

SOTERO IGNACIO, PLAINTIFF AND APPELLANT, VS. SANTOS CHUA HONG, ESTANISLAO FELICIANO, MARIA OJEDA, FELIX DE LEON AND VICENTE SOTTO, DEFENDANTS AND APPELLEES.*G.R. No. 29752. March 12, 1929*

Ponente: OSTRAND, J.

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It appears from the record that prior to August 30, 1918, the spouses Santos Chua Hong and Margarita Ignacio were the owners of an undivided half of a fish pond situated in a place called Bitas, municipality of Paombong, Bulacan, and embracing an area of over 40 hectares. Their title was evidenced by Torrens certificate No. 314 of the Province of Bulacan. On the date mentioned, the spouses executed a deed of sale, with pacto de retro, to one Estanislao Feliciano, not only for the Bitas property but also for another fish pond situated in a place called Pamarawan and which measures about 30 hectares. The consideration mentioned in the document was P10,000, and the term for redemption or repurchase was fixed at two years with an option for a two years extension of the term.

On November 21, 1918, Santos Chua Hong and Margarita Ignacio executed a deed of donation of their interest in the Bitas fish pond in favor of the herein plaintiff, Sotero Ignacio, the son of Margarita. The document recited that there was an encumbrance of a sale with pacto de retro on the land, in favor of Estanislao Feliciano, as security for a loan of P10,000, and which the donors undertook to pay, and it was also stipulated in subparagraph {a) of paragraph 4 of the deed that in case Margarita Ignacio should die before payment had been made, the other donor, Santos Chua Hong, obligated himself to redeem the land from the pacto de retro sale two years from August 30, 1918. It further appears in the deed that, in return for the donation, Sotero Ignacio renounced any and all rights, interests, and participation in the remaining property of the donors.

Margarita Ignacio died on March 14, 1919, and notwithstanding the stipulation in subparagraph (a) of paragraph 4 of the deed of donation, Santos Chua Hong remained in possession of the property in question and did not redeem the land from the encumbrance above mentioned.

It becoming evident to the plaintiff that Santos Chua Hong had no intention to carry out the provisions of the deed of donation, he, on January 26, 1923, filed the deed with the register of deeds of Bulacan for annotation on the certificate of title No. 314. The owner's duplicate of said certificate was in possession of Estanislao Feliciano, who refused to surrender it to the register of deeds, and application was made to the Court of First Instance for an order compelling Feliciano to exhibit the certificate of title in order that the donation might be entered on it by way of memorandum. On January 27, 1923, the court issued an order requiring Feliciano to present the certificate to the register of deeds. Seven days later, Santos Chua Hong and his son, Geminiano Ignacio, through their counsel, Vicente Sotto, filed a motion in the original land registration case asking that the order of January 27 be revoked. The motion was set down for hearing February 17, 1923, but was continued until March 8 when Attorney Sotto, in representation of Santos Chua Hong presented an amended motion in which it was alleged that

the donation in question had been obtained by fraud and that Santos Chua Hong signed the deed of donation in the belief that it was executed in favor of his son, Geminiano Ignacio, and not in favor of Sotero Ignacio and that therefore the donation was null and void and should not be noted in the registry of deeds. On the same date, March 8, the Court of First Instance issued an order suspending the effects of the order of January 27, until the validity of the donation had been definitely determined, and ordered the opponents Santos Cfrua Hong and Geminiano Ignacio to bring an action within thirty days for that purpose. On March 14, 1923, Attorney Sotto filed a motion for reconsideration of the order of March 8, which motion was denied on the 23d of the same month. Seven days thereafter Feliciano, after having obtained a consolidation of his title in the registry of deeds, sold the property to one, Maria Ojeda, a mistress of Attorney Sotto, for the sum of P10,000. She took no active part in the transaction, and the check for the purchase money was signed "M. Ojeda, By: Vicente Sotto." On April 7, 1923, Sotto presented a motion in which it was alleged that the title .of Estanislao Feliciano had been consolidated and that he, according to "informes fidedignos," had sold the property to a lady called Maria Ojeda, whose title had been duly registered. Counsel therefore asked that his clients be relieved from the effects of the order of March 8 and that the claim of Sotero Ignacio be dismissed.

The present action was thereupon brought, and three days later, on June 11, 1923, notice of lis pendens was filed with the register of deeds and entered in the Us pendens. register. Notwithstanding this, Maria Ojeda, on September 8, 1923, sold both of the fish ponds to Felix de Leon, the consideration mentioned in the deed being P10,000, and on the same date, the latter conveyed one-half of his alleged interest in the Bitas fish pond to Attorney Sotto for the alleged consideration of P5,000.

In his last amended complaint, the plaintiff prays (a) that he be declared the owner of the property described in the deed of donation, and that the defendants be ordered to deliver possession to him; (b) that it be declared that the conveyances made to Maria Ojeda and Felix de Leon are fictitious and null and void; (c) that all transfer certificates of title which affect the property in question be cancelled and that instead thereof, a certificate of title be issued in favor of the plaintiff; and (d) that the plaintiff be given compensation for the products of the property in question, of which products he had been deprived. At the trial of the case, the plaintiff presented his evidence whereupon the defendants moved the dismissal of the case, which motion was granted in a decision dated January 30, 1928. From this decision the plaintiff appealed.

In our opinion, the appeal is well taken. Contrary to the earlier conception in this jurisdiction, it is now well settled that whenever it is clearly shown that a deed of sale with pacto de retro, regular on its face, is given as security for a loan, it must be regarded as an equitable mortgage. In other words, we are now following the doctrine laid down by the United States Supreme Court in the case of *Russell vs. Southard* (35 U. S., 139).

It appears from Exhibit G in the record that the assessed value of Margarita Ignacio's interest in the Bitas property was P22,060 and that the Pamarawan fish pond was assessed at P34,850. The uncontradicted testimony of Severino Gonzales, owner of ftsli ponds itf the same vicinity, tends to show that the real total value of the two properties is no less than P76,000, over seven times the amount of the consideration for the pacto de retro sale.

Another indication that the sale was made as security for money is the fact that Santos Chua Hong remained in possession of the property sold, paying a so-called rent of P100 to Estanislao Feliciano, the purchaser. It will be noted that the P100 per month would be exactly 12 per cent per annum, the maximum legal interest on a loan secured by real property. Feliciano's sale of the properties to Maria Ojeda indicates that he merely desired to recover his money and did not want the land, of which he, as a matter of fact, never had possession.

Aside from other evidence pointing in the same direction, the facts stated are fully sufficient to show that, though regular on its face, the deed of sale with pacto de retro was given as security for a loan of P10,000 and that,

consequently, the legal effect of the document was that of an equitable mortgage. In the case of *Villa vs. Santiago* (38 Phil., 157), this court, citing *Laureano vs. Kilayco* (34 Phil., 148); *Cuyugan vs. Santos* (34 Phil., 100); and *PP. Agustinos Recoletos vs. Lichauco* (34 Phil., 5), said:

"Counsel insist that the conduct of the plaintiff himself, taken together with the marked disproportion between the amount of money advanced and the value of the property in question, and having in mind the purpose to which the money was applied, and the fact that there was no physical transfer of the possession of the land at the time of the alleged sale, sustains his contention that the true understanding between the parties was that the money was advanced by way of a loan; and that the property described in the deed would be held by the lender merely as security for its repayment, this property to be sold in the event of failure to repay the loan, and the proceeds to be applied to the repayment of the indebtedness to the extent necessary to reimburse the creditor in full.

"We are of opinion that this contention should be sustained, giving as we do, exceptional weight to the circumstances surrounding the transaction and the conduct of the parties themselves, especially that of the plaintiff, in view of the fact that the mouth of one of the parties to the transaction is sealed by death."

But it is argued that the defendants were holders in good faith of their transfer certificates of title and that, therefore, their titles cannot now be questioned. That would be true if the defendants really were holders in good faith and for valuable consideration (sec. 39, Act No. 496). But we cannot find that such is the case here. The defendant Sotto was counsel for Santos Chua Hong almost from the beginning of the controversy between his client and the plaintiff and must have had full knowledge of the latter's claim; it is also evident that he was the leading spirit in the scheme subsequently put in effect. It is not disputed that he was living with Maria Ojeda as husband and wife and though the check for P10,000 delivered to Feliciano was in the name of Maria Ojeda, it was made and signed by Vicente Sotto. A few months afterwards, the property was transferred to Doctor De Leon, the consideration stated in the deed being P10,000, the same sum as that paid to Feliciano.

Under the circumstances of the case, it can hardly be doubted that the transfer to De Leon was in reality made by Sotto. In any event, considering the intimate relations between Sotto and Maria Ojeda, the presumption is that she was fully informed of the circumstances. It may further be noted that there was uncontradicted evidence in the record to the effect that Maria Ojeda had neither property nor business occupation. There is also uncontradicted evidence showing that the relations between Santos Chua Hong and Doctor De Leon were very close. It also appears that the alleged sales to De Leon and to Vicente Sotto were made after a notice of *lis pendens* had been recorded in the proper registry of deeds, and that Santos Chua Hong had been in possession of the property up to the time of the trial of the case and probably still is in such possession. It may further be observed that the encargados or caretakers of the two fish ponds testified that they always dealt with their employer, Santos Chua Hong, and recognized him as the owner and that they never had seen any of the defendants in the vicinity of the said fish ponds.

The facts stated show clearly that the defendants were not holders in good faith of their respective transfer certificates of title. On the contrary, the plaintiff's surmise that the successive transfers of the properties have been made for the benefit of Santos Chua Hong and that the property in some manner has been transferred back to him, seems quite probable. Not being holders in good faith and for a valuable consideration, the defendants cannot invoke the provisions of section 39 of the Land registration Act, and their titles are not indefeasible.

At the trial of the case, the plaintiff did not present in evidence the deed of sale with *pacto de retro* and it is suggested that an instrument of that nature "cannot be interpreted, construed, or reformed unless the document itself is before the court. That may be true; it is, indeed, difficult to conceive of a situation where a document may be reformed without being exhibited to the court either in the original or by copy. But that has nothing to do with

this case. We are not here endeavoring to interpret or reform any document; it is conceded, and not disputed, that the deed of sale to Feliciano is in the form of a pacto de retro deed and is, in every respect, properly executed as such. We are here only concerned with the determination of the legal effect of such a document if it is executed as security for a debt, and it is settled beyond argument that for the purpose of such determination, oral evidence is admissible. As stated in 27 Cyc, 1023: The admission of parol testimony to prove that a deed absolute in form was in fact given and accepted as a mortgage does not violate the rule against the admission of oral evidence to vary or contradict the terms of a written instrument."

Feliciano's loan to Santos Chua Hong has been repaid. The Bitas fish pond must therefore be considered redeemed, and the plaintiff is now unquestionably the sole owner of the undivided one-half donated to him, but there is no direct evidence that the money with which the property was redeemed was furnished by Santos Chua Hong, though there are strong indications that such was the case. We must therefore leave the settlement of that question to the defendants among themselves.

From what we have said, it follows that the decision of the court below must be reversed, and it is hereby declared that the plaintiff is the owner of the undivided one-half of the Bitas fish pond donated to him by Santos Chua Hong and Margarita Ignacio on November 21, 1918, and it is ordered that possession of said undivided one-half be delivered to said plaintiff. It is further ordered that the transfer certificate of title issued to the defendant Felix de Leon be cancelled as to the Bitas property and that the transfer certificate of title issued to the defendant Vicente Sotto be cancelled, in toto and that thereupon a transfer certificate of title to an undivided one-half of the said Bitas property, free from all encumbrances except those expressly provided for by statute (sec. 39 of the Land Registration Act as amended), be issued in favor of the plaintiff, Sotero Ignacio. It is further ordered that the defendant Santos Chua Hong pay damages to the plaintiff in the sum of P2,000 per annum from June 8, 1923, until possession of the property is delivered to said plaintiff. Without costs. So ordered.

Street, Johns, Romualdez, and Villa-Real, JJ., concur.

Johnson, J., concurs in the result.

DISSENTING:

MALCOLM and VILLAMOR, JJ.:

The fundamental issue in this case, on the determination of which all other questions depend, is the nature of the instrument dated August 30, 1918—whether a pacto de retro or a mortgage. As explanatory of this statement, it may be remarked that at the time the instrument was executed the persons involved in the transaction were the spouses Santos Chua Hong and Margarita Ignacio and one Estanislao Feliciano. Sotero Ignacio was the natural son of Margarita Ignacio, and became interested in the matter after the accomplishment of the document of donation by Santos Chua Hong and Margarita Ignacio on November 21, 1918, that is, subsequent to the formulation of the instrument of pacto de retro or mortgage. In reaching a correct decision on the issue, there is consequently absolutely no need to complicate matters by sanctioning the intrusion of the various transfers from Feliciano to others and the various intrigues and machinations through which the parties saw fit to drag themselves. All these latter facts, while proving nothing of credit to those involved, are entirely beside the point in resolving the question before us.

As showing that the instrument of August 30, 1918, should be considered to be a mortgage, there are present the following facts: (1) The oral testimony of Lazaro Ignacio regarding the payment of interest and rent; and (2) the testimony of Severino Gonzalez as to the alleged value of the property.

As showing that the instrument of August 30, 1918, was in the nature of a pacto de retro, we have the following: (1) The document itself was not offered in evidence. The presumption must consequently be, as was stated by the trial judge, that the parties considered the instrument to be one of sale with pacto de retro. It is believed that the history of the law of evidence can be searched in vain for any authority which holds that an instrument sought to be cancelled, an instrument sought to be reformed, or an instrument sought to be interpreted or construed can be cancelled, reformed, interpreted, or construed without the physical presence in the record of the instrument itself. (2) The document of donation which was accepted by Sotero Ignacio spoke of the land as having been sold under pacto de retro in favor of Estanislao Feliciano. Sotero Ignacio is thus estopped by his own action to prove that the instrument was other than a pacto de retro. (3) In the deed of sale by Estanislao Feliciano to Maria Ojeda attached to the complaint, the instrument is described as a pacto de retro, and Estanislao Feliciano while on the witness stand said that it was such. (4) The instrument perfected and signed on August 30, 1918, was to be effective for a term of two years. In other words, it expired on August 30, 1920. On that date, title consolidated in the name of Estanislao Feliciano and he became the absolute owner of the land, and this is shown by the contents of the Torrens title. (5) The instrument of August 30, 1918, covered two parcels of land while the donation which it is now sought to enforce covered one parcel of land. Holding the instrument of August 30, 1918, to be a mortgage in this case will result in that instrument being a mortgage for one parcel of land and a pacto de retro for the other parcel of land—certainly rather anomalous.

We understand the natural indignation of the court on the discovery of a fraud. Yet even so we should not depart from an even minded reflection on the basic facts. Our conclusion is that the issue should be decided by holding that there is lacking a clear preponderance of the evidence to prove the instrument of August 30, 1918, to be a mortgage. Accordingly, Judge Teodoro acted advisedly in dismissing the action, and his judgment should be sustained and confirmed.

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