

DY BUNCIO & COMPANY, INC., PLAINTIFF AND APPELLEE, VS. ONG GUAN CAN ET AL., DEFENDANTS. JUAN TONG AND PUA GIOK ENG, APPELLANTS.

G. R. No. 40681. October 02, 1934

Ponente: HULL, J.

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HULL, J.:

This is a suit over a rice-mill and camarin situated at. Dao, Province of Capiz. Plaintiff claims that the property belongs to its judgment debtor, Ong Guan Can, while defendants Juan Tong and Pua Giok Eng claim as owner and lessee of the owner by virtue of a deed dated July 31, 1931, by Ong Guan Can, jr.

After trial the Court of First Instance of Capiz held that the deed was invalid and that the property was subject to the execution which had been levied on said properties by the judgment creditor of the owner. Defendants Juan Tong and Pua Giok Eng bring this appeal and insist that the deed of the 31st of July, 1931, is valid.

The first recital of the deed is that Ong Guan Can, jr., as agent of Ong Guan Can, the proprietor of the commercial firm of Ong Guan Can & Sons, sells the rice-mill and camarin for P13,000 and gives as his authority the power of attorney dated the 23d of May, 1928, a copy of this public instrument being attached to the deed and recorded with the deed in the office of the register of deeds of Capiz. The receipt of the money acknowledged in the deed was to the agent, and the deed was signed by the agent in his own name and without any words indicating that he was signing it for the principal.

Leaving aside the irregularities of the deed and coming to the power of attorney referred to in the deed and registered therewith, it is at once seen that it is not a general power of attorney but a limited one and does not give the express power to alienate the properties in question. (Article 1713 of the Civil Code.)

Appellants claim that this defect is cured by Exhibit 1, which purports to be a general power of attorney given to the same agent in 1920. Article 1732 of the Civil Code is silent over the partial termination of an agency. The making and accepting of a new power of attorney, whether it enlarges or decreases the power of the agent under a prior power of attorney, must be held to supplant and revoke the latter when the two are inconsistent. If the new appointment with limited powers does not revoke the general power of attorney, the execution of the second power of attorney would be a mere futile gesture.

The title of Ong Guan Can not having been divested by the so-called deed of July 31, 1931, his properties are subject to attachment and execution.

The judgment appealed from is therefore affirmed. Costs against appellants. So ordered.

Avancena, C. J., Abad Santos, Vickers, and Diaz, JJ., concur.

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