

## CATALINO SEVILLA AND VALERIANA DE LEON, PLAINTIFFS AND APPELLEES, VS. GAUDENCIO TOLENTINO, DEFENDANT AND APPELLANT.

*G.R. No. 30291. March 15, 1929*

Ponente: VILLA-REAL, J.

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### VILLA-REAL, J.:

This is an appeal taken by the defendant Gaudencio Tolentino from the judgment of the Court of First Instance of Nueva Ecija, the dispositive part of which is as follows:

"By virtue of these considerations, the court is of opinion that with respect to the complaint judgment must be, as it is hereby, rendered ordering the defendant Gaudencio Tolentino to vacate the lands hereinafter described, and that he deliver the possession thereof to the plaintiffs. The defendant is sentenced to pay said plaintiffs the sum of P2,200 as rental for the agricultural year 1921-1922, with' the 12 per cent interest stipulated in the promissory note executed by the defendant to that effect; to pay the sum of P2,200 for the agricultural year 1922-1923 with interest at 10 per cent as per the contract of lease; to pay the sum of P2,200 for the agricultural year 1923-1924 with interest at 10 per cent as also stipulated in said contract of lease. As to the counterclaim and the cross-complaint of the defendant's additional answer, the plaintiffs are hereby absolved from both with costs against the defendant.

The two parcels of land involved herein are as follows:

"(a) Situated in the barrio of San Esteban, municipality of Bongabon, Nueva Ecija; bounded on the north by the provincial road of Cabanatuan; on the east by the properties of Mariano Agustin, Emilio Nacarrete, Gaudencio Tolentino and the Bancal Creek; on the south by an irrigation ditch, the property of Saturnino and Rufino Tolentino, Cinco Creek and the homesteads of Epifanio Laureta; and on the west by public lands. It contains an area of 541.825 square meters.

"(b) Situated in the barrio of San Esteban, municipality of Bongabon, Province of Nueva Ecija; bounded on the north by Cinco Creek and lot No. 1, 11-8660; on the south-east by Cinco Creek and the properties of Juana Azarcon and the heirs of Eduardo Llado; and on the west by Cinco Creek and the homestead of Andres and Epifanio Laureta. It contains an area of 322.286 square meters."

In support of his appeal, the appellant assigns the following alleged errors committed by the trial court in its judgment, to wit:

"1. The lower court erred in not holding that the alleged contract of purchase and sale with right to repurchase and of lease, is nothing more than a simulated contract of a mortgage loan to cover up usurious interest.

"2. The lower court erred in not holding that the contract entered into by and between the plaintiffs and the defendant is a loan with usurious interest.

"3. The lower court erred in sentencing the defendant to vacate the lands and in ordering their delivery to the plaintiffs.

"4. The lower court erred in not holding that the lands in question are the defendant's exclusive property.

"5. The lower court erred in not holding that the registration of the alleged sale with right to repurchase in the register of deeds is improper, and in not ordering its cancellation and the necessary corrections in order that the lands might be restored to the defendant's name.

"6. The lower court erred in not holding that the preliminary attachment issued at the instance of the plaintiffs, against the defendant was obtained without any real ground.

"7. The lower court erred in not ordering the plaintiffs to pay the defendant an indemnity for the damages caused by the preliminary attachment.

"8. The lower court erred in not granting the defendant damages for having been unduly deprived of the possession of the lands in question.

"9. The lower court erred in not ordering that the lands in question be restored to the defendant Gaudencio Tolentino as soon as possible.

"10. The lower court erred in not sentencing the plaintiffs to pay the costs."

The following facts were proved at the trial by a preponderance of the evidence:

Prior to the transaction with which the present case is concerned, the defendant Gaudencio Tolentino had been borrowing money from several persons, securing its payment with the two parcels of land in controversy, but always executing a deed of sale with a right to repurchase and of lease wherein appeared the interest on the sums obtained as a loan as a yearly rental of the lands. In the year 1920, as the period for the payment of a loan of P17,000 which Gaudencio Tolentino had obtained from General Manuel Tinio was to mature, the former, availing himself of the offer which the herein plaintiff Catalino Sevilla had made to furnish him money on the two parcels of land which were mortgaged in favor of said General Manuel Tinio by an instrument in the form of a sale with a right to repurchase, with the usual contract of lease,—since he was not disposed to sell said lands to Catalino Sevilla for P45,000 offered by the latter—he appealed to the aforesaid Catalino Sevilla for a loan of money. Plaintiff Catalino Sevilla loaned the defendant Gaudencio Tolentino the sum of P19,000, with 15 per cent interest per annum thereon, giving as security the lands in controversy which were to be redeemed from General Manuel Tinio. In executing the proper instrument, Exhibit 1, dated May 11, 1920, it was made in the form of a sale with a right to repurchase for the sum of P20,000 of which P19,000 was the amount of the loan and the P1,000 a portion of the P3,000 interest at 15 per cent per annum, plus the costs of drawing up the deed. On the same date, May 11, 1920, the same parties entered into a contract of lease of the two parcels of land supposedly sold with a right to repurchase for the period of two years at a rental of P2,000 which represent the rest of the interest, and with 10 per cent interest in case of default in the payment of said rental (Exhibit 3). On June 15, 1921, owing to a defect in the technical description of the two parcels of land, another deed of sale with a right to repurchase had to be executed for the sum of P21,000 (Exhibit 10), of which P20,000 was the amount of the first instrument Exhibit 1, because Gaudencio Tolentino could not pay more than P2,000, by way of interest, as rental, and the P1,000 as a part of the P3,000 interest at 15 per cent per annum, plus the expenses of the preparation of the document, corresponding to the new year from May 11, 1921 to May 11, 1922. The period stipulated in the new deed is two years, expiring on May 11, 1923. On the same date, June 15, 1921, a contract of lease was executed by and between the same parties on the two parcels of land in question for a period of two years from May 11, 1921, and for the yearly rental of P2,200 (Exhibit A), which represents the rest of the interest. As there existed two contracts, one for P20,000 (Exhibit 1) and another for P21,000 (Exhibit 10), and as it appeared that Gaudencio Tolentino owed the two sums, Catalino Sevilla executed a deed of resale (Exhibit 2) in favor of Gaudencio Tolentino of the two parcels of land sold under Exhibit 1 on the same day, June 15, 1921. When the period of the supposed sale With a right to

repurchase (Exhibit 10), had expired without the defendant Gaudencio, Tolentino having redeemed the lands supposedly sold, the plaintiffs, by a sworn statement, caused the consolidation of the title in their favor to be noted in the corresponding Torrens certificate, which was done on May 19, 1923 (Exhibit 11), and on the same date the proper certificate of transfer of title was issued to the spouses Catalino Sevilla and Valeriana de Leon (Exhibit B).

The term of the supposed lease having expired without Gaudencio Tolentino having paid the rental for the agricultural years 1921-1922 and 1922-1923, nor the 12 per cent interest agreed upon in the supposed contract of lease Exhibit A, on November 28, 1923 the plaintiffs filed the present action of forcible entry and detainer against the defendant in the justice of the peace court of Laur, Nueva Ecija, setting out in the complaint the contract of lease Exhibit A. The assessed value of the two parcels of land in litigation is P35,000.

There is no question that the real transaction between the plaintiffs and the defendant is a loan with a mortgage security which was made to appear to be a sale with a right to repurchase in order to cover the usurious interest of 15 per cent per annum. This may be inferred not only from the parol evidence of record, but also from the manner and circumstances in which the instruments were drawn. The very acknowledgment made by Gaudencio Tolentino of the sum of P2,200 "as interest on our debt to Catalino Sevilla, which is the rental of the land we sold with a right to repurchase" with interest at 12 per cent per annum from the first of May, 1923, which is set out in the complaint filed by the plaintiffs, shows that in the series of transactions between the plaintiffs and the defendant there was nothing more than a contract of loan with a mortgage security. The plaintiff Catalino Sevilla himself, testifying in his own behalf, used the words "loan/" "interest," in referring to said transactions.

In view of the facts established by a preponderance of the evidence, the legal question arises as to whether or not the plaintiffs are entitled to the possession of the lands in litigation.

If, as we have seen, the real character of the transaction between the plaintiffs and the defendant was (and is) that of a loan with a mortgage security in the form of a sale with a right to repurchase, with a lease, the plaintiffs did not acquire any right of ownership over the two parcels of land by the expiration of the period for their redemption and are not entitled to the possession thereof.

As to the other assignments of error, since the present action of forcible entry and detainer was begun in the justice of the peace court of Laur, and was appealed to the Court of First Instance of Nueva Eeija, and later to this court, the only question to decide refers to the character and extent of the possession, for the solution of which evidence upon the title to property may be admitted in accordance with the doctrine laid down in the case of *Chicote vs. Acasio* (31 Phil., 401), interpreting the provisions of section 68 of Act No. 136, as amended by Acts Nos. 1627 and 2041. If, in the case of *Mendoza vs. Arellano and B. de Arellano* (36 Phil., 59), this court laid down the doctrine that "where the real issue raised by defendant's pleadings in an action of this kind in a court of a justice of the peace is whether an alleged contract of sale with right to repurchase, including an alleged rental contract, is a valid contract, or a fictitious and simulated contract which does not set forth the real nature of the agreement entered into by the parties, a question of title is involved which necessitates the transfer of the record for trial in the Court of First Instance by certificate of the justice of the peace," it was because the defendant prayed that the properties described in the complaint be declared to belong to him. In the instant case the defendant has limited himself to asking in his answer for the dismissal of the complaint, reserving the right to bring such action as he may be entitled to. The question of ownership of the lands in litigation is not, therefore, in controversy, but only the possession thereof. The defendant's implied admission of the genuineness of the contract of lease does not bar him from alleging and proving that said contract is fictitious and simulated, and that the contract of sale with a right to repurchase from which it arose was really and truly a mortgage contract and, consequently, the plaintiffs had no right to the possession of the lands which are the subject matter of the transaction.

As to the damages prayed for in the counterclaim of the defendant, we do not find sufficient merits to grant the petition.

By; virtue whereof, we are of the opinion and so hold, that the plaintiffs are not entitled to the possession of the lands in litigation, and the defendant is hereby absolved from the complaint, with costs against the appellees, without prejudice to such rights as they have as mortgage creditors. So ordered.

Johnson, Street, Malcolm, Ostrand, Johns, and Romualdez, JJ., concur.

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