

ENCARNACION MAGALONA ET AL., PLAINTIFFS AND APPELLEES, VS. JUAN PESAYCO, DEFENDANT AND APPELLANT.*G. R. No. 39607. February 06, 1934*

Ponente: GODDARD, J.

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In the month of September, 1930, the plaintiffs, Encarnacion Magalona, Juan Sermenon, and the defendant, Juan Pesayco, formed a partnership for the purpose of catching "semillas de bangus o aua" in the sea and rivers within the jurisdiction of the municipality of San Jose, Antique Province, for the year 1931. It was agreed that the defendant should put in a bid for this privilege and that the partners should each supply one third of the capital in case the defendant was awarded the desired privilege. The defendant, having had experience in this line, was to be the manager in case his bid was accepted. The defendant offered the sum of P5,550.09 for the year ending December 31, 1931. As a deposit of one-fourth of the amount of the bid was required each of the partners put up one third of this amount. This bid, being the highest, was accepted by the municipality and the privilege was awarded to the defendant. The defendant entered upon his duties under the contract and gave an account of two sales of "semillas de bangus", to Tiburcio Lutero as representative of the plaintiff Magalona. As the defendant, on April 21, 1931, had on hand only P410 he wired, Exhibit A, Lutero for sufficient money to complete the payment of the first quarter which was to be paid within the first twenty days of the second quarter of the year 1931. This telegram reads as follows: "Hemos conseguido plazo hasta esta tarde tenemos aqui cuatrocientos diez gira telegraficamente restante." Lutero immediately sent P1,000 to the municipal treasurer of San Jose, Antique (Exhibit D).

The defendant managed the business from January 1, 1931, and with the exception of the two sales above-mentioned, never gave any account of his catches or sales to his partners, the plaintiffs. In view of this the herein complaint was filed April 21, 1931, in which it was prayed that a receiver be appointed by the court to take charge of the funds of the partnership and the management of its affairs; that the defendant be ordered to render an account of his management and to pay to the plaintiffs their participation in the profits thereof; that the defendant be required to turn over to the receiver all of the funds of the partnership and that the defendant be condemned to pay the costs.

The plaintiffs put up a bond of P5,000 and a receiver was appointed who also put up a bond for the same amount.

The receiver took over the management and took possession of all the devices and implements used in the catching of "semillas de bangus".

At the trial it was proven that before April 20, 1931, the defendant obtained and sold a total of 975,000 "semillas de bangus" the market value of which was P3 per thousand. The defendant made no report of this nor did he pay the plaintiffs any part of the P2,925 realized by him on the sales thereof. This was not denied.

In his two counter-complaints the defendant prays that he be awarded damages in the sum of P34,700. He denies that there was a partnership and depends principally upon the fact that the partnership agreement was not in

writing.

The partnership was conclusively proven by the oral testimony of the plaintiffs and other witnesses, two of whom were Attorneys Lutero and Maza. The defense made no objection to the questions asked with regard to the forming of this partnership. This court has held that if a party permits a contract, which the law provides shall be in writing, to be proved, without objection as to the form of the proof, it is just as binding as if the statute had been complied with.

However, we cannot agree with the appellant that one of the requisites of a partnership agreement, such as the one under consideration, is that it should be in writing.

Article 1667 of the Civil Code provides that "Civil partnerships may be established in any form whatever, unless real property or real rights are contributed to the same, in which case a public instrument shall be necessary."

"Articles of partnership are not required to be in writing except in the cases mentioned in article 1667, Civil Code, which controls article 1280 of the same Code. (Fernandez vs. De la Rosa, 1 Phil., 671.)

"A verbal partnership agreement is valid between the parties even though more than 1,500 pesetas are involved and can be enforced without bringing action under article 1279, Civil Code, to compel execution of a written instrument. (Arts. 1261, 1278-1280, 1667, Civil Code; arts. 116-119, 51, Code of Commerce.) Thunga Chui vs. Que Bentec, 2 Phil, 561." (4 Phil. Digest, 3468.)

The dispositive part of the decision of the trial court reads as follows:

"Habiendose probado, sin pruebas en contrario, de que el demandado obtuvo durante su administracion de este negocio, semillas de bangtts por valor de P2,925 que no dio cuenta ni participation a sus consocios los demandantes, el Juzgado declara al demandado en deber a la sociedad, compuesta por demandantes y demandado, en la suma de P2,925, importe de 975,000 semillas de bangus a f3 el millar, y ordena que entregue esta suma al depositario judicial nombrado, como fondos de dicha sociedad.

"Se sobreseen las contrademandas y se condena en costas al demandado. Asi se ordena."

This decision is affirmed with costs in both instances against the defendant-appellant. So ordered.

Malcolm, Villa-Real, Hull, and Imperial, JJ., concur.

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