

MANUEL MELENCIO, MARIANO MELENCIO, PURA MELENCIO, AND CARIDAD MELENCIO, PLAINTIFFS AND APPELLANTS, VS. DY TRAO LAY, DEFENDANT AND APPELLEE.

G.R. No. 32047. November 01, 1930

Ponente: OSTRAND, J.

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OSTRAND, J.:

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On August 1, 1927, the plaintiffs, Manuel, Mariano, Pura and Caridad Melencio, brought the present action against the defendant-appellee, Dy Tiao Lay, for the recovery of the possession of a parcel of land situated in the town of Cabanatuan, Nueva Ecija, and containing an area of 4,628.25 square meters. The plaintiffs further demand a monthly rental of P300 for the use and occupation of the parcel from May, 1926, until the date of the surrender to them of the possession thereof; and that if it is found that the said appellee was occupying the said parcel of land by virtue of a contract of lease, such contract should be declared null and void for lack of consent, concurrence, and ratification by the owners thereof.

In his answer, the defendant pleaded the general issue, and as special defenses, he alleged in substance that he was occupying the said tract of land by virtue of a contract of lease executed on July 24, 1905, in favor of his predecessor in interest, by Ruperta Garcia, Pedro Melencio, Juliana Melencio, and Ruperta Melencio under the terms specified therein, and which contract is still in force; that Liberata Macapagal, the mother of the plaintiffs, in her capacity as judicial administratrix of the estate of Ramon Melencio, one of the original coowners of the parcel of land in question, actually recognized and ratified the existence and validity of the contract aforesaid by virtue of the execution of a public document by her on or about November 27, 1920, and by collecting from the assignees of the original lessee the monthly rent for the premises until April 30, 1926; and that said defendant deposits with the clerk of court the sum of P20.20 every month as rent thereof and that as a counterclaim, he seeks the recovery of P272 for goods and money delivered by him to the plaintiffs.

The plaintiffs filed a reply to the answer alleging, among other things, that Ruperta Garcia was not one of the co-owners of the land in question; that the persons who signed the alleged contract of lease never represented themselves as being the sole and exclusive owners of the land subject to the lease as alleged by the defendant in his answer; that the said contract of lease of July 24, 1905, is null and void for being executed without the intervention and consent of two coowners, Ramon Melencio and Jose P. Melencio, and without the marital consent of the husbands of Juliana and Ruperta Melencio; that the lessee has repeatedly violated the terms and conditions of the said contract; and that Liberata Macapagal, in her capacity as administratrix of the property of her deceased husband, could not lawfully and legally execute a contract of lease with the conditions and terms

similar to that of the one under consideration, and that from this it follows that she could not ratify the said lease as claimed by the defendant.

On January 21, 1928, Liberata Macapagal Viuda de Melencio, duly appointed and qualified as administratrix of the estate of her deceased husband, Ramon Melencio, filed a petition praying to be allowed to join the plaintiffs as party to the present case, which petition was granted in open court on January 31, 1928. Her amended complaint of intervention of February 14, 1928, contains allegations similar to those alleged in the complaint of the original plaintiffs, and she further alleges that the defendant-appellee has occupied the land in question ever since November, 1920, under and by virtue of a verbal contract of lease for a term from month to month. To this complaint of intervention, the defendant-appellee filed an answer reproducing the allegations contained in his answer to the complaint of the original plaintiffs and setting up prescription as a further special defense.

It appears from the evidence that the land in question was originally owned by one Julian Melencio. He died prior to the year 1905 leaving his widow, Ruperta Garcia, and his five children, Juliana, Ramon, Ruperta, Pedro R., and Emilio Melencio. Emilio Melencio also died before 1905, his son Jose P. Melencio, then a minor, succeeding to his interest in the said parcel of land by representation. A question has been raised as to whether the land was community property of the marriage of Julian Melencio and Ruperta Garcia, but the evidence is practically undisputed that Ruperta Garcia in reality held nothing but a widow's usufruct in the land.

On July 24, 1905, Ruperta Garcia, Pedro R. Melencio, Juliana Melencio, and Ruperta Melencio executed a contract of lease of the land in favor of one Yap Kui Chin, but neither Jose P. Melencio nor Ramon Melencio were mentioned in the lease. The term of the lease was for twenty years, extendible for a like period at the option of the lessee. The purpose of the lessee was to establish a rice mill on the land, with the necessary buildings for warehouses and for quarters for the employees, and it was further stipulated that at the termination of the original period of the lease, or the extension thereof, the lessors might purchase all the buildings and improvements on the land at a price to be fixed by experts appointed by the parties, but that if the lessors should fail to take advantage of that privilege, the lease would continue for another and further period of twenty years. The document was duly acknowledged but was never recorded with the register of deeds. The original rent agreed upon was P25 per month, but by reason of the construction of a street through the land, the monthly rent was reduced to P20.20.

Shortly after the execution of the lease, the lessee took possession of the parcel in question and erected the mill as well as the necessary buildings, and it appears that in matters pertaining to the lease, he dealt with Pedro R. Melencio, who from 1905 until his death in 1920, acted as manager of the property held in common by the heirs of Julian Melencio and Ruperta Garcia. The original lessee, Yap Kui Chin, died in 1912, and the lease, as well as the other property, was transferred to Uy Eng Jui who again transferred it to Uy Eng Jui & Co., an unregistered partnership. Finally the lease came into the hands of Dy Tiao Lay, the herein defendant-appellee.

Ramon Melencio died in 1914, and his widow, Liberata Macapagal, was appointed administratrix of his estate. In 1913 the land which includes the parcel in question was registered under the Torrens system. The lease was not mentioned in the certificate of title, but it was stated that one house and three warehouses on the land were the property of Yap Kui Chin.

In 1920 the heirs of Julian Melencio made an extra judicial partition of parts of the inheritance, and among other things, the land here in question fell to the share of the children of Ramon Melencio, who are the original plaintiffs in the present case. Their mother, Liberata Macapagal, as administratrix of the estate of her deceased husband, Ramon, collected the rent for the lease at the rate of P20.20 per month until the month of May, 1926, when she demanded of the lessee that the rent should be increased to P300 per month, and she was then informed by the defendant that a written lease existed and that according to the terms thereof, the defendant was entitled to

an extension of the lease at the original rental. The plaintiffs insisted that they never had any knowledge of the existence of such a contract of lease and maintained that in such case the lease was executed without their consent and was void. It may be noted that upon careful search, a copy of the contract of lease was found among the papers of the deceased Pedro R. Melencio. Thereafter the present action was brought to set aside the lease and to recover possession of the land. Upon trial, the court below rendered judgment in favor of the defendant declaring the lease valid and ordering the plaintiffs to pay the P272 demanded by the defendant in his counterclaim. From this judgment the plaintiffs appealed.

The contention of the appellants is that the aforesaid contract of lease (Exhibit C) is null and void for the following reasons:

- "1. That Exhibit C calls for an alteration of the property in question and therefore ought to have been signed by all the coowners as by law required in the premises.
- "2. That the validity and fulfillment of the said agreement of lease were made to depend upon the will of the lessee exclusively.
- "3. That the said contract of lease being for a term of over six years, the same is null and void pursuant to the provision of article 1548 of the Civil Code.
- "4. That the duration of the, same is unreasonably long, thus being against public policy.
- "5. That the defendant-appellee and his predecessors in interest repeatedly violated the provisions of the agreement."

The first proposition is based on article 397 of the Civil Code which provides that "none of the owners shall, without the consent of the others, make any alterations in the common property even though such alterations might be advantageous to all." We do not think that the alterations are of sufficient importance to nullify the lease, especially so since none of the coowners objected to such alterations until over twenty years after the execution of the contract of lease. The decision of this court in the case of *Enriquez vs. A. S. Watson & Co.* (22 Phil., 623), contains a full discussion of the effect of alterations of leased community property, and no further discussion upon that point need here be considered.

The second proposition is likewise of little merit. Under the circumstances, the provision in the contract that the lessee, at any time before he erected any building on the land, might rescind the lease, can hardly be regarded as a violation of article 1256 of the Civil Code.

The third and fourth propositions are, in our opinion, determinative of the controversy. The court below based its decision principally on the case of *Enriquez vs. A. S. Watson & Co.* (22 Phil., 623), and on the resolution of the Direction General de los Registros dated April 26, 1907. (*Jurisprudencia Civil*, vol. 107, p. 222.) An examination of the *Enriquez* case will show that it differs materially from the present. In that case all of the coowners of a lot and building executed a contract of lease of the property for the term of eighteen years in favor of A. S. Watson & Co.; one of the owners was a minor, but he was represented by his legally appointed guardian, and the action of the latter in signing the lease on behalf of the minor was formally approved by the Court of First Instance. In the present case only a small majority of the coowners executed the lease here in question, and according to the terms of the contract the lease might be given a duration of sixty years; that is widely different from a lease granted by all of the coowners for a term of only eighteen years.

The resolution of April 26, 1907, is more in point. It relates to the inscription or registration of a contract of lease of some pasture grounds. The majority of the co-owners of the property executed the lease for the term of twelve years, but when the lessees presented the lease for inscription in the registry of property, the registrar denied the

inscription on the ground that the term of the lease exceeded six years and that therefore the majority of the coowners lacked authority to grant the lease. The Direccion General de los Registros held that the contract of lease for a period exceeding six years, constitutes a real right subject to registry and that the lease in question was valid.

The conclusions reached by the Direccion General led to considerable criticism and have been overruled by a decision of the Supreme Court of Spain dated June 1, 1909. In that decision the court made the following statement of the case (translation) :

"The joint owners of 511 out of 1,000 parts of the realty denominated El Mortero, leased out the whole property for twelve years to Dona Josef a de la Rosa; whereupon the Count and Countess Trespalacios together with other co-owners brought this suit to annul the lease and, in view of the fact that the land was indivisible, prayed for its sale by public auction and the distribution of the price so obtained; they alleged that they neither took part nor consented to the lease; that the decision of the majority of part owners referred to in article 398 of the Code, implies a common deliberation on the step to be taken, for to do without it, would, even more than to do without the minority, be nothing less than plunder; and that, even if this deliberation were not absolutely necessary, the power of the majority would still be confined to decisions touching the management and enjoyment of the common property, and would not include acts of ownership, such as a lease for twelve years, which according to the Mortgage Law gives rise to a real right, which must be recorded, and which can be performed only by the owners of the property leased.

"The part owners who had executed the contract prayed in reconvention that it be held valid for all the owners in common, and if this could not be, then for all those who had signed it, and for the rest, for the period of six years; and the Avdiencia of Caceres having rendered judgment holding the contract null and void, and ordering the sale of the realty and the distribution of the price, the defendants appealed alleging under the third and fourth assignments of error, that the judgment was a violation of article 398 of the Civil Code, which is absolute and sets no limit of time for the efficacy of the decisions arrived at by the majority of the part owners for the enjoyment of the common property, citing the decisions of June 30th, 1897, of July 8th, 1902, and of October 30th, 1907; under the fifth assignment of error the appellants contended that in including joint owners among those referred to in said article, which sets certain limits to the power of leasing, in the course of the management of another's property, the court applied article 1548 unduly; and by the seventh assignment of error, they maintained the judgment appealed from also violated article 1727, providing that the principal is not bound where his agent has acted beyond his authority; whence it may be inferred, that if in order to hold the contract null and void, the majority of the part owners are looked upon as managers or agents exercising limited powers, it must at least be conceded that in so far as the act in question lies within the scope of their powers, it is valid; the contract cannot be annulled in toto."

The Supreme Court held that the appeal from the decision of the Audiencia of Caceres was not well taken and expressed the following consideranda:

"Considering that, although as a rule the contract of lease constitutes an act of management, as this court has several times held, cases may yet arise, either owing to the nature of the subject matter, or to the period of duration, which may render it imperative to record the contract in the registry of property, in pursuance of the Mortgage Law, where the contract of lease may give rise to a real right in favor of the lessee, and it would then constitute such a sundering of the ownership as transcends mere management; in such cases it must of necessity be recognized that the part owners representing the greater portion of the property held in common have no power to lease said property for a longer period than six years without the consent of all the coowners, whose proprietary rights, expressly recognized by the law, would by contracts of long duration be restricted or annulled; and as under article 1548 of the Civil Code such contracts cannot be entered into by the husband with respect to his wife's property, by the parent or guardian with respect to that of the child or ward, and by the manager in default of special power, since the contract of lease only produces personal obligations, and cannot

without the consent of all persons interested or express authority from the owner, be extended to include stipulations which may alter its character, changing it into a contract of partial alienation of the property leased;

"Considering that, applying this doctrine to the case before us, one of the grounds upon which the judgment appealed from, denying the validity of the lease made by the majority of the part owners of the pasture land El Mortero is based, must be upheld; to wit, that the period of duration is twelve years and the consent of all the coowners has not been obtained; hence, the third, fourth, and fifth assignments of error are without merit; firstly, because article 398 of the Civil Code, alleged to have been violated, refers to acts decided upon by the majority of the part owners, touching the management and enjoyment of the common property, and does not contradict what we have stated in the foregoing paragraph; secondly, because although the cases cited were such as arose upon leases for more than six years, yet this point was not raised on appeal, and could not therefore be passed upon; and thirdly, because it cannot be denied that there is an analogy between a manager without special authority, who is forbidden by article 1548 of the Code to give a lease for a period of over six years, and the joint owners constituting a legal majority, who may decide to lease out the indivisible property, with respect to the shares of the other coowners; and having come to the conclusion that the contract is null and void, there is no need to discuss the first two assignments of error which refer to another of the bases adopted, however erroneously, by the trial court;

"Considering that the sixth assignment of error is without merit, inasmuch as the joint ownership of property is not a sort of agency and cannot be governed by the provisions relating to the latter contract; whence, article 1727 of the Code alleged to have been violated, can no more be applied, than, the question of the validity or nullity of the lease being raised, upon the contract as celebrated, it would be allowable to modify a posteriori some one or other of the main conditions stipulated, like that regarding the duration of the lease, for this would amount to a novation; still less allowable would it be to authorize diverse periods for the different persons unequally interested in the fulfillment."

Taking into consideration articles 398, 1548, and 1713 of the Civil Code and following the aforesaid decision of June 1, 1909, we hold that the contract of lease here in question is null and void.

It has been suggested that by reason of prescription and by acceptance of benefits under the lease, the plaintiffs are estopped to question the authority for making the lease. To this we may answer that the burden of proof of prescription devolved upon the defendant and that as far as we can find, there is no proof that Ramon Melencio and his successors ever had knowledge of the existence of the lease in question prior to 1926. We cannot by mere suspicion conclude that they were informed of the existence of the document and its terms; it must be remembered that under a strict interpretation of the terms of the lease, the lessees could remain indefinitely in their tenancy unless the lessors could purchase the mill and the buildings on the land. In such circumstances, better evidence than that presented by the defendant in regard to the plaintiffs' knowledge of the lease must be required.

The fact that Ramon during his lifetime received his share of the products of land owned in common with his coheirs is not sufficient proof of knowledge of the existence of the contract of lease when it is considered that the land in question was only a small portion of a large tract which Pedro R. Melencio was administering in connection with other community property.

The appealed judgment as to the validity of the lease is therefore reversed, and it is ordered that the possession of the land in controversy be delivered to the intervenor Liber ata Macapagal in her capacity as administratrix of the estate of the deceased Ramon Melencio. It is further ordered that the defendant pay to said administratrix a monthly rent of P50 for the occupation of the land from May 1st, 1926, until the land is delivered to the administratrix. The sum of P272 demanded by the defendant in his counterclaim may be deducted from the total amount of the rent due and unpaid. The buildings erected on the land by the defendant and his predecessors in

interest may be removed by him, or otherwise disposed of, within six months from the promulgation of this decision. Without costs. So ordered.

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

Johnson, J., reserves his vote.

DISSENTING

Street and Villamor, JJ.:

Although the name of Ramon Melencio, father of the plaintiffs in this action, was not in fact signed to the lease in question, and the lease did not even so much as mention him as one of the coowners, the undersigned are nevertheless of the opinion that Ramon Melencio, and his children

after him, are estopped from questioning said lease, for the reason that, from 1905 to the time of his death in 1914, Ramon Melencio enjoyed the benefits of the lease, as did his widow and children after him, until May, 1926, when the widow repudiated the lease, as a preliminary to the bringing of this action by the plaintiffs. By their acceptance of the benefits of the lease over so long a period, the persons now questioning the lease and their father, their predecessor in interest, are estopped to question the authority for making the lease. This estoppel cures the want of the special power contemplated in article 1548 of the Civil Code.

In addition to the estoppel arising from the acceptance of benefits under the lease, an estoppel further arises from the fact that Ramon Melencio, during the years following the execution of the lease, stood by and saw the lessees place upon the property improvements of a value of more than P100,000, for which reason, also, equity will not permit the lease to be disturbed to the prejudice of the lessee.

To exhibit the foregoing proposition fully, it is necessary to understand the facts relative, to the controversy. These are substantially as follows:

The land covered by the original lease, having an area of some 6,000 square meters, is located in the town of Cabanatuan and was formerly the property of one Julian Melencio, married to Ruperta Garcia. After the death of Julian Melencio, his widow, Ruperta Garcia, united, in 1905, with three of their children, namely, Pedro R., Juliana, and Ruperta, in executing, in favor of Yap Kui Chin, as lessee, the lease which is the subject of this controversy. The consideration mentioned in the lease was the sum of P25 per month. On August 2, 1907, at the request of Pedro R. Melencio, another document was drawn changing the superficial configuration of the leased land but preserving its original extension of 6,000 square meters. This change was made for the purpose of giving Pedro R. Melencio space upon which to construct a house on the part segregated from the original mass. In 1915 a new street, passing through the leased property, was opened in Cabanatuan; and Pedro R. Melencio, acting for the lessors, reduced the monthly rent from P25 to P20, to correspond with the reduction in the area of the leased land resulting from the occupation of part of it by the street.

At the time the lease was made there was living one Ramon Melencio, son of Julian Melencio and Ruperta Garcia and brother of the heirs who signed the lease. Also before this time there had been another brother named Emilio Melencio. But Emilio was dead and his only surviving son, Jose P. Melencio, was a small boy then under the tutelage of his uncle Pedro R. Melencio. The lease referred to is not and never has been questioned by any of the

persons, or descendants of the persons, who signed the instrument. Neither has it been questioned by Jose P. Melencio, son of Emilio. Nor was the lease questioned in life by Ramon Melencio, who died in 1914; and the only persons raising a question as to its validity are four of the five children of Ramon, the same being the plaintiffs in this case.

By a series of changes, not necessary to be here recounted, the rights of the original lessee became vested in the defendant, Dy Tiao Lay. At the time of the institution of the present action the defendant, Dy Tiao Lay, had a rice mill, consisting of valuable buildings and improvements, constructed on the land, and valued, it is alleged, at P160,000; but during the time of the pendency of this action a fire occurred which seems to have destroyed the mill and improvements with the exception of a camarin valued at some P15,000,

In November, 1920, the children of Julian Melencio and Ruperta Garcia executed a partial extrajudicial partition of the properties belonging to their father's estate; and the land covered by this lease was assigned to Liberata Macapagal, widow of Ramon Melencio, in right of her deceased husband Ramon and as representative of the children. It will be noted that the land encumbered by the lease was thus assigned precisely to the family of the deceased brother, Ramon Melencio, who at the same time was the sole living brother whose name was not signed to the lease.

At the time the lease was executed, Pedro R. Melencio was in fact the manager of the common ancestral estate belonging to himself and his brothers and sisters; and he continued as such until 1920. After the partition, or partial partition, of the fraternal estate in 1920, Liberata Macapagal Viuda de Ramon Melencio succeeded to the office of manager, or guardian, of the estate of her children, at least with respect to the parcel now in question.

It will be noted as an important fact that every dollar due as rent from the leased land was paid by the lessee, from the time when rent first became due, and these payments were made first to Pedro R. Melencio as manager of the common estate pertaining to himself and his brothers and sisters, until 1920, when the rents began to be paid to Liberata Macapagal in the right of herself and children. In April, 1926, Liberata ceased to collect the rent, and in May, thereafter, she refused to accept payment of the monthly installment of rent then due. For this reason the defendant has been making a consignment of the corresponding rent for the benefit of the lessors in the office of the provincial treasurer. No question is made that during the life of Ramon Melencio he received his share of the monthly rental from the property in question; nor is there any question that thereafter his widow and children received their share of the same until the property was assigned in partition to Liberata Macapagal and her children, after which they received all of the rent, until Liberata refused longer to accept it.

The undersigned concur in the proposition that the lease signed in 1905 was not per se binding on Ramon Melencio, first, because he; was not a party to that lease; and, secondly, because the making of a lease for twenty years, extendible under certain circumstances for a second and third period of equal duration, was an act of rigorous alienation and not a mere act of management and enjoyment such as is contemplated in article 398 of the Civil Code. (Sentencia, June 1, 1909; Ruiz, Cod. Civ., vol. 4, p. 502.) Neither do we pause to argue that the contract might have been considered valid under the doctrine of this court stated in *Eleizegui vs. Manila Lawn Tennis Club* (2 Phil., 309). At any rate the lease did not purport to bind Ramon, and he was not even mentioned therein as one of the coowners.

But it is to be noted that none of the parties signatory to the lease have at any time sought to abrogate the contract; and some of the children of Ramon Melencio only are before the court as actors in this case seeking to set the contract aside. Under these circumstances the undersigned are of the opinion that Ramon Melencio was at the time of his death bound by the lease, from his having participated for years in the benefits derived from the contract, and that his children, who derive their rights from him, are likewise bound.

It is well established that an estate in land may be virtually transferred from one man to another without a writing, by the failure of the owner to give notice of his title to the purchaser under circumstances where the omission to do so would operate as a fraud (Kirk vs. Hamilton, 102 U. S., 68, 77; 26 Law. ed., 79). This doctrine is so universally accepted that a bare reference to general treatises on the subject of estoppel is necessary (10 R. C. L., p. 694; 21 C. J., pp. 1154, 1160, 1206, 1207, 1209) ; and the estoppel is as effective with respect to a lease as it is with respect to a deed of absolute conveyance (21 C. J., 1213).

In the case before us Ramon Melencio lived in the town where the land covered by this lease was located, and every time he went abroad he must have seen the valuable improvements which the original lessee, or his successors in interest, were erecting and had erected upon part of the common ancestral estate. But from the date the lease was executed until his death Ramon Melencio did nothing except to receive such portion of the rent as pertained to him. Under these circumstances, even if his brother Pedro R. Melencio had conveyed the property away by deed of absolute alienation, Ramon would have been legally bound.

It is but natural that so long as he lived after the lease was made, no complaint was ever registered by him against its validity.

And if Ramon Melencio was estopped, of course his children are estopped, for their rights are of a purely derivative character. In the case before us a period of more than twenty-one years elapsed between the time the lease was made and the date when it was first called in question by the widow.

But Manuel Melencio, the oldest of the heirs who are suing in this case, says that he did not know the terms of the lease until a short while before this action was instituted, when he called upon the widow of his uncle Pedro and found a copy of the lease after searching among his uncle's papers. It is not surprising that this plaintiff, who was hardly more than a baby when the lease was made, should not have known about the terms of the contract. But it was all the time safely kept among the papers of his uncle Pedro, who, as already stated, was manager of the common estate of the brothers and sisters. Ramon Melencio is now dead and of course cannot speak as to whether he knew the terms of the agreement. But he should be presumed to have known its terms, because he was enjoying benefits from month to month under it, and he had the means of knowledge immediately at hand, namely by recourse to a trusted brother in whose custody the contract was preserved. In addition to this, we note that when partition was effected about the year 1920 the fact that the property in question was subject to a lease in favor of the defendant was noted in the document by which the property was assigned to Liberata Macapagal and her children. The suggestion that the terms of the lease were unknown to the plaintiffs is of little weight and of no legal merit. We note that the lease was never registered, but this fact makes no difference in a lawsuit between the parties to the lease, or their successors in interest.

We are of the opinion that the judgment should be affirmed.

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