

MARTIN GAGARA, PLAINTIFF AND APPELLEE, VS. ANTONIO BARTOLOME ET AL., DEFENDANTS. ANTONIO BARTOLOME, APPELLANT.*G.R. No. 28677. February 12, 1929*

Ponente: STREET, J.

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This action was instituted on May 20, 1927, in the Court of First Instance of the Province of Lanao by Martin Gagara, for the purpose of recovering from Antonio Bartolome and others a parcel of land containing about 48 hectares, situated in the barrio of Dalipuga, municipality of Iligan, Province of Lanao, and more particularly described in the complaint. To the complaint the defendant Antonio Bartolome answered with a general denial and special defense, in which, after he admitted that the property had at one time belonged to the plaintiff, he nevertheless alleged that on March 25, 1912, it had been conveyed by the plaintiff to Gregorio Nanaman and that the latter had subsequently sold the same under contract of sale with pacto de retro at twelve months to V. M. I. Susing & Co.; that the privilege of repurchase had never been exercised by Nanaman; and that on February 23, 1914, the property consolidated in Susing & Co., a predecessor in interest of the defendant. The defendant Gregorio Nanaman answered with what in effect is a mere general denial by asserting that the conveyance made by himself to Susing & Co. was in every respect a valid sale. The plaintiff then interposed a replication to the special defense of Antonio Bartolome, asserting that the sale made by the plaintiff to Gregorio Nanaman was fictitious and without consideration and that the execution of said instrument by the plaintiff was procured by deceptive and fraudulent devices of Bartolome and his associates. He further asserted that the transfer made by Nanaman, though in form a contract of sale with pacto de retro, was really intended as security for a highly usurious loan of money.

Upon hearing the cause the trial court decided the issues of the controversy in favor of the plaintiff, and considering the mortgage indebtedness of Nanaman to have been fully satisfied from the produce received by the defendant and his predecessors in interest from the land, the court declared the plaintiff to be the owner thereof and ordered the defendant Bartolome to surrender the land and pay the sum of P200 per month to the plaintiff until the surrender of the property. From this judgment the defendant Bartolome appealed.

The primary case of the defendant Bartolome as owner of the property in question is based upon documents to the following effect: On March 25, 1912, the plaintiff Martin Gagara, then owner of the land, conveyed it by public instrument to his kinsman, Gregorio Nanaman, for a purported consideration of P1,500 (Exhibit 2). Nanaman is shown to have had possession of the same property thereafter; and on February 23, 1913, Nanaman conveyed it to V. M. I. Susing & Co., of Iligan, for a purported consideration of P1,000, with privilege of repurchase at twelve months, and with stipulation for Nanaman to remain in possession as renter, at the rate of P40 per month. Repurchase was admittedly never effected by Nanaman, with the result that the property apparently consolidated in Susing & Co. on February 23, 1914. One-third of the money mentioned as consideration for the conveyance of February 23, 1913, appears to have been taken from Miguel Sheker & Co., as a result of which that firm became a

participant in the deal with Susing & Co.

The defendant Bartolome, in those days a parish priest of Iligan, was a member of the firm of Susing & Co., and when Susing & Co. was later liquidated, the shares which had pertained to Susing & Co. and Sheker & Co. passed to Bartolome, who has subsequently alone asserted any interest in the property.

In view of the failure of Nanaman to effect repurchase, Nanaman lost possession and the property passed in 1914 into the possession of the purchasers. The proof further shows that at first the associated purchasers, and after them Bartolome exclusively, appropriated to themselves and enjoyed the property, and the same was in possession of the defendant Bartolome upon the day when this action was brought.

The plaintiff admits that the conveyances (Exhibits 1 and 2) on which the defendant relies were executed by Gregorio Nanaman and himself, but their legal effect is questioned on the grounds already mentioned in the statement of the plaintiff's replication to Bartolome's answer. In this connection the testimony submitted by the plaintiff tends to show that in the year 1912 Nanaman had conveyed this property of the plaintiff without authority to Susing & Co. in consideration of a debt which Nanaman then owed to the firm mentioned. Susing & Co., having presently found that Nanaman was not the owner of the property, threatened to prosecute him for estafa and thereby induced the plaintiff to execute the instrument Exhibit 2, dated March 25, 1912, conveying the property to Nanaman. The plaintiff asserts that the sale therein mentioned was fictitious and that Susing & Co. knew it. However, pursuant to that conveyance, the later contract of February 23, 1913 (Exhibit 1), was made by Nanaman, conveying the property, as already stated, to Susing & Co. The evidence for the plaintiff tends to show that the consideration for the Exhibit 1 was a preexisting indebtedness resulting from a small loan, which by the addition of exorbitant interest had reached the amount stated as the consideration of the instrument.

The plaintiff says that in 1916 he made demand upon the defendant Bartolome for the surrender of the property, based on the point of view that the transfer effected by Nanaman had been intended as security for a loan, and that by that time (1916) it ought to be considered that the debt was satisfied. The plaintiff says that he was put off on that occasion on some pretext or other; and that he again, in 1921, made demand upon Bartolome for the restitution of the property, when Bartolome promised that, if he would let him keep the property about three years longer, it would be surrendered to him. All these alleged promises by Bartolome to surrender the property are denied by him; and for the establishment of said promises the plaintiff relies exclusively upon his own testimony, supplemented, as to the interview in 1921, by a kinsman (Abiol) who says that on this occasion he was invited to go along with the plaintiff and heard the conversation which the latter had with Bartolome.

The question then arises whether the testimony of the plaintiff and his kinsman is sufficient to show that Bartolome admitted the plaintiff's right to redeem the property at the end of three more years. Upon this point, after examining the evidence carefully, we are constrained to hold that the plaintiff's proof is not sufficient. It will be noted that the plaintiff is attempting to defeat the effect of his own deed fifteen years after the act. After so long a period the charges of fraud must be incontrovertibly proved in order to accomplish their effect; and it seems to us that the long delay of the plaintiff in seeking relief in court speaks against the probability of the wrong complained of. It will be remembered also that the plaintiff exhibits no scrap of paper to prove his theory of the case,—no writing convinces us of the alleged promise of the defendant to surrender the property at the end of the period stated. Indeed, in our opinion, the testimony of Abiol shows that, when the interview was had between the plaintiff and Bartolome in 1921, the attitude of the plaintiff towards Bartolome was of a menacing character, and any concession that Bartolome then made, if any, was doubtless prompted by fear.

In the view we take of the case, the circumstance that Gagara received nothing from his nephew Nanaman when

he deeded the property to the latter on March 25, 1912, and that Susing & Co. may have had notice of that fact, does not invalidate the subsequent sale of the property by the nephew to Susing & Co. By placing the title in his nephew the plaintiff in effect gave the nephew full power of alienation; and the nephew himself has made no attempt to secure the annulment of his own deed.

When the trial of this action was begun in court the attorney for the defendant announced his conformity with the proposition that the land in question belongs (in Spanish, *pertenecia*) to the plaintiff Gagara. So the transcript purports to show; and upon this circumstance the attorney for the appellee suggests that this must be taken as an admission by the defendant that the title to the land is now in the plaintiff and that the only question for discussion in this case is over the improvements. We entertain no doubt, however, that the stenographer, in making the transcription, misread his notes; for the appropriate word to be used in that connection was *belonged* (in Spanish, *pertenecia*). In other words, an expression indicating a past condition was incorrectly translated in the present. That this mistake was made is evident not only from the state of the pleadings but from the fact that, after the supposed admission was made, the parties proceeded to develop the question actually at issue, which was the state of the present title. And at any rate, the court could not found upon an admission of the character indicated an estoppel such as is invoked by the appellee in this case.

The attorney for the appellee raises a question concerning the process by which the defendant is supposed to have acquired the interest formerly vested in Susing & Co. and Sheker & Co.; and in this connection Exhibits 3 and 3-A of the defendant are criticized for inconsistency with the statement contained in an indorsement on Exhibit 1. The point, in our opinion, is not decisive; for the defendant is admittedly in possession of the property in question, claiming under the deeds executed by the plaintiff and his nephew; and relief is being sought by the plaintiff against the defendant in his character of successor in interest of Susing & Co. The plaintiff is therefore apparently estopped from questioning the character of the defendant as such successor.

The foregoing discussion conducts us to the conclusion that the plaintiff's case is not made out, and that even conceding that the plaintiff might at one time have had a right of action to redeem the property in question from the sale which was made by Nanaman in 1913, such right has prescribed and the defendant has acquired an indefeasible title by adverse possession.

The judgment appealed from is therefore reversed and the defendants are absolved from the complaint. So ordered, without pronouncement as to costs.

Johnson, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

Malcolm and Johns, JJ., dissent.

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