

JOSE D. VILLEGAS AND IRENE SANTOS, PLAINTIFFS AND APPELLANTS, VS. PEREGRINA TAN, DEFENDANT AND APPELLANT MARGARITA E. FERMIN AND SOTERO P. FERMIN, INTERVENORS.

G. R. No. 35955. December 09, 1932

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal by the plaintiffs and the defendant from a decision of Judge Ed. Gutierrez David of the Court of First Instance of Nueva Ecija, dated January 14, 1931, the dispositive part of which is as follows:

"En virtud de estas consideraciones, el Juzgado opina que debe fallar y falla esta causa en cuanto a la demanda de los demandantes, en cuanto a la demanda de los terceristas, se absuelve de una y otra a la demandada. En cuanto a la contrademanda de esta, se declara a los demandantes contrademandados sin derecho a comprar el terreno de autos y se expide en contra de dichos demandantes, sus encargados, aparceros y otros cualesquiera que obren en su nombre y representacion, para que se abstengan de labrar, sembrar y cosechar en el terreno de autos, y de molestar o perturbar de cualquiera manera y bajo cualquier pretexto a la demandada y sus encargados y aparceros en la limpieza, siembra, cosecha y posesion del referido terreno. En Quanto a la reconvenccion de la demandada contra los terceristas, se condena a estos a pagar a dicha demandada la cantidad de seis mil pesos en concepto de canon devengado y no pagado sobre los terrenos arrendados por los mismos durante los dos anos 1928 y 1929. Y se condena a los demandantes y terceristas a pagar mancomunada y solidamente a la demandada los 18 cavanos de palay para semilla del terreno en cuestion, los 45 cavanos de palay para manutención de los aparceros en el mismo, mas P115 por el mismo concepto, mas P237.70 por gastos de siembra del palay cosechado en dicho terreno. Con las costas a los demandantes y terceristas."

The principal contentions of the parties may be briefly stated as follows:

The plaintiffs brought this action on December 26, 1929 to compel the defendant to convey to them as the successors in interest of the spouses Margarita E. Fermin and Sotero P. Fermin a certain parcel of land in the barrio of Sto. Tomas, municipality of Jaen, Nueva Ecija, for P14,800, in accordance with the contract of December 7, 1927 (Exhibit C), whereby the defendant granted the spouses Fermin an option of buying the land on or before December 31, 1929 for P14,800, which sum the plaintiffs offered to pay the defendant before the expiration of that period.

The defendant in her answer, filed March 17, 1930, alleged that the spouses Fermin in violation of the lease contract, Exhibit C, had not paid the rent for 1928, and that she rescinded the contract of lease and the option of purchase from January, 1929, and the spouses Fermin delivered to her the possession of the land (Exhibit F);

That neither the spouses Fermin nor the plaintiffs had paid or offered to pay the rent for 1929;

That the plaintiffs offered to pay only P14,800, and not P36,000 for the two parcels as stipulated in Exhibit C. Defendant set up a counterclaim of P4,000 for the palay and sugar cane levied upon and sold by the sheriff notwithstanding the *terceria* interposed by her on November 18, 1929; and another of P3,000 for the rents for 1928.

On May 7, 1930, the defendant filed a cross-complaint for an injunction to prevent the plaintiffs from interfering with her cultivation of the land, and applied for a preliminary injunction, which was granted by Judge Ocampo on May 31, 1930. An order for the dissolution of the preliminary injunction was issued on July 23, 1930, conditioned on the plaintiffs' giving a bond for P6,000. The defendant amended her cross-complaint on July 29, 1930 and asked for P4,600 as damages for 1930, P600 being the amount spent by the defendant in planting the crop after the preliminary injunction was issued in her favor on May 31, 1930, and P4,000 as damages for each succeeding year.

When the case was called for trial on August 11, 1930, the attorneys for the plaintiffs and the defendant submitted the following agreed statement of facts:

"Las partes por medio de sus respectivos abogados que subscriben convienen en los hechos siguientes:

- Que los demandantes son conyuges, mayores de edad, residentes en Malabon, Rizal, y la demandada es mayor de edad, viuda, y residente en 532 Colorado, Manila.

- Que en virtud de un mandamiento de ejecucion librado en la causa No. 3608 del Juzgado de Primera Instancia de Rizal, titulada Irene Santos y Jose D. Villegas contra Margarita E. Fermin y Sotero P. Fermin, el Sheriff Provincial de Nueva Ecija ejecuto y vendio en publica subasta el interes y participacion que, en 2 de diciembre de 1929, pudieran tener Margarita E. Fermin y Sotero P. Fermin en cierta parcela de terreno situada en el sitio Kampugo, y que en la declaracion de amillaramiento, tax No. 6646 se avalua en P10,240 y se describe como sigue:

" 'Parcela de terreno situada en el Barrio de Sto. Tomas, Jaen, Nueva Ecija, de una extension superficial de 544,503 metros cuadrados, poco mas o menos, lindante al norte con Gervasia Alejandrino, Felipe Gamboa y otros; al este, con calle que se dirige a Sta. Rosa; al sur con el Estero Kampugo, y la calle que se dirige a Sta. Rosa; al oeste con Maximo Viola y el Estero Putlod; esta mejorado con un camarin que contiene una trilladora marca "ADVANCE RUMELY" con su aparato de la misma marca.'

"Y en la declaracion para fines de amillaramiento tax No. 4007 esta avaluada en P6,790 y se describe como sigue:

"Una parcela de terreno, situada en el Barrio de Sto. Tomas, Municipio de Jaen, Provincia de Nueva Ecija, I. F., con todas las mejoras y edificaciones, que mide una extension superficial de 66 hectareas, poco mas o menos, y linda al N con los herederos de Mamerto Natividad, Gervasia Alejandrino y Felipe Gamboa; al E con la calzada de Sto. Tomas ; al S con Felipe Gamboa, Estero Kampugo, Estero Putlod y Estero Putot, y al O con los herederos de Andres Cepillo Cruz y de Nicolas Cepillo.'

- Que en escritura publica de fecha 29 de noviembre de 1924, ratificada ante el Notario Publico Sr. Ceferino M. Galdez, de Manila, los conyuges Margarita E. Fermin y Sotero P. Fermin, vendieron con pacto de retro por el precio de P10,300 la referida propiedad a la demandada Peregrina Tan, expirando el plazo para el retracto en 31 de enero de 1926, habiendose cedido en arrendamiento dicha propiedad por Peregrina Tan a los mismos vendedores Margarita E. Fermin y Sotero P. Fermin. Copia exacta de dicha escritura se hace parte de esta estipulacion como Exhibit A el mismo documento anexo a la demanda como tal Exhibit A.

- Que en 20 de mayo de 1927, la demandada Peregrina Tan subscribio una declaracion jurada haciendo constar que la referida venta Exhibit A quedo absoluta e irrevocable por haber expirado el plazo para recomprar la propiedad, sin que los esposos Margarita E. Fermin y Sotero P. Fermin la hayan comprado. Copia exacta de dicha declaracion se hace parte de este convenio y aparece como Exhibit B, anexo a la demanda.

- Que en 7 de diciembre de 1927, la demandada Peregrina Tan y los conyuges Margarita E. Fermin y Sotero P. Fermin otorgaron una escritura publica, ratificada ante el Notario Publico de Manila, Sr. Calayag, en virtud de la

cual la demandada Peregrina Tan se compromete y obliga hasta el día 31 de diciembre de 1929, a vender a los citados esposos la propiedad arriba descrita por el precio convenido de P14,800. Copia exacta de dicha escritura anexo a la demanda como Exhibit C se hace parte integrante de este convenio.

- Que en la venta en pública subasta verificada por el Sheriff Provincial de Nueva Ecija en 2 de diciembre de 1929, el interés y participación que tuvieron los conyuges Margarita E. Fermin y Sotero P. Fermin en consideración al precio de P11,000 pagado por los demandantes Jose D. ViUegas e Irene Santos, el Sheriff Provincial de Nueva Ecija los adjudicó a los demandantes, como consta en el certificado de venta, copia del cual se hace parte integrante en este convenio, como Exhibit D, que es el mismo Exhibit D anexo a la demanda.

- Que el día 3 de diciembre de 1929, los demandantes Jose D. ViUegas e Irene Santos ofrecieron a la demandada Peregrina Tan el precio de P14,800, pagadero inmediatamente o en cualquier momento, tan pronto como dicha Peregrina Tan otorgase a favor de los demandantes la correspondiente escritura de venta. Copia de dicha oferta escrita por los demandantes a la demandada marcada Exhibit E anexo a la demanda se hace parte en este convenio.

- Que la demandada recibió dicha oferta escrita el día 4 de diciembre de 1929, como consta en la nota al pie del documento de oferta Exhibit E.

- Que la demandada Peregrina Tan en carta fechada 5 de diciembre de 1929 dirigida a los aquí demandantes Jose D. Villegas e Irene Santos manifiesta que no acepta la oferta de compra hecha por los demandantes, y hasta ahora dicha demandada persiste en dicha negativa. Copia de la carta de la demandada unida como Exhibit F en la demanda se hace parte en este convenio.

- Que los demandantes reproducen dicha carta Exhibit F solamente para demostrar la negativa de la demandada a cumplir la obligación de vender la propiedad por el precio de P14,800, y los demandantes niegan y no aceptan los hechos alegados en dicha carta Exhibit F como fundamento alegado por la demandada para sostener su negativa.

- Que según la escritura Exhibit C de este convenio, los esposos Sotero P. Fermin y Margarita E. Fermin, arrendatarios de las dos parcelas de terreno, podían comprar dichas dos parcelas 'durante el término de arrendamiento'.

- Que dentro del término del arrendamiento según dicho Exhibit C, 'si los arrendatarios, esposos Fermin, faltaren al cumplimiento de todas o cualesquiera de las condiciones convenidas para el arrendamiento de las parcelas descritas bajo las letras (a) y (b) del presente contrato, especialmente al pago del canon estipulado, la arrendadora podrá dar por terminado dicho arrendamiento y, además, rescindir y dejar sin efecto su compromiso de venta';

"Y piden respetuosamente al Hon. Juzgado apruebe este convenio de hechos."

On the same date the spouses Fermin were permitted to intervene in this case. They alleged that Exhibit C was a simulated document, executed by the intervenors and the defendant, after the land in question had been attached by the plaintiffs, to assure the payment of the sum owing by the intervenors to the defendant;

That the intervenors never sold said land to the defendant, but only mortgaged it. They prayed the court to declare Exhibit C fictitious and simulated, and the intervenors the owners of the property.

In answer to defendant's cross-complaint, plaintiffs alleged that the defendant had not suffered any damages by reason of the dissolution of the preliminary injunction, because she had no right thereto; that the defendant knew that Exhibits A, B, C did not express the true facts or intention of the parties, and that she had never been the owner "of the property in question, and that all the acts executed to consolidate defendant's title were in fraud of the plaintiffs, who had attached all the rights of the intervenors.

The intervenors did not appeal. The case was complicated somewhat by their intervention, which plaintiffs' attorney characterizes as providential, but in our opinion there was nothing providential in the intervention of the spouses Fermin. They would have us believe that Exhibit A was intended to be merely a mortgage put into the form of a pacto de retro sale at the instance of the defendant, and that Exhibits B and C were executed for the purpose of defeating the judgment of the plaintiffs against the spouses Fermin. In other words, the intervenors contend that they connived with the defendant to defeat the plaintiffs. We are not favorably impressed by such testimony. Defendant emphatically denied the contention of the intervenors. Plaintiffs' attorney criticizes the failure of the defendant to call Attorney Mariano Escueta as a witness, but we find that it was agreed that he would corroborate her in all those matters wherein she had alluded to him (p. 112, stenographic record). Plaintiffs have adopted the contention of the intervenors, and repudiated the agreed statement of facts. The evidence does not sustain this contention.

"When the terms of a contract of sale with right of repurchase are clear and leave no doubt as to the intention of the parties who have employed in the making of the said contract express words evidently showing their intention, it is not possible to infer from the contents of the document containing the said contract that there has been another stipulation consistent with a loan upon a security of personal property and chattels which appear therein to have been sold, and, for its true and real interpretation, the literal sense of the stipulations of the contract above all other things should be followed in the absence of proofs which show that the contracting parties had an intention distinct from that appearing in the contract." (Chinchilla vs. Rafel and Verdaguier, 39 Phil., 888.)

"When it is evident that the intention of the parties was to enter into a contract of purchase and sale, it is not proper to regard the contract merely as one of loan with mortgage. The court cannot make the contract for the parties, nor determine their rights in accordance with a contract which they did not make." (P. Chaves y Hermano vs. Neri and Neri San Jose, 44 Phil., 94.)

We are convinced by a careful examination of the evidence, oral and documentary, that Exhibit A was intended to be what it purports to be, a pacto de retro sale of the property in question. This document was recorded in the office of the register of deeds of Nueva Ecija on December 8, 1924. The period within which the spouses Fermin could repurchase the property for P10,300 was by verbal agreement extended at their request from January 31, 1926 to January 31, 1927. They did not repurchase the property, and the defendant became the absolute owner thereof on February 1, 1927. The spouses Fermin had no longer any interest in the property when the plaintiffs attached their interest in the property on March 17, 1927, and the plaintiffs consequently acquired no lien on the property by attaching an interest that did not exist. The defendant's ownership of the property was not affected by her failure to file a *terceria* with the sheriff, regardless of whether or not she was informed of the attachment (sec. 442 of the Code of Civil Procedure).

On May 27, 1927, the defendant filed with the register of deeds an affidavit for the consolidation of her title to the land now in question (Exhibit B).

The spouses Fermin paid the rent for the years 1924 to 1926, and at their request the defendant permitted them to remain in possession of the land during 1927. On December 7, 1927 Peregrina Tan and the spouses Fermin executed a contract whereby Peregrina Tan leased the land in question and another parcel of land to the spouses Fermin for the years 1928 and 1929 for a rental of P1,500 a year for each parcel, payable on December 31, 1928 and December 31, 1929. To guarantee the payment of this rent, the spouses Fermin mortgaged certain real and personal property to Peregrina Tan. It was further agreed that during the term of the lease or until December 31, 1929 Peregrina Tan bound herself to sell the two parcels of land to the spouses Fermin for P29,000 and P14,800 respectively; that the spouses Fermin had paid in advance P6,500 on the purchase price of the first parcel, leaving a balance of P22,500; that if the spouses Fermin failed to fulfill any of the conditions of the lease, the lessor might

terminate the lease and furthermore rescind and cancel the agreement to sell, and retain the P6,500, without prejudice to her right to collect the rent due. In case of the non-fulfillment of all or any of the terms of the lease the lessees bound themselves to deliver the possession of the two parcels of land to the lessor. This document was ratified before a notary public in Manila on December 12, 1927 (Exhibit C).

In the price of P14,800 stipulated for the purchase of the parcel of land now in question, the rent for 1927 was included.

In March, 1928, by agreement between the spouses Fermin and Peregrina Tan, the tract of land which included that sold by the Fermis to Peregrina-Tan, was sub-divided, and the sixty-six hectares corresponding to Peregrina Tan were set off to her and the remaining seventeen hectares to the Fermins. A plan was made showing the land corresponding to each party (Exhibit 3).

It appears that in the land registration case of Salvador Natividad, the above-mentioned parcels of land were included in the applicant's plan, but that an opposition as to the 66 hectares was filed by Peregrina Tan, and by the Fermis as to the 17 hectares, and that these oppositions were sustained by the court and the two parcels excluded.

The spouses Fermin did not pay the rent for 1928, and in January, 1929 Peregrina Tan declared the lease and the agreement to sell terminated, and the spouses Fermin delivered to her the possession of the land. Peregrina Tan put her overseer in charge of the land, and made preparations to have it cultivated, but in March, 1929 the spouses Fermin went to her house in Baliuag, Bulacan, and requested her not to put new tenants on the land, but to allow their tenants to continue to cultivate the land in order that the Fermis might collect what their tenants owed them. Peregrina Tan acceded to this request.

On December 2, 1929 the sheriff of Nueva Ecija, at the instance of the plaintiffs, sold at public auction the interest of the Fermis in the land in question to the plaintiff Irene Santos, a judgment creditor of the Fermis, for P11,000 (Exhibit D), and placed the purchaser in possession of the land. She took possession of the crop of palay.

On December 3, 1929, the plaintiffs informed the defendant that they had bought at public auction the interest of the Fermis in the land in question, and tendered her P14,800 for the land in accordance with the option granted the Fermis on December 7, 1927 (Exhibit E).

On December 5, 1929, the defendant refused the offer of the plaintiffs, stating that she was the absolute owner of the land, free from all liens and incumbrances, from January, 1929, and that the Fermis had lost all their interest in the land because they had violated the conditions of the agreement of December 7, 1927, and had formally delivered to her the possession of the land in January, 1929 (Exhibit F).

Although the plaintiffs claimed the right to purchase the land for P14,800 under the agreement of December 7, 1927, they never offered to pay the rent therein stipulated.

It is clear from the foregoing facts that the Fermis lost their right to purchase the land in question by their failure to pay the rent for 1928, and that they had no interest in the land at the time of the sheriff's sale on December 2, 1929, and that the plaintiffs consequently got nothing by their purchase of the rights of the Fermis. It is elementary that a purchaser at sheriff's sale acquires no better title or greater right than the judgment debtor had. The plaintiffs therefore had no cause of action against the defendant.

On defendant's counterclaim the trial court condemned the plaintiffs and the intervenors to pay the defendant jointly and severally 63 cavans of palay and P352.70. These expenses were incurred by the defendant in planting the 1929 and 1930 crops, which the plaintiffs took possession of. Although plaintiffs' sixth assignment of error relates in part to this finding, it is not relied on in appellants' brief, and no reason is adduced for setting aside the

finding of the trial judge.

The defendant as appellant makes the following assignments of error:

"PRIMER ERROR

"El Juzgado inferior erro al no condenar a los demandantes, solidariamente con los terceristas, a que paguen a la demandada P1,500 como canon del terreno en cuestion, correspondiente al ano 1928.

"SEGUNDO ERROR

"El Juzgado inferior erro al no condenar a los demandantes, solidariamente con los terceristas, a que paguen a la demandada la suma de P4,000 como dafios y perjuicios correspondientes al ano 1929.

"TERCER ERROR

"El Juzgado inferior erro al no condenar a los demandantes a que indemnicen a la demandada en la suma de P4,062 por los danos y perjuicios correspondientes al ano 1930.

"CUARTO ERROR

"El Juzgado inferior erro al no condenar a los demandantes a que indemnicen a la demandada por los frutos durante la apelacion de los demandantes, a razon de P3,489 anuales comenzando desde el ano 1931 inclusive hasta que ellos hubieren abandonado el terreno a la demandada."

We find no merit in defendant's first and second assignments of error. The intervenors were sentenced to pay the defendant the rent for 1928 and 1929. The mere fact that the plaintiffs bought the interest of the intervenors in the land, which proved to be nil, did not make them liable for the obligations of the intervenors which had already accrued. The defendant cannot deny the plaintiffs the right to purchase the land because the intervenors did not pay the rent, and at the same time hold the plaintiffs for the rent.

With respect to defendant's third and fourth assignments of error, we find that the trial judge, for lack of evidence, did not attempt to determine the value of the crop or the rental value of the land for 1930, because the trial was terminated on October 16, 1930 and the crop was not harvested until December of that year. Plaintiffs had no right to take possession of the land immediately after the sale in December, 1929 or to retain it in their possession. If the spouses Fermin, the judgment debtors, had been the owners of the land, they would have had the right to retain possession of it for one year after the sale. The defendant is entitled to recover from the plaintiffs the reasonable rental value of the land for the time that the plaintiffs have been in possession thereof.

The decision of the lower court is affirmed, without a special finding as to costs, reserving to the defendant the right to prove in this same cause the reasonable rental value of the land for the time that it has been in the possession of the plaintiffs.

Avanceña, C. J., Street, Malcolm, Abad Santos, Imperial, and Butte, JJ., concur.

VILLA-REAL, J.: I dissent.

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