

AGATON ARANETA, EXECUTOR OF THE ESTATE OF HERMENEGILDO ARANETA, PLAINTIFF AND APPELLANT, VS. BRAULIO MONTELIBANO, AS TUTOR OF THE MINOR CHILDREN OF ANICETO MONTELIBANO, DECEASED...

G.R. No. 4177. September 15, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 10th day of February, 1895, the plaintiff commenced an action in the Court of First Instance of the Province of Occidental Negros against the defendant, for the purpose of compelling the defendant (1) to execute and deliver a deed in favor of the plaintiff, for a certain parcel of land situated in the sitio of Malisburg, barrio of Tansa, in the municipality of Saravia, in the Province of Occidental Negros; (2) to deliver the possession of the said property to the said plaintiff. A particular description of the property in question is found in the complaint filed in said cause.

The particular facts upon which the plaintiff relies are as follows:

First. That one Aniceto Montelibano, on the 13th day of April, 1887, sold to Hermenegildo Araneta, for the sum of P6,000, the land in question, with the right to repurchase the same after a period of four years.

Second. That the said Aniceto Montelibano remained in possession of said tract of land as a tenant of the said Araneta, paying the latter one-third of the crops.

Third. That Aniceto Montelibano died intestate upon the 20th day of December, 1898, leaving four minor children.

Fourth. That after the death of Aniceto Montelibano, by virtue of the provisions of the Civil Code relating to the settlement of estates by family council, on the 7th day of June, 1899, Braulio Montelibano was duly appointed tutor of the minor children of Aniceto Montelibano.

Fifth. That Aniceto Montelibano, during his lifetime and within the four years prescribed by the contract, did not repurchase the land in question.

Sixth. That the said contract of sale contained a provision that if the said Aniceto Montelibano did not repurchase the property in accordance with its terms, that he should then execute and deliver to Hermenegildo Araneta an absolute deed for the land in question.

It seems that no further steps were taken in the prosecution of said cause until the 25th of April, 1907, when the defendant filed a demurrer to said complaint, which demurrer was overruled by the court upon the 30th day of April, 1907..

The original action was commenced by Felix Araneta, administrator of the estate of the said Hermenegildo

Araneta. Felix Araneta having died and Agaton Araneta having been appointed as administrator of the said estate, he presented a motion in the Court of First Instance to be substituted as plaintiff in said cause for Felix Araneta, which motion was granted.

On the 1st day of May, 1907, the defendant, Braulio Montelibano, filed his answer, alleging-

- (a) That the particular piece or parcel of land in question was not in his possession; and
- (b) That the said parcel of land was sold by the said Aniceto Montelibano during the life of the said Hermenegildo Araneta, and with his knowledge and consent, to one Leon Lopez, who was then (May 1, 1907) in possession of the said land. The defendant further alleged that an inventory had been made of the property left by the deceased Aniceto Montelibano, and that the said parcel of land was not included in the said inventory.

Upon the issues thus presented the plaintiff went to trial. During the trial the only proof presented by the plaintiff was-

- (a) To the effect that the said Aniceto Montelibano did execute and deliver the contract referred to in the complaint of the plaintiff upon the 13th day of April, 1887, the execution of which contract was not denied by the defendant; and
- (b) That a demand had been made on the 10th day of February, 1892, by the representatives of the said Hermenegildo Araneta upon Aniceto Montelibano for the payment of the said obligation. It will be remembered that the said contract was executed and delivered upon the 13th day of April, 1887. There is nothing in the record to show when Hermenegildo Araneta died. The demand for the payment (if it was a demand for the payment of the said P6,000) was made by Felix Araneta, as administrator of the estate of his father, Hermenegildo Araneta, so that Hermenegildo Araneta must have died some time prior to the 10th of February, 1892. This demand was made upon Aniceto Montelibano and was in the form of a letter presented to the said Montelibano by Felix de la Cruz. The said letter and the answer thereto are as follows:

"FEBRUARY 10, 1892.

"Sr. D. ANICETO MONTELIBANO.

"DEAR COUSIN: I address you this letter on account of the money which you have drawn from papa, and concerning which I am obliged to write you, to see if it is possible for you to pay us, and I think that you must know the source of this money, and that several are the owners of it; therefore I, as executor, am the one who writes you this letter, and you should take into account the time that said money has been in your hands, and we have been awaiting from this date, therefore, cousin, I expect you to pay us.

"With nothing to add, I am your affectionate cousin.

"FELIX ARANETA."

"MY DEAR COUSIN: I have read the letter, and on this very day I am getting ready to leave on account of a delicate matter, principally about myself, so that you will pardon me if I have only answered here; cousin, your silence during all of this time causes me every day more and more vexation and grief, and it should have been paid by me long ago; but, what can I do when money is lacking, I have hardly enough for family expenses, and if I could only have realized on land I would have invited (sic) you, on account of the vexation I have when thinking of the debt, therefore, cousin, I leave this matter in your hands and if you can no longer have for me the same consideration that you had before, I am at your orders, and in case your answer reaches me here, because I have to leave to-morrow, I pray you to, write me and deliver (your letter) to Bibing, my daughter, in order that she may forward it to me, and, cousin, you must not think that I am going to give you trouble, but what can I do now ?

"Kind regards to yourself and family, and command your affectionate cousin who loves you all, and kisses your hand,

"ANICETO M. LIBAN."

These letters do not show whether a demand was made for the payment of the P6,000 in question or not. There was no proof adduced during the trial showing that the demand was made for the payment of the said P6,000. Felix de la Cruz, the person who carried the letter and presented it to Aniceto Montelibano, said that while he knew it was for the purpose of making a collection of money, he did not know to what particular money the demand related.

During the trial of the cause, the defendant offered proof showing that some time (the date not appearing) during the lifetime of the said Hermenegildo Araneta, the said Aniceto Montelibano sold the land in question to one Leon Lopez, with the knowledge and consent of the said Araneta; that the said Leon Lopez entered into the possession of the said property, and paid to the said Hermenegildo Araneta during his lifetime at least a part of the said P6,000, and that the said Lopez is still in possession of the said property; that the said parcel of land was thereafter never considered a part of the estate of the said Aniceto Montelibano. The plaintiff made no effort to refute this proof of the defendant.

After hearing the evidence adduced during the trial of the cause, the lower court made the following findings of fact:

"I find the facts to be that on April 13, 1887, the contract that is set up in the complaint was executed. Previous to that time, Aniceto Montelibano was the owner of this hacienda (the parcel of land in question); on that date he received P6,000 from Hermenegildo Araneta and gave him this contract, by which he conveyed to the said Araneta this hacienda, with the condition that if the P6,000 was not paid back within four years from that date, then the hacienda should become the property of Hermenegildo Araneta, and if it was not paid back then Aniceto would execute in favor of Hermenegildo Araneta, a public document of conveyance, conveying the said hacienda.

"I find also that the money was not paid back within that time, and that at the expiration of that time the duty rested upon Aniceto Montelibano to execute a public document of conveyance. Both the parties were living at that time and lived for a long time afterwards, and whether there was any agreement between them as to changing that contract, there is no evidence showing it, except their contract.

"I find that Aniceto Montelibano continued upon the hacienda after the execution of this paper under the contract of lease that is set up in the complaint, and that about fourteen years ago, and in the lifetime of both of these parties, this hacienda was conveyed to Leon Lopez and went out of the possession of Aniceto Montelibano and into the possession of Leon Lopez and has continued in the possession of Lopez down to the present time. This change of possession of the hacienda must have been known to Hermenegildo Araneta, and the allegations in the answer are that it was with his consent * * * and the allegation of the answer is that after that conveyance, Lopez assumed the remainder of this debt to Hermenegildo Araneta and that he paid a portion of it to him before his death and subsequently paid the balance to the heirs of the estate.

"I find further that at the time of Aniceto Montelibano's death, he was not in possession of the property; that it did not go into his estate in any way; that it was not included in the inventory of his estate, and that none of that property came into the hands of the tutor of the minor heirs of Aniceto Montelibano."

The court concluded with the following statement:

"I feel, under all the circumstances, that the whole matter was arranged between the parties and that the sale that was made to Lopez was made with the consent of Hermenegildo Araneta, for the purpose of settling up and arranging Hermenegildo Araneta's claim, and I am inclined to believe the fact suggested by the witness

Alejandro Montelibano, that after that conveyance to Lopez, the balance of the debt that was unpaid, was paid by him and so discharged. I may not be right in this matter, but if I am not it is the result of the negligence of the parties who owned the claim. I think if a party owns a claim of P6,000, with good security on it, and stands for sixteen years without doing anything about it, that it is a fair presumption that it has been settled in some way, and upon all the evidence I am inclined to enter judgment for the defendant to recover upon the amount that the plaintiff has not established his right to recover, and it is so ordered that the defendant recover his costs."

From this judgment of the lower court the plaintiff appealed, making several assignments of error, all of which relate to the sufficiency of the proof to sustain the plaintiff's claim. There was no proof whatever offered by the plaintiff showing that the original indebtedness had not been paid. The plaintiff seemed to rely upon the fact that his possession of the original document was sufficient proof that the same had not been paid. Possession of a document calling for the payment of money is not conclusive proof that the amount called for in the document has not been paid. The defendant offered evidence to the effect that a part of the obligation created in said contract had been satisfied by one Lopez. The plaintiff offered no proof whatever to rebut that fact.

We have given the substance of the proof adduced during the trial and the conclusions of the court thereon above.

It will be noted from an examination of the prayer of the complaint of the plaintiff that he asks two remedies:

First. That the defendant, the tutor of the minor children of the deceased Aniceto Montelibano, execute and deliver to him a conveyance for the land described in the complaint; and

Second. That the defendant deliver to the plaintiff the possession of the land in question.

The defendant alleged that he did not have possession of the property at the time he answered, and that he never did have possession of the said land. An action for the specific recovery of the possession of real property must be brought against the one who is actually or constructively in possession of the same.

With reference to the demand of the plaintiff for the execution and delivery of a conveyance or deed of the land in question by the defendant, the lower court found that the land in question had been sold and transferred to Leon Lopez with the knowledge and consent of the deceased Hermenegildo Araneta. The proof shows clearly that the defendants never had possession of the land in question, and that they had never made any claim whatsoever to said property.

Upon the question of the sale of the land in question to Leon Lopez, the proof is meager. The statements of Alejandro Montelibano seem to be more or less doubtful and contradictory. Had the alleged sale actually been made, it would seem that Lopez would have been one of the best witnesses to prove that fact. He was one of the parties to the alleged transaction. He was still living at the time of the trial, yet he was not called to testify. No writing or document, public or private, was presented in support of the alleged sale. At the time of the alleged sale the four years had expired and Araneta had a right to a deed to the land. Montelibano was a mere tenant. He could not sell the land. The land belonged to Araneta. Lopez could not obtain title to the land from Montelibano without the intervention of Araneta. Lopez, if the allegations of Montelibano are true, must have had full knowledge of what actually transpired. His testimony upon that question would be of the greatest importance in the solution of the question presented by the defendant.

The mere fact that the land in question was not included in the inventory of the estate of Aniceto Montelibano does not show that it had been sold to Lopez. (See *Lim- Chingco vs. Terariray*, 5 Phil. Rep., 120.)

A serious objection exists as to parties against the form of the present action. The plaintiff alleges in his complaint that Aniceto Montelibano died on the 20th of December, 1898, intestate, leaving four minor children, called

Bibiana, Maria, Rosario, and Raymundo. In the present action, however, the plaintiff made defendants Braulio Montelibano, as tutor of said minor children, Rosario, Raymundo, and Bibiana. The record does not show why Maria was not made a party defendant. Until the contrary is shown, each of these heirs has "an equal interest in the property in question.

It would seem clear that the present action could not be concluded without having all of the heirs in court.

There is also the other question whether an action can be brought against an administrator or tutor for the purpose of compelling him to carry out a contract for the conveyance of land under the circumstances existing in this case. Under the provisions of article 661 of the Civil Code, the heirs, by virtue of the right of succession, are subrogated to all the rights and obligations of the deceased. The heirs are no more than the continuation of the juridical personality of their predecessor in interest. (Decision of the supreme court of Spain, January 28, 1892; Mojica vs. Fernandez, 9 Phil. Rep., 403.)

The heirs having succeeded to whatever interest their ancestry had in the land and contract in question, they may, by virtue of articles 1279 and 1280 of the Civil Code, be compelled in a proper action to execute the public instrument required under the contract between their ancestor and Araneta. (Mojica vs. Fernandez, 9 Phil. Rep., 403.) All of the heirs were not made parties defendant in the present action. Apart of them can not be required to execute the document prayed for by the plaintiff. They must all be made parties defendant. They are all equally interested. Of course when they are all made parties they will be permitted to show, providing they have evidence to justify it, that Leon Lopez was, by the consent of the said Araneta, substituted for their ancestor in the contract which the representatives of the said Araneta are now attempting to enforce. That is a question of defense. Whether Leon Lopez, being actually in possession (if that is so) should be made a party defendant in the present action, we do not decide.

For the reason, therefore, that all of the heirs of the said Aniceto Montelibano were not made parties in the present action, the judgment of the lower court is hereby revoked and the cause is hereby remanded to the lower court, with permission on the part of the plaintiff to amend his complaint.

Arellano, C. J., Torres, Carson, and Moreland, JJ., concur.

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