

ELENO CORREA, PLAINTIFF AND APPELLANT, VS. ALEJANDRO R. MATEO AND MAXIMO ICASIANO, DEFENDANTS. ALEJANDRO R. MATEO, APPELLANT.*G.R. No. 32052. October 28, 1930*

Ponente: JOHNS, J.

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The facts are simple, novel, and peculiar. It is admitted that the defendant, Alejandro R. Mateo, was the original owner of the ten parcels of land in question. That on August 7, 1920, he executed a deed for them to his co-defendant, Maximo Icasiano, the consideration for which was P18,000, of which P4,000 only was paid on August 12, 1920, when the deed was actually delivered. The remaining P14,000 was payable in installments at the rate of P1,500 annually, the last of which was for P2,000. It is also admitted that on the same day that the deed was delivered and the P4,000 paid to Alejandro R. Mateo, the defendant, Maximo Icasiano, for a consideration of P4,000 then paid to him, executed to the plaintiff what is known in the record as Exhibit C, which in form is a pacto de retro, of the identical land which was conveyed to Maximo Icasiano by Alejandro R. Mateo, by the terms of which, for failure to repurchase on or before August 12, 1925, the absolute title to the property was to become vested in the plaintiff without the right of redemption. It also appears that during the five-year period Icasiano was to have and remain in possession of the land upon the payment of an annual rental of P480. It is also agreed that for the failure of Icasiano to pay the first installment of P1,500 on the purchase price of the property, Alejandro R. Mateo commenced an action against Icasiano to recover the first unpaid installment upon which he procured judgment, and that five of the ten parcels of land were levied upon and sold at public auction to Alejandro R. Mateo on or about April 23, 1923, which left a balance still due and owing him of P12,500 of the original purchase price of P18,000. The defendant not being able to satisfy the payment of the remaining P12,500, he then waived all of his rights to the remaining five parcels, and ceded them to his codefendant, all of which was in March and April, 1923. It is admitted that the deed from Alejandro R. Mateo to his codefendant was never recorded, and that at all times the record title to the property in dispute has remained and is now in Alejandro R. Mateo. It is also conceded that Exhibit C was never recorded. It is claimed and asserted, and not denied, that Alejandro R. Mateo never knew of the execution of Exhibit C or of its terms and conditions. It is also admitted that the only payment which Maximo Icasiano ever made to the plaintiff was P480, which was the first yearly rental.

The evidence is conclusive that after the sheriff's sale of the five parcels of the property to Alejandro R. Mateo to satisfy his judgment, Maximo Icasiano delivered the actual possession of all of the ten parcels to his codefendant, Alejandro R. Mateo, who at all times since has been and is now in possession thereof.

In the final analysis, we have this situation. August 12, 1920, Alejandro R. Mateo sold and conveyed the ten parcels of land in dispute to his codefendant at an agreed price of P18,000. P4,000 was paid at the time the deed was delivered, and the remaining P14,000 was to be paid in annual installments, the deed for which was never filed for record. Upon that day and for a consideration of P4,000, Maximo Icasiano executed to the plaintiff what

is known in the record as Exhibit C, which in form is a pacto de retro, which was never recorded. There is no claim or pretense that Alejandro R. Mateo ever knew of the existence of that instrument. After the execution of both instruments, Maximo Icasiano took and remained in possession of the property under, a contract with the plaintiff in and by which he (was to pay him P480 annually in the nature of rental. Things remained in that situation until Maximo Icasiano failed to make the payment of his first annual installment of P1,500 upon the purchase price of the property, by reason of which, in the ordinary course of business, his codefendant obtained judgment against Maximo Icasiano for that amount, levied upon, and sold five out of the ten parcels of land, to satisfy his judgment, pursuant to Which in April, 1923, Maximo Icasiano not only delivered possession of the five parcels which were sold, but also the remaining five parcels which were not sold, by the sheriff, for the reason that he was unable to pay the debt or any part of it to his codefendant.

It must be admitted that upon its face, Exhibit C is in form a pacto de retro, and that by its express terms and conditions, the title to all of the ten parcels should be and become vested in the plaintiff on August 12, 1925. Even so, upon the admitted facts, that would be harsh and cruel. The plaintiff would have us believe that on the very day that Maximo Icasiano purchased the ten parcels of land from his codefendant at an agreed price of P18,000 he sold and conveyed the same land to the plaintiff for P4,000. Such a business transaction would violate every rule of reason and common sense. Nobody in his right mind would ever purchase ten parcels of land at an agreed price of P18,000, and on the same day turn around, sell, and convey the same land to a third person for P4,000, and thus subject himself to the payment of the remaining P14,000 of the original purchase price.

As stated the record title to the property then and ever since has been in the name of Alejandro R. Mateo, and his deed to Icasiano was never filed for record, and while it {was executed on August 7, 1920, it was never actually delivered until August 12, 1920, the same day that Exhibit C was executed and delivered, and it is fair to assume that the P4,000 which Icasiano paid to Alejandro R. Mateo was the P4,000 which plaintiff on that day paid to Icasiano.

In the very nature of things, plaintiff must have known of the execution of the deed to Icasiano and its actual consideration.

Among other things, Exhibit C recites:

* * * * *

"1st. That Mr. Maximo Icasiano is the owner of ten (10) parcels of land, all of which are destined to the cultivation of sugar cane and corn, with the exception of one 'which is destined to the cultivation of palay, acquired by absolute sale from Father Alejandro R. Mateo, as evidenced by the document issued in my favor under date of August 7, 1920, before the Notary Public Mr. Ambrosio Valero, Registry Number 47, Polio II, Series of 1920, which does not give their descriptions, inasmuch as the papers and documents concerning the ownership, with the descriptions of the ten parcels referred to in this deed of sale, subject to repurchase, are attached to the latter.

"That in consideration of the sum of four thousand pesos, Philippine currency, which the vendor Maximo Icasiano has received from the spouses Eleno Gorrea and Luisa Silverio, to his satisfaction, he hereby cedes, sells and transfers to them the aforesaid ten parcels of land described in the document executed by Mr. Alejandro R. Mateo, registry No. 47, folio II, series of 1920, attached hereto.

"2nd. That the vendor Maximo Icasiano before the expiration of five agricultural years counted from the date of the execution hereof, has the right to repurchase the property hereby sold, for the same sum of P4,000.

"3rd. It is agreed and stipulated that during these five years, the vendor shall take a lease of this property at four hundred eighty pesos per annum, payable in August of every year. * * *"

It is apparent from this specific reference that the plaintiff knew of the terms and conditions of that deed, and that the actual purchase price of the property was P18,000. Yet, by the express terms of Exhibit C, plaintiff would not only be entitled to 12 per cent per annum on his P4,000 for the period of five years, but he would then be and become the sole and absolute owner of the land for a consideration of P4,000 which Icasiano purchased from Alejandro R. Mateo on the very day that Exhibit C was executed, for a consideration of P18,000. Such a transaction would be grossly inequitable and unconscionable. Both the deed and Exhibit C having been delivered on the same day, they should be more or less construed together as one and the same transaction, even though Alejandro R. Mateo never knew of the execution of Exhibit C.

When neither the deed to Icasiano nor Exhibit C upon which it is based were filed for record, the law will not permit the plaintiff to become the sole and absolute owner of the land for a consideration of P4,000, which on the very day that Exhibit C was executed, Icasiano purchased from Alejandro R. Mateo for an actual consideration of P18,000, upon which P4,000 only of the purchase price was ever paid.

The judgment of the lower court cannot be sustained. By the express terms and provisions of Exhibit C, if enforced, the plaintiff would be the sole and exclusive owner of all of the ten parcels of land. There is no legal principle upon which the land can be divided. Be that as it may, upon the facts disclosed in the record, equity and good conscience will not permit the enforcement of Exhibit C as a *pacto de retro*.

All things considered, and in the interest of justice, it should be construed as an equitable mortgage upon all of the ten parcels of land. As stated, it is apparent that the P4,000 which plaintiff paid to Icasiano was the P4,000 which he paid to Alejandro R. Mateo. That is to say, since August 12, 1920, Alejandro R. Mateo has had the use and benefit of P4,000 of plaintiff's money. In addition to that, it also appears that since April, 1923, Alejandro R. Mateo has had the fruits and products of all of the land.

In his complaint the plaintiff prays for judgment that he is the sole and absolute owner of the land and for its possession and damages, by way of rental, for its unlawful use and occupation. Upon such a pleading, we would not feel justified in rendering a decree of foreclosure for the amount due and owing the plaintiff. But we are clearly of the opinion that the plaintiff has an equitable lien for his P4,000 which enured to the use and benefit of Alejandro R. Mateo on all of the ten parcels of land. It is true that as between the plaintiff and Alejandro R. Mateo no specific rate of interest is specified for the P4,000. But it appears by the express terms of Exhibit C that Icasiano was to pay an annual rental of P480 during the five-year period for the use and benefit of the land, of which P480 only was paid.

As stated, the admitted facts are simple and peculiar. All things considered, we are of the opinion that Alejandro R. Mateo is the sole and exclusive owner of all of the ten parcels of land, for which he should have a corresponding judgment. We are also of the opinion that the plaintiff has an equitable lien upon all of the ten parcels of land in the nature of a mortgage to secure the payment to him of his P4,000, with interest thereon from August 12, 1921, at the rate of 12 per cent per annum until paid, with the legal right to enforce the lien in the court in a proper proceeding at any time within sixty days after this judgment should become final.

For such reasons, the judgment of the lower court is reversed and the complaint dismissed, without prejudice to the right of the plaintiff, within sixty days after final judgment, for a failure to pay the amount due and owing him, to foreclose his mortgage in a proper proceeding and sell all or any part of the ten parcels of land to satisfy his debt. Neither party to recover costs. So ordered.

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

Johnson and Street, JJ., reserve their votes.

Judgment reversed.

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