

ESTATE OF THE DECEASED LAZARO MOTA ET AL., PLAINTIFFS AND APPELLANTS, VS. VENANCIO CONCEPCION ET AL., DEFENDANTS. SALVADOR SERRA, INTERVENOR AND APPELLEE.

G.R. No. 34581. March 31, 1932

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

In the amended complaint in the present case, the plaintiffs seek to recover of the defendants Venancio Concepcion and P. C. Whitaker the amount of P283,786.59 with interest from October, 1927, being the unpaid balance of the selling price of a railway for transporting sugar cane from certain plantations situated in the municipalities of Ylog and Kabankalan in the Province of Occidental Negros, and in default of the payment thereof, to foreclose the mortgage upon said railway, and also to collect the sum of P808,375.02 by way of damages arising from the alleged negligence of the defendants in maintaining said railway in a proper condition for the transportation service for which it was intended.

With permission of the court, Salvador Serra intervened as a third-party claimant against the plaintiffs and the defendants, praying: (1) That his conveyance of a half interest in said railway to the defendants be rescinded, and that the railway or his interest therein be returned to him, or damages paid him in lieu thereof; and (2) that plaintiffs and defendants be required to render an accounting of one-half of the returns from the management of the railway line after May 15, 1920.

The principal defendants did not appear to defend themselves and the court rendered judgment against them and for the plaintiffs in the sum of P245,804.65 with legal interest from October 31, 1925, at the same time declaring that the mortgage upon the railway in favor of the plaintiffs is null and void, and that the claim of damages against the defendants had not been proved.

As to the complaint of the intervenor, the court held that the conveyance of a half interest in the railroad made by Serra to Concepcion and Whitaker was rescinded, and rendered judgment in favor of Serra against the plaintiffs for the sum of P150,000 instead of the railway, but denied his petition for an accounting, with costs in favor of said intervenor.

From this judgment the plaintiffs appealed.

At the beginning of the year 1919, Lazaro Mota, now deceased, and Salvador Serra entered into a partnership to construct several kilometers of railroad in the municipalities of Ylog and Kabankalan, Occidental Negros, in order to facilitate the transportation of sugar cane to two sugar centrals named San Isidro and Palma of which they were the respective owners. In January 1920 Serra transferred his half interest to the defendants Concepcion and Whitaker in connection with the sale of the Palma central. In December 1920, Mota also sold his half interest in the railroad to the same purchasers, Concepcion and Whitaker. At this last sale, only part of the price was paid down, and in order to secure the payment of the remainder, Concepcion and Whitaker mortgaged to Mota the entire railroad. The present action was brought by the plaintiffs to recover the unpaid balance and to foreclose the

mortgage. As the mortgage included not only the railroad, which is real property, but also the rolling stock, which is movable, and therefore personal property, Mota had the contract recorded in the registry, not only as a mortgage upon unregistered real property, according to Act No. 3344, but also as a mortgage of personal property. However, we are here concerned only with the contract as a mortgage upon unregistered real property.

The trial court erred in holding that the mortgage was null and void. It is true that the contract does not contain some of the data mentioned in section 194 of the Administrative Code, but the mortgage was actually recorded in the registry of deeds by the registrar, and we are of the opinion that it is valid between the contracting parties, as it would be even if it had not been recorded. From among the decisions of this court cases may be cited wherein it is held that a mortgage upon unregistered real property is void under the Spanish Mortgage Law, but the rule upon this point has been modified by section 194 of the Administrative Code, as amended, which clearly recognizes the validity of such a contract between the contracting parties. (*Standard Oil Co. vs. Castro*, 54 Phil., 716.)

On the other hand, we agree with the trial court that the plaintiffs are not entitled to recover damages of the defendants, as claimed in the second cause of action. Such damages, in addition to being speculative in nature, have not been proved.

Taking up once more the matter of the intervention, we hold that the court below did not err in permitting it. Supposing that Serra's contention were well-founded upon its merits, his interest in the litigated property would be a sufficient justification for the court to grant him permission to intervene and litigate with plaintiffs and defendants upon said interest. But the intervenor's contention is, we find, wholly untenable upon the merits. His right to rescission, which he could once have exercised against Concepcion and Whitaker, has lapsed. With regard to this, it is to be noticed that the transfer of Serra's one-half interest in the railway to Concepcion and Whitaker is evidenced by a document whereby he sold to them the Palma central. It is clear that this conveyance of Serra's half interest in the railroad to them was an actual sale, and not a mere assignment, as Serra now pretends. In the case of *Estate of Mota vs. Serra* (47 Phil., 464), which refers to another aspect of the controversy between the parties here litigant, this court held that all of the railway together with the Palma plantation was the property of Whitaker and Concepcion in consequence of the contract here in question. We see no reason for arriving at a different conclusion now. In paragraph VI of said contract the railway is mentioned, and Concepcion and Whitaker are said to be subrogated to all the rights and obligations arising from said contract, binding themselves likewise to comply with all the contracts entered into between the vendor and the partners, tenants on shares, and employees. The words "were subrogated" used in said contract evidently mean "succeeded", and one who succeeds to the rights and obligations created by a contract becomes, to all intents and purposes, the owner of the property which is the subject of such rights and obligations.

Now then, when the Palma plantation was sold with Serra's half interest in the railroad, as stated above, Serra was given a mortgage upon said plantation, though not upon the railway, to secure the payment of some hundred thousand pesos, having received only the sum of P945,861.90 cash. The balance of the price was never paid, with the result that Serra foreclosed the mortgage upon the Palma plantation, and upon execution, he bought it with the improvements made thereon by the vendees, for the sum of P500,000. It is evident that having foreclosed the mortgage given him to secure the unpaid portion of the selling price of plantation and railway, Serra cannot now maintain another action to rescind the sale of his half interest in the railway. Having demanded the fulfillment of the contract in another action for the foreclosure of the mortgage, his right to rescission has been extinguished. Furthermore, even supposing that Serra could have exercised the right of rescission against his vendees, he could not do so against the Estate of Mota, because the latter was a third party in the contract between Serra and the vendees, and is, moreover, an innocent creditor for value.

In view of the conclusion that Serra's alleged right to rescind that contract does not exist, his claim for damages,

instead of the return of the railway, becomes of necessity unfounded, and the judgment of the court granting Serra the sum of P150,000 erroneous.

For the foregoing considerations, the judgment appealed from must be affirmed so far as it holds that defendants Concepcion and Whitaker are indebted to the plaintiffs in the amount of P245,804.69 with legal interest from October 31, 1925 until fully paid, and reversed with regard to the rest of it; wherefore, plaintiffs and defendants are absolved from Serra's cross-complaint, and let the cause be remanded to the court of origin with instructions that unless the debt of Concepcion and Whitaker is paid within ninety days from notice hereof, the railway shall be sold for the payment of said debt and the incidental expenses in the foreclosure of the mortgage. Without special award of costs. So ordered.

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

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