

SANTIAGO TIU FIAN, PLAINTIFF AND APPELLEE, VS. HILARIO YAP, DEFENDANT AND APPELLANT.

G.R. No. 4236. September 18, 1909

Ponente: CARSON, J.

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CARSON, J.:

The prayer of the complaint in this action is limited to a demand for an accounting by the defendant as managing partner of a certain partnership, which plaintiff alleges is still in existence, and defendant contends was dissolved in the year 1905 after a final settlement between the partners.

Plaintiff and defendant, both of whom are Chinese, were at one time joint owners of a certain tract of land, which they cultivated under a partnership agreement, by virtue of which the defendant had control of the property as manager. Some time in the month of November, 1905, the defendant submitted a statement of account, and some differences having arisen as to certain expenditures claimed to have been made by the defendant on partnership account, it was agreed that the defendant should purchase the plaintiff's interest in the property, and that the partnership should be dissolved. In pursuance of this agreement the plaintiff on the 20th of November, 1905, executed a written deed of sale, which was formally acknowledged before a notary public on the 9th of December, 1905, and which by its terms conveys his interest in and to the land to the defendant, absolutely and unconditionally, in consideration of the payment of the sum of P600, receipt of which was acknowledged in the deed.

Up to this point, plaintiff and defendant are substantially agreed as to the facts, but here their respective stories radically sever.

Defendant swore that he paid the plaintiff the purchase price of his interest in the land in question when the deed of sale was executed; that at the same time the deed was delivered to him; but that it had been stolen from him some three months later. These allegations, if they could be accepted as true, would, of course, finally dispose of plaintiff's cause of action; but the trial judge refused to believe the testimony of the defendant and we do not think his allegations are satisfactorily established by the evidence of record. We do not deem it necessary, however, to make any express findings as to their truth or falsity, and we expressly reserve our opinion on this point, because, wholly disregarding the evidence introduced by the defendant, the judgment of the trial court must be reversed and the complaint must be dismissed, on the ground that the evidence introduced by the plaintiff himself does not establish his right to an accounting.

Plaintiff testified that at the time when the contract was entered into and the deed of sale executed, the defendant gave him a promissory note for the purchase price of his interest in the land; that after the deed was acknowledged before the notary, he, the plaintiff, left it in the hands of the notary, and instructed him not to turn it over to the defendant until the promissory note for the purchase price was paid; that defendant failed to pay the note when it became due and payable; that thereafter, on the 22d of March, 1906, he turned over the promissory note (presumably, to the notary) and received in exchange therefore the deed of sale; and that at the same time he

executed before the notary a formal instrument wherein he solemnly declared that he rescinded, revoked, and annulled the deed of sale because of defendant's failure to pay the purchase price.

The trial judge was of opinion that the sale of the plaintiff's interests was not an absolute sale; that it was conditioned upon the payment of the purchase price; that the purchase price never having been paid, the sale never took effect; and, therefore, that the agreement for the dissolution of the partnership being dependent upon the sale of plaintiff's interests to the defendant, the partnership was never dissolved and plaintiff is entitled to an accounting.

But there is no evidence in the record brought to this court which even tends to sustain the finding of the trial judge that the sale was conditioned on the payment of the purchase price. On the contrary, plaintiff's evidence leaves no room for doubt that the conveyance was an absolute and unconditional one. The original deed of sale executed and put in evidence by him, and which contains the terms of the contract of sale as entered into between the parties, expressly and explicitly sets out that the sale evidenced thereby was an absolute and unconditional one; the instrument executed by the plaintiff more than three months after the date of the execution of the deed of sale, wherein he undertook to rescind and annul it, formally recites the fact that the land in question had been conveyed to the defendant "a titulo de dueño absoluto" (with the title of absolute ownership); and finally the plaintiff admitted that he took from the defendant a promissory note for the amount of the purchase price at the time when the deed was executed.

The plaintiff himself, when testifying on the witness stand, did not pretend that he had any agreement with the defendant conditioning the sale upon the payment of the purchase price or of the promissory note therefor; though he evidently thought that by instructing the notary public not to deliver the deed of sale until the promissory note for the purchase price was paid, he could and did secure to himself the right to rescind or annul the contract in the event of defendant's failure to pay the note. But in the absence of an agreement between himself and the defendant, such arbitrary instructions could in no wise affect the nature of the transaction evidenced by the deed of sale. The vendee having delivered, and the vendor having accepted the promissory note for the amount of the purchase price, the sale was thereby consummated, and the vendee had he desired so to do could have compelled the plaintiff to make delivery of the property sold without awaiting the maturity of the note, and he would have been entirely within his rights had he conveyed the land purchased by him to a third party, immediately after the execution of the deed of conveyance and the delivery and acceptance of the promissory note. (Articles 1457 and 1461, Civil Code; *De la Rama vs. Sanchez et al.*, 10 Phil. Rep., 432.) It is very clear, therefore, that the failure of the notary public to deliver the deed of sale, in pursuance of plaintiff's arbitrary and unauthorized instructions not to do so, could not and did not defeat the absolute and unconditional character of the conveyance of the property described therein. And, of course, his attempt, by his own act and deed, without the consent of the defendant, to dissolve, rescind, and annul the contract was, therefore, absolutely void and of no effect.

The contract of sale of the plaintiff's interest in the property in question being still in full force and effect, and that contract, by agreement of parties, having terminated the partnership which existed between them prior to its execution, and constituting at the same time an agreed settlement of the respective interests of the partners, plaintiff has no right to an accounting, and his action should, therefore, be dismissed.

It has been suggested that the trial judge may have based his finding that the title to the property in question did not pass to the defendant because of his failure to pay the promissory note given for the purchase price, upon a deposition of the notary public, which appears to have been submitted in the court below, but which does not appear in the record brought to this court; and it is said that the trial court was perfectly justified in doing so, if from that deposition it appeared that by express agreement between plaintiff and defendant, made at the time of the execution of the deed of sale or immediately thereafter, it was understood that the deed should not be

delivered and that title to the property should not pass until the purchase price had been paid.

We do not question the right of the parties to enter into such an agreement, nor that such an agreement, duly entered into, would sustain a finding that the sale was conditioned upon the payment of the purchase price, so that the title to the property sold would not pass until the purchase price had been paid; but we do not deem it necessary to impose upon the parties the additional burden of expense and delay involved in correcting¹ the alleged omission from the record of the deposition of the notary, because we are satisfied that the mere oral testimony of this witness, that the parties had entered into such an agreement, would not be sufficient, in itself, to establish the existence of such an agreement, in view of the other evidence of record, to wit, first, the solemn recital of the fact that the sale was an absolute and unconditional one, contained in the deed itself and in the above-mentioned instrument executed three months later by the plaintiff, wherein he undertook to rescind and annul the sale; second, the fact that a promissory note was given and accepted for the amount of the purchase price; and, third, that the plaintiff himself made no reference whatever to the existence of such an agreement in his testimony, although he undertook to testify to all that occurred between himself and the defendant in connection with the transaction.

Ten days from the date hereof let judgment be entered reversing the judgment of the court below, without costs to either party in this instance, and twenty days thereafter let the record be returned to the court below, where judgment will be entered in accordance herewith. So ordered.

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

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