

TOMASA MASONGSONG, PLAINTIFF AND APPELLANT, VS. PRIMITIVO KALAW, DEFENDANT AND APPELLEE.

G. R. No. 33753. March 09, 1931

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This action was instituted for the purpose of having a certain deed of sale with right of redemption executed by the plaintiff in favor of the defendant, quoted in the complaint, declared by the court as failing to express the real intention of the parties, it being, in reality, a mortgage deed, praying, therefore, for the cancellation of the certificate of title which, by virtue of said sale and the subsequent consolidation, was issued to the defendant, and that the latter be sentenced to pay the costs.

In addition to a specific denial of certain paragraphs of the complaint, the defendant sets up a special defense alleging that the contract was a real and true sale in accordance with the genuine and free will and purpose of the parties, the plaintiff having actually received the sale price of P20,000; that the period of redemption had elapsed without having made use of the right of redemption, and, consequently, a transfer certificate of title was issued in favor of the defendant without any protest from the plaintiff. The defendant, in addition, interposes a cross-complaint on account of the plaintiff's refusal to deliver the possession of the property sold, with damages suffered, by reason of such refusal, amounting to P2,000 per annum from February 25, 1927. Upon these allegations, the defendant asks for the dismissal of the complaint, and that the contract of sale in question be declared a real contract of sale, and the defendant's title to the property sold absolute and irrevocable. The defendant also asked that in order to avoid greater and irreparable damages, the possession of the property be delivered to him before the trial of the case upon its merits, unless the plaintiff furnish a bond in his favor to answer for damages already sustained and in the future.

The court heard the parties upon the last petition and with their acquiescence ordered the plaintiff to furnish a bond in favor of the defendant in the amount of P8,000 for the non-issuance of the writ of possession applied for by the defendant, and the plaintiff having failed to furnish such bond, the aforesaid writ was issued, delivering the possession of the land in question to the defendant.

Later on the defendant was permitted to add to his answer another special defense to the effect that the question here raised is *res judicata*.

Some time later, by agreement of the parties, the court appointed a commissioner to count the coconut trees on the land.

After trial of the case, the Court of First Instance of Batangas rendered judgment absolving the defendant from the complaint.

The plaintiff has appealed from this judgment, making the following assignments of error:

- The trial court erred in holding that the document presented by the plaintiff marked as Exhibit E constituted a

sale with right of redemption and not as a mere mortgage deed.

- The trial court also erred in not holding that the plaintiff-appellant signed and executed said Exhibit E, on the understanding that it was to be considered by the parties thereto as a mere mortgage deed.
- The trial court likewise erred in giving greater weight and credit to the testimony given by the witnesses for the defendant than to the evidence submitted by the plaintiff.
- The trial court finally erred in rendering judgment in favor of the defendant-appellee Primitivo Kalaw, and against the plaintiff-appellant Tomasa Masongsong."

The facts cited by the party appellant as indicating that the contract entered into was one of mortgage and not of sale with the right to repurchase, cannot be considered as sufficiently proved. On the contrary, the record shows that there are facts established by a preponderance of evidence, aside from the deed of sale itself, Exhibit E, which corroborate the literal text of said deed and which must prevail unless destroyed by evidence of sufficient weight and force, for the facts stated in a document are presumed to be true. (*Asido vs. Guzman*, 37 Phil., 652; *Mendezona vs. Philippine Sugar Estates Development Co.*, and *De Garay*, 41 Phil., 475.)

With regard to the sale price, considering the circumstances of the case, particularly the report of the commissioner appointed by the court below to count the coconut trees on the land while it was still in the plaintiff's possession, we agree with the court below in considering that it is not inadequate.

Finding no reason in the record to depart from the conclusions set forth in the judgment appealed from, we hereby affirm it in its entirety, with costs against the plaintiff. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, and Ostrand, JJ., concur.

JOHNS, J.:

I dissent.

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