

KABANKALAN SUGAR CO., INC., PLAINTIFF AND APPELLANT, VS. FELIX RUBIN, DEFENDANT AND APPELLEE.

G.R. No. 32122. March 24, 1930

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the Kabankalan Sugar Co., Inc., from the decision of the Court of First Instance of Occidental Negros, of civil cases Nos. 4311, 4313, 4360, and 4414 thereof, being G. R. Nos. 32122, 32222, 32223, and 32224 of this court, respectively, the dispositive part of which is as follows:

"By virtue whereof, it is held:

" (a) That the preliminary mandatory injunction granted in causes Nos. 4360 and 4414 is final and perpetual;

"(b) That in cases Nos. 4311 and 4313, the latter in connection with case No. 4360: (1) The liens held by Amando A. Perlas and Jose P. Tinsay on the sugar, or its value, harvested by Felix Rubin and Jose Rubin on the Hilabangan Estate, held by the latter as copartners in shares, and situated in the municipality of Kabankalan, Occidental Negros, are preferential; and (2) that Felix Rubin and Jose Rubin must pay to the plaintiff Kabankalan Sugar Co., Inc., the amounts of P22,464.20 and P23,144.09, respectively, with 12 per cent interest per annum from August 18, 1927, and in addition 10 per cent upon each of said sums as attorney's fees; and

"(c) Without special pronouncement of costs in the four cases." In support of its appeal, the appellant assigns the following alleged errors as committed by the court below in its decision, to wit:

"1. The trial court erred in not holding and declaring the alleged chattel mortgages in favor of Amando A. Perlas and Jose P. Tinsay, null and void, and therefore ineffective to create any lien in their favor on the sugar crops in question, and in considering the belated Exhibits 2-P and 2-T as curing such nullity.

"2. The court erred in not finding that the said alleged chattel mortgages, particularly the parts thereof speaking of the amounts said to have been obtained by the appellees Felix and Jose Rubin, are false and fictitious, and made with the deliberate intention of defrauding and hampering the appellant Kabankalan Sugar Co., Inc., in the recovery of its just credits.

"3. The court erred in not holding that under Exhibits A and L, which have been duly registered the appellees Felix and Jose Rubin as well as the appellees Perlas and Tinsay were bound to respect the right of the appellant company to the fulfillment of that provision of the said exhibits which obligated Felix and Jose Rubin to consign to the said company all of their sugars for the purpose of being sold, at a commission and the net proceeds applied to their accounts, so long as they should have any indebtedness or any debit balance in favor of the same company.

"4. The court erred in not upholding the statutory preference in favor of the appellant Kabankalan Sugar Co., Inc., with respect to the products of the crops of its respective debtors Felix and Jose Rubin, pertaining to the agricultural year 1927-1928, and in holding that the supposed chattel mortgages in favor of Perlas and Tinsay

are credits pignoratícios' within the meaning of articles 1922 and 1926 of the Civil Code, and enjoy preference over the appellant company's credits for cultivation expenses.

"5. The court erred in issuing ex-parte a preliminary mandatory injunction in civil case No. 4360 and another one in civil case No. 4414 and in making both writs perpetual in rendering its decision, when a receivership was clearly the more proper ancillary remedy and the one most equitable to the parties; and in not dissolving the said preliminary writs despite the petition of the appellant company.

"6. The court erred in not rendering judgment against the sureties in the bonds given by the plaintiffs in said cases Nos. 4360 and 4414, jointly and solidarily with the said plaintiffs themselves for the damages suffered by the same injunctions, which damages exceed the total value of the sugar in question."

The following facts, some proved at the trial without question and others established by a preponderance of evidence, are pertinent and necessary for the solution of the questions raised in this appeal:

On November 1, 1920, Josefa Pacheco, entered into a contract with the Kabankalan Sugar Co., Inc., whereby she granted the latter a right of way within and across her plantation known as Hilabangan, for a period of twenty years, reserving for herself the right to mill in the sugar central known as Bearin, belonging to the said company, all the cane she produced to her aforesaid plantation.

On September 29, 1922, Josefa Pacheco and the Kabankalan Sugar Co., Inc., entered into another contract whereby they agreed to modify the terms of the contract of right of way by reducing it to seven years or crops beginning with the crop of 1922-1923, and the former bound herself, for the same period, to mill the sugar cane from the Hilabangan Plantation in said sugar central.

On July 25, 1922, the Kabankalan Sugar Co., Inc., and Jose Rubin entered into a contract whereby the former granted a credit to the latter to be invested in the cultivation of a portion of the Hilabangan Plantation, which he held as copartner in shares, and he in turn bound himself to mill all his sugar cane in the Bearin Central, the duration of the contract to be for one year, extendible by written agreement.

On June 2, 1922, the Kabankalan Sugar Co., Inc., and Felix Rubin entered into a contract almost identical to the one executed by Jose Rubin, the only material difference being in the amount of the credit granted (Exhibit A).

The period stipulated in the two above-mentioned contracts was never extended by means of a written agreement between the contracting parties; but upon the expiration of the one year period stipulated therein, the parties continued doing business under verbal agreements. The Kabankalan Sugar Co., Inc., under said verbal agreements, obligated itself to advance money to Jose and Felix Rubin under separate accounts, to be used in the planting, cultivation, and harvesting of their sugar cane, on condition that their respective portions should be sold by the Kabankalan Sugar Co., Inc., and the net proceeds thereof would be credited to their respective accounts.

About the middle of 1926, the Kabankalan Sugar Co., Inc., attempted to compel Josefa Pacheco to execute a notarial instrument acknowledging that the Kabankalan Sugar Co., Inc., by virtue of the private document dated November 1, 1920, had a railroad right of way within and across the Hilabangan Plantation for a period of twenty years. Josefa Pacheco refused to execute such a document, alleging that the contract of November 1, 1920, had been novated by that of September 29, 1922.

Due to the differences between the Kabankalan Sugar Co., Inc., and Josefa Pacheco, the mother of the appellees Jose and Felix Rubin, Ignacio Huarte, then manager of the Kabankalan Sugar Co., Inc., refused to extend any further credit to Jose and Felix Rubin to continue their respective agricultural labors on the Hilabangan Plantation, unless their mother would agree to sign the document which the company demanded of her, extending the right of way granted to its railroad to twenty years.

A few months later, said Ignacio Huarte, manager of the Kabankalan Sugar Co., Inc., suggested to Jose and Felix Rubin that they might submit a budget of their respective work on the Hilabangan Plantation, which they did; but after the milling season of 1926-1927, which ended in the month of March, 1927, Ignacio Huarte, manager of Kabankalan Sugar Co., Inc., refused to extend Jose and Felix Rubin any further credit unless their mother signed the document required by said company with reference to the railroad right of way.

The credit granted to Jose Rubin for the crop of 1927- 1928 was P7,000 and that granted to Felix Rubin was P5,000 which should have been distributed during the period from October, 1926, to July, 1927. Jose and Felix Rubin had drawn several sums on account of their credit from time to time, and by March, 1927, the former had not only drawn the whole of the credit, but P2,000 in addition, excluding the interest on his increased account, and the latter all the credit granted him, plus P2,997.15, excluding interest.

In the liquidation of the accounts of Felix and Jose Rubin made on August 17, 1927, the former appeared to be indebted to the Kabankalan Sugar Co., Inc., in the sum of P22,464.20, and the latter in the sum of P23,144.09.

Inasmuch as from the month of April, the sugar cane required greater attention and more expenditures, and as the Kabankalan Sugar Co., Inc., through Ignacio Huarte, its manager, refused to advance Jose and Felix Rubin any more credit, and suggested that they might seek it elsewhere, they had to follow his suggestion in order to save their crops.

On August 10, 1927, Jose Rubin executed a document, Exhibit 2-T, in favor of Jose P. Tinsay, whereby he mortgaged to the latter his share in the sugar-cane crop of the portion of the Hiabangan Plantation which he held as copartner on shares.

On August 20, 1927, Felix Rubin also executed a document, Exhibit 1-P, in favor of Amando A. Perlas, whereby he mortgaged to the latter, as security for the payment of a loan of P12,000 at 12 per cent interest per annum, all his share in the sugar-cane crop on his portion of the plantation which he held as copartner on shares.

These mortgage deeds were not sworn to by the contracting parties, but this defect was later cured by the subsequent insertion of the proper oath.

It also appears of record that the approximate cost of the production of a picul of sugar, including the fertilizer, in the Province of Occidental Negros, is P4, and that on account of the good quality of the soil on the Hilabangan Plantation, the cost is still less, including milling expenses; that Felix Rubin produced in the crop of 1927-1928, 1,400.87 piculs of centrifugal sugar; that in the same crop, Jose Rubin produced 2,971.39 piculs of centrifugal sugar; that 45 per cent of said crops went to the central, and 55 per cent to the planter, so that Felix Rubin's share was 560.32 piculs, and Jose Rubin's 1,188.56 piculs; and that the share of both these debtors was sold at P10 a picul.

From the evidence adduced at the trial by both parties in support of their respective contentions and of the agreed statement of facts submitted by them, it may be deduced that the plaintiff company not only furnished Felix and Jose Rubin P5,000 and P7,600 respectively for the crop of 1927-1928, but also an additional amount of P2,000 to the former and P2,997.15 to the latter; and furthermore that in the month of August, 1927, on account of the company's refusal to extend any more credit to these planters in order to continue the cultivation and care of the sugar cane in the months of April, May, June, July, August, and September, Felix Rubin obtained from Amando A. Perlas P12,000 with interest at 12 per cent per annum, secured by a mortgage of his share in said crop, and Jose Rubin obtained from Jose P. Tinsay a loan of P14,000 secured by a mortgage of his share in the crop.

If the cost of the cultivation and harvesting of sugar cane does exceed P4 per picul on land similar to that of Felix and Jose Rubin and if said Felix Rubin produced 1,400.87 piculs of centrifugal sugar, at the rate of P4 per picul,

he must have spent for plants, cultivation, and harvesting of the sugar cane just mentioned, P5,603.48; and if Jose Rubin produced 2,971.39 piculs of centrifugal sugar at the rate of P4 per picul, he must have spent for plants, cultivation, and harvesting of the cane produced, P11,885.56. Calculating that the cost of cultivation during the months of October, November, and December, 1927, and January, February, and March, 1928, must have been about the same as that expended during the months of April, May, June, July, and August, 1928, one-half of what Felix and Jose Rubin spent in the production of their respective crops must have come from the credit obtained from the plaintiff company, and the other half from that obtained from Amando A. Perlas and Jose P. Tinsay; that is, Felix Rubin must have spent P2,801.74 of the credit granted by the Kabankalan Sugar Co., Inc., and P2,801.74 of that obtained from Amando A. Perlas, while Jose Rubin must have spent P5,942.78 of the credit granted him by said Kabankalan Sugar Co., Inc., and P5,942.78 of that obtained from Jose P. Tinsay.

Well then, where both the Kabankalan Sugar Co., Inc., on the one hand, and Amahdo A. Perlas and Jose P. Tinsay on the other, claim a preferred lien on the shares of Felix and Jose Rubin, respectively, in the centrifugal sugar harvested, which of these claimants is entitled to preference and for what amount?

These preference claims presented by the respective claimants are based on chattel mortgages executed in favor of each of them on the share of Felix and Jose Rubin, respectively, in the centrifugal sugar produced from their sugar cane crops. It is contended by the Kabankalan Sugar Co., Inc., that the chattel mortgages instituted by Felix and Jose Rubin, respectively, in favor of Amando A. Perlas and Jose P. Tinsay, as security for the payment of their respective credits, are null and void because they have not been sworn to by the mortgagors, even though this defect was cured later on by supplying the oath.

We deem it unnecessary to enter into a discussion as to which of these chattel mortgages are valid and enforceable. Credits advanced to the debtor for plants and the cost of cultivation and harvesting, are a preferred lien on the proceeds of the crop for which they were employed, following article 1922, case 6, of the Civil Code, and this preference established by the Civil Code is superior to conventional preferred liens, such as those created by mortgage contracts, whether chattel or otherwise. (Unson vs. Urquijo, Zuloaga and Escubi, 50 Phil., 160.) In the case at bar, as both the Kabankalan Sugar Co., Inc., and Amando A. Perlas and Jose P. Tinsay advanced credits to Felix and Jose Rubin for plants and the cost of cultivation and harvesting of the crops, upon the proceeds whereof a preferred lien is claimed, it is immaterial whether or not a mortgage was constituted, inasmuch as the legal securities not only sufficed, but were superior to the conventional securities.

If, as we have seen, Felix Rubin must have spent on plants, cultivation and harvesting, P2,801.74 of the credit extended him by the Kabankalan Sugar Co., Inc., and P2,801.74 received from Amando A. Perlas, and if Jose Rubin spent P5,942.78 of the credit obtained from said Kabankalan Sugar Co., Inc., and P5,942.78 of that obtained from Jose P. Tinsay, each of these creditors has a preferred lien on the proceeds of said crops pertaining to the debtors, for the part of their respective credits spent by the paid debtors for plants, cultivation and harvesting; that is, they have a lien on the piculs of sugar belonging to each of them.

A. the sugar constituting the shares of the debtors Felix and Jose Rubin has been sold at P10 a picul, making P5,603.50 for the former, and P11,885.60 for the latter, and the former having spent P5,602.48 in the production of his crop, and the latter P11,885.56, which amounts were derived from the credits advanced by the Kabankalan Sugar Co., Inc., Amando A. Perlas, and Jose P. Tinsay, respectively, each of these creditors has a preferred lien on the proceeds of the sale of the respective shares of said debtors in the crops for their respective credits invested in the aforesaid production. So that the Kabankalan Sugar Co., Inc., is entitled to a preferred lien on the P5,603.50, being the proceeds of Felix Rubin's share, for the amount of P2,801.74 spent on plants and the cost of cultivating and harvesting, and on the sum of P11,885.60, proceeds of the (sale of Jose Rubin's share, for the amount of P5,942.80, spent for plants, cultivation, and harvesting; Amando A. Perlas is entitled to a preferred lien on said

sum of P5,603.50, proceeds of the sale of Felix Rubin's share, for the amount of P2,801.75, spent for plants, cultivation, and harvesting; and Jose P. Tinsay has a preferred lien on said sum of P11,835.60, the proceeds of the sale of Jose Rubin's share, for the amount of P5,942.80, spent for plants, cultivation, and harvesting.

As to the remainder of the credit received by Felix and Jose Rubin, respectively, from the Kabankalan Sugar Co., Inc., by Felix Rubin from Amando A. Perlas, and by Jose Rubin from Jose P. Tinsay, not spent for plants, cultivation, and harvesting, it has no preference, and must be considered as an ordinary credit payable in the usual manner.

As to the issuance of the preliminary mandatory injunction, by virtue of which the defendants-cross-complainants have been put in possession of the sugar which, as their share, appertains to the defendants Felix and Jose Rubin, taking it from the Kabankalan Sugar Co., Inc., this court has already held that the ancillary remedy proceeding of a preliminary mandatory injunction will not lie to take the litigious matter out of the possession or control of one person and place it into that of another (*Devesa vs. Arbes*, 13 Phil., 273; *Evangelista vs. Pedrenos*, 27 Phil., 648).

With regard to the damages claimed by the plaintiff- appellant as caused by the undue issuance of the preliminary mandatory injunction, as it suffered no privation other than the possession of the sugar on which it had a preferred lien, and as a bond has been furnished for said damages, the aforesaid preferred lien may be enforced against said bond.

Wherefore, the judgment appealed from is modified, and it is held in civil cases Nos. 4311 (G. R. No. 32122) and 4313 (G. R. No. 32222), that the plaintiff-appellant, the Kabankalan Sugar Co., Inc., holds a preferred lien on the respective shares of Felix and Jose Rubin of the sugar produced by their respective crops, or their value, P5,603.50, and P11,885.60, respectively, for the sums of P2,801.74 and P5,942.80, respectively, being the amounts of their credits extended to said debtors and spent on plants, cultivation, and harvesting; and Amando A. Perlas and Jose P. Tinsay, respectively, hold a preferred lien on the same shares of said Felix and Jose Rubin for their respective values of P5,603.50 and P11,885.60, for the amounts of P2,801.74, and P5,942.80, respectively, the amounts of their respective credits extended to said debtors, and by the latter spent on their aforementioned crops; and Felix and Jose Rubin, furthermore, are each ordered to pay said plaintiff-appellant without preference, the balance of the credits extended to them not spent on plants, cultivation, and harvesting, or P19,662.46 and P17,201.29, respectively, plus the corresponding interest at the rate of 12 per cent per annum from August 18, 1927, and 10 per cent of each of said amounts as attorney's fees, without special pronouncement of costs. So ordered.

Johnson, Malcolm, Villamor, Ostrand, Johns and Romualdez, JJ., concur.

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