

RAFAEL FERNANDEZ, PLAINTIFF AND APPELLANT, VS. PAZ V. DEL ROSARIO, DEFENDANT AND APPELLEE.

G. R. No. 35398. November 16, 1932

Ponente: VILLA-REAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-35398/>

VILLA-REAL, J.:

The plaintiff, Rafael Fernandez, has appealed to this court against the decision of the Court of First Instance of Manila, the dispositive part of which reads as follows:

"The complaint against Paz V. del Rosario is dismissed so far as it seeks to eject her, with costs against the plaintiff. But she is sentenced to pay the latter the P12,000 borrowed from Engracio de Asis, with interest at 12 per cent per annum from June 1st, and the advances really made by the plaintiff or his predecessor, Engracio de Asis, as land tax.

"Certificate of title No. 34475, Exhibit B, is declared null and void. The plaintiff is ordered to execute a deed of conveyance of the property in favor of the defendant, with the encumbrance, the amounts mentioned in the foregoing paragraph to be reimbursed by her."

In support of his appeal the appellant assigns the following alleged errors as committed by the trial court in its decision, to wit:

- The lower court erred in admitting the testimony of Benita Quiogue Vda. de Del Rosario, tending to show that the contracts between the defendant and Engracio de Asis y Parafina (Exhibits 3, 5 and 6) were a simple security for the payment of a loan and not an absolute sale.
- The lower court erred in finding that the contracts Exhibits 3, 5 and 6 between Engracio de Asis y Parafina and the defendant were only a security for the payment of a loan and not an absolute conveyance.
- The lower court likewise erred in not holding that the defendant was estopped to show, as against the plaintiff, that the contracts between her and Engracio de Asis y Parafina were one of security for a loan and not one of absolute sale.
- The lower court erred in finding that the plaintiff was not a purchaser of the property in good faith.
- The lower court erred in not giving force and effect to the contract between Engracio de Asis y Parafina and the plaintiff.
- The lower court erred in ordering the cancellation of the transfer certificate of title No. 34475 (Exhibit B) and in not giving it full force and effect.
- The lower court lastly erred in refusing to grant the prayer in the plaintiff's complaint."

The present case originated in a complaint filed by Rafael Fernandez praying upon the facts alleged therein that the defendant Paz V. del Rosario be ordered to vacate the property described in said complaint, to pay P840 by way of rent with legal interest, plus the sum of P300 a month from January 1, 1930, until she delivers up the

property, and the sum of P400 on account of the penal clause with legal interest, and the costs.

In answer to the complaint, the defendant denied generally and specifically each and every alleged fact therein, and set up the special defense under oath, that the transaction between her and Engracio de Asis y Parafina was really a loan secured by a mortgage executed in the form of a sale with lease attached, whereby the mortgagor reserved the right to redeem the mortgaged property. The defendant prays to be absolved from the complaint, which should be dismissed.

The following facts have been proved at the trial without contradiction:

On May 21, 1928, the defendant-appellee, Paz V. del Rosario, executed an instrument (Exhibit 6) in favor of Engracio de Asis y Parafina, noted on the back of certificate of title No. 30555, book No. T-81, registry of deeds of Manila, in which it is stated that the former sold to the latter for P7,000 a parcel of land with a building under construction out of her own private funds, which she bound herself to complete, the vendee assuming the mortgage lien upon the property in favor of Alfredo Chicote. On the same day, May 21, 1928, the same parties executed another instrument (Exhibit 4) whereby Paz V. del Rosario took a lease of that property conveyed by Exhibit 6, from Engracio de Asis y Parafina, at a monthly rental of P70, for a period of two years.

On June 12, 1928, Paz V. del Rosario executed another instrument (Exhibit 5) acknowledging receipt of P3,000 from Engracio de Asis y Parafina, as a sum additional to the sale price of P7,000 as set forth in Exhibit 6, in consideration of certain improvements she would make thereon, consisting in the use of first-class material, both paint and timber for carpentry work and sanitary installation, the construction of a garage of strong material, etc.

On June 29 of the same year, the defendant-appellee Paz V. del Rosario executed another instrument (Exhibit 3) acknowledging the receipt of P2,000 from Engracio de Asis y Parafina, for additional improvements consisting in chairs, wardrobes, curtains, a chapel with its ornaments, looking glasses and the like, amounting to P12,000, the sale price set forth in Exhibit 5.

On the same day, the same parties executed another instrument (Exhibit A) by virtue of which the former contract of lease (Exhibit 4) was revoked, and Paz V. del Rosario took a lease of the same property from Engracio de Asis y Parafina at a monthly rental of P120 for a term of two years, under certain conditions, including the following :

* * * * *

"That while this contract is in force, the TENANT shall assume the following expenses and work; drafting the necessary instrument, registering the title, obtaining it, up-keep, repair, use, sanitary requirements and fines, taxes, necessary improvements, which are to remain on the property, the insurance premiums upon the property in the name of the LANDLORD for an amount not less than twelve thousand pesos, Philippine currency, and the partial payments to Mr. Alfredo Chicote to reduce the mortgage, principal and interest.

"That during the period of this contract, the LANDLORD binds himself to sell the property to the TENANT if the latter fulfills each and every condition set forth in this instrument, at the stipulated price of twelve thousand Philippine silver pesos (P12,000), besides any advance or sum expended upon the property; provided that if the TENANT defaults in any of the conditions herein set forth, especially the payment of rent, this lease shall be immediately terminated, and this option of purchase cancelled and annulled, without the necessity of any notice, power or authority granted by any person or any order issued by any court, and the TENANT binds herself to vacate the property forthwith, expressly waiving every right thereto and all the laws favorable to him.

"That if the buildings and improvements are destroyed, the TENANT cannot purchase the land for less than the sum of TWELVE THOUSAND pesos Philippine currency (P2,000).

"In case the LANDLORD is compelled to take recourse to the courts of justice in order to enforce the conditions hereof against the TENANT, the latter shall pay him four hundred pesos (P400) by way of penalty for each complaint or motion and shall further defray the lawyer's fees, costs, etc., and shall not be entitled to raise an objection, being thus agreed upon by both contracting parties."

The defendant defaulted in some of the conditions set forth in the deed Exhibit A, to wit: payment of the monthly installment agreed upon, for the months from May, 1929 until the present date; the payment of the insurance premiums ; the payment of the land tax, which had to be paid by Engracio de Asis y Parafina for the year 1929 (Exhibit E) ; the partial payments to Alfredo Chicote on account of the principal and interest upon the latter's mortgage credit upon the property in litigation; the payment of the sum of P400 as court costs; and the payment of the stipulated rental.

On December 6, 1929, Engracio de Asis y Parafina sold the land in question with all the improvements thereon to the plaintiff-appellant Rafael Fernandez for P13,000, as evidenced by the deed Exhibit D, delivering to the latter the deeds of sale Exhibits 3, 5, and 6, and the contract of lease, Exhibit A, mentioned above, whereby the vendee was subrogated to the vendor's obligation to the mortgagee, Alfredo Chicote. This deed of sale, Exhibit D, was recorded in the office of the register of deeds of Manila, having issued in favor of said vendee the transfer certificate of title No. 34475 (Exhibit B).

The property in question may earn a monthly rental of P300 and is worth not less than P30,000. Having received notice of the sale to the plaintiff-appellant Rafael Fernandez, and having been assured that a certain person wished to buy it for P32,000 in December, 1929, the defendant and her attorney attempted to negotiate with the plaintiff and his attorney for the redemption of the property, but were unsuccessful. (Exhibits 1, 1-A, 2-A.)

The first question to decide in this appeal is raised in the first assignment of error: whether the trial court erred in admitting the testimony of Benita Quiogue Vda. de Del Rosario to show that the contracts Exhibits 3, 5, and 6, entered into by the defendant Paz V. del Rosario with Engracio de Asis y Parafina, were mere guarantees of the payment of a loan, and not absolute sales.

This court has steadily held that whenever the issue is whether a written transaction is an absolute sale or a loan secured by a mortgage, and it is alleged in the answer under oath that the real intention of the parties was the latter, parol evidence may be adduced to prove it. (Cuyugan vs. Santos, 34 Phil., 100; Rodriguez vs. Pamintuan and De

Jesus, 37 Phil., 876; Cuyugan vs. Santos, 39 Phil., 970; Tolentino and Manio vs. Gonzalez Sy Chiam, 50 Phil., 558; Ignacio vs. Chua Hong, 52 Phil., 940.) As for the plaintiff's contention that the defendant, being a lessee, cannot deny the lessor's (i. e., the plaintiff's) title, this court held in Sevilla and De Leon vs. Tolentino, 53 Phil., 16, that:

"2. ID.; ID.; ID.; FICTITIOUS AND SIMULATED CONTRACT.—The defendant's implied admission of the genuineness of the contract of lease does not bar him from alleging and proving that said contract is fictitious and simulated, and that the contract of sale with a right to repurchase from which it arose was really and truly a mortgage contract, and, consequently, the plaintiffs had no right to the possession of the lands which are the subject matter of the transaction."

In the second assignment of error the question is raised whether the contracts Exhibits 3, 5, and 6, between Engracio de Asis y Parafina and the defendant, Paz V. del Rosario, are only security for a loan, or an absolute conveyance.

If the first instrument, Exhibit 6, executed, by the defendant Paz V. del Rosario in favor of Engracio de Asis y Parafina expressed the real intention of the contracting parties, the vendee would have become the absolute owner

of the land sold with all the improvements, and if the vendor-lessee wanted additional improvements and the vendee-lessor was willing to pay for them, the most natural thing (being the common practice) would be for the owner to have the work done without executing a new deed of sale with an increase in price. Since the additional improvements were made on condition that the rent would be increased from P70 to P120 a month, the only thing necessary would have been to alter the contract of lease. The increase in the sale price with money taken twice from the vendee himself by the vendor for the purpose of the additional improvements upon the property sold means nothing more than that the P7,000 made to appear in the instrument Exhibit 6 as the sale price was in reality a loan secured by a mortgage, with 12 per cent annual interest in the form of rent. With reference to the rights acquired by the plaintiff-appellant, Rafael Fernandez, by virtue of the conveyance made on December 6, 1929, in his favor by Engracio de Asis y Parafina of all his rights and obligations under the deed Exhibit D, and its registration in the registry of deeds and the issuance of the transfer certificate of title No. 34475 (Exhibit B), the record shows that said Rafael Fernandez received all the deeds of sale and lease Exhibits 3, 5, 6, and A, executed by Paz V. del Rosario in favor of Engracio de Asis y Parafina. With those documents in his possession the plaintiff could not but discover that the real transaction between the defendant Paz V. del Rosario and Engracio de Asis y Parafina was a loan secured by a mortgage under the guise of a sale with a lease of the property apparently sold. If this be so, in buying the rights of Engracio de Asis y Parafina the plaintiff Rafael Fernandez knew that what he had acquired consisted of the rights of the mortgagee of the property in question with the improvements, and in presenting the deed Exhibit D, executed by Engracio de Asis y Parafina in his favor at the office of the registrar of deeds of Manila for annotation and the issuance of the proper transfer certificate of title, he was not acting in good faith, and such annotation and transfer cannot protect him or render his title irrevocable.

Inasmuch as we are concerned with mere ejectment proceedings, although the answer set up a claim of ownership but without asking for a ruling upon the point, the petition being merely for a dismissal, the court below had no jurisdiction to make any other holding than a dismissal.

Having reached the conclusion that the deed Exhibit 6, executed by the defendant Paz V. del Rosario in favor of Engracio de Asis y Parafina, although in the form of an absolute sale, is really a mortgage given to secure a loan, and that in acquiring the rights of the latter, the plaintiff Rafael Fernandez knew the real transaction between his predecessor and the defendant Paz V. del Rosario was a loan secured by a mortgage, said plaintiff acquired no more rights than the mortgagee had: he did not acquire the rights of a vendee of the property, and the mortgagor is still the owner thereof, entitled to remain in possession thereof.

In view of the foregoing considerations, we are of the opinion and so hold: (1) That when in ejectment proceedings based upon breach of contract of the lease the defendant sets up a special defense under oath to the effect that the sale made by the lessee to the lessor is a fictitious transaction, to disguise a loan secured by a mortgage, parol evidence may be admitted in support of said special defense; (2) that the vendee of property with a Torrens transfer certificate of title who knows from the documents delivered to him by the vendor that the latter's title is fictitious, and that his only right is that of a mortgagee, does not act in good faith and acquires no more right than the vendor had.

Wherefore, the judgment appealed from is affirmed so far as it absolved the defendant from the complaint, which is hereby dismissed, with costs against the plaintiff, and reversed in all other respects, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Abad Santos, Hull, Vickers, Imperial, and Butte, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.