

STANDARD OIL CO. OF NEW YORK, PLAINTIFF AND APPELLANT, VS. FRANCISCO CASTRO, DEFENDANT AND APPELLANT. LEDESMA HERMANOS AND PEDRO DE LA VINA Y PORTA, DEFENDANTS AND APPELLEES.

G. R. No. 32207. March 29, 1930

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

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This is an appeal taken by Francisco Castro, the defendant and cross-complainant, and by the Standard Oil Company of New York, the plaintiff herein, from the decision of the Court of First Instance of Iloilo, the dispositive part of which is as follows:

"Wherefore the court finds that the deed of sale Exhibit B is false and fraudulent, and hereby declares it to be null and void; the Ledeshia Brothers shall retain possession of the land in question purchased at public auction; the mortgage deed Exhibit A is likewise declared null and void; and judgment is rendered in favor of the plaintiff, the Standard Oil Company of New York, against defendant Francisco Castro for the sum of five thousand three hundred fifty-four pesos and fifty-nine centavos (P5,354.59), with legal interest thereon from the filing of the complaint herein, that is, August 15,1928, until full payment, plus one thousand three hundred thirty-eight pesos and sixty-seven centavos (P1,338.67) as attorney's fees, with costs, and it is held that no action should be taken with reference to the damages."

In support of his appeal the defendant and cross-complainant, Francisco Castro, assigns the following alleged errors as committed by the court below, to wit:

"1. The trial court erred in not rendering judgment by default against the cross-defendant and appellee, with respect to the cross-complaint filed by the herein appellant Francisco Castro.

"2. The trial court erred in holding that Exhibit B is a fictitious and fraudulent deed of sale and was executed to defraud the appellee 'Ledesma Hermanos and Pedro de la Vina y Porta' thereby frustrating the decision rendered in civil case No.. 1875 of the Court of First Instance of Capiz.

"3. The trial court erred in not declaring the herein appellant Francisco Castro a purchaser in good faith and for valuable consideration and the legal owner of the parcels of land now in litigation.

"4. The trial court erred in not adjudicating the damages claimed by the appellant Francisco Castro which represent the fruits and reasonable rents of the land in question."

The plaintiff, the Standard Oil Company of New York, in turn assigns the following alleged errors to the court

below, to wit:

"The trial court erred in all the following particulars:

- "1. In declaring fictitious, fraudulent, and null the deed of sale, Exhibit B.
- "2. In finding that Ledesma Hermanos should continue in possession of the land in question.
- "3. In declaring null and without value the mortgage, Exhibit A.
- "4. In not ordering the foreclosure of the mortgage, Exhibit A."

The following pertinent facts are necessary to a solution of the questions raised by both appellants:

Francisco Castro's father died in 1906 leaving property situated in the municipalities of San Carlos and Sagay of the Province of Occidental Negros, and Pilar, of the Province of Capiz. On January 8, 1920, Anacleta Cortes, his widow, and mother to the aforesaid defendant and cross-complainant, sold the San Jose Estate situated in the municipality of Pilar, Province of Capiz, for P80,000 (Exhibit 2-2) in her own name and on behalf of her husband's heirs. On March 22, 1917, she sold the parcels of land described in Exhibit 3-3, situated in the municipality of San Carlos, Occidental Negros, and belonging pro indiviso to herself and her husband's heirs, to Tranquilino Broce for P11,000. On September 11, 1920, she sold the lots situated in the municipality of Sagay, Occidental Negros, to Mariano Arroyo Sing Bengco for P19,000, in behalf of her husband's heirs and of herself, executing to that effect the deed Exhibit 4-4. Anacleta Cortes Vda. de Castro, received the sum of P14,000 from Ambrosio Sison and the Ledesma Brothers, as the price of certain parcels of land belonging pro indiviso to herself and to her husband's heirs (Exhibit 5-5). She also received from the San Carlos Milling Company the amount of P25,000 as the selling price of land similarly owned.

On January 16, 1925, Anacleta Cortes Vda. de Castro filed suit against the Ledesma Brothers and Pedro de & Vina y Porta, docketed as civil case No. 1875 of the Court of First Instance of Capiz, claiming damages (Exhibit 1). On March 18, 1925, the Ledesma Brothers and Pedro de la Vina y Porta set up counterclaims against said Anacleta Cortes Vda. de Castro, which were amended on September 14, 1925, and again on January 16, 1926 (Exhibits 2, 2-a, and 2-6).

On or about September 24, 1926, Francisco Castro suggested to his mother, Anacleta Cortes Vda. de Castro, that She assign to him her share in the inheritance of his deceased father. She executed the deed Exhibit 1-1 in his favor, stating that for and in consideration of the sum of P22,000, she assigned and transferred to him her property situated in Nueva Invencion, which she had obtained by purchase from Teodulfo Suner for P25,000. To meet the payment of the selling price, Francisco Castro's share in the proceeds of the sale of his father's property, which amounted to P18,166 was applied thereto, and he paid in addition P4,000 borrowed of his sister Ines Castro, and later paid back, assigning a house of his to her. The property in litigation having been assigned to Francisco Castro, he entered into possession thereof.

On November 22, 1926, the Court of First Instance of Capiz rendered judgment in civil case No. 1875, quoted in Exhibit 3, in favor of Pedro de la Vina y Porta and the Ledesma Brothers against Anacleta Cortes Vda. de Castro, upon the former's counterclaims, in the amount of P18,701.71, and 619.63 piculs of muscovado or its market value when the judgment is executed, with legal interest on both sums from the filing of the counterclaims, that is, March 18, 1925. The court absolved Pedro de la Vina y Porta and the Ledesma Brothers from the complaint filed by Anacleta Cortes Vda. de Castro.

On August 10, 1927, the deed of sale Exhibit B and 1-1, executed by Anacleta Cortes Vda. de Castro in favor of her son Francisco Castro, was recorded in the registry for unregistered real estate in the Province of Iloilo in

accordance with Act No. 2837.

On August 12, 1927, Francisco Castro mortgaged these lands acquired from his mother to the Standard Oil Company of New York, executing the instrument Exhibit A, which was recorded on August 18, 1927, in the registry for unregistered real estate in the Province of Iloilo, created by Act No. 2837.

On September 27, 1927, the proper writ of execution (Exhibit 4) was issued in civil case No. 1875 against Anacleto Cortes Vda. de Castro, and in pursuance thereof the provincial sheriff of Iloilo attached the property in controversy. Francisco Castro filed a third-party claim of title (Exhibits 23 and 24-A) to said property, but Pedro de la Vina y Porta and the Ledesma Brothers having filed a bond for P10,000, the attachment was continued and the property sold at public auction to said judgment creditors for P15,000, and the proper deed of sale was issued in their name (Exhibit 5). Upon the expiration of the one-year period for redemption, the provincial sheriff of Iloilo executed the final deed of transfer of the property in question (Exhibit 37) to the purchasers, Pedro de la Vina y Porta and the Ledesma Brothers, and upon the 3d of March, 1929, proceeded to deliver the possession thereof to them (Exhibit 38).

In the month of February, 1928, defendant Pedro de la . Vina y Porta took possession of the lands mentioned, alleging that he had purchased them at public auction, and filed a bond to secure his possession. Owing to the elections Francisco Castro—a candidate for municipal president— was unable to file the proper action against Pedro de la Vina y Porta and the Ledesma Brothers in time, and it was only after the elections, when the Standard Oil Company of New York instituted the instant action against him, that he was able to do so by means of a cross-complaint against said Ledesma Brothers and Pedro de la Vina y Porta. Neither Francisco Castro nor his mother Anacleto Cortes Vda. de Castro were notified of the judgment rendered in civil case No. 1875 by the Court of First Instance of Capiz, which gave rise to the attachment and the sale in favor of the Ledesma Brothers and Pedro de la Vina y Porta of the property in litigation, until December 6, 1926 (Exhibit 31).

In view of the fact that the validity of the assignment of the lands in litigation by Anacleto Cortes Vda. de Castro to her son Francisco Castro is assailed by the defendants- appellees, and hence, also the validity of the mortgage thereof to the plaintiff-appellant, the Standard Oil Company of New York, said defendants-appellees contending that since the assignment is null and void, the mortgage is likewise null and void having been executed by one who is not the owner of the mortgaged property, we shall therefore treat first of all, of the assignments of error made by Francisco Castro, defendant and appellant, in support of his appeal.

With regard to the first assignment of error made by Francisco Castro, inasmuch as it does not appear from the bill of exceptions that he took exception to the order denying his motion to hold the cross-defendants and appellees Pedro de la Vina y Porta and the Ledesma Brothers in default, he must be understood to have acquiesced in said order and cannot now be heard to complain against it.

In regard to the question as to whether or not the sale made by Anacleto Cortes Vda. de Castro, in favor of her son Francisco Castro of the lands in question is legal and valid, the cross-defendants and appellees, Pedro de la Vina y Porta and the Ledesma Brothers, contend that said sale made by Anacleto Cortes Vda. de Castro, in favor of her son Francisco Castro through Exhibit A and 1-1, is fictitious, because it was made without a valuable consideration and to defraud her creditors, among whom are the cross- defendants and appellees, and hence, unlawful and void, Francisco Castro being a purchaser in bad faith.

The record shows that of the proceeds of the sale made by Anacleto Cortes Vda. de Castro, in her own name and as guardian of her five children, of various properties left by her deceased husband, amounting to P150,000, Francisco Castro's share amounted to P18,166. This amount was applied in part payment of the sum of P22,000 Which is the selling price of the lands in litigation, and the remainder of P4,000 was borrowed by Francisco

Castro from his sister Ines Castro, later assigning to her a house of his in satisfaction of the debt. The cross-defendants allege that this sale was fraudulent, because it was made without a valuable consideration, and it is incumbent upon them to prove their allegation by the best evidence admissible in law, which they have failed to do, therefore, the legal presumptions of good faith and the existence of a valuable consideration, have not been disturbed.

Another circumstance mentioned as indicating the existence of fraud, is the fact that at the time the lands were assigned, two counterclaims were pending in the Court of First Instance of Capiz against Anacleto Cortes Vda. de Castro, and the latter was insolvent because she had been assigning the rest of the property left to her, for the purpose of defrauding her creditors. If this were true, it is unaccountable why said appellees when they filed their counterclaims, they did not apply for a preliminary attachment of the property of said Anacleto Cortes Vda. de Castro, in order to secure the payment of the judgment subsequently to be rendered in their favor, as indeed was the case. Does not this plainly show that when Anacleto Cortes Vda. de Castro executed Exhibit A and 1-1 in favor of her son, Francisco Castro, she was not financially embarrassed, and that the assignments she made of her property not only failed to alarm her creditors, but did not even raise their suspicion?

The mere fact that the vendor was the vendee's mother, if the sale was made for a valuable consideration and said vendor was not at that time insolvent, is not an element of fraud.

As the sale of the lands in question was not made under circumstances which give rise to the legal presumption of fraud, and as the presumption of good faith has not been destroyed by competent, positive, and preponderating evidence, said sale is lawful and valid.

Having reached the conclusion that the sale of the lands in litigation made by Anacleto Cortes Vda. de Castro in favor of her son, Francisco Castro, is lawful and valid, the other questions to be decided are the following: (1) Whether or not the mortgage of the lands in controversy executed on August 12, 1927 by Francisco Castro in favor of the plaintiff-appellant is valid and effective; and (2) whether or not the debt secured thereby takes preference over the judgment in favor of the defendants-appellees, Pedro de la Vina y Porta and the Ledesma Brothers in civil case No. 1875 of the Court of First Instance of Capiz.

The mortgage executed by Francisco Castro in favor of the plaintiff-appellant, the Standard Oil Company of New York, although it deals with unregistered land, is lawful and valid in favor of the Standard Oil Company of New York from the time of the registration, which took place August 18, 1927, according to Act No. 2837, and became effective thence against third parties not vested with a better title. At the time of said mortgage, a deed of sale of said land in favor of Francisco Castro was recorded in the registry of unregistered lands in the registry of deeds of Iloilo, without a memorandum of any lien or encumbrance thereon. And although in December, 1926, the decision in civil case No. 1875 of the Court of First Instance of Capiz was filed in the clerk's office, in favor of the "Ledesma Brothers and Pedro de la Vina y Porta, and against Anacleto Cortes Vda. de Castro, execution was not issued nor levied upon the aforesaid property until September 23, 1927, when it was attached as property of the judgment-debtor Anacleto Cortes Vda. de Castro. The mere fact that the Ledesma Brothers and Pedro de la Vina y Porta secured judgment in their favor, does not give them a preferential lien on these lands which were not the subject of the litigation (art. 1924, paragraph [6], Civil Code), and because the Standard Oil Company of New York held a mortgage lien prior thereto on said property, which must be considered preferential under article 1923, case 3, of the said Code.

It is true that registrations made under Act No. 2837 will not prejudice a third party's better right, but in the case in question the judgment in favor of Ledesma Brothers and Pedro de la Vina y Porta does not give the latter a preferential lien on the property in litigation as against the Standard Oil Company of New York, for, as stated, the

latter holds a prior mortgage lien.

Wherefore we are of opinion and so hold that the court below erred in declaring the mortgage held by the plaintiff, the Standard Oil Company of New York, null and void, and in not considering its credit preferential to that of the defendants Pedro de la Vina y Porta and the Ledesma Brothers based upon the judgment.

Upon the question of damages, as claimed by the cross- complainant, Francisco Castro, the only evidence adduced consists in his own statement to the effect that it was the intention to plant sugar cane on the land in question, and he calculates that had not the same been delivered to the cross-defendants and appellees, the crops would have amounted to 80 piculs a hectare a year, that is, 4,000 piculs all told, and which, if sold at the rate of P7 a picul, would have netted P28,000. Such a reckoning is entirely speculative and will not support an adjudication of damages.

In view of the foregoing considerations, we are of opinion and so hold: (1) That a mortgage of unregistered real property recorded in the registry created by Act No. 2837 for instruments of unregistered lands is valid and effective as such mortgage, and the credit secured thereby takes precedence over a judgment lien the execution of which by attachment and a public auction sale was made subsequent to the registration of the aforesaid mortgage; (2) that a mother's sale of her property to her son in consideration of the latter's share in his father's estate, while a counterclaim was pending against the vendor in an action begun by her, where it is not shown that she was at that time insolvent, is not a sale for the purpose of defrauding her creditors; and (3) that evidence of a plan to plant sugar cane on land sold at public auction, the production thereof being speculative, will not serve as the basis for the adjudication of damages.

Wherefore, the judgment appealed from is reversed, and Francisco Castro is declared to be the absolute owner of the property in controversy, the appellees Pedro de la Vina y Porta and the Ledesma Brothers being ordered to deliver the possession thereof to the aforesaid defendant and cross- complainant, Francisco Castro; it is likewise held that the mortgage executed by the defendant Francisco Castro to the plaintiff, the Standard Oil Company of New York, is foreclosed, and the former is sentenced to pay into the Court of First Instance of Iloilo the sum of P5,354.59 within ninety days from the promulgation of this judgment, plus the stipulated interest, and the additional amount of P1,338.67, by way of attorney's fees, and to pay the costs; and if upon the expiration of this period, the defendant Francisco Castro has not made this payment, the mortgaged property shall be sold for the purpose of raising this amount and the costs; and if the proceeds of the sale be insufficient to meet them, other property of said defendant shall be attached until the whole amount of the judgment is recovered; with costs against the appellants. So ordered.

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

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