

MATEO OLONA, PLAINTIFF AND APPELLEE, VS. ALEJANDRO PASCUA, DEFENDANT AND APPELLANT.*G.R. No. 3180. March 25, 1907*

Ponente: MAPA, J.

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The complaint filed in this case has for its object the recovery of possession of a piece of land, alleged by the plaintiff to be his property. The said complaint alleges, among other facts, the following:

First. "That in the year 1896 the plaintiff made delivery to the defendant and Paulino Benitez, under a mortgage, his title deeds justifying his possession as well as the ownership to the property described, together with the fruits and profits accruing therefrom, as a guaranty to secure the sum of 40 pesos received from both persons as a loan, the said mortgage having for its term the time during which said loan might remain owing and unpaid."

Second. "That in the year 1897 Paulino Benitez transferred and ceded his rights to Alejandro Pascua, the defendant herein."

Third. "That in the month of April, 1903, the plaintiff, desiring to redeem his said land made demand upon the defendant for the return of the same and of the title deeds thereto, by tender of the 40 pesos, but the defendant refused to so comply therewith."

The only defense of the defendant, as alleged by him in his answer to the complaint, was that the land in litigation had been sold to him by the plaintiff in 1894; that by reason of the same he, the defendant, had had the fact of such possession of said land registered in the office of the registrar of property since the 14th day of August, 1905, and that the said property was assessed in his, the defendant's name. The defendant denies, of course, the truth or certainty of the loan as well as the existence of the mortgage as alleged by the plaintiff in his complaint.

The court below handed down a judgment in favor of the plaintiff. The defendant took exception to the said judgment and asked for a new trial basing his motion on the allegation that the proofs did not justify the decision of the court below.

The bill of exceptions herein shows that four witnesses were presented by the plaintiff and three witnesses by the defendant during the trial of this cause. The defendant, in addition to the three witnesses mentioned, presented in evidence a copy of a record of possessory proceedings had in the court of the justice of the peace of Gerona, now Pura, of the Province of Tarlac. The court in the judgment also refers to the witnesses presented by the plaintiff. Notwithstanding this fact the appellant has not seen fit to better his appeal herein by including in his bill of exceptions the testimony given by even one of the witnesses, either for the plaintiff or for the defense in this cause or trial, but bases his appeal solely on the record of possessory proceedings referred to as his only proof presented to this court in his bill of exceptions. This fact renders a review by this court of all the proofs and evidence materially impossible, and the review of but a part of such proofs and evidence would not be just nor legal. The appellant having the right to ask or not to ask for the review of the proofs or evidence herein for the purpose of

bettering and sustaining his appeal in the second instance, his failure to include them within the bill of exceptions is equivalent to a waiver of said review of said proofs and this even after having asked for a new trial of the cause in the Court of First Instance. For such reason this court should abide by and simply consider the findings of fact contained and set forth in the judgment appealed from.

The court below, in said judgment, establishes the following conclusion of fact: "The witnesses for the plaintiff are worthy of credit, and have testified in support of all of the allegations contained in the complaint." This being so, if all the facts alleged in the complaint have been proven by the testimony of the witnesses, whom the court considered truthful, the conclusion of law contained in the said judgment herein that "the ownership of the land in question belongs to the plaintiff and that the defendant holds the possession of said property illegally," is inevitable and unavoidable. The natural and logical consequence of this is that the land should be returned to the plaintiff, and that the judgment, therefore, should be affirmed, and it is so ordered.

In the judgment of the court below there appears no finding with respect to the repayment of the said loan of 40 pesos in guaranty of which the plaintiff delivered to the defendant the land in litigation. This point appears set out in the complaint herein, wherein it is said, in addition, that the plaintiff tendered the payment of said sum, but that the defendant refused to receive the same.

It would not be just to deprive this defendant of said guaranty without the full satisfaction of the credit at the same time. In view of this we order that the return of the land to the plaintiff be made upon the condition of the payment to the defendant of the sum of 40 pesos, which sum the plaintiff herein admits owing him, the defendant.

With this modification, we affirm the judgment appealed from, with the costs of this instance against the appellant. After the expiration of twenty days from the notification of this decision, let judgment be entered in accordance herewith, and ten days thereafter let the case be remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Johnson, and Tracey, JJ., concur.

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