

GENARO FERRER ET ALS., PLAINTIFFS AND APPELLANTS, VS. LUCIA MATIAS ET ALS., DEFENDANTS AND APPELLEES.

G. R. No. 34723. December 05, 1931

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal by the plaintiff from a judgment of the Court of First Instance of Nueva Ecija, dismissing the complaint with costs against the plaintiffs.

The plaintiffs allege in their complaint, among other things, that some time during the year 1917, the said Roque Ferer borrowed two hundred fifty pesos from the said Casimiro Tinio, with interest at the usurious rate of 24 per centum per annum; that as security for the said loan, the said Roque Ferer conveyed to the said Casimiro Tinio by way of mortgage the parcel of land described in the complaint; that on July 27, 1919, the said Roque Ferer paid to the said Casimiro Tinio sixty pesos as interest on the said loan for the year 1917- 1918; and on May 29, 1920, he paid to the said Casimiro Tinio a second sixty pesos as interest on the said loan for the year 1918-1919; that some time during the year 1924, the said Casimiro Tinio took possession of the land above described and retained possession thereof until his death, after which the defendant administrators of his estate succeeded him in possession of the said land; that the said Casimiro Tinio and the defendants administrators of his estate have received the fruits from the land above described ever since the year 1924; that notwithstanding the fact that the plaintiffs have repeatedly made known to the defendants their desire to redeem the said land, and notwithstanding the further fact that the plaintiffs have made repeated demands on the defendants for an accounting for the fruits received therefrom, the said defendants have refused and continue to refuse to render an account.

The plaintiffs therefore pray judgment for an accounting for the fruits received from the land described in the complaint; for the cancellation of the mortgage also alleged in the complain upon the payment of the debt secured thereby; for the return of the land to the plaintiffs; and for the refund of all interest paid on the loan.

In her answer the defendant denies each and every allegation of the complaint, and as a special defense alleges that the contract of sale mentioned in her original answer having been executed by Roque Ferer, who is now deceased, without questioning its genuineness, legality, and authenticity, during his life time, the plaintiffs are now estopped and barred to object to its legality and genuineness."

After a careful examination we cannot find sufficient evidence in the record to prove the plaintiffs' allegations; on the contrary, the evidence of the defendant seems more clear and admits but little doubt as to Tinio's ownership of the land in question. The judgment appealed from is affirmed without

Ten days after the promulgation of this decision final judgment will be entered, and five days thereafter the record will be remanded to the court below.

It is so ordered.

Avanceña, C. J. Johnson, Villamor, and Villa-Real, JJ., concur.

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