

NICANOR JACINTO, PLAINTIFF AND APPELLEE, VS. JUANA FAJARDO AND FELIX GREGORIO, DEFENDANTS AND APPELLANTS.

G. R. No. 37866. February 17, 1934

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Nueva Ecija in an action of reivindicacion with respect to three parcels of land situated in said province, having an area of 72.8 hectares, and more particularly described in paragraph 2 of the plaintiff's petition.

It is alleged in said petition that the plaintiff is the absolute owner of said lands and that the defendants are his tenants under contract to pay an annual rental of P4,000 in March of each year; that the defendants owe a balance of P2,350 on the rental due in March, 1930, and P4,000 on the rental due in March, 1931, making a total of P6,350 past due at the time the petition was filed; that although demand has been made, defendants refuse either to surrender the possession of said lands or to pay the rent.

The answer of the defendants, besides making a general denial, presents a special defense and a counter-demand. The special defense is as follows: That the deed of sale with pacto de retro executed on April 5, 1922, by the defendants conveying the said lands to the plaintiff is fictitious and null; that said deed and the rental contract whereby the defendants were to remain in possession were used to disguise a usurious loan; that the certificate of transfer of title which the plaintiff obtained in the year 1926 and by means of which he consolidated his ownership to said lands was obtained without the knowledge and consent of the defendants; that the defendants are in possession of said lands and have never sold them to the plaintiff or any other purchaser.

The counter-demand is, in substance, as follows: That on January 18, 1922, the defendants transferred to the plaintiff with pacto de retro for a consideration of P39,100 four tracts of land described in the counter-demand with the right of repurchase on or before June 30, 1922; that on June 12, 1922, the defendants paid the plaintiff the said sum of P39,100; that notwithstanding having received said payment the plaintiff, in violation of his contract and without the consent of the defendants, sold and transferred the said lands to Purificacion Soriano.

Besides praying to be absolved from the demands set up in the petition, the defendants pray that they have judgment against the plaintiff for the sum of P28,806.50 which they allege was interest paid to the plaintiff, and also P5,000 for attorney's fees and also P39,100 with legal interest referred to in their counter-demand.

The answer (and counter-demand) is sworn to by Felix Gregorio who states that he has read the same and knows its contents and states that all the allegations thereof are true according to his best knowledge and understanding.

The two principal questions in this case are: First, whether the deed of April 5, 1922, is a sale with pacto de retro or a disguised mortgage; second, whether the plaintiff made the conveyance to Purificacion Soriano referred to in the contract in fraud of the defendants.

Considering the counterclaim first, it is established by Exhibit 8 that the plaintiff received from the defendant

Juana Fajardo the sum of P39,100 as the repurchase price of her lands which she had sold to the plaintiff with pacto de retro in January, 1922. It is also established by Exhibit F that the plaintiff reconveyed said lands, not to the defendant Juana Fajardo, but to her daughter, the said Purificacion Soriano. The evidence, both oral and written, is overwhelming that said transfer to Purificacion was made with the knowledge and consent of both defendants. The defendant Juana herself signed said deed as a witness. The P39,100 which was paid to the plaintiff was the money of Purificacion Soriano. It appears further that when Purificacion presented said deed, Exhibit F, in the land registration case for the purpose of obtaining a Torrens title, the defendant Gregorio assisted her and testified in her behalf. After Purificacion obtained her certificate of transfer of title the defendants (her parents) filed suit against her in the Court of First Instance of Nueva Ecija (civil case No. 4339) for the purpose of getting possession of the four parcels of land conveyed to her by Dr. Jacinto as aforesaid (Exhibit F). The trial court rendered judgment in favor of Purificacion and Juana Fajardo and her husband Felix Gregorio appealed to this court. In our decision promulgated February 3, 1930, G. R. No. 31019,[1] this court, in affirming the judgment, said:

"Teniendo en cuenta todas las circunstancias del caso y el hecho de que la demandante fue testigo en el otorgamiento de la escritura de venta Exhibito F por el Dr. Nicanor Jacinto y su esposa Rosario Pantangco a favor de Purificacion Soriano, y su codemandante Felix Gregorio declaro a favor de dicha Purificacion Soriano en apoyo de la solicitud de e"sta para la adjudicacion y registro a su favor de las cuatro parcelas de terreno descritas en el primer motivo de accion, somos de opinion y asi declaraxnos que la preponderancia de hechos probatorios establece que Purificacion Soriano es duena absoluta de dichas cuatro parcelas de terreno por haberlas recomprado del Dr. Nicanor Jacinto y de su esposa Rosario Pantangco con su propio peculio."

There is not a scintilla of evidence in the record of the case before us to contradict the conclusions of this court in G. R. No. 31019 as above stated. Therefore, the counterclaim which the defendants have filed, is utterly without foundation and the oath of Felix Gregorio that the allegations of the counterclaim are true according to his beat knowledge and understanding, is false.

On the first question involved in this case, namely, whether the deed of April 5, 1922, of the defendants to the plaintiff was a sale with pacto de retro or a disguised usurious mortgage, the plaintiff submitted the testimony of six witnesses. The defendants offered only the testimony of Felix Gregorio. As the question in this case is primarily one of fact and of the credibility of the witnesses, we do not hesitate to declare the preponderance of the evidence unquestionably in favor of the plaintiff. It is unnecessary to review this evidence. The deed of April 5, 1922 (Exhibit 1) is an unambiguous sale with pacto de retro, and the defendant has proven no circumstances that warrant this court in impeaching said document. (Cf. Tolentino and Manio vs. Gonzalez Sy Chiam, 50 Phil., 558.) The judgment below is affirmed with costs against the appellants.

Street, Villa-Real, Abad Santos, and Diaz, JJ., concur.

[1] Gregorio and Fajardo vs. Soriano and Lopez, not reported.

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