nos. 719 and 720. These certificates bear a memorandum of a mortgage executed on April 30, 1918, in favor of the Philippine National Bank for the sum of P8,000, with interest at 8 per cent per annum, and for the term of ten years. On August 3, 1918, Antonia Gustilo leased the property for the term of seven years to the plaintiff Vicente Ardosa at an annual rent of P1,000. The lease is evidenced by a notarial document Exhibit G, and it is recited therein that Ardosa paid the rent in advance for the whole term of the lease, or a total sum of P7,000. By notarial document Exhibit D, executed on the 10th of the same month, Ardosa subleased the plantation to the plaintiff Felix Montinola Celis for three agricultural years, or until June 30, 1921. The term of the sublease was subsequently, on August 15, 1921, by a private document or "receipt" extended so as to embrace the full term of the original lease.

On August 8, 1920, Antonia Gustilo executed a deed of sale for the property in favor of the plaintiff Mercedes Gustilo, the consideration named in the deed being P30,000, the purchaser assuming the mortgage debt to the Philippine National Bank (Exhibit 1). As Antonia's certificates of title were in the possession of the bank, no transfer certificates appear to have been issued in favor of Mercedes.

On November 24, 1920, Antonia and Mercedes Gustilo executed a second mortgage on the same property in favor of the defendant Herminio Maravilla for the sum of P25,000, and for the term of one year from the date of the document. Upon the expiration of the term, the debt secured by the mortgage was paid with money alleged to have been furnished by Jose Maravilla, a cousin of the defendant, and another mortgage was on January 4, 1922, executed in Jose's favor for P28,000, representing the original debt of P25,000 with interest.

When the debt secured by the last mortgage fell due, Herminio Maravilla, in the name of Jose Maravilla, demanded payment which Mercedes Gustilo was unable to make and it was finally agreed between the parties that the title to the plantation was to be transferred to the defendant in full satisfaction of the debt, the defendant assuming the debt to the National Bank. A deed to that effect was thereupon executed by Mercedes Gustilo and her husband, the plaintiff Leopoldo Jereza, in favor of the defendant on August 9, 1922 (Exhibit A).

In the meantime Felix Montinola remained in possession of the plantation by virtue of his sublease and in a letter dated September 21, 1922, the defendant notified him that he would be required to pay 12 per cent of the total sugar production of the plantation as rent. Relying on the lease from Antonia Gustilo to Ardosa and his own sublease from the latter, Montinola refused to pay rent to the defendant, and in December, 1922, jointly with

Mercedes Gustilo and Vicente Ardosa, brought the present action.

In the complaint the plaintiffs in substance allege the facts hereinbefore set forth and, in addition thereto, aver that though in the deed from Mercedes Gustilo and Leopoldo Jereza to the defendant no mention was made of the lease to Ardosa and Montinola, the defendant by false statements led Mercedes Gustilo to believe that he would nevertheless respect the lease, and that in this belief she and her husband executed the deed. Upon the facts so stated, the plaintiffs pray that judgment be rendered declaring that the defendant has no right to the crop growing on the hacienda and to collect rents during the duration of the term of the lease to Ardosa; that it be further declared that said lease is an incumbrance upon the property which the defendant has bound himself to respect, and that it be ordered that said lease be noted on the transfer certificate of title issued in favor of the defendant.

The defendant in his answer denies the allegations of the complaint and, by way of cross-complaint and counter-claim, alleges that at the time of his purchase of the plantation, he had no knowledge of the existence of a lease on the property; that if he had had such knowledge, he would not have made the purchase; that the plaintiffs fraudulently concealed from him the existence of the lease; that subsequently to the purchase he has paid to the Philippine National Bank the sum of P1,253.19 on the mortgage assumed by him through his purchase of the land; and that he has paid the sum of P573.74 in back taxes on the land which should have been paid by the vendors. He therefore asks that the contract of sale of the plantation to him be declared rescinded and that judgment be rendered against the plaintiffs for the sum of P1,253.19 for payments made to the Philippine National Bank, and for the further sum of P573.74 for back taxes paid.

In answer to the defendant's cross-complaint and counterclaim, the plaintiffs allege that at the time of his purchase, the defendant was fully informed of all incumbrances on the Mercedes plantation, and that he assumed the payment and fulfillment of said incumbrances and obligations; that he has riot complied with the terms and conditions under which the sale of the property to him was made; and that through his failure to comply with such terms and conditions, the plaintiffs have suffered damages in the sum of P20,000. They therefore ask that the sale be declared rescinded through the fault of the defendant and that judgment be rendered against the defendant and in favor of the plaintiffs for the sum of P20,000 and for the costs.

Upon trial, the court below found that when the defendant purchased the property in question from the plaintiff Mercedes Gustilo, he had full knowledge of the fact that the property had been leased to Vicente Ardosa, as well as of the terms of said lease, and held that it therefore became a part of the contract of sale. The court also declared that the lease, being for a term of more than six years, was registerable and ordered that it be entered upon the certificates of title and upon the records of the register of deeds. The court further found that the defendant had failed to fulfill his obligations under the contract of sale and declared said contract rescinded, holding that inasmuch as the rescission was due to his fault, the defendant was not entitled to recover any sum which he might have expended in consideration of the sale. It also held that under the exceptions established in article 1571 of the Civil Code, the defendant had no right to terminate the lease in question and was not entitled to receive any sum for the occupation of the land by the lessee. The plaintiffs' claim for damages was disallowed. The plaintiffs Mercedes Gustilo and Leopoldo Jereza appeal and so does the defendant.

The appeal of Mercedes Gustiio and Leopoldo Jereza relates to their claim for damages and is so entirely without merit as to require no discussion. It may be noted that the defendant has never had possession of the property and has received no benefit therefrom.

The defendant presents the following assignments of error:

- "1. The trial court erred in holding that the defendant and appellant had notice at the time of making the purchase that the land was leased for seven years to Vicente Ardosa and sublet by the latter to the plaintiff

Felix Montinola Cells, and that the defendant having made the purchase with knowledge of said lease, the same in effect became a part of the contract of sale to him of the plantation.

"2. The trial court erred in holding that the defendant has no right to terminate the lease in question, and therefore is not entitled to receive any amount whatsoever in consideration of said lease, the latter coming within the two exceptions or provisos of article 1571 of the Civil Code.

"3. The trial court erred in holding that the contract of lease at bar is registerable, and in ordering its registration in the register of property and its notation on the proper transfer certificate of title as an incumbrance upon the land.

"4. The trial court erred in holding that by reason of the defendant's failure to perform the obligations contracted by him in the contract of sale in question, said contract was rescinded as prayed for by the defendant, but without any right on the part of the latter to be repaid for any such amount as he may have spent or paid by reason of said contract.

"5. The trial court erred in ordering that the amount of the price of the sale of 12 per cent of the crop placed by order of the court in possession of Felix Montinola as depositary be delivered to the latter."

The first, second and fifth assignments of error have reference principally to questions of fact upon which the findings of the court below are fully sustained by the evidence. That the defendant at the time of purchasing the plantation had full knowledge of the fact that it had been leased to Vicente Ardosa, is shown not only by the testimony of Mercedes Gustilo and Leopoldo Jereza but is also corroborated by the notary before whom the deed was acknowledged. This testimony, in connection with the circumstances surrounding the case, leaves no doubt whatever upon that point. Neither have we any doubt that the defendant was informed as to the terms of the lease and of the fact that the rent had been paid in advance. This being established, the defendant was bound to respect the lease and the court below did not err in holding that said lease in effect became a part of the contract of sale.

This conclusion is in harmony with our decision in the case of *T. de Winkleman and Winkleman vs. Veluz* (43 Phil., 604). The fact that the land in question in this case is registered land while the land in the *Winkleman* case was unregistered, does not affect the legal principles involved. The Land Registration Act only protects the holder in good faith, and cannot be used as a shield for frauds. Strong and convincing evidence is, of course, required to establish the existence of encumbrances not appearing on the certificate of title, but such evidence is not lacking in the present case.

The defendant's failure to respect the Ardosa lease is in itself a sufficient breach of the terms of the contract of sale to justify its rescission, but in addition thereto it is also to be observed that while the present action was pending in the Court of First Instance, one Aquiles M. Sajo, a near relative of the defendant, brought an action against Mercedes and Antonia Gustilo and Leopoldo Jereza upon a promissory note for P28,000 executed in favor of Jose Maravilla, and secured by the mortgage of January 4, 1922, the plaintiff alleging that the note and the corresponding mortgage had been assigned to him by Jose Maravilla on August 16, 1922, one week after the sale of the plantation to the defendant. In view of the fact that it clearly appears that that sale was made with the understanding and for the purpose of canceling the debt evidenced by the note and mortgage upon which Sajo's action was brought, the plaintiffs are also for this reason clearly entitled to a rescission.

Under the third assignment of error, the defendant-appellant argues that the assignment of the lease by Ardosa to Montinola did not appear in a notarial instrument and that therefore the trial court erred in ordering that the lease be entered upon the certificate of title. There is not much force in this argument; if the court had jurisdiction, the judgment itself would be sufficient warrant for the entry of the corresponding memorandum, but inasmuch as the term of the lease has already expired, the entry in question is unnecessary and the judgment must be modified

accordingly. In this connection it may be well to call attention to the fact that under the last paragraph of section 112 of the Land Registration Act, petition for amendments or alterations of certificates of title—which includes the entry of a memorandum—must be "filed, and entitled in the original case in which the degree of registration was entered," and upon that ground it may have been error to order such an entry in the present proceedings.

The defendant's fourth assignment of error is well taken. The trial court may possibly have been misled by paragraph 2 of article 1806 of the Civil Code, but that paragraph applies only to cases where "the nullity arises from illegality of the consideration or the purpose of the contract" (Civil Code, art. 1305). The provision applicable to the present case is found in article 1303 which reads as follows:

"When an obligation has been adjudged void, the contracting parties shall restore to each other the things which have been the subject-matter of the contract, together with their fruits, and the price paid therefor, together with interest, without prejudice to the provisions of the following articles."

The court below therefore erred in holding that the defendant was not entitled to reimbursement for his payments to the National Bank and for taxes.

For the reasons stated, the judgment appealed from is affirmed in so far as it holds that the defendant was bound to respect the lease from Antonia Gustilo to Vicente Ardosia and the sublease to Felix Montinola, declares the sale of the plantation by the plaintiffs Mercedes Gustilo and Leopoldo Jereza to the defendant rescinded, and awards to Felix Montinola the sugar produced on the plantation during his receivership or the money received from the sale of such sugar. In all other respects, the judgment is reversed.

It is hereby ordered that the defendant have and recover judgment against the plaintiffs Mercedes Gustilo and Leopoldo Jereza, jointly and severally, for the sum of P1,253.19 for payments made on their behalf to the National Bank and for the further sum of P573.74 for taxes paid, all with interest at the rate of 6 per cent per annum from February 23, 1923, the date of the filing of the defendant's cross-complaint and counterclaim. The defendant-appellant shall pay the costs of both instances. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Johns, Romualdez, and Villa-Real, JJ., concur.

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