

FEDEBICO VALERA, PLAINTIFF AND APPELLANT, VS. MIGUEL VELASCO, DEFENDANT AND APPELLEE.

G.R. No. 28050. March 13, 1928

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by Federico Valera from the judgment of the Court of First Instance of Manila dismissing his complaint against Miguel Velasco, on the ground that he has not satisfactorily proven his right of action.

In support of his appeal, the appellant assigns the following alleged errors as committed by the trial court in its judgment, to wit: (1) The lower court erred in holding that one of the ways of terminating an agency is by the express or tacit renunciation of the agent; (2) the lower court erred in holding that the institution of a civil action and the execution of the judgment obtained by the agent against his principal is but a renunciation of the powers conferred on the agent; (3) the lower court erred in holding that, even if the sale by Eduardo Hernandez to the plaintiff Federico Valera be declared void, such a declaration could not prevail over the rights of the defendant Miguel Velasco inasmuch as the right of redemption was exercised by neither Eduardo Hernandez nor the plaintiff Federico Valera; (4) the lower court erred in not finding that the defendant Miguel Velasco was, and at present is, an authorized representative of the plaintiff Federico Valera; (5) the lower court erred in not annulling the sale made by the sheriff at public auction to defendant Miguel Velasco, Exhibit K; (6) the lower court erred in failing to annul the sale executed by Eduardo Hernandez to the plaintiff Federico Valera, Exhibit C; (7) the lower court erred in not annulling Exhibit L, that is, the sale at public auction of the right to repurchase the land in question to Salvador Vallejo; (8) the lower court erred in not declaring Exhibit M null and void, which is the sale by Salvador Vallejo to defendant Miguel Velasco; (9) the lower court erred in not ordering the defendant Miguel Velasco to liquidate his accounts as agent of the plaintiff Federico Valera; (10) the lower court erred in not awarding plaintiff the P5,000 damages prayed for.

The pertinent facts necessary for the solution of the questions raised by the above quoted assignments of error are contained in the decision appealed from and are as follows:

"By virtue of the powers of attorney, Exhibits X and Z, executed by the plaintiff on April 11, 1919, and on August 8, 1922, the defendant was appointed attorney-in-fact of the said plaintiff with authority to manage his property in the Philippines, consisting of the usufruct of a real property located on Echague Street, City of Manila.

"The defendant accepted both powers of attorney, managed plaintiff's property, reported his operations, and rendered accounts of his administration; and on March 31, 1923 presented Exhibit F to plaintiff, which is the final account of his administration for said month, wherein it appears that there is a balance of P3,058.33 in favor of the plaintiff.

"The liquidation of accounts revealed that the plaintiff owed the defendant P1,100, and as a misunderstanding arose between them, the defendant brought suit against the plaintiff, civil case No. 23447 of this court. Judgment was rendered in his favor on March 28, 1923, and after the writ of execution was issued, the sheriff

levied upon the plaintiff's right of usufruct, sold it at public auction and adjudicated it to the defendant in payment of all of his claim.

"Subsequently, on May 11, 1923, the plaintiff sold his right of redemption to one Eduardo Hernandez, for the sum of P200 (Exhibit A). On September 4, 1923, this purchaser conveyed the same right of redemption, for the sum of P200, to the plaintiff himself, Federico Valera (Exhibit C).

"After the plaintiff had recovered his right of redemption, one Salvador Vallejo, who had an execution upon a judgment against the plaintiff rendered in a civil case against the latter, levied upon said right of redemption, which was sold by the sheriff at public auction to Salvador Vallejo for P250 and was definitely adjudicated to him. Later, he transferred said right of redemption to the defendant Velasco. This is how the title to the right of usufruct to the aforementioned property later came to vest in the said defendant."

As the first two assignments of error are very closely related to each other, we will consider them jointly.

Article 1732 of the Civil Code reads as follows:

"Art. 1732. Agency is terminated:

"1. By revocation;

"2. By the withdrawal of the agent;

"3. By the death, interdiction, bankruptcy, or insolvency of the principal or of the agent."

And article 1736 of the same Code provides that:

"Art. 1736. An agent may withdraw from the agency by giving notice to the principal. Should the latter suffer any damage through the withdrawal, the agent must indemnify him therefore, unless the agent's reason for his withdrawal should be the impossibility of continuing to act as such without serious detriment to himself."

In the case of *De la Peña vs. Hidalgo* (16 Phil., 450), this court laid down the following rule:

"1. AGENCY; ADMINISTRATION OF PROPERTY; IMPLIED AGENCY.—When the agent and administrator of property informs his principal by letter that for reasons of health and medical treatment he is about to depart from the place where he is executing his trust and wherein the said property is situated, and abandons the property, turns it over to a third party, renders accounts of its revenues up to the date on which he ceases to hold his position and transmits to his principal a general statement which summarizes and embraces all the balances of his accounts since he began the administration to the date of the termination of his trust, and, without stating when he may return to take charge of the administration of the said property, asks his principal to execute a power of attorney in due form in favor of and transmit the same to another person who took charge of the administration of the said property, it is but reasonable and just to conclude that the said agent had expressly and definitely renounced his agency and that such agency was duly terminated, in accordance with the provisions of article 1732 of the Civil Code, and, although the agent in his aforementioned letter did not use the words "renouncing the agency," yet such words, were undoubtedly so understood and accepted by the principal, because of the lapse of nearly nine years !up to the time of the latter's death, without his having interrogated either the renouncing agent, disapproving what he had done, or the person who substituted the latter."

The misunderstanding between the plaintiff and the defendant over the payment of the balance of P1,000 due the latter, as a result of the liquidation of the accounts between them arising from the collections by virtue of the former's usufructuary right, who was the principal, made by the latter as his agent, and the fact that the said defendant brought suit against the said principal on March 28, 1928 for the payment of said balance, more than prove the breach of the juridical relation between them; for, although the agent has not expressly told his principal

that he renounced the agency, yet neither dignity nor decorum permits the latter to continue representing a person who has adopted such an antagonistic attitude towards him. When the agent filed a complaint against his principal for the recovery of a sum of money arising from the liquidation of the accounts between them in connection with the agency, Federico Valera could not have understood otherwise than that Miguel Velaseo renounced the agency; because his act was more expressive than words and could not have caused any doubt. (2 C. J., 543.) In order to terminate their relations by virtue of the agency, the defendant, as agent, rendered his final account on March 31, 1923 to the plaintiff, as principal.

Briefly, then, the fact that an agent institutes an action against his principal for the recovery of the balance in his favor resulting from the liquidation of the accounts between them arising from the agency, and renders a final account of his operations, is equivalent to an express renunciation of the agency, and terminates the juridical relation between them.

If, as we have found, the defendant-appellee Miguel Velaseo, in adopting a hostile attitude towards his principal, suing him for the collection of the balance in his favor, resulting from the liquidation of the agency accounts, ceased ipso facto to be the agent of the plaintiff-appellant, said agent's purchase of the aforesaid principal's right of usufruct at public auction held by virtue of an execution issued upon the judgment rendered in favor of the former and against the latter, is valid and legal, and the lower court did not commit the fourth and fifth assignments of error attributed to it by the plaintiff-appellant.

In regard to the third assignment of error, it is deemed unnecessary to discuss the validity of the sale made by Federico Valera to Eduardo Hernandez of his right of redemption in the sale of his usufructuary right made by the sheriff by virtue of the execution of the judgment in favor of Miguel Velasco and against the said Federico Valera; and the same thing is true as to the validity of the resale of the same right of redemption made by Eduardo Hernandez to Federico Valera; inasmuch as Miguel Velasco's purchase at public auction held by virtue of an execution of Federico Valera's usufructuary right is valid and legal, and as neither the latter nor Eduardo Hernandez exercised his right of redemption within the legal period, the purchaser's title became absolute.

Moreover, the defendant-appellee, Miguel Velasco, having acquired Federico Valera's right of redemption from Salvador Vallejo, who had acquired it at public auction by virtue of a writ of execution issued upon the judgment obtained by the said Vallejo against the said Valera, the latter lost all right to said usufruct.

And even supposing that Eduardo Hernandez had been tricked by Miguel Velasco into selling Federico Valera's right of repurchase to the latter so that Salvador Vallejo might levy an execution on it, and even supposing that said resale was null for lack of consideration, yet, inasmuch as Eduardo Hernandez did not present a third party claim when the right was levied upon for the execution of the judgment obtained by Vallejo against Federico Valera, nor did he file a complaint to recover said right before the period of redemption expired, said Eduardo Hernandez, and much less Federico Valera, cannot now contest the validity of said resale, for the reason that the one-year period of redemption has already elapsed.

Neither did the trial court err in not ordering Miguel Velasco to render a liquidation of accounts from March 31, 1923, inasmuch as he had acquired the rights of the plaintiff by purchase at the execution sale, and, as purchaser, he was entitled to receive the rents from the date of the sale until the date of the repurchase, considering them as a part of the redemption price; but not having exercised the right of repurchase during the legal period, and the title of the purchaser having become absolute, the latter did not have to account for said rents.

Summarizing, the conclusion is reached that the disagreements between an agent and his principal with respect to the agency, and the filing of a civil action by the former against the latter for the collection of the balance in favor of the agent, resulting from a liquidation of the agency accounts, are facts showing a rupture of relations, and the

complaint is equivalent to an express renunciation of the agency, and is more expressive than if the agent had merely said, "I renounce the agency."

By virtue of the foregoing, and finding no error in the judgment appealed from, the same is hereby affirmed in all its parts, with costs against the appellant. So ordered.

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

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