

**JOSE M. KATIGBAK, PLAINTIFF AND APPELLEE, VS. TAI HING CO.,
DEFENDANT. PO SUN SUY AND PO CHING, INTERVENORS AND
APPELLANTS.**

G.R. No. 29917. December 29, 1928

Ponente: VILLA-REAL J.

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VILLA-REAL J.:

Po Sun Suy and Po Ching appeal to this court from the judgment of the Court of First Instance of Manila, the dispositive part of which is as follows:

"1. Ordering the defendants Po Sun Suy and Po Ching, as lessees of the realty, to pay the plaintiff the sum of P28,500, with legal interest from the filing of the complaint.

"2. Ordering the estate of the deceased Po Tecsi to pay the defendants Po Sun Suy and Po Ching, that they may, in turn, pay the plaintiff upon this judgment the sum which represents the rents of the property unduly collected from the occupants of said property by Po Tecsi while alive and by his administrator Po Sun Suy after his death, and not paid to the plaintiff either by Po Tecsi, father of the defendant Po Sun Suy, or by the latter, or by defendant Po Ching. Said sum thus collected, according to the testimony of the defendant Po Sun Suy (p. 147, t. s. n.) is P745, per month, which, for nineteen months, amounts to P14,155. The balance of the rents, that is, the difference between the sum of P1,500 for which the property was leased by the plaintiff to the defendants, and P745 which is the sum collected from the occupants of the property each month by Po Tecsi and by the administrator of his estate must be for the account of the defendants; and

"3. Ordering the defendants and the intervenor each to pay one-third of the costs of the action."

In support of their appeal the appellants assign seventeen errors which we shall take up in the course of this decision.

The following facts have been proven by a preponderance of the evidence:

Gabino Barreto Po Ejap was the owner, with a Torrens title, of the land in litigation, with the improvements thereon. This realty was subject to a mortgage lien in favor of the Philippine National Bank, executed on May 5, 1919, to secure the payment of the sum of P60,000 with 7 per centum interest per annum. (Exhibit 9.)

On November 29, 1921, Po Tecsi executed a general power of attorney in favor of his brother Gabino Barreto Po Ejap, empowering and authorizing him to perform on his behalf and as his lawful agent, among other acts, the following: "To buy, sell, or barter, assign or admit in acquittance, or in any other manner to acquire or convey all sorts of property, real and personal, businesses and industries, credits, rights, and actions belonging to me, for whatever prices and under the conditions which he may stipulate, paying and receiving payment in cash or in installments, and to execute the proper instruments with the formalities provided by the law." (Exhibit A.)

On December 15, 1921, Po Tecsi executed an instrument acknowledging an indebtedness to his brother Gabino Barreto Po Ejap in the sum of P68,000, the price of the properties which the latter had sold to him. (Exhibit U-1.)

On March 31, 1923, Gabino Barreto Po Ejap executed a second mortgage on the aforesaid land with its improvements, in favor of Antonio M. H. Limjenco for the sum of P140,000 and interest at 10 per centum per annum. (Exhibit 9.)

On April 17, 1923, Gabino Barreto Po Ejap, sold the said land with its improvements to his brother Po Tecsí for the sum of P10,000, subject to the same encumbrances. (Exhibit 9.)

On November 22, 1923, Gabino Barreto Po Ejap, making use of the power conferred on him by his brother Po Tecsí, sold absolutely and forever to the herein plaintiff-appellee Jose M. Katigbak, the aforesaid land with its improvements for the sum of P10,000, mentioning in the instrument executed to that end only the mortgage lien of P60,000 in favor of the Philippine National Bank, and without recording either his power of attorney or the sale in the proper certificate of title. Notwithstanding said sale Po Tecsí remained in possession of said property.

On October 22, 1924, Po Tecsí leased a part of said land to Uy Chia for a period of five years from October 1, 1923. The contract drawn up to that end was recorded in the proper certificate of title. (Exhibits 2 and 9.)

On August 24, 1924, Po Tecsí wrote to his brother Gabino Barreto Po Ejap complaining that he had been after him so much for the forwarding of the rents of the property and explaining his precarious financial condition, telling him that he did not collect the rents for himself, and promising to remit the balance after having paid all expenses of repairs and cleaning up, together with the vouchers, so he could not blame him for anything. (Exhibits M and M-1.)

In November, 1925, Po Tecsí, answering his brother Gabino Barreto Po Ejap, wrote to the latter telling him that in the month of October, 1925, he had sent him a draft for the sum of P2,000, and was therefore surprised that he claimed said rent. In said reply Po Tecsí also told his brother Gabino Barreto Po Ejap that if he wanted to lease the property in question to Smith Bell & Co., he should not do so without first consulting him, because if someone offered him a higher rent he wanted to exercise his right to lease it. (Exhibits N and N-1.)

On February 27, 1925, the mortgage on the land in question in favor of Antonio M. H. Limjenco for P140,000 was cancelled, the cancellation being recorded on the proper certificate of title on June 11, 1927. (Exhibits X and 9.)

Po Tecsí died on November 26, 1926.

In December, 1926, Po Sun Suy, Po Tecsí's son, submitted to Gabino Barreto Po Ejap a liquidation of accounts showing the rents collected on the property up to that month. (Exhibit P.)

On February 11, 1927, Po Sun Suy was appointed administrator of the estate of his deceased father, submitting an inventory in which he included the land in discussion as one of the properties left by his deceased father, and obtaining the transfer of the certificate of title in his name as said administrator.

On February 14, 1927, Po Sun Yao alias Po Sun Suy, answering a letter from his uncle Gabino Barreto Po Ejap, told the latter that times were bad, because the price of hemp had slumped, and the plantations had suffered damages, and begged him to let him pay the rent later. (Exhibits C and C-1.)

On February 11, 1927, Gabino Barreto Po Ejap executed an instrument in favor of his son Po Sun Boo, assigning to him all his rights and actions in the credit of P68,000 against Po Tecsí. (Exhibit U.)

On May 22, 1927, Jose M. Katigbak sold the property in question to Po Sun Boo for the sum of P10,000. (Exhibit J.)

On May 27, 1927, Po Sun Boo notified Po Sun Suy and Po Ching that he had purchased the land they occupied

and that from that date they were to deal with him concerning the payment of the rents thereof. (Exhibit I.)

Ever since the property in discussion had been sold by Gabino Barreto Po Ejap to Jose M. Katigbak, the former had administered it, entering into an oral contract of lease with Po Tecsi, who occupied it at a monthly rental of P1,500, payable in advance on the first day of each month. Later on, when Po Tecsi died, Po Sun Suy, as administrator of the estate of his father Po Tecsi, continued renting said land on which stood Po Ching's store.

As Po Tecsi had not paid a part of the rent due up to the time of his death, and Po Sun Suy, his son, the rent due from his father's death until Jose M. Katigbak transferred the ownership thereof to Po Sun Boo on May 23, 1927, the present action was brought in the Court of First Instance of Manila for the recovery of said rent which amounts to P45,280, first against the commercial firm Tai Hing Co., and later against the members of said firm, Po Sun Suy and Po Ching, by an amendment to the original complaint.

Po Sun Suy, as the judicial administrator of the estate of his deceased father Po Tecsi, filed an intervention praying that judgment be rendered against Jose M. Katigbak, the plaintiff, declaring him not to be the owner of the property described in the second paragraph of the complaint and, therefore, not entitled to the rents of the property in question.

The first question to be determined in the present appeal is one of procedure, and that is whether or not the trial court had jurisdiction to try the case on its merits.

The appellants contend that they as intervenors, having raised the question of ownership, the solution of which is necessary for the determination of the question of rent, the Court of First Instance of Manila had no jurisdiction to try the case, the properties in question being situated in the municipality of Tacloban, Province of Leyte.

An action for the recovery of rent is a personal action, and as such is transitory and may be instituted in the province where the defendant or the plaintiff resides, at the election of the plaintiff (sec. 377, Act No. 190; *Boga Tan Chiao Boc vs. Sajo Vecina*, 11 Phil., 409). With respect to the collection of rents, then, the Court of First Instance of Manila had jurisdiction to try the action instituted to that end.

The question of ownership was raised by the intervenors who thereby submitted to the jurisdiction of the Court of First Instance of Manila and, according to the doctrine laid down in the case of *Manila Railroad Company vs. Attorney-General* (20 Phil., 523), a Court of First Instance having full and unlimited jurisdiction over realty situated in the Philippine Islands, a Court of First Instance of a province may try a case concerning realty situated in another province so long as no objection is entered to said court's exercise of its jurisdiction. The intervenors having submitted to the jurisdiction of the court by filing a third-party claim, in which they raised the question of ownership of the premises, the rent of which it is sought to recover, they cannot consistently object to the exercise of said jurisdiction.

Having decided the question of the court's jurisdiction with respect to the venue, we shall pass on to the question of the ownership of the land involved herein.

In the first place, it is contended by the appellants that Gabino Barreto Po Ejap was not authorized under the power executed by Po Tecsi in his favor to sell said land, for the reason that said power had been executed before Gabino Barreto Po Ejap sold said land to his brother Po Tecsi.

We do not think that on this point the pertinent part of the power of attorney we have quoted above could give rise to any doubt. The power is general and authorizes Gabino Po Ejap to sell any kind of realty "belonging" (*pertenecan*) to the principal. The use of the subjunctive "*pertenecan*" (might belong) and not the indicative "*pertenecen*" (belong), means that Po Tecsi meant not only the property he had at the time of the execution of the

power, but also such as he might afterwards have during the time it was in force. (2 Corpus Juris, p. 614.)

The appellants also contend that said power of attorney not having been registered) in the registry of deeds, the authority granted therein to sell realty registered in accordance with the Torrens system is ineffective, and the sale of the property in question made by Gabino Barreto Po Ejap in favor of Jose M. Katigbak by virtue of said power has no more effect than that of a contract to transfer or sell.

Inasmuch as in accordance with, section 39 of said Act No. 496, "Every applicant receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith, shall hold the same free of all incumbrance except those noted on said certificate," every document which in any manner affects the registered land is ineffective unless it is recorded in the registry of deeds. But such inefficacy only refers to third persons who, in good faith, may have acquired some right to the registered land.

While it is true that a power of attorney not recorded in the registry of deeds is ineffective in order that an agent or attornay-in-fact may validly perform acts in the name of his principal, and that any act performed by the agent by virtue of said power with respect to the land is ineffective against a third person who, in good faith, may have acquired a right thereto, it does, however, bind the principal to acknowledge the acts performed by his attorney-in-fact regarding said property (sec. 50, Act No. 496).

In the present case, while it is true that the non-registration of the power of attorney executed by Po Tecsi in favor of his brother Gabino Barreto Po Ejap prevents the sale made by the latter of the litigated land in favor of Jose M. Katigbak from being recorded in the registry of deeds, it is not ineffective to compel Tecsi to acknowledge said sale.

From the fact that said power and sale were not recorded in the registry of deeds, and from the omission of any mention in the deed of sale of the mortgage lien in favor of Antonio M. H. Limjenco, and the lease of a part of said land in favor of Uy Chia, the appellants deduce that said sale is fraudulent.

The record contains many indications that Po Tecsi was not unaware of said sale. His several letters complaining of the pressing demands of his brother Gabino Barreto Po Ejap to send him the rents of the land, his promises to send them to him, and the remittance of the same were a tacit acknowledgment that he occupied the land in question no longer as an owner but only as lessee.

The appellants have tried to explain the remittance of said rents to Gabino Barreto Po Ejap by Po Tecsi, saying that they were in payment of a debt which the latter owed the former for certain property which said Gabino Barreto Po Ejap had sold to Po Tecsi. But there is nothing in any of said letters to indicate that said rents were sent on account of said debt.

The appellants deny that there has been any contract of lease between Po Tecsi and Gabino Barreto Po Ejap of the lands in question, for the reason that there exists no document to evidence it. The evidence is clear that the rents were payable in advance on the first day of each month. If this is so, then there is no need of a contract to prove the existence of the lease.

Upon the death of Po Tecsi on November 26, 1926, his son Po Sun Suy succeeded him in the possession of the land and was appointed administrator of his father's estate on February 11, 1927. On February 14, 1927, he wrote to his uncle, Gabino Barreto Po Ejap, in answer to the latter's letter to send him what he collected of the rents of the house, saying that the price of hemp had suddenly dropped, his motor boat had been grounded, and his abaca plantations had suffered damages, promising to send the rents later on.

Po Tecsí occupied the land as lessee from November 22, 1923, until his death on November 26, 1926, having paid up the rents accrued until October 22, 1906, and leaving unpaid the rents due and accrued from that date until his death, at the rate of P1,500 per month. From the latter date his son Po Sun Suy was appointed administrator of the estate of his father Po Tecsí, and continued to collect the rents of daid land from the lessees, amounting to P745.

It does not clearly appear from what date the land was leased to the defendants Po Sun Suy and Po Ching for the sum of P1,500 a month. If Po Tecsí had rented it until his death, then the defendants Po Sun Suy and Po Ching could not have rented it until after the death of Po Tecsí.

The rights of the sub-lessee Uy Chia, whose lease for five years from October 1, 1923, was duly recorded in the registry of deeds, are valid, for it does not appear that he had any knowledge of the sale of the subleased property in favor of Jose M. Katigbak, which sale, as we have said, has not been recorded in the registry of deeds and cannot, therefore, affect the rights of third persons acquired in good faith and duly registered.

To summarize, then: the sale made on November 22, 1923, by Gabino Barreto Po Ejap, as attorney-in-fact of Po Tecsí, in favor of Jose M. Katigbak of the land in question is valid; after said sale, Po Tecsí leased the property sold, from Gabino Barreto Po Ejap, who administered it in the name of Jose M. Katigbak, at a rental of P1,500 per month, payable in advance, leaving unpaid the rents accrued from that date until his death which occurred on November 26, 1926, having paid the accrued rents up to October 22, 1925; from November 26, 1926, the defendants Po Sun Suy and Po Ching leased said land for the sum of P1,500 per month; on February 11, 1927, Po Sun Suy was appointed administrator of the estate of his father Po Tecsí, and filed with the court an inventory of said estate including the land in question; and on May 23, 1927, Jose M. Katigbak sold the same property to Po Sun Boo.

The claim for rents due and unpaid by Po Tecsí, deceased, and proceedings for the settlement of whose estate have been instituted, should be presented to the committee on claims and appraisal appointed in said intestate proceeding in accordance with the provisions of section 703 of the Code of Civil Procedure and cannot be collected by an ordinary action.

As to the rents accrued and unpaid since the death of Po Tecsí, his son Po Sun Suy, as administrator of his property, having included said property in the inventory of the latter, the same is in custodia legis, and hence, the rents collected by said administrator of said property are also in custodia legis. The claim then of Jose M. Katigbak for the rents accrued and unpaid up to the date when said property was sold to Po Sun Boo, as well as the accrued and unpaid rents from the time the latter acquired it up to the present date, must be presented in the court taking cognizance of the intestate proceeding for the settlement of Po Tecsí's estate.

For the foregoing, we are of opinion and so hold: (1) That Jose M. Katigbak was the absolute owner of the property in controversy, subject to the encumbrances on the same appearing in the registry of deeds; (2) that his claim for the rents of the property in litigation accrued and unpaid by Po Tecsí before his death must be presented to the committee on claims and appraisal appointed in the intestate proceedings for the settlement of the estate of said Po Tecsí; (3) that the claim of Jose M. Katigbak for the rents of the said property collected by Po Sun Suy, as administrator of the property of the intestate estate of his father Po Tecsí, must be presented to the court having cognizance of said intestate proceeding.

By virtue whereof, and with the modifications above indicated, the judgment appealed from is affirmed, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Johnson, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

DISSENTING

MALCOLM, J.:

Until the rules formally announced in *Briones vs. Garcia* ([1919], 40 Phil., 68) relating to the approval of bills of exceptions, an authority often followed, shall be reconsidered and set aside, the said rules should be given indiscriminate application to all cases, and this being done in the instant case, the petition presented on behalf of the appellee should be decided in favor of the petition, with the result that the appeal should be ordered dismissed.

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