

BENITO MOJICA, PLAINTIFF AND APPELLEE, VS. JUANA FERNANDEZ, ADMINISTRATRIX OF THE ESTATE OF PEDRO SANCHEZ, DECEASED, DEFENDANT AND APPELLANT.

G.R. No. 3483. December 21, 1907

Ponente: CARSON, J.

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CARSON, J.:

No motion for a new trial was submitted to the trial court, hence this court is precluded from an examination of the evidence of record, for the purpose of reviewing the findings of fact, as set out in the decision of the trial judge.

The defendant is the administratrix of the intestate estate of Pedro Sanchez, deceased. On the 22d day of October, 1894, the plaintiff, Benito Mojica, sold to the said Pedro Sanchez three pieces of real estate, situated in Manila, and in the Province of Bulacan, for the sum of P15,000. The sale was made *con pacto de retro* (with a condition as to repurchase), by virtue of which Mojica reserved the right to repurchase the land for the selling price, within a period of four years from the date of sale. By the terms of the contract it was further agreed that the vendor, Mojica, was to retain possession of the real estate during the term within which he reserved the right of repurchase, and was to pay the said Sanchez the sum of P125 per month as rental for its use and occupation. Owing to the unsettled conditions prevailing at that time, the period of four years within which the vendor reserved the right off repurchase expired without his having exercised this right. Thereafter Sanchez made the necessary *nota de consolidacion* (consolidating entry) in the proper registries, and thus appears upon the land records as the absolute owner of the property in question.

Sometime thereafter Sanchez entered into a verbal agreement with Mojica whereby he obligated himself to resell the said property to Mojica upon request so to do, and to permit Mojica to continue in possession of the property provided he "continued to pay the interest" on the original purchase price of P15,000, at 10 per cent per annum.

Thereafter, on the 1st day of December, 1901, Sanchez and Mojica entered into a new agreement in writing in a private document whereby Sanchez leased the said real estate to Mojica for a period of ten years, for the sum of P1,800 per annum, being the interest at 12 per cent per annum on the sum of P5,000, payable in installments of P150 monthly, and agreed that Mojica was to have the right of repurchase for the sum of P15,000 at the expiration of the said period of ten years. Mojica thereafter continued to pay the rental at the rate of P150 per month, which was received by Sanchez up to the time of his death. In a document purporting to be his last will and testament, Sanchez expressly recognized Mojica's right of repurchase of said property under the terms of said contract of lease and repurchase, but this instrument was not admitted to probate as the last will and testament of Sanchez, owing to a noncompliance with the formal provisions of the Code, of Civil Procedure touching the execution of such instruments. Mojica continued to pay the rent to the widow of Pedro Sanchez after his death, she having been named the executrix of the alleged will, and later appointed as administratrix of Sanchez's estate. In May, 1905, the defendant administratrix undertook to increase the monthly rental to P350 per month and refused to

receive P150 as theretofore paid, although that amount was duly tendered.

This action appears to have been instituted as a result of the attempt of the defendant administratrix to increase the amount of the monthly rental. The prayer of the complaint is as follows:

"Therefore, the court is prayed to render judgment declaring that the fictitious alleged sale of the land described in this complaint was in fact a loan of P15,000, with interest at the rate of 12 per cent per annum, secured by mortgage on the said property, and that the consolidation entry made in favor of Don Pedro Sanchez in the registries of Manila and of the Province of Bulacan be annulled; and, if this remedy be not granted, that the defendant, as administratrix of the intestate estate of Don Pedro Sanchez, be required to register as a public document the private rental contract of the said lands, for a period of ten years, and the agreement to sell the same at the end of the said term, annulling at the same time the consolidation entry of ownership of the said lands in favor of Don Pedro Sanchez, with the costs of this proceeding."

Upon the facts as above set out, the trial court properly held that neither the *venta con pacto de retro* (sale with right of repurchase) nor the private document, dated September 1, 1901, could be declared to be instruments of loan or mortgage. The contract of sale with a right to repurchase was a valid contract recognized and authorized by law, and under its terms the purchaser was entirely within his rights when he caused the annotation in question to be entered in the proper land registries. (Civil Code, Sec. 1, Chap. VI, Title IV, Book IV.)

The trial court further held that "the private document of lease and right of repurchase has no legal standing for more than six years from its execution, being to the prejudice of third persons, the heirs of one of the parties to it;" that "the plaintiff is entitled to the possession of the premises described in the complaint for six years from September 1, 1901, upon paying the monthly sum of P150 and otherwise complying with the conditions of the private document executed between him and Pedro Sanchez, deceased, on September 1, 1901;" that "the plaintiff having complied with all the terms and conditions of the agreement of September 1, 1901," and that the six-year term set out therein having elapsed at the date of the entry of the judgment, the plaintiff was entitled, upon payment of the sum of P15,000 to have executed to him a resale of the premises described in the complaint, and thereupon to have the consolidation entry in favor of Pedro Sanchez, deceased, annulled.

These rulings seem to be based upon article 1280 of the Civil Code, which provides that contracts of rental of real estate for a period of six or more years, when said contracts are to the prejudice of third persons, must be executed in a public document.

But with respect to the contract entered into by the deceased and evidenced by the document of September 1, 1901, the heirs can not be regarded as "third persons." Article 27 of the Mortgage Law defines a "third person" to be "one who has not taken part in the act or contract recorded." Under the Civil Code, the heirs, by virtue of the right of succession are subrogated to all the rights and obligations of the deceased (art. 661) and can not be regarded as third parties with respect to a contract to which the deceased was a party, touching the estate of the deceased. (*Barrios v. Dolor*, 2 Phil. Kep., 44.) This doctrine was enunciated by the supreme court of Spain in its decision of January 27, 1881, wherein it held that "both judicial and extrajudicial acts, formally accepted by one who was a lawful party thereto, are effective as to the heirs and successors of such persons, who are not to be regarded as third persons for this purpose;" also in its decision of January 28, 1892, wherein it held that "the heirs are no more than the continuation of the juridical personality of their predecessor in interest, and can in no way be considered as third persons within the meaning of article 27 of the Mortgage Law."

The principle on which these decisions rest is not affected by the provisions of the new Code of Civil Procedure, and, in accordance with that principle, the heirs of a deceased person can not be held to be "third persons" in relation to any contracts touching the real estate of their decedent which comes into their hands by right of inheritance; they take such property subject to all the obligations resting thereon in the hands of him from whom they

derive their rights.

Other than the above-cited provisions of article 1280 of the Civil Code, we know of no limitation to the power of Pedro Sanchez, the owner of the real estate in question, to enter into the contract, of September 1, 1901. Section 335 of the Code of Civil Procedure, which provides that an agreement for the leasing of real estate for a period longer than one year, or for the sale of real property or of an interest therein, must be in writing, was not in force at the time when the contract was executed, and, in any event, that contract, while not a public document, was in fact made in writing.

As we construe the contract, the plaintiff upon complying with its terms and conditions is entitled to continue in possession of the land in question for a period of ten years from the date thereof, and at the end of this period, upon payment of the sum of P15,000, to have the lands in question deeded to him by the vendor or his proper legal representatives.

In the course of its opinion, the trial court held "that said Pedro Sanchez might have been required to execute a public document containing the provisions of the private document during his lifetime, but his heirs or legal representatives can not be required to execute such a public document." This proposition seems to rest on the theory that the heirs and legal representatives of the deceased are "third persons" with reference to the said document.

But we have said that with respect to the contract entered into by the deceased, and evidenced by the private document of September 1, 1901, the heirs can not be regarded as "third persons," and, therefore, under the provisions of article 1279 of the Civil Code, the heirs of Pedro Sanchez may be compelled in a proper action to execute the public instrument evidencing the said contract, as required by the provisions of article 1280 of that code.

The heirs were not made parties defendant in this action, which, so far as it seeks to secure the execution of a public document under the provisions of article 1279 of the Civil Code, is not one which may be commenced against an executor or administrator under the provisions of sections 702 and 703 read together with section 114 of the Code of Civil Procedure, and hence this portion Of the prayer of the complaint can not be granted in this action.

The judgment of the trial court is reversed, without costs in this instance, and after ten days judgment will be entered against the plaintiff for the costs in the Court of First Instance, but without prejudice to the right of the plaintiff to institute a proper action against the heirs to compel them to execute a public instrument evidencing the terms of the private document of September 1, 1901. So ordered.

Arellano, C. J., Torres, Johnson, Willard, and Tracey, JJ., concur.

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