

ESTEBAN GUILLERMO, PLAINTIFF AND APPELLEE, VS. RAMON MATIENZO ET AL., DEFENDANTS AND APPELLANTS.*G. R. No. 3529. August 14, 1907*

Ponente: TORRES, J.

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Esteban Guillermo, the plaintiff in this case, brought this action through his attorney, Santiago D. Reyes, to recover the possession of two parcels of coconut land, whereof the location and boundaries and the plantings are described in the complaint dated the 25th of January, 1905, in which it is alleged that he obtained the property five years ago from the brothers Irineo, Miguel, and Aurelio Montefalcon, by purchase, subject to an agreement of pacto de retro.

In the complaint, the plaintiff prayed that judgment be entered in his favor, and that the proceedings by the deputy sheriff of Nagcarlang, Province of La Laguna, by whom the property had been attached and sold, be set aside; that the land be restored to him, and that Ramon Matienzo, at whose request the land was attached as the property of Irineo Montefalcon, be sentenced to pay the costs together with an indemnity of P500 for damages suffered by the plaintiff. The plaintiff also alleged that, notwithstanding his objections, the said sheriff completed the execution, and deprived him of the possession and enjoyment of the land which he had purchased under the agreement con pacto de retro, when as a matter of fact the right of redemption was the only thing which the defendant could have attached as belonging to the vendor against whom execution had been granted.

In their reply the defendants, Ramon Matienzo and Mariano Manalang, through their attorney, Julian Gerona, moved that the complaint be dismissed with costs against the plaintiff. They denied in toto all the facts set forth in the complaint, and alleged, as a special defense, that the judgment entered in their favor in the action brought by Ramon Matienzo against Irineo Montefalcon in the court of the justice of the peace of Nagcarlang had become final, the execution thereof having been completed by the sheriff, who attached two parcels of land situated in Tipacan, a different location from that named in the complaint, to wit, Cabuyao, in the same town of Nagcarlang; that the two last-named parcels of land, owned exclusively by Irineo Montefalcon, had been purchased by Mariano Manalang at public auction, by virtue of the said judgment, the location and boundaries of the land being described in the reply.

In the amended complaint, Sulpicio Triviño, the deputy sheriff, and Albino Sarmiento, bondsman for Ramon Matienzo, were made defendants in the suit. The sheriff demurred and claimed to be excluded therefrom for reasons which he stated. A similar request was made by Albino Sarmiento through his attorney, Manuel Legaspi Florendo. The plaintiff's attorney having agreed to these requests in writing on August 4, 1905, the defendants Trivino and Sarmiento were thereupon excluded, since they were not concerned in this litigation.

The case came on for trial, and in view of the result the judge rendered judgment on the 2d of February, 1906, declaring null and void the auction sale and the adjudication of the land to Mariano Manalang, and after directing that the deed of sale executed in his favor by the deputy sheriff of Nagcarlang be canceled, the court held that the

said parcels of land were the property of Esteban Guillermo, the plaintiff. It was further provided therein that the right of Manalang to recover from Ramon Matienzo the amount he paid the latter, with interest thereon, should not be affected by said judgment, and reserved the right of the defendant Matienzo to ask for the reestablishment of the original judgment entered in his favor, as against Irineo Montefalcon, in order that another writ of execution might be issued by virtue thereof against the latter. The defendants to pay the costs of the action.

Attorney Benito Gimenez Zoboli, on behalf of the defendants Manalang and Matienzo, excepted to the above judgment, but on the third day the exception was with-drawn in the name of Manalang, and, with respect to Matienzo, motion was made for a new trial in accordance with paragraph 3 of section 145 of the Code of Procedure in Civil Actions, on the ground that the evidence produced at the trial did not sustain the judgment rendered.

As may be seen, the complaint herein is one of intervention filed by the owner of two parcels of land which were attached and sold at the instance of Ramon Matienzo, one of the defendants in this case, for the recovery of a certain sum. due him by Irineo Montefalcon, one of the former owners of the property.

This action is based on the right of ownership acquired by the plaintiff, Esteban Guillermo, by reason of his purchase of the said two parcels of land, and of two others, on the 18th of June, 1900, from the owners thereof to wit, Irineo, Miguel, and Aurelio Montefalcon under an agreement *con pacto de retro*. No time was fixed for the exercise of such right, according to a private document signed by both contracting parties, produced in evidence at the trial, and marked as "Exhibit 1," in which, among other things, it was agreed that the sellers could not re-purchase the land in less than four years from the date of the contract, it appearing that the vendors, who as tenants occupied the land that they had sold, finally delivered the same to the owner on the 18th of June, 1904, when the lease ceased, precisely upon the expiration of four years.

The agreement with *pacto de retro* added to the above-mentioned contract does not destroy or weaken the validity and sufficiency of the contract of purchase and sale of said land. The right of ownership, although it may be defeated, was in this case properly transferred to the purchaser, who was thereby subrogated to all the rights and actions pertaining to the vendors in connection with the alienated land, all of which was acknowledged without any discussion by the parties to this action.

"Contracting parties may make any agreement and establish whatever terms and conditions they may deem advisable, provided they are not in contravention of law, good morals, or public order." (Art. 1255, Civil Code.)

Contracts are binding whatever may be the form in which they may have been executed, provided the essential conditions required for their validity exist. (Art. 1278, Civil Code.) Therefore, the fact that the contract in this case was contained in a private document only, is not an impediment, because it was legally acknowledged by the interested parties, and for this reason the said document was of the same force as a public instrument with respect to those who signed it and their legal representatives. (Art. 1225, Civil Code.)

As to the admission of the private document, to which objection was made by the appellant, who alleged that article 389 of the Mortgage Law was thereby violated because the document had not been registered, it must be considered that the defendant Matienzo, the creditor of Irineo Montefalcon, one of the vendors, had not acquired any real rights over the land sold to plaintiff; he merely had a personal right to recover the amount due him, since the land was not in any way encumbered or affected in his favor. Therefore, the defendant Matienzo is not the third party whose rights are protected by the law, nor is article 389 of the Mortgage Law applicable in the present case.

If it is a fact that, from the 18th of June, 1900, the plaintiff, Guillermo, has been the sole lawful owner of the land

which was sold to him by the brothers Montefalcon, and that since the 18th of June, 1904, the latter ceased to be the tenants of the estate and delivered it to its owner, then the land could not have been lawfully attached on the 22d of July following, at the instance of the defendant Matienzo, for the purpose of securing a debt to the payment of which the plaintiff, who owns the land, is not liable. Hence when the latter requested the removal of the attachment, it was the sheriff's duty to have complied with the request, in view of the fact that the said land did not belong to the debtor, upon whom a writ of execution had been served, all of which was in due course shown by the plaintiff.

The attachment and sale of property belonging to a third party, such as the plaintiff herein, who had no share in the liability contracted by another person in favor of a creditor, and with whom the said third party was not connected by reason of any contract or valid obligation, can under no consideration be lawfully sustained, and the proceedings should therefore be annulled. No appeal having been taken by the plaintiff against the said judgment, by insisting upon his claim for damages, and in view of his implied assent, it is not proper to discuss the matter in this instance.

Considering the merits of the case, we are of opinion that the judgment appealed from should be affirmed, with the costs of this instance against-the appellant, Ramon Matienzo. So ordered.

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

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