

CELESTINA SANTOS ET AL., PLAINTIFFS AND APPELLANTS, VS. JUANA MARQUEE ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 3678. March 19, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

This was an action by the plaintiffs against the defendants for the purpose of recovering from the defendants the sum of 15,000 pesos. The undisputed facts seem to be as follows:

First. The plaintiffs were the only heirs of Doña Maria Jimenez, who died in the month of September, 1891, leaving all of her property to the said plaintiffs.

Second. Of the defendants, Juana Marquez was the wife of Don Pedro Jimenez, and the others are the legitimate children and only heirs of the said Pedro Jimenez and the said Juana Marquez.

Third. The record does not disclose when Don Pedro Jimenez died. It is to be presumed, however, from the record that he died sometime prior to the 1st day of January, 1889.

Fourth. At the time of the death of the said Pedro Jimenez, he was indebted to the said Doña Maria Jimenez in the sum of 20,000 pesos.

Fifth. That after the death of the said Pedro Jimenez his heirs, or the defendants herein, executed and delivered to the said Maria Jimenez the following contract:

"We Doña Juana Marquez and my sons, Don Buenaventura, Doña Eloisa Don Pedro, and Doña Casimira, all of the surname Jimenez, declare, as far as on our part it is legally and extrajudicially possible, that: jointly, and as constituting one sole family, we are the legitimate and general heirs of the deceased, Don Pedro Jimenez, husband and father respectively of the exponents, and the legitimate owners of six parcels of land located in the visita of Baligan: the first is hemp land, with an area of about half a pison, the boundaries of which are as follows: lands of Don Jacinto Manuel and of Nicolas Laneta, Calle Real of the visita, and a small river; the second is also hemp land, with an area of about one pison, the boundaries of which are the following: lands of Ramon Nunez, lands of Carlos Nano, lands of Eugenio Aguilar, and a small river; the third is also hemp land, with an area of about two pisonones, the boundaries of which are: land of Antonio Mual, the road leading to the visita, a small river, and land of Antonia Marquez; the fourth, the same as the foregoing, with an area of about half a pison, the boundaries of which are: land of Don Guillermo Nieves, land of Antonia Marquez, land of Antonio Mual, land of Eduardo Mortiga, and the road to the visita of Cotmon; the fifth, planted with hemp and coeanuts, has an area of about seven pisonones, the boundaries of which are: lands of Eduardo Mortiga, Calixto Nasagao, Juan Aguilar, Pedro Moros, Francisco Flores, Benito Vivar, and Temas Gomez; and the sixth is hemp land, with an area of about half a pison, the boundaries of which are as follows: lands of Eulalio Ticui, Domingo Villaraza, Pedro Moros, and Francisco Flores. And inasmuch as, on account of our said general and legitimate succession, we are indebted to Doña Maria Jimenez in the sum of 20,000 pesos, we make a real and perpetual cession of the six parcels of land above-mentioned in favor of our creditor Doña Maria Jimenez, on account of the said debt, to the extent of 1,300 pesos, which is the value of the said lands,

and should the same be worth more, we make a donation thereof, inter vivos or nonreversible, in favor of the said Doña Maria Jimenez, to whom we deliver and convey the same with the exclusive use, profits, and benefits that appertain to them according to law, the said Doña Maria Jimenez taking possession thereof as the legitimate owner by title of lawful purchase, and we waiving all rules, privileges, and general provisions of law applicable to this contract.

"And as this document shows that the sum in which the lands herein described were assessed does not cover the amount owing, the balance, that is, 15,000 pesos, we jointly and severally bind ourselves to pay to Doña Maria Jimenez, or to her successors, all the sums which may be paid to us by our debtors, and in case our financial condition should improve, with or without the payments made by our debtors, we shall pay the balance still due at its maturity; and if, by reason of nonpayment by our debtors, or that our condition does not improve in such manner that we can pay our debt, the same shall be by this liquidation forever settled.

"In testimony whereof and of all the statements herein contained, to the fulfillment of which we are bound, we sign in duplicate this document together with Doña Maria Jimenez who also signs in evidence of her agreement hereto.

"Camalig, January 1, 1889."

The present action is based upon the foregoing contract.

After hearing the evidence adduced during the trial, which clearly supported the foregoing facts the judge of the lower court rendered a decision which contained the following conclusion:

"The judgment of this court is that the obligation is still in force, and that the defendants should pay it in the manner provided for in the conditional clause. But the writ for the execution of this decision can not be issued until after it has been judicially determined that the plaintiffs are entitled to collect the amount of the indebtedness according to this conditional clause or condition precedent.

"One-half of the costs of this suit shall be paid by the plaintiffs and the other one-half by the defendants."

From this conclusion of the lower court the plaintiffs appealed, and made the following assignments of error:

"1. The court erred in holding that the fulfillment of the obligation, which is the object of this suit, is subject to a condition precedent.

"2. The court erred in holding that the financial condition of the defendants had not improved since the time when the obligation herein litigated was assumed."

With reference to the first assignment of error, the plaintiffs claim that the lower court committed an error in holding that the contract above quoted, and which constituted the basis of the plaintiffs' cause of action, contained una condicion suspensiva. By reference to said contract it will be seen that one of its provisions is as follows:

"And as this document shows that the sum in which the herein described lands were assessed does not cover the amount indebted, the balance-that is, 15,000 pesos-we jointly and severally bind ourselves to pay to Doña Maria Jimenez, or to her successors, all the sums which may be paid to us by our debtors, and ,in case our financial condition should improve, with or without the payments made by our debtors, we shall pay the balance still due at its maturity; and if, by reason of nonpayment by our debtors, or that our condition does not improve in such manner that we can pay our debt, the same shall be by this liquidation forever settled."

From a reading of this clause of the contract it would seem to be clear that the promise of the defendants was based upon one of two provisions:.

(a) The collection of all or of a part at least of certain debts existing in favor of the said Pedro Jimenez, or

(b) The improvement of the financial condition of the said defendants,

The terms of this condition are in the alternative. It would seem, therefore, that, if the defendants had collected the said debts or had improved their financial condition, either one or the other, the conditional provision of the contract would become absolute and they would be liable in an action. There is nothing in the contract which indicates to what extent the financial condition of the defendants should be improved before they would be liable under that provision of their contract. Neither do we now pass upon that question, for the reason that the evidence clearly shows that their financial condition at the time of the trial of the cause, or at the time the action was commenced was no better than it was at the time of the making of the said contract (January 1, 1889). Neither do we pass upon the question as to how much of the said debts should be collected before the other condition of the contract should become absolute, for the reason that the evidence discloses beyond peradventure of doubt that the defendants up to and including the time of the trial of said cause had been unable to collect any of said credits whatever.

No objection was made as to the validity of the contract. Neither does it seem that any could be made because neither by the terms of the contract nor the evidence adduced during the trial of the cause does it appear that its provisions were in contravention of law, morals, or public order.

At the death of Don Pedro Jimenez, the said Doña Maria Jimenez, in favor of whom said obligation existed, had the right to insist upon the payment of said obligation out of the estate of the said Pedro Jimenez. But, instead of insisting upon the payment of her claim out of the estate, she accepted the present contract in lieu of such right, thereby postponing the payment of her obligation against the estate of the said Pedro Jimenez until the compliance with the conditions mentioned in said contract.

It is our opinion, and we so hold, that the right of the plaintiffs to recover the sum mentioned in said contract depends upon the conditions mentioned therein. The plaintiff having failed to show that one or the other of the conditions of said contract had been complied with, the action on the part of the plaintiffs was immature, and therefore the judgment of the lower court is hereby reversed, and it is ordered that a judgment be rendered in favor of the defendants and against the plaintiffs, dismissing the said complaint without prejudice, with costs. So ordered.

Arellano, C. J., Torres, Mapa, and Carson, JJ., concur. Willard, J., dissents.

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