

IÑIGO S. DAZA, PLAINTIFF AND APPELLEE, VS. FELISA TOMACRUZ AND PABLO TANJUTCO, DEFENDANTS AND APPELLANTS.*G.R. No. 37046. September 19, 1933*

Ponente: IMPERIAL, J.

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The plaintiff herein brought this action in the Court of First Instance of Bulacan for the partition of a parcel of land and the improvements thereon described in certificate of title No. 3411, to obtain damages from the defendants herein, and to compel them to render an accounting of their administration of the property in question, consisting in a fishery.

The defendants appealed from the judgment ordering the partition of the property in question; from the order appointing partition commissioners; and from the order approving the report submitted by the majority of said commissioners and adjudicating to each party in his corresponding share thereof. They likewise appealed from the order prohibiting them from taking and selling fish from the fishery in question without first obtaining permission of the court.

The facts established by the evidence are stated in the opinion of the trial court as follows:

"It is an established fact that the property described in the complaint is the same designated as No. 3 in certificate of title No. 3411 (Exhibit C) issued in the name of Felisa Tomacruz on October 1, 1927, in spite of the fact that this same property belongs not only to her but also to her brother, the Rev. Father Tirso Tomacruz. Felisa mortgaged the property for the first time on October 24, 1927, to the Philippine National Bank to secure the payment of a loan of P7,000 with interest thereon at the rate of 9 per cent per annum. In none of the above-mentioned transactions, that is, the registration and the mortgage of the land in question, did her brother and coowner, Father Tirso Tomacruz, intervene or was he mentioned.

"The reason for this omission cannot be categorically ascertained from the records of the case, but the truth is that one month after the first mortgage was constituted, Felisa, as a mere formality, conveyed one-half of the property in question through an absolute sale to Father Tirso without receiving any amount therefor, inasmuch as the act was nothing more than a recognition of the latter's participation therein. The sale, however, was not noted immediately on the corresponding certificate of title and the omission of such notation thereon afforded Felisa the opportunity to constitute, as she did in fact constitute, a second mortgage on the property on March 8, 1929, although two additional parcels of land were included, for the sum of two thousand pesos (P2,000) with interest thereon at the rate of 10 per cent per annum, and to give force and effect to such mortgage by having it noted on the corresponding certificate of title on the following day, March 9, 1929.

"Notwithstanding these anomalies, nothing would have happened, had it not occurred to Father Tirso to sell, as he did in fact sell, his share in the property to the plaintiff herein, Iñigo S. Daza, on November 29, 1929. Daza presented the deed of sale for registration on December 4, 1929, but inasmuch as the registration of Father Tirso's document of acquisition was a necessary requisite thereto, he also presented for registration the deed of sale executed by Felisa Tomacruz in favor of Father Tirso. Both documents were finally recorded on the aforementioned date but inasmuch as during the proceedings Daza learned of the existence of the lien on the

property purchased by him, he demanded of Father Tirso the redemption of the mortgage in question. Father Tirso, who, according to the deed of sale had already received the sum of eighteen thousand pesos (P18,000) in consideration thereof, refunded to Daza the sum of P3,225.84. Instead of redeeming the mortgage, Daza bought the Philippine National Bank's rights and anomalously became a mortgage creditor with the right to foreclose the mortgage on all of the property acquired by him. This purchase was recorded on January 7, 1931. Daza demanded of the defendants herein the partition of the property in question and inasmuch as they refused to comply therewith, he instituted this action now under consideration."

In their brief, the appellants assign twenty-one (21) alleged errors as committed by the trial court in its decision. This extensive assignment of errors is rather due to the method of unnecessarily subdividing questions of fact and of law which are kindred in nature. In its decision, the court reduced all the questions raised in the pleadings to four, to wit: (1) Whether the sale executed in favor of the appellee was fictitious as claimed by the appellants; (2) whether the latter are entitled to a reimbursement of the alleged expenses for improvements; (3) whether they are still entitled to exercise the right of legal redemption; and (4) whether the appellee is entitled to the partition sought by him. Aside from the other questions arising from the subsequent orders excepted to by the appellants, we are of the opinion that among the questions raised, those formulated by the court are the only ones that really deserve serious consideration.

In this instance, the appellants have abandoned their claim that the purchase by the appellee of one-half of the property was fictitious and fraudulent. They have undoubtedly been convinced by the overwhelming evidence presented by the appellee, which established the sale of the litigated half of the property beyond question. The appellants could not seriously question the aforesaid transfer thereof on the ground that they admitted from the beginning that Father Tirso Tomacruz was a coowner in the same proportion of the fishery in question.

The court held that the appellants were not entitled to a reimbursement of the alleged expenses for improvements on the ground that the records show that they did not in good faith spend for such improvements the money they obtained from mortgages on all of the property, which mortgages were constituted behind Father Tomacruz's back, without his knowledge or consent, notwithstanding the fact that he was a coowner thereof. The court, likewise, declared that even granting that the appellants were entitled to such reimbursement, Father Tomacruz had already contributed his proportionate share thereof by returning to the appellee the sum of P3,225.84 deducted from the P18,000 representing the price of his share of one-half of the property in question. These conclusions are supported by the weight of the evidence and are in accordance with the findings of the court.

The appellants were denied the exercise of the right of legal redemption invoked by them in their cross-complaint on the ground that they made use of said right too late, that is, only on February 22, 1931, whereas, on the other hand, the records show that the sale executed by Father Tomacruz in favor of the appellee was recorded in the registry of deeds on December 4, 1929. In accordance with article 1524 of the Civil Code which fixes a period of nine (9) days within which the right of legal redemption may be exercised, it is evident that the appellants lost such right due to the lapse of the aforesaid period. (*Sempio vs. Del Rosario*, 44 Phil., 1.)

The appellants contend that the exact price paid for the property was P14,774.16 inasmuch as the sum of P3,225.84 was returned to the appellee by Father Tomacruz, and they likewise argue that, in view of this circumstance, the period for the exercise of the right of legal redemption should commence from the date they were informed of the exact price thereof and not from the date the transfer was recorded. The fallacy of such reasoning, which is evidently based on false premises, is at once apparent. It is not true that the price was not P18,000. If the vendor was obliged to return the sum of P3,225.84, it was due to the appellants' having mortgaged all of the property twice without his knowledge or consent, thus placing their coowner in an embarrassing situation with respect to the purchaser, the herein appellee, and he had to reimburse the latter by returning to him

one-half of the amount of the liens already existing on the share sold. Hence, in the last analysis, the appellants herein were responsible for the reduction suffered by Father Tomacruz in the price of his one-half participation in the property in question.

The appellants' last contentions which deserve consideration are those arising from the subsequent orders relative to the appointment of partition commissioners, the approval of the report submitted by the majority thereof, and the prohibition to sell fish without first obtaining permission of the court. Inasmuch as the partition applied for was in order, it was the duty of the court to appoint capable commissioners for that purpose and this is exactly what it did. The majority of the said commissioners found a just and equitable way of dividing the property into two parts, one of which they allotted to each litigant. This disproves the appellants' contention that the fish-pond was not susceptible of division and it is clear that the court did not commit an error in approving the report in question. But the appellants contend that another division should have been made of the fishery in the manner proposed by them. The fact that the court rejected their proposition does not necessarily mean that it committed an error inasmuch as we are convinced that the partition recommended by the majority of the commissioners and approved by the court was the most convenient, just and equitable. With regard to the prohibition, the court undoubtedly adopted such measure in order to equally safeguard the rights of both parties with the view of determining the products of the fish-pond so that, at the proper time, it could adjudicate to each coowner his corresponding share thereof. We see nothing objectionable in this precaution. With the adoption of such a measure, further unnecessary litigation will doubtless be avoided.

The judgment appealed from being in accordance with the law, it is hereby affirmed, with costs against the appellants. So ordered.

Malcolm, Villa-Real, Abad Santos, and Hull, JJ., concur.

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