

HARRY MARTIN, PLAINTIFF AND APPELLANT, VS. AGUSAN COCONUT COMPANY, DEFENDANT AND APPELLEE.

G.R. No. 30427. August 12, 1929

Ponente: JOHNS, J.

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JOHNS, J.:

As we analyze the record, the real question involved in this case is the legal force and effect of Exhibit 1, which ia as follows:

"AGUSAN COCONUT COMPANY

"DIKLOM RANCH

"RESULT OF THE DIVISION OF THE SIASSI-AGUSAN-MARTIN HERD

1—Class and age 2—Agusan Share 3—Martin share

"Male:

Broken steers 1 1

Three years old steers 6 6

Two years old steers 25 26

One year old steers 16 17

Male calves branded 9 10

Male calves unbranded 22 23

—79 —83

"Female:

Three years old and over 28 29

Two years old 19 20

One year old 23 24

Female calves branded 8 9

Female calves unbranded 20 21

—98 —103

Original cows 72

"Total Agusan share.....177 Martin share.....258

"We hereby certify that we have made the partition of the cattle involved in the contract or pasturage agreement between Mr. Harry Martin and the Agusan Coconut Company and that the above is the result of such partition— 177 head of cattle for the Agusan Coconut Company as shown under column No. 2 and 258 head of cattle for Mr. Harry Martin as shown under column No. 3. This partition terminates the above-mentioned contract or pasturage agreement.

"Done at Diklom, Bukidnon, P. I., this 18th day of March, 1926.

"(Sgd.) H. MARTIN

"AGUSAN COCONUT COMPANY

"By (Sgd.) F. LEWIS

"Superintendent, Diklom Ranch

"Witness: Witness:

"(Sgd.) J. AGUDO (Sgd.) R. E. GEARHART

"DIKLOM, BUKIDNON, P. I.

"March 23rd, 1926

"I hereby acknowledge the receipt of two hundred fifty-eight (258) head of cattle from the Agusan Coconut Company as shown in detail under column No. 3 and headed '3—Martin share.'

"(Sgd.) H. MARTIN"

The appellant in his brief says:

"4. Our fourth assignment of error is to the effect that the lower court erred when it found that the division of the animals and their increment as provided in the contract had been made on March 18, 1926, as shown by Exhibit 1.

"Exhibit 1 was prepared by the defendant, through its agents, and the method of securing the signature of the plaintiff thereto was testified to by the plaintiff (pages 18 and 19, sten. notes) who also declared that when he went to Diklom in March, 1926, to get the animals which belonged to him he took with him the certificates of ownership for all his animals which had such certificates at the time they were sent to the Diklom ranch, which said certificates had been returned to him by the defendant to whom he had formerly delivered them. He further declared (pages 137 and 138, sten. notes) that he could find but 72 of the animals corresponding to the 173 certificates which had been returned to him by the defendant and which he had taken with him to Diklom, and also (page 19, sten. notes) that he received the animals which the defendant was willing to deliver to him 'under protest' and that the animals so delivered to him were not all those to which he was entitled. Such Exhibit 1 is not a final determination and division of the animals as between this plaintiff and this defendant but is, under the circumstances, nothing more than a receipt for the actual number of animals which the defendant was willing to deliver to the plaintiff. The plaintiff likewise declared (pages 18 and 19, sten. notes), and this again without contradiction, that the defendant, through its agent, tried to require him to sign a 'quitclaim receipt' at the time he received such animals which receipt had already been prepared and which he refused to sign and that after such refusal he told the defendant's agent, Mr. Lewis, a witness at the hearing in the lower court, to prepare a receipt for the animals which had been delivered to him and that he would sign same; that such receipt (Exhibit 1) was prepared and that he signed it. None of these declarations on the part of the plaintiff were in any way contradicted- and must be taken to be true.

"While it is true that plaintiff made no written reservations upon Exhibit 1, his protest to the signing of the first receipt prepared for his signature and to the number of animals received by him is a sufficient protest and

reservation of his rights, even if he had not signed the second receipt 'under protest' as he declared he did. Plaintiff understood Exhibit 1 to be what he had asked Mr. Lewis, the representative of the defendant, to prepare, i. e.) a receipt for the animals received by him. He signed it as and for such a receipt only (pages 18, 19 and 138, sten. notes). This exhibit was prepared by the defendant and if there are any doubts as to its meaning such doubts must be resolved against the defendant who made it.

"Such Exhibit 1 in connection with Exhibits K, K-1, to K-9, inclusive (excluding Exhibits K-4a and K-4b) show conclusively that Exhibit 1 is not a division of the animals and their increment as provided in the contract, Exhibit A, and we, therefore, respectfully insist that our fourth assignment of error should be sustained.

"Further in connection with this assignment we invite attention to the gross misrepresentation, if not actual fraud, on the part of the defendant in delivering to the plaintiff 173 certificates of ownership covering that number of his cattle originally placed in the hands of the defendant, thus leading him to believe that such number of such animals were still in defendant's possession, and then delivering to him but 72 of the total covered by such certificates,"

That exhibit was signed March 18, 1926, at which time, as a part of the exhibit, the plaintiff acknowledged in writing the receipt of the 258 head of cattle from the defendant, "as shown in detail under column No. 3 and headed '3—Martin share.'"

The plaintiff admits that he signed Exhibit 1, and that he received the 258 head of cattle as the "result of the Division of the Siassi-Agusan-Martin Herd," but contends that he signed it under "protest," and that he was misled and deceived by the defendant as to the actual facts and as to the number of cattle which he should receive under the original contract. Exhibit 1 was executed by the plaintiff in person and the defendant through Lewis, its superintendent.

At the oral argument plaintiff's attorney contended that Exhibit 1 was executed under duress or coercion, but that contention is not sustained by the record. In the final analysis, all that Lewis ever told the plaintiff was this, that I am authorized to make the division and to deliver the cattle on condition that you will sign Exhibit 1 after the division is made, but if you do not sign Exhibit 1, I have no authority to deliver you the cattle. That was not coercion ; neither was it undue influence. The plaintiff had the option to stand upon his legal rights and to refuse to sign the exhibit in the manner and form in which it was drafted, and he elected to sign it, upon the strength of which the 258 head of cattle were then and there delivered to him, and it expressly recites that "This partition terminates the above mentioned contract or pasturage agreement." If that contract was then and there terminated, as Exhibit 1 says, how and upon what legal principle can the plaintiff now enforce it ? It will be noted that there are no reservations of any kind in Exhibit 1, and that there is nothing upon its face which would even suggest that it was signed by the plaintiff under protest, as he now claims.

Exhibit 1, which was executed on March 18, 1926, is in writing and was duly signed by the respective parties in the presence of two witnesses; and plaintiff acknowledges the receipt of the 258 head of cattle as his share of the cattle under the original contract of about November 20, 1920.

Plaintiff's cause of action is founded upon the original contract of November, 1920, and is based upon alleged breaches of the terms and conditions of that contract, and yet he admits that he signed Exhibit 1 and that he received the 258 head of cattle as a result of "the partition of the cattle involved in the contract or pasturage agreement" between him and the defendant, "and that the above is the result of such partition," and "this partition terminates the above mentioned contract or pasturage agreement." The complaint does not seek to revoke or set aside Exhibit 1. Neither does it allege fraud in its execution. In fact no reference whatever is made to Exhibit 1 in the complaint, and yet the plaintiff admits that he signed it and received the 258 head of cattle. In the face of that

admission and without any allegation of fraud, how can plaintiff maintain an action on the original contract which was terminated five years later by another contract between the parties to the original contract?

In other words, when it appears that the parties to the original contract five years later have entered into another and a different contract which recites that a division was made of the property between the parties under the original contract, and specifically states that the original contract is terminated, and both parties take and accept the fruits of that settlement and division, in the absence of fraud or mistake in the execution of the last contract, which must both be alleged and proven, how and upon what legal principle can either party to the division maintain an action for a breach of the terms and conditions of the original contract? Nowhere in the pleadings is there any allegation of fraud or mistake in the execution of Exhibit 1. It is not even mentioned in the complaint. To defeat its legal force and effect, plaintiff now says that he signed Exhibit 1 under protest.

Upon that point, testifying as to his conversation with Lewis, superintendent of the defendant, plaintiff testified:

"A. I called his attention concerning this and he told me that they had been sold. I then told him, how could you have sold those animals since I have the certificates here? And he answered me, it is all we have and if you do not want to take them, we shall collect from you for the maintenance of the same here. Your contract has already expired and I have instructions to deliver them to you, and if you refuse to take them, we shall collect from you a certain amount each day for their stay and care; and he said that they did the same thing as regards the other herd of cattle that were there and which belonged to Mr. Aboitiz. I then took all the cattle which were delivered to me under protest that some of my cattle were missing. He asked me to sign a quit-claim receipt, which I refuse to do, and I told Mr. Lewis to make a receipt for the animals that he delivered to me and that I would sign it and that was done."

Yet the stubborn fact remains that after this conversation the plaintiff signed Exhibit 1 as it was written and accepted and receipted for the 258 head of cattle as a result of that division. There is nothing in Exhibit 1 to show that it was signed under protest or to show that it was signed on any terms or conditions, and it expressly recites that "this partition terminates the above mentioned contract or pasturage agreement," which flatly contradicts the oral testimony of plaintiff above quoted. There is no claim or pretense that he was misled or deceived in the signing of it or that he did not know its nature and contents or what he was signing, and there is no evidence that he was forced to sign Exhibit 1 or that he signed it under duress or coercion. The signing of it was a matter at his option and of his own discretion. Lewis was the superintendent of the defendant, and in the final analysis, he said to the plaintiff, I am authorized to make this settlement and division, but I do not have any authority to make any other settlement or to deliver the cattle, and the plaintiff signed Exhibit 1. That was not coercion or duress, and the signing of it by the plaintiff was purely an act of his own judgment and discretion as to what he should do, and he accepted and signed Exhibit 1 and is bound by its legal force and effect.

As we analyze the record that exhibit was a full and final settlement between the parties of all matters between them arising from or growing out of the original contract of November, 1920. It follows that the judgment of the lower court is affirmed, with costs. So ordered.

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

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