

PRUDENCIO DE JESUS, PLAINTIFF AND APPELLANT, VS. FERNANDO GREY, JR., AND THE PHILIPPINE POSTAL SAVINGS BANK, DEFENDANTS. FERNANDO GREY, JR., APPELLANT.

G. R. No. 39996. March 28, 1934

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

On September 16, 1929, the plaintiff, who is the father-in-law of the defendant Grey, executed in favor of the latter a power of attorney to sell or mortgage two parcels of land, with the improvements thereon, belonging to the former and described in transfer certificate of title No. 14194, issued in the plaintiff's name. The instrument thus executed was recorded in the registry of deeds of the City of Manila on October 8th of the same year. By virtue of the said power of attorney, the defendant, on October 10, 1929, executed a mortgage deed whereby he constituted a mortgage for P12,000 on the said property in favor of the Philippine Postal Savings Bank, the other defendant. Said mortgage was recorded in the registry of deeds and later noted on the aforesaid transfer certificate of title. From the proceeds of the mortgage, the defendant Grey paid to the city treasurer the sum of P3,594.86 for unpaid taxes on the plaintiff's real property known as the Solis-Tondo Subdivision (Exhibit 9), the balance thereof having been used by the said plaintiff on different occasions, and for that reason the mortgages executed by him in favor of Wm. H. Anderson, which had become due, could not be paid.

The plaintiff, alleging that he never executed the power of attorney in question and that if he ever signed it his signature was fraudulently obtained by the defendant Grey, brought this action against Grey and the Philippine Postal Savings Bank, praying that the power of attorney in question and the mortgage deed, which was executed by the defendant Grey, be declared null and void, and that Grey and his codefendant be ordered to indemnify him for damages in the sum of P5,000.

The defendant Grey appealed from the judgment rendered by the trial court, the dispositive part of which reads as follows:

"Let judgment be rendered on the complaint:

"1. Holding that there is no ground to declare null and void the power of attorney, Exhibit A, and the mortgage deed executed and recorded in favor of the defendant the Philippine Postal Savings Bank, Exhibit D;

"2. Ordering the defendant Fernando Grey, jr., to pay to the plaintiff, by way of damages, the sum of twelve thousand pesos (P12,000), with interest thereon at 9 per cent per annum, plus whatever amount the Philippine Postal Savings Bank may recover in connection with the mortgage loan of P12,000.

"3. Condemning the defendant Grey to pay the costs. "As to the cross-complaint, the plaintiff Prudencio de Jesus is entirely absolved therefrom, with the costs against the defendant. So ordered."

The plaintiff likewise appealed from that part of the judgment which declared valid the mortgage constituted in favor of the Philippine Postal Savings Bank.

Both appellants assign various alleged errors as committed by the trial court in its judgment appealed from, which assignments need not be discussed nor passed upon separately.

The trial court gave full credit to the plaintiff's testimony. It was greatly influenced by the circumstance that the said plaintiff is an old man of more than seventy years of age and that he hardly understands and writes Spanish. For such reasons it arrived at the conclusion that although the signature appearing in the power of attorney is the plaintiff's genuine signature, it had been obtained fraudulently and without his knowledge of the contents thereof.

This court has carefully examined all the evidence presented by the parties, particularly the testimony of the witnesses presented, and arrived at a different conclusion. This court is convinced that the plaintiff not only signed the power of attorney in question but that, before signing it, he was also informed of the contents thereof and of the fact that it empowered his son-in-law to mortgage his two parcels of land for the purpose of raising funds to meet his personal obligations. It is natural and comprehensible that the plaintiff has charged his son-in-law with fraud after the serious differences he had with the latter. However, his testimony should be accepted with caution, and should not be allowed to prevail against the testimony of the instrumental witnesses and of the notary public before whom the said power of attorney was ratified by the plaintiff. We refer to the two instrumental witnesses because Venancio Cruz, who was presented by the plaintiff and who testified that the said plaintiff did not sign before him, had previously made an affidavit stating under oath that the said plaintiff voluntarily signed the document in question in his presence. After carefully studying all the evidence, this court does not hesitate to declare that the plaintiff has not succeeded in destroying the evidentiary force of the power of attorney which he had executed in favor of his son-in-law.

The foregoing adversely decides the plaintiff's appeal in regard to the validity of the mortgage executed in favor of the Philippine Postal Savings Bank. Inasmuch as the power of attorney is valid, it follows that the mortgage in question must necessarily be valid.

The cross-complaints of the defendant Grey will now be discussed. He prays that the plaintiff be ordered to render an accounting of his transactions or sales of the portions composing the Solis-Tondo Subdivision in order to determine the income obtained by the said plaintiff during the period intervening between February 24, 1926, and December 26, 1929, so that he (Grey) may be given 2 per cent thereof which the said plaintiff had bound himself to pay him in consideration of services rendered and of the profits obtained by the said plaintiff from the subdivision in question. The evidence on this point, particularly the power of attorney Exhibit 2, sufficiently supports the contention of the defendant Grey. Inasmuch as the document in question is genuine and effective, there is no reason why the plaintiff should not comply with the terms thereof.

With respect to the last cross-complaint for the sum of P150,000 representing the amount of the promissory note Exhibit 16, the trial court found that such document was executed without any valuable consideration and for that reason it is null and void. The evidence, which this court has reviewed, sufficiently and convincingly supports this conclusion. According to the said promissory note, the amount in question was given to the defendant Grey in consideration of an alleged economy or savings of 30,000 square meters of land effected in the preparation of the last subdivision, which area was valued at P10 a square meter. It appears, however, that Grey hardly exerted any effort in connection with the new plans, nor did he intervene in the preparation thereof, his work having been confined merely to speaking to Architect Arellano in order that the new plans might be approved, as they were in fact approved. This court holds that such services, however meritorious they might have been, can never be worth the exorbitant and notorious sum of P150,000. This court concludes that the trial court was right in not giving the promissory note in question any legal effect.

Wherefore, the appealed judgment is hereby affirmed in so far as it declares valid the power of attorney Exhibit A

and the mortgage deed executed in favor of the Philippine Postal Savings Bank, and the same is hereby reversed in so far as it condemns the defendant Grey (1) to pay the plaintiff the sum of P12,000, with interest thereon at 9 per cent per annum, plus whatever amount the Philippine Postal Savings Bank may recover on account of the mortgage loan; (2) to pay the costs, and (3) in so far as it absolves the plaintiff from the cross-complaint; and the plaintiff is hereby ordered to render, within thirty (30) days, an accounting of all income he has obtained from the Solis-Tondo Subdivision and to pay to the defendant Grey two per cent (2%) of said gross income, without special pronouncement as to the costs of this instance. So ordered.

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

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