

LEOCADIA ANGELO, PLAINTIFF AND APPELLEE, VS. CIPRIANO PACHECO, DEFENDANT AND APPELLANT.

G. R. No. 32894. September 08, 1931

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The principal question to decide in this case is whether, as the plaintiff contends and the trial court has held, the defendant waived his right to warranty. The judgment appealed from accordingly sentences the defendant to complete the full selling price by paying P8,000 to the plaintiff, with legal interest from August 15, 1927, and the costs, and denies him the P68,000 which he claims as damages for lack of such warranty.

The defendant maintains that the so-called waiver of his right to warranty in case of eviction was not made with full knowledge of the risks and consequences thereof, and therefore he impugns the judgment of the court below, making[^] several assignments of error.

The facts of the case are:

On July 14, 1920, the plaintiff executed a deed of sale to the defendant conveying a parcel of land consisting of some 659 hectares in area situated in the municipality of Paniqui, Tarlac, and five carabaos, for P13,500, of which the defendant paid P5,500 and promised to pay the balance of P8,000 on or before the month of March, 1921.

By that deed of sale, which is Exhibit 3, the defendant waived his right to warranty in case of eviction, in the following terms:

"It is hereby also covenanted and agreed by both parties that the vendee waives warranty in case of eviction from the property sold, to which he has a right by virtue of this sale, against the vendor Leocadia Angelo."

In 1924, wishing to dispose freely of the land but prohibited from doing so by a certain clause in the deed marked Exhibit 3, the defendant asked the plaintiff to sign another deed eliminating that prohibition, and so Exhibit 4 was executed on June 18, 1924. The second deed of sale also provided for the waiver of warranty in case of eviction in the following terms:

"It is also covenanted and agreed by both parties that the vendee, Cipriano Pacheco, waives warranty in case of eviction from the property sold, to which he has a right by virtue of this sale, against the vendor Leocadia Angelo, and undertakes to recognize any lien on said property."

On the same date the defendant executed the promissory note marked Exhibit A, for P8,000 payable in three years from the date thereof, and secured the payment of that amount with a real estate mortgage evidenced by Exhibit B.

But the land which the plaintiff sold to the defendant through the deeds marked Exhibits 3 and 4 was at that time the subject of litigation as follows:

On July 2, 1920, or about twelve days before the sale of the realty through Exhibit 3, the plaintiff had instituted proceedings for the registration of said land. The defendant was aware of this action when the sale took place on the 14th of the month that year, and he had even been told by Attorney Natividad who the probable opponents would be. From that time on the defendant was in charge of the registration proceeding, the plaintiff taking no part therein, and he succeeded in obtaining judgment on September 20, 1923, decreeing the registration of the land in the name of Leocadia Angelo, whose name had been retained as that of the party applicant.

On July 18, 1924, the proper decree was issued in the name of the plaintiff. A month had already elapsed when the deed of sale, Exhibit 4, and the promissory note, Exhibit A, as well as the mortgage, Exhibit B, had been executed.

On October 6th that same year, i. e., 1924, a motion for the review of the decree was filed by the Director of Lands and by two large groups of private opponents.

On May 25, 1925, when the defendant, Cipriano Pacheco already appeared as the owner of the property, with a certificate of title, he filed his answers to the petitions for review, and after a hearing thereon, the court set aside on June 23, 1925, the decree issued to Leocadia Angelo, the plaintiff herein, and the transfer certificate of title in the name of the defendant Cipriano Pacheco.

From that decision an appeal was taken both by the latter and by Lucia F. de Valle Cruz to whom the property had been sold by Cipriano Pacheco, the Supreme Court on December 31, 1926,[1] affirmed the order setting aside the decree and the transfer certificate of title, but "declaring that the appellant Lucia F. de Valle Cruz, or her successors in interest, shall have a lien upon the land" for the sum of P15,000 with interest at the rate of 12 per cent per annum from July 23, 1924, and with the right to foreclose the mortgage, in default of payment, as provided in sections 254-259 of the Code of Civil Procedure, except that in the sale under such foreclosure, the portions of the land occupied by the petitioners for review should not be sold until the portions not so occupied have been sold and the proceeds of the sale found insufficient for the satisfaction of the lien. In all other respects, the appealed order was affirmed. (Exhibit 1.)

Later on Lucia F. de Valle Cruz brought an action against Cipriano Pacheco and obtained judgment in the Court of First Instance of Tarlac in civil case No. 2459 on January 31, 1928, for the same mortgage credit of P15,000 with the interest mentioned above. (Exhibit D.)

The question now is: Does the warranty obligation still bind the plaintiff as the vendor of that land? The defendant's formal and express waiver of warranty in case of eviction, set forth in Exhibit 3 and reiterated in Exhibit 4 under the authority of the last paragraph of article 1475 in the Civil Code, answers this question in the negative.

The defendant argues that such a waiver is void under article 1476 of the Code mentioned because there was bad faith on the vendor's part, inasmuch as in selling the land, she knew that it did not belong to her and she did not even have possession thereof. But the record does not bear out this imputation. And in his answer to the petition for the reopening of the decree, the defendant himself swore to the contrary, saying that when the vendor sold the land, which she had acquired in good faith, she firmly believed that Pedro Eugenio from whom she had bought it, was the owner in fee simple. (Exhibit 2, page 86.)

The counsel for the appellant invites our attention to a passage in this court's decision, Exhibit 1, with reference to the trial court's finding in the reopening of the decree, to the effect that Leocadia Angelo obtained the decree through fraud and that the sale of the land to the defendant herein was not made in good faith. Note that with reference to the decree the record shows that it was the defendant who obtained it, without a personal intervention on the plaintiff's part. And with respect to the sale of the land not in good faith, such a passage is a mere statement made by this court of certain findings of the court below. In that case this court never said that Leocadia Angelo

sold the land in question to the defendant in bad faith.

The appellant also cites in his brief the following paragraph from this court's decision in that case, Exhibit 1:

"If that allegation is true, and we must so assume in the absence of a denial, the applicant was guilty of a deliberate misrepresentation which tended to prevent the adverse claimants or occupants from receiving formal notice of the registration proceedings and from asserting their rights."

To begin with, the evidence in this case shows that Leocadia Angelo took no part in the proceedings of the reopening of the decree; that it was Cipriano Pacheco himself, the defendant herein, who did so, and who is therefore to blame for not entering the denial for lack of which this court assumed that allegation to be true. In the second place, even assuming for a moment that the deliberate misrepresentation to which this court referred were chargeable to Leocadia Angelo, such a falsehood in connection with the registration proceeding has nothing to do with the eviction or its antecedents and consequences. The bad faith which annuls the waiver according to article 1476, invoked by appellant's counsel, must bear some relation to the fact or facts giving rise to eviction. Manresa, that authoritative commentator, thus expresses himself on this point:

"What does the vendor's bad faith consist in? In our opinion, it consists in his knowing beforehand at the time of the sale of the presence of the fact giving rise to eviction and its possible consequences." (Commentaries on the Spanish Civil Code, by Manresa, Vol. X, page 194, 3d edition.)

The judgment appealed from is assailed in so far as it holds that when the deed of sale Exhibit 3, was executed, the land thereby conveyed had already been registered under the Torrens system and the petitions for review were pending hearing. This holding is, indeed inaccurate; but such an error has not affected the case in the court below, the decision being based not upon this inexactitude, but upon the defendant's complete and absolute waiver of warranty for eviction, and upon the failure of evidence to show that the plaintiff acted in bad faith in conveying the realty.

Furthermore, not only did the defendant make a formal and express waiver of warranty for eviction, but—perhaps because he was convinced that he had waived that right entirely—he failed to notify the vendor, plaintiff herein, or to have her summoned for the reopening of the decree, when he should have done so because he was in danger of losing the property, as he indeed did. For failure of that notice, the plaintiff is not bound to warranty, according to article 1481 of the Civil Code.

The other assignments of error are groundless.

Finding no sufficient reason for altering the dispositive part of the judgment appealed from, it is hereby affirmed in its entirety. The costs shall be charged to the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Villa-Real, and Imperial, JJ., concur.

[1] Angelo vs. Director of Lands, 49 Phil., 838.

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