

CARMEN ZAMORA GONZAGA Y PILAR, PLAINTIFF AND APPELLEE, VS. PEDRO MARTINEZ ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 3196. January 06, 1908

Ponente: CARSON, J.

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CARSON, J.:

This action was brought to recover an undivided one-half interest in certain real estate situated in the city of Manila of which the plaintiff alleges that she has been deprived by the defendants since the 3d day of December, 1903, together with the rental value thereof since that date. There is no dispute as to the facts, which are as follows:

First. Francisco Martinez, on the 2d day of December, 1902, sold and delivered to the plaintiff in this action an undivided one-half interest in the real estate set out in the complaint for the sum of \$3,000.

Second. In the contract of sale, the vendor reserved the right to repurchase the said real estate within a term of twelve months from the date thereof.

Third. In the same contract the purchaser agreed to rent the said real estate to the vendor for the sum of 30 pesos, Mexican currency, per month.

Fourth. The said contract was inscribed in the registry of property of the city of Manila on the 27th of December, 1902.

Fifth. The right of repurchase was never exercised, and the proper consolidation entry was entered in the said registry of property in the city of Manila on the 22d day of December, 1903.

Sixth. The said defendant, Pedro Martinez, and the above-mentioned Francisco Martinez are respectively son and husband of one Germana Ilustre, who died in the year 1906, the said Pedro Martinez and Francisco Martinez being her only heirs, each being entitled to an undivided one-half of her estate, of which the property in question constituted a part.

Seventh. In the course of the administration of the estate of Germana Ilustre, in the month of June, 1903, the said Pedro Martinez and Francisco Martinez executed a partition agreement of the said real estate. This partition agreement was approved by the Court of First Instance of Manila on the 15th day of June, 1903, and in accordance with its terms all of the real estate in question in this action was allotted to the defendant Pedro Martinez.

Eighth. The rental value of the said property since the date of the consolidation entry on the 22d of December, 1903, is 120 pesos Mexican currency, per month.

Upon these facts the trial court held that the sale by Francisco Martinez of his one-half undivided interest in the property in question clothed the purchaser with title thereto which was not affected by the partition agreement that was afterwards entered into between Francisco Martinez, and Pedro Martinez, and judgment was rendered in

accordance with the prayer of the complaint. From this judgment the defendant appealed, the only error assigned being the finding of the court, that the said sale to the plaintiff by Francisco Martinez was a valid sale unaffected by the provisions of the said partition agreement.

The precise question involved in the contention of the appellants was decided in the case of *Montaño Lopez vs. Martinez Ilustre* (5 Phil. Rep., 567). The syllabus of the opinion of the court in that case is as follows:

"M. and the defendant were owners as tenants in common of twenty-eight separate tracts of land. M. sold to the plaintiff his undivided one-half interest in two of these tracts by contracts with pacto de retro. Before the right to repurchase had expired M. and the defendant made a voluntary partition between themselves of the twenty-eight tracts, by which partition the two tracts in which the plaintiff was interested fell to the defendant. M. did not exercise his right of repurchase. Held, That the partition between M. and the defendant did not affect the plaintiff, and that he was the owner of an undivided one-half of the two lots in question."

The arguments advanced in the brief of the appellants in support of their contention are substantially the same as those submitted at the hearing of the above-cited case, and the court adheres to its decision as therein set out. The judgment of the trial court is, therefore, affirmed, with the costs of this appeal against the appellants. So ordered.

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

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