

M. SINGH, PLAINTIFF AND APPELLEE, VS. TAN CHAY, DEFENDANT AND APPELLANT.*G.R. No. 27404. December 24, 1927*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Manila by M. Singh for the purpose of recovering from Tan Chay the sum of P25,000, upon, a first cause of action, as damages for breach of contract, and a further sum of P50,000, upon a second cause of action, also as damages for breach of contract, together with interest and costs. Upon hearing the cause the trial court found favorably to the plaintiff upon both causes of action and entered judgment for the plaintiff to recover the total sum claimed by the plaintiff, namely, P75,000, with legal interest from the date of the filing of the complaint, and with costs. From this judgment the defendant appealed.

The plaintiff is a resident of the City of Manila who assumed the office of real estate broker in the transactions about to be described, while the defendant is a merchant and resident of Manila who, at the times to be referred to, was desirous of acquiring coconut lands in the Province of Laguna. On August 25, 1925, the plaintiff presented himself to Tan Chay and procured the latter to sign a contract (Exhibit A), of the following tenor:

"In consideration of the benefit and profit to accrue to me, I hereby obligate myself and agree to buy, through and by the mediation of Mr. M. Singh, of Manila, the properties of Eduardo Campos, deceased, located in Piris, municipality of Guinayangan, Tayabas, Philippine Islands, comprising all parcels of land of said deceased in the place mentioned, together with all buildings, coconut trees, and other improvements existing on the same (excepting cattle and furniture), said land having been declared for taxation in twelve tax declarations, and more precisely bounded and described in four Torrens certificates of title and four plans at present in the possession of the Philippine National Bank.

"The price which I agree to pay for the said entire properties, free from any charge or lien, is one hundred sixty thousand pesos (P160,0.00), all payable in cash upon the execution of the corresponding deed of conveyance.

"Whatever lien may exist on said properties can be cancelled in the act of consummating the transaction of purchase and sale, in order that the seller may thus utilize the proceeds of the sale, or part of the same, for the purposes of such cancellation."

At the time this contract was made the estate of Eduardo Campos was under the control of Godofredo Reyes, of Lucena, Tayabas, as administrator, who was anxious to sell the lands mentioned in the foregoing contract. Singh accordingly got into touch with Reyes and, under date of September 7, 1925, made a written offer for the purchase of the property at the price of P135,000. To this proposition Reyes replied in a note, dated September 8, 1925, saying that he would hold Singh's letter as an offer to be considered after others should have had an opportunity to present their offers at the time previously announced for the sale. On September 15, 1925, Reyes sent a telegram to Singh, in Manila, informing the latter that if he persisted in his proposition he must deposit the purchase price in the Philippine National Bank until noon of September 19, and that otherwise his offer was rejected. In response to this requirement Singh applied to Tan Chay and requested him to supply the funds necessary to make the

required deposit. Tan Chay, however, refused to make the deposit or to supply the money for Singh to make it, with the result that the negotiations between Singh and Reyes for the purchase of the property fell through and Reyes soon thereafter sold the property to another person. In explanation of his refusal to proceed in the matter, Tan Chay says that at the time the contract Exhibit A was made Singh had represented that the Campos lands contained 55,647 coconut trees, but that he (Tan Chay) had received information later to the effect that there were only about 16,000 trees on said lands.

Tan Chay says that when he informed Singh that he would not take the property, Singh said to him, if you do not want it, you can pass it and I will find other land. Upon this Tan Chay said, You can look for it, and if the land is good I will buy. Tan Chay claims that upon the same occasion he asked Singh to return the contract Exhibit A, and Singh replied that he did not have it as it was in the hands of the owner of the land. Tan Chay persisted in this request, but the answer of Singh was always as before. In conformity with the suggestion thus made that Singh might look for other property suited to Tan Chay's requirements, Singh presently found certain lands for sale in the municipality of Dolores, Province of Tayabas; and when this fact was communicated to Tan Chay, a second contract (Exhibit B), dated November 16, 1925, was executed by the latter to the following effect:

"Upon consideration of the benefit and profit to accrue to me, I hereby obligate myself and agree to buy, through and by the mediation of Mr. M. Singh, of Manila, the following properties of Don Bernardo Marquez, of Dolores, Province of Tayabas, namely:

"Lot No. 4.—Land situated in the municipality of Dolores, Tayabas, containing an area of 194 hectares, 95 ares, and 98 centares, more or less, with all the coconut trees and other improvements existing thereon.

"Lot No. 1.—Land situated in the municipality of Dolores, Tayabas, containing an area of 190 hectares, 83 ares, and 88 centares, more or less, with all the coconut trees and other improvements existing thereon.

"Lot No. 6.—Land situated in the municipality of Dolores, Tayabas, containing an area of 184 hectares, 91 ares, and 72 centares, more or less, with all the coconut trees and other improvements existing thereon.

"The price which I obligate myself to pay for said properties (lands, coconut trees, and other improvements) will be upon the basis of the number of coconut trees existing on said above described lands, at the price of P4.50 for each coconut tree, without distinction, payable in cash.

"The said properties, at the price above stated, shall be free from any charge or lien; but whatever lien may exist on said properties, or on either, can be cancelled in the act of consummating the transaction of purchase and sale, in order that the seller may utilize the proceeds of the sale, or part of the same, for the purposes of such cancellation."

No sooner had this contract been executed than Tan Chay appears to have yielded to the unworthy temptation of buying the properties mentioned in the contract directly for himself without the intervention of Singh. To this end, on December 19, 1925, he purchased from the Philippine Sugar Estates Development Co., Ltd., a mortgage credit which that company held against the property, paying therefor the sum of P41,174.42. Three days later he entered into a contract to purchase from the supposed owner, Bernardo Marquez, the same properties for the sum of P175,000, the same amount for which Marquez had offered to sell to Singh. In this contract (Exhibit I) it was agreed that Tan Chay should be credited with the amount already paid out by him to the Development Company and that nothing should be paid to Marquez until a Torrens title should be procured and all adverse claims paid off, though Tan Chay promised to advance the money for satisfying the incumbrances and for prosecuting the legal measures necessary to clearing up of the title.

The purpose of Tan Chay in these transactions was no doubt to evade the payment of what Singh would have earned as a commission upon the deal; but of course the defendant is liable in damages for what may have been

thereby lost to the plaintiff; and in this action, in the light of the facts already stated, it was only necessary for the plaintiff to prove the amount of his damages. By reference to the contract (Exhibit B) it will be seen that Tan Chay promised to pay the sum of P4.50 for each coconut tree on the property, and it was incumbent upon the plaintiff to prove the number of trees. Upon this point the only thing that we can find in the testimony is the statement of the plaintiff to the effect that Marquez had told him that seventy five thousand trees had been planted on the properties by him and that he was sure that at the least there were fifty thousand.

So much with respect to the state of fact upon which the case was tried. In an application for a new trial based upon newly discovered proof submitted after the decision was rendered in the court below, some astonishing things are brought to light. The most important facts thus made to appear in various affidavits and numerous documents are two, namely, that there are not more than about thirty one thousand coconut trees on all three of the properties, and that Bernardo Marquez has not been the holder of the legal title for many years, his title having long been extinguished by sale under execution. Moreover, it is likewise shown that the property covered by the contract Exhibit B was so heavily incumbered at the time the contract was made that it could not probably be cleared for less than P200,000. If these inferences are correct, it is quite evident that Singh has not really been damaged by the act of the defendant in acquiring the property without Singh's intervention.

Upon the legal aspects of the case as presented in the two causes of action, we are of the opinion that the judgment in favor of the plaintiff upon the first cause of action cannot be sustained, for the reason that the plaintiff has not proved any dereliction of legal duty on the part of the defendant in the performance of the contract Exhibit A. The deal with respect to the purchase of the Campos properties, mentioned in said contract, undoubtedly collapsed because of the failure of Tan Chay to advance P135,000 for deposit in the Philippine National Bank, as demanded by Mr. Godofredo Reyes, administrator of Eduardo Campos. But there is nothing whatever in the contract which imposes on Tan Chay the duty to make this deposit. The obligation assumed by the defendant, in the contract referred to, was to pay the sum of P160,000 at the time the deed should be executed; and although it was stipulated that any liens on the property might be cancelled at the time of the consummation of the deal, and by use of the purchase money, or part thereof, there was nevertheless no obligation on the part of the defendant to advance any part of the consideration, as an indication of good faith, prior to the final act. The judgment entered in favor of the plaintiff on this cause of action must therefore be reversed.

With respect to the second cause of action, we are of the opinion that the case is one where, in the interest of justice, we are compelled to exercise the discretionary power vested in this court of ordering a new trial. The damages awarded to the plaintiff by the trial court consist of P50,000; and this amount is reached by subtracting the sum of P175,000 (which the plaintiff supposes to be the price at which he could have purchased the property) from the sum of P225,000, the value of the property under Exhibit B, if there are fifty thousand coconut trees on the land. But, as already stated, there is no proof of the existence of any such number of trees on the property except the statement of the plaintiff that Marquez had so informed him. We do not consider this hearsay statement sufficient to support the weight of so serious a judgment. It is true that said statement as to the number of trees was not objected to, by the attorney for the appellant, as hearsay evidence; and hearsay proof, if convincing to the conscience of a court, may undoubtedly sometimes serve the purpose. Nevertheless, we cannot close our eyes to the obvious fact that the defendant's interests were unskillfully represented in the court below; and we cannot be entirely indifferent to the state of facts revealed in the documents presented by the new attorney who was employed by the defendant to present the application for a new trial. Technically considered the plaintiff has not altogether shown sufficient excuse for not producing this proof at the trial. But when all the circumstances connected with the case are considered, in relation with the capital fact that there is no satisfactory proof of the number of trees upon the lands, the situation is one that calls loudly for our intervention; and since our eyes are now open to the fact that the affirmance of this judgment might mean a possible grave miscarriage of justice, we

cannot properly do otherwise than exercise our discretion to grant a new trial.

In conformity with what has been said above, the judgment upon the first cause of action stated in the complaint is reversed and the defendant absolved from liability there-under; while the judgment upon the second cause of action is set aside, and the cause remanded to the court of origin for a new trial upon said cause of action", with leave to either party to amend his pleadings. So ordered, without special pronouncement as to costs.

Avanceña, C.J., Johnson, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

MALCOLM, J., dissenting:

My vote is to reverse on the first cause of action, to affirm on the second cause of action, and to deny the petition for a new trial.

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