

**THE BACHRACH MOTOR CO., INC., PLAINTIFF AND APPELLEE, VS.
ETHEL M. KANE, AS ADMINISTRATRIX OF THE ESTATE OF THE
DECEASED WILLIAM KANE, DEFENDANT AND APPELLANT.**

G.R. No. 41820, May 29, 1935

Ponente: DIAZ, J.

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DIAZ, J.:

This is a sequel of case No. 5153 decided by the Court of First Instance of Rizal on September 19, 1932. The action brought in said case was for ejectment and the judgment of the court was adverse to the therein plaintiff, also plaintiff in this case, having absolved from the complaint the defendant William Kane of whose estate the defendant Ethel M. Kane is now the executrix or administratrix.

The action brought in this case is for the recovery of property, the plaintiff Bachrach Motor Co., Inc., having allege in its complaint that the property described therein which is no other than that involved in said ejectment case, exclusively belongs to it.

The judgment of the lower court was this time adverse to the defendant, said court having held that the plaintiff is the owner of the property in question with all the improvements thereon, and having also ordered the defendant to pay to said plaintiff, by way of damages, the sum of P250 monthly, from May 6, 1932, with the costs of the suit. From this judgment of the lower court, the defendant appealed to this court claiming in her brief that the former committed in its judgment the following six alleged errors, to wit:

"1. The trial court erred in not declaring that the fundamental facts in this case are res adjudicata.

"2. The trial court, having found in its order of October 26, 1933,—whereby, motu proprio, it reopened the trial of this case—that the sale of the property in question by Geo. C. Sellner to Carlos Zamora was fictitious and that therefore the transfer of the same property by Zamora to Mrs. Bachrach had no legal effect, erred in subsequently reversing that finding.

"3. The trial court erred in not finding that the transaction between Mr. Sellner and Mrs. Bachrach, evidenced by Exhibits H and 5, constituted only an equitable mortgage on the property in question.

"4. The trial court erred in not finding that at the time Mrs. Bachrach loaned P14,100 to Geo. C. Sellner on the property in question she had actual notice of the contract Exhibit E between the said Sellner and William Kane whereby the former agreed to sell, and actually delivered the possession of, said property to the latter for P24,000 of which Kane had paid P4,000 and was paying the balance at the rate of P250 a month

"5. The trial court erred in not finding that the transfer of the property in question by Mrs. Bachrach to the Bachrach Motor Co., Inc., was without consideration, fictitious and of no legal effect.

"6. The trial court erred in declaring that the plaintiff is the owner of the land in question and its improvements, ordering the defendant to deliver the possession thereof to the plaintiff and to pay to the latter as damages the sum of P250 a month from May 6, 1932, and in subsequently ordering the execution of its judgment before it

had become final."

We have carefully reviewed the record and the evidence and find that the following statement of facts and considerations made by the lower court in its decision is fully supported by the evidence and by the law:

"The evidence for the defendant shows that the deceased William Kane had entered into a contract of sale with one Geo. C. Sellner for the purchase of the land in question on January 12, 1931, and this contract is the document Exhibit E. By virtue of this contract, the defendant and her predecessor, the deceased William Kane, have been in possession of the land and its improvements. The defendant also testified that in the latter months of the year 1931 and after Mary McDonald Bachrach had purchased this land from Carlos L. Zamora, E. M. Bachrach, husband of Mary McDonald Bachrach and manager of the plaintiff corporation, went to the house built on the land in question where the defendant and the deceased then lived and told them that he had purchased the land. The defendant and the deceased William Kane answered that they also had a contract of sale with one Geo. C. Sellner for the purchase of the land and the house.

"As defenses, the defendant alleges that she is the owner of the land, in question by virtue of the deed of purchase (Exhibit E) executed by Geo. C. Sellner in favor of the deceased William Kane; that the plaintiff had knowledge of this contract in favor of William Kane, and is therefore not a bona fide purchaser, and that this case, already constitutes *res judicata*.

"The principal and fundamental purpose of the Torrens Title system is to finally determine the titles to lands. In the case at bar, the plaintiff has the Torrens title No. 22066 (Exhibit B) issued to it for the land in question. Prior to the issuance of this Torrens title to the plaintiff, the land and its improvements were registered in the name of Carlos L. Zamora and Mary McDonald Bachrach, predecessors of the same plaintiff.

"To impugn the validity of the plaintiff's title to the land in question, fraud on the part of the plaintiff in the acquisition thereof must be shown. The existence of fraud has neither been proved nor even alleged. The defendant testified that she had notified the plaintiff of the contract of sale executed by Geo. C. Sellner in favor of William Kane. This notice was made after the sale in favor of Mary McDonald Bachrach. In addition to these circumstances, the defendant herself has no legal and valid title to the land in question inasmuch as the contract of sale (Exhibit E) executed in favor of the deceased William Kane by Geo. C. jSellner is not a registered or registerable document, and "creates no property right to real property. Said instrument was executed by Geo. Q. Sellner who was not the registered owner of the land. To hold that the private and unregistered document (Exhibit E) executed by Geo. C Sellner in favor of the defendant can be the source of property rights, is to nullify completely the fundamental principles underlying - Act No. 496. That the defendant is entitled to claim damages from Geo, C. Sellner, cannot in any manner affect the rights legitimately acquired by the plaintiff.

"The defense of *res judicata* is unfounded as case No. 5153 was for ejectment,"

It is proved and undisputed that the property in question was originally covered by transfer certificate of title No. 17467 of the registry of deeds of the Province of Rizal when Ruby Holstein or Harnett to whom said certificate was issued sold it to Carlos L. Zamora. The latter obtained the issuance in his favor of the other transfer certificate of title No. 19483 after the cancellation of said transfer certificate of title No. 17467; and later or on September 11, 1931, he sold said property to Mary McDonald Bachrach who, after the issuance to her of transfer certificate of title No. 20618, also upon the cancellation of transfer certificate of title No. 19483, sold it to the herein plaintiff, of which her husband E. M. Bachrach is the president, said plaintiff having obtained the issuance in its favor of transfer certificate of title No. 22066 (Exhibit B) on June 27, 1932.

Geo. C. Sellner was not really the registered owner of the property in question in the registry of deeds of Rizal, when he sold it to William Kane; in fact the document claimed by the defendant to be a document of sale executed by said Sellner in favor of William Kane is not so because, by its terms, it appears to be no more than a

receipt for the sum of P4,000 which Kane had paid to Sellner, and a promise by the latter to execute a deed of sale in favor of Kane at a later date. Said document, besides not being one of sale as just stated, is a private document and therefore, as held by the lower court, was not and could not be registered in the registry of deeds, as in fact it was never registered therein.

There is not the least doubt that the defense of exception of *res judicata* interposed by the appellant, relying upon the decision in the case of *Peiialosa vs. Tuason* (22 Phil., 303), is neither in point nor applicable to the case at bar because while the general rule is that such defense holds true in all cases wherein the same question is raised between the same parties, whatever form or guise the cause of action may have taken, said rule is not absolute and it precisely has its exception in cases as the present, by virtue of an express provision of section 87 of Act No. 190. In fact said section provides as follows:

"A judgment rendered in a suit of unlawful entry and detainer, either for the plaintiff or defendant, shall not bar an action in the Court of First Instance between the same parties respecting title to the land or building; nor shall any judgment given therein be held conclusive of the facts found in another action between the same parties." For this reason this court, discussing the question in the case above cited, said among other things as follows:

"Having arrived at our conclusion that the provisions of section 87 of the Code of Civil Procedure do not limit or restrict the application of the general rules based on the doctrine of *res judicata* as developed in Anglo-American jurisprudence in reliance on judgments in forcible entry and detainer actions, save only so far as that section expressly provides that such actions shall not be a bar to another action respecting title to real estate, and so far as it provides further that the facts found in a judgment in such an action shall not be conclusive in another action between the parties upon a different claim or cause of action; it only remains to apply these rules in the case at bar."

The court referred to the rule which reads as follows:

"A point which was actually and directly in issue in a former suit, and was there judicially passed upon and determined by a domestic court of competent jurisdiction, cannot be again drawn in question in any future action between the same parties or their privies, even when the causes of action in the two suits are wholly different."

Furthermore, in the case of *De Jesus vs. Manaano* (29 Phil., 367), it was expressly stated, thus reiterating what had been said in the cases therein cited, that a judgment rendered in a former action for forcible entry and detainer of a real estate between the same parties does not produce the effect of *res judicata* and is not a bar to the successful prosecution of an action for the recovery of possession thereof. The very same doctrine was held in the case of *Banatao vs. Dabbay and Tuliao* (38 Phil., 612). Therefore, the defense of *res judicata* is groundless.

The second error attributed to the lower court is without merit. Every court is vested with the incidental and inherent power to amend its orders, resolutions and decisions within the statutory period when the purpose thereof is to make them conformable to law and to avoid injustice (section 11, No. 7, Act No. 190), either upon motion of the parties or *motu proprio*. The lower court in setting aside its order of September 25, 1933, merely acted, and properly to be sure, in pursuance of the rule above stated.

The third error is likewise without merit because as against Sellner's testimony that the transaction in question was a simple mortgage, we have the testimony of Mrs. Bachrach who categorically affirmed that it was an absolute sale, in addition to the deed of sale, Exhibit H, which conclusively proves it.

The reason why the fourth error is without merit is given in the appealed decision.

As to the fifth error, there is evidence of record that for the transfer of the property in question by Mrs. Bachrach

to the plaintiff of which her husband E. M. Bachrach is the president, she was credited with the value thereof (page 25 of the t. s. n., civil case No. 5153, admitted as evidence in this case by agreement of the parties), in addition to the other consideration that her husband is the president of the plaintiff corporation. As to the last error, the foregoing sufficiently states why the plaintiff should be declared the owner entitled to the possession of the property in question.

However, we find competent and sufficient evidence of record to hold that the reasonable rent of said property is only P60, not P250 a month. The plaintiff's claim that the rent is and should be fixed at P250 a month is based, so we imagine as there is no direct evidence of record to show such fact, on the sum of P250 agreed upon between the deceased William Kane and George C. Sellner that the former should pay to the latter on account of the stipulated sale price. The rent cannot be based on said amount because the reason or consideration for which it was fixed was different from that of lease for which rent is paid. Two witnesses who testified in the case affirmed that the reasonable monthly rent of the property in question is P60, and at all events not more than P70.

For all the foregoing, the appealed decision is affirmed, except as to the damages which, considered as rents, is hereby fixed at P60 a month from May 6, 1932.

The right to bring the proper action against George C. Sellner is reserved to the appellant.

Let the costs be assessed to the appellant. So ordered.

Malcolm, Hull, Vickers, and Goddard, JJ., concur.

Judgment modified,

RESOLUTION ON MOTION FOR RECONSIDERATION

August 28, 1935

DIAZ, J.:

The appellant has filed a motion praying that we reconsider the decision rendered in this case, for the following reasons:

"1. The court erred in disregarding the fact that Carlos Zamora, Mrs. Bachrach's grantor, was a fictitious 'owner of the property in question, the real owner being Geo. C. Sellner, according to the implied admission not only of Sellner and Zamora but of Mrs. Bachrach herself.

"2. The court erred in overruling appellant's third assignment of error.

"3. The court erred in not declaring that appellant has a lien on the property in question amounting to P8,000."

The first reason alleged has already been carefully considered, as shown on pages 4 and 5 of our decision. We cannot close our eyes to the true and undisputed fact that the land and its improvements in question had previously been registered in the registry of deeds of the Province of Rizal, as the property of Carlos L. Zamora in whose favor transfer certificate of title No. 19483 had been issued, after the cancellation of the former title covering the same properties (transfer certificate of title No. 17467), which had been issued in the name of Ruby Holstein, because Zamora had purchased them from the latter. In said transfer certificate of title No. 19483 as well as in the preceding title No. 17467, no mention is made, either directly or indirectly, of any right which George C. Sellner might have in said real properties. Consequently, it being known that the real purpose of Act No. 496, under whose provisions were issued not only the original certificate of title relative to the real properties in

question, but also the transfer certificates of title above stated, which were issued later, after the cancellation of the former, is to quiet title to land and to put a stop forever to any question of the legality of the title as soon as it is issued in the manner and under the conditions provided in said Act (Legarda and Prieto vs. Saleeby, 31 Phil., 590), so that upon the expiration 'of the period to question its legality by means of a petition for review (section 38, Act No. 496, as amended by section 1 of Act No. 3630), the same constitutes a sure guaranty that it is perfect, absolute and indefeasible, and that if no incumbrance is noted therein, it shall be understood that the properties, covered thereby are free of all incumbrance, except those expressly imposed by law (Government of the Philippine Islands vs. Avila, 38 Phil., 383; section 39, Act No. 496, as amended by section 4 of Act No. 3621); the contention that George C. Sellner, not Carlos L. Zamora, was the true owner of the real properties in question, is absolutely untenable and need not be considered.

The document claimed to be a deed of sale executed by George C. Sellner in favor of William Kane (Exhibit E), which cannot legally be considered as such deed of sale for the reasons stated in the decision whose reconsideration is sought, cannot in the least affect the transfer certificate of title issued in favor of Carlos L. Zamora (No. 19483), nor that issued later in favor of Mary McDonald Bachrach (transfer certificate of title No. 20618), nor the other transfer certificate of title No. 22066 issued afterwards in favor of Bachrach Motor Co., Inc., because, aside from the reason stated in the preceding paragraph, it does not have the requisites provided by section 50 in connection with section 127 of Act No. 496, necessary to constitute a valid transfer registerable in the registry of deeds. It is a private document which in fact was never registered in the registry of deeds of the Province of Rizal.

On the other hand, George C. Sellner is estopped from alleging ownership of said real properties because he induced Mary McDonald Bachrach to act as she did, thinking him to be a mere broker or agent of Carlos L. Zamora, as he was then believed to be, and as in fact he himself testified during the trial that he was, for many years theretofore, a broker. The law provides that he, who by his own declaration or act deliberately led another to believe a particular thing to be true and to act upon such belief, shall not be permitted to retract nor contradict him who has acted under such inducement (section 333, Act No. 190). George C. Sellner so induced Mary McDonald Bachrach to purchase what she believed belonged to Carlos L. Zamora that Sellner himself became an instrumental witness to the deed of sale Exhibit H. He is the first witness whose signature appears in said document. Neither the testimony of George C. Sellner nor that of Carlos L. Zamora can destroy the efficacy and validity of the transfer certificate of title issued in the name of said Zamora. The rule of estoppel is as applicable to the latter's case as to Sellner's.

For this reason the fact that Carlos L. Zamora has testified during the trial that the transaction between Sellner and him, on the one hand, and Mary McDonald Bachrach, on the other (Exhibit H), was, in his opinion, a mere mortgage and not a sale (t. s. n., pr 70) ; that he did not know the owner of the real property which was the subject matter of said transaction (t. s. n., p. 70) ; and that Sellner, not he, received the payment thereof (t. s. n., p. 72), is of no avail to the appellant because the law bars him and does not permit documentary evidence of the nature of the public instrument Exhibit H and of transfer certificates of title Nos. 17467, 19483, 20618 and 22066 of the registry of deeds of Rizal, which have been duly registered in the corresponding registry books, to be rebutted and overcome by oral evidence like the testimony of said witnesses Sellner and Zamora (section 285, Act No. 190; section 38, Act No. 496; Maloles vs. Director of Lands, 25 Phil, 548),

From the foregoing in addition to what we said on the same point in the decision, it results that the second reason invoked by the appellant in her motion is untenable. Between Sellner's testimony and that of Mary McDonald Bachrach, the latter's is of greater weight because it is corroborated by the deed of sale Exhibit H, by transfer certificate of title No. 19483 and by Exhibit 5 which gave said Sellner the option to buy the properties in question.

There was nothing strange in the fact that neither Mary McDonald Bachrach nor the appellee took possession of said properties from the time of their acquisition because said Sellner had been given the option to buy and during the period given him for that purpose 'he would collect the rents that became due.

As to the last reason, suffice it to say that in the decision we reserved to the appellant the right to bring any proper legal action against George C. Sellner who received from William Kane the sums of money which the latter had been paying him. We now reiterate said reservation.

In resume, the appellant's motion is denied for the reasons stated in this resolution and in the decision promulgated on May 29, 1935. So ordered.

Malcolm, Hull, Vickers, and Goddard, JJ., concur.

Motion dented.

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