

CENTRAL AZUCARERA DE TARLAC, PLAINTIFF AND APPELLEE, VS. RICARDO DE LEON AND RAFAEL FERNANDEZ, DEFENDANTS. L. P. MITCHELL, ASSIGNEE OF THE INVOLUNTARY INSOLVENCY OF RAFAEL FERN...

G.R. No. 41937. September 04, 1935

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Manila in an action for specific performance of a milling contract and for damages for breach of the same.

In its original complaint filed on November 19, 1930, it is alleged in substance that on August 15, 1929, the defendant Ricardo de Leon entered into a milling contract with the plaintiff affecting the production of sugar cane on eighty seven hectares of land situated in the municipality of Lubao in the Province of Pampanga (Exhibit A). It is alleged that De Leon assured the plaintiff that the title to said land is not registered under Act No. 496 (Torrens Act) and therefore the contract provided that De Leon, when required to do so by the plaintiff, would take all necessary steps at his expense to obtain the registration of the title and that the obligations of the said contract, Exhibit A, should be set out in full in the title so acquired.

Among the terms of said milling contract, De Leon agreed for a period of thirty years to plant at least half of said lands in sugar cane and to deliver the cane to the plaintiff's central for milling. In other respects, the terms of Exhibit A are those commonly used in milling contracts in the Philippine Islands.

The said milling contract was recorded in accordance with the law relating to unregistered lands and it is alleged that De Leon perpetrated a fraud on the plaintiff, in that he had actually obtained a Torrens title to said lands more than a year before the said contract was made, as shown by certificate No. 2658 in the office of the register of deeds of Pampanga.

It is further alleged that De Leon transferred said Torrens title to the defendant Rafael Fernandez without any notation of the plaintiff's milling contract, Exhibit A, but that Fernandez had actual knowledge of the said contract at the time the said Torrens title was transferred to him. It is further alleged that the defendant Rafael Fernandez proposes to cut the sugar cane actually growing on the land aforesaid and deliver the same to the Central Azucarera de Mabalacat in violation of the terms of the said Exhibit A.

The prayer of the petition is that a receiver be appointed and that the defendants be ordered and required to comply with the terms of the said milling contract, Exhibit A, and specially that the rights of the plaintiff under the said milling contract be endorsed on the Torrens certificate now held by Rafael Fernandez. The defendant Fernandez, on November 24, 1930, through his counsel, filed what was called "a special appearance" in which he challenged the jurisdiction of the court to try this case and also demurred on the ground that the complaint does not state facts sufficient to constitute a cause of action. On December 11, 1930, the defendant De Leon

filed a similar demurrer attacking the jurisdiction of the court. On December 26, 1930, the trial court sustained the defendants' demurrers and ordered the plaintiff to amend within five days from notice. From this decision the plaintiff appealed and this court, under date of September 22, 1931,¹ reversed the decision of the trial court and remanded the cause for further proceedings.

While said appeal was pending in this court, involuntary insolvency proceedings against the defendant Rafael Fernandez were filed in the Court of First Instance of Manila and on August 1, 1931, he was adjudicated an involuntary insolvent. On September 23, 1931, L. P. Mitchell was duly elected assignee in said insolvency proceedings and duly qualified as such on September 25, 1931. On the latter date, the clerk of the Court of First Instance of Manila, pursuant to the provisions of section 32 of the Insolvency Law (Act No. 1956) executed a general assignment in favor of L. P. Mitchell of all the real and personal property, rights, credits and assets of every kind of the said insolvent Fernandez.

On November 3, 1931, L. P. Mitchell, the said assignee, filed a motion in the Court of First Instance that he be permitted to intervene and to "defend this action in substitution of the defendant Rafael Fernandez". This motion having been allowed, the plaintiff on March 27, 1933, filed the following amendments to its original petition in substance as follows: First, that L. P. Mitchell be included as one of the defendants in his said character as assignee of Rafael Fernandez, the insolvent; that the said assignee since September 25, 1931, took possession of the lands described in the original petition and of the cane growing thereon amounting to some 2,000 tons which he delivered for milling purposes to the Pampanga Sugar Mill; that like wise, during the milling season of 1932-1933, he delivered some 2,000 tons of sugar cane to be milled in the same central; that the plaintiff, by virtue of its said contract, Exhibit A, with De Leon, is entitled to fifty per cent of the sugar cane harvested by the said assignee from the said lands during the milling seasons of 1931-1932 and 1932-1933 and it is prayed that the said assignee, L. P. Mitchell, be required to deliver to the plaintiff the equivalent thereof or its value.

To the plaintiff's amended petition the assignee, p Mitchell, filed an amended answer in which after setting out the facts relating to the insolvency proceedings the assignee alleged that he was not a party to the contracts referred to in the petition and had no knowledge of their execution till after the title to the land vested in the assignee; that he was an innocent transferee for value and lawfully acquired the properties free from any encumbrance in favor of the plaintiff. It is further alleged in his special defense that the wrong complained of by the plaintiff, if any, was solely due to its own neglect in not ascertaining the facts shown in a public registry before executing the alleged contract with De Leon. It is further alleged that whatever sugar cane the assignee took from the lands described in the complaint were taken by him as the legal representative of the creditors of Rafael Fernandez.

On November 14, 1933, the trial court rendered its judgment finding that Fernandez was informed by De Leon of the contract, Exhibit A, in favor of the plaintiff before De Leon transferred the land to Fernandez by Exhibit B. The court adopted the view that the assignee of an insolvent debtor represents the bankrupt and takes the bankrupt's property in the same plight and condition, that the bankrupt held it and subject to all the equities impressed upon it in the hands of the bankrupt. The court accordingly held that inasmuch as Fernandez could not claim the benefit of section 39 of the Land Registration Law (Act No. 496), neither could his assignee in insolvency. The court rested its decision on the case of *Ingersoll vs. Concepcion and Cauwenhergh* (44 Phil., 243).

We agree with the appellee that section 70 of the Insolvency Law (Act No. 1956) is not applicable to this case because the insolvent debtor, Fernandez, made no conveyance and did none of the things mentioned in section 70 with the "view to giving a preference to any creditor or person having a claim against him".

Reduced to its simplest terms the basic question, to be determined is whether or not the assignee Mitchell may set

up any other or different defense than Fernandez could have set up against the plaintiff's demand. Is the assignee in this case the representative of the insolvent alone?

It is true that in his motion for leave to intervene in this case the assignee Mitchell asked leave "to defend this action in substitution of the defendant Rafael Fernandez". His counsel doubtless had in mind the language of section 33 of the Insolvency Law as follows: "* * * If any action, or proceeding in which the insolvent is defendant is pending at the time of the adjudication, the assignee may defend the same in the same manner and with like effect as it might have been defended by the insolvent. * * *" But the amended answer filed by the assignee fairly discloses that the real purpose of the assignee's intervention was to protect the interest of the creditors of the insolvent regardless of the fact that the action still proceeded nominally against the defendant Fernandez. Nor are we inclined to place a restrictive interpretation on the language of section 33 above quoted in view of the other provisions of the Insolvency Law which plainly indicate that the assignee represents primarily the interests of the creditors of the insolvent in the liquidation of the latter's estate. (*Te Pate vs. Ingersoll*, 43 Phil., 394.) He may therefore properly present defenses on behalf of the creditors which were not available to the insolvent.

Assuming that petitioner's action could have been maintained against Fernandez had he not become insolvent, can the same action be now maintained against the insolvent's assignee? As stated, the entire estate of the insolvent Fernandez including the Torrens title, Exhibit B, was transferred by operation of law (section 32 of the Insolvency Law) on September 25, 1931, to the assignee L. P. Mitchell. The assignee registered this transfer and obtained a new certificate of title to the lands referred to in the plaintiff's petition without any notation of the plaintiff's milling contract, Exhibit A. If any one of the creditors of Fernandez, while the latter was solvent, had obtained from Fernandez a transfer certificate in consideration of his debt in good faith, he would have taken the land free of the encumbrance of the milling contract, Exhibit A. By parity of reasoning, the transfer of Fernandez's certificate of title to the assignee, Mitchell, who represents the creditors collectively, should likewise be governed by the provisions of section 39 of the Land Registration Act, *supra*. The abatement of the claims of the creditors and the benefits to the insolvent resulting from the insolvency proceeding may, by fair interpretation, be deemed "value". That the assignee Mitchell acquired the Torrens title "in good faith" cannot be questioned, for he is an officer of the court and acted in the line of his legal duty. The assignee becomes the registered owner when the new certificate is issued to him under section 86 of Act No. 496 and we see no reason to deny him the benefits of the provisions of section 39, *supra*.

There is another aspect of the case arising out of the nature of the plaintiff's cause of action. As against Fernandez the plaintiff has no equitable title which it is seeking to establish—but only an "equity" arising out of the alleged 'fraud of Be Leon of which Fernandez had knowledge when he acquired the Torrens title. This "equity" might have been enforced in an action in personam against Fernandez but not against a third party—in this case, the creditors represented by the assignee Mitchell—who did not participate in the fraud and had no notice thereof.

The case of *Ingersoll vs. Concepcion and Cauwenbergh* (44 Phil., 243), relied on by the appellee, is not in point here because of the essential difference in the nature of the plaintiff's demand. That case involved the foreclosure of a mortgage of land given by the insolvent himself—which the opinion describes as "a proceeding in rem". The court held that section 60 of the Insolvency Law specifically provides for the foreclosure of such liens but that the assignee on behalf of the creditors "whom the assignee represents" might appear and "make any defense which he may have to the merits".

In view of the premises, the judgment appealed from is reversed with directions to dismiss the petition with costs in this instance against the appellee.

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

Judgment reversed.

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