

AGRIPINO DE OCAMPO ET AL., PLAINTIFFS AND APPELLEES, VS. JUAN ZAPORTEZA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 30246. August 31, 1929

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The instant appeal seeks the reversal of the judgment appealed from, holding that the contract Exhibit A is a mortgage rather than a sale subject to repurchase.

The action brought prayed that said contract Exhibit A be annulled by the court.

The main question discussed by the parties both in the court below and in this instance is: Whether or not the instrument Exhibit A expresses the true agreement entered into by and between the parties.

The appellants maintain that the trial court erred in holding that the instrument Exhibit A is a mortgage deed, and not a deed of sale subject to repurchase, contending that the parties herein submitted an agreed statement of facts wherein it appeared that the appellees executed the instrument Exhibit A in favor of the appellants; and alleging, moreover, that they received the price of the sale, and that there was no fraud in the execution of the instrument in question.

It is true that the deed in question apparently evidences an agreement of a sale subject to repurchase; but as the plaintiffs-appellees have put in issue a mistake of said writing, and its failure to express the true intent and agreement of the parties, the presumption established in section 285 of the Code of Civil Procedure depends on the evidence in the case. And the plaintiffs' evidence shows: (1) That the portion of land conveyed to the defendants by the plaintiffs, added to that conveyed to them by the deceased Alejandro de Ocampo, only comprises an area of land planted with 700 coconut trees; and (2) that the conveyance by Alejandro de Ocampo, and that subsequently made by the plaintiffs, were only to secure the amount of P1,000 received by the former, and the other amount of P2,000 furnished by the same defendant to pay off a debt of the deceased to the National Bank (P1,604.44), and funeral expenses, (P400).

The plaintiffs contend, by means of witnesses Agripino and Gregorio de Ocampo, that the contract between the parties is in reality a simple mortgage, but was made to appear as if it were a sale, subject to repurchase, at the suggestion of Nazario P. de Mesa, the attorney for the defendants, who told them that, as it was a question between brothers, there was no objection to drawing up the deed in that form; whereas, if the agreement were evidenced as a loan, the defendants might appear in a bad light if the transaction were not dissimulated, in view of which, the plaintiffs consented to sign the instrument. The trial court states in its judgment that it was convinced that said plaintiffs gave a substantially correct account of the conversations between the parties which preceded the execution of the document in question, and we are of opinion that this is supported by the evidence.

It should here be noted that when, in March, 1924, the instrument Exhibit A was executed, the decree adjudicating lot No. 4210, which includes the two parcels of land in question, in the registration proceeding thereof, had not

yet been issued, such issuance having taken place on August 31, 1925, in favor of Agripino de Ocampo and others. On January 27, 1926, the trial court that took cognizance of the registration proceeding, amended its decree, on motion of the defendants, by including therein the lien of a sale subject to repurchase for P3,000 for the period of three years from the 4th of March, 1924. On June 18, 1926, the original certificate was issued in favor of those to whom the lot was adjudicated in accordance with the amended decree. And, subsequently, on September 14, 1927, the certificate of transfer (Exhibit 1) was issued in favor of the defendants.

It is a fact duly proven in the proceedings that the certificate of transfer in favor of the defendants includes not only the two parcels described in the instrument Exhibit A, planted with 700 coconut trees, but all of lot No. 4210, which, according to the evidence, contains 2,000 coconut trees. Therefore, it is evident that the certificate of transfer, Exhibit 1, in so far as it includes a portion of land planted with 1,300 coconut trees, to which the defendants are not at all entitled, should not be given legal effect, especially when said certificate of transfer has been obtained by the defendants during the pendency of the present action wherein the value of the instrument Exhibit A is precisely the matter in dispute.

In view of the foregoing, we are of opinion, and so hold, that the instrument Exhibit A does not express the true contract entered into by the parties, and taking for granted that Exhibit 1 is valid, we hold, nevertheless, that as the defendants obtained the amendment of the decree of adjudication by means of said instrument, and having, furthermore, obtained the certificate of transfer of title knowing that only two parcels of lot No. 4210 had been transferred to them, application must here be made of the doctrines upheld in the cases of *Uy Aloe vs. Cho Jan Ling* (19 Phil., 202); *Camacho vs. Municipality of Baliuag* (28 Phil., 466); and *Severino vs. Severino* (44 Phil., 343), to the effect that the defendants only hold the certificate of transfer in trust for the plaintiffs with respect to the portion of the lot planted with 1,300 coconut trees; and they are therefore bound to execute a deed in favor of the plaintiff, transferring to them said portion planted with 1,300 coconut trees.

With regards to the two portions described in the instrument Exhibit A, we affirm the judgment appealed from, ruling that within ninety days from the date this decision becomes final, the administrator of the estate of the deceased Alejandro de Ocampo must redeem the land which is the subject matter of the contract, paying the sum of P3,000 to the defendants, who shall restore said land to the administrator, provided that if the administrator fails to exercise this right within the period fixed, the ownership of the land described in the deed Exhibit A shall be consolidated in the defendants. So ordered.

Avanceña, C. J., Johnson, Street, Johns, Romualdez, and Villa-Real, JJ., concur.

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