

COSME BIAGTAN, PLAINTIFF AND APPELLEE, VS. CONCEPCION VIUDA DE OLLER, CARMEN OLLER DE SIPIN, TELESFOBO SIPIN ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 42898. January 30, 1936

Ponente: DIAZ, J.

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DIAZ, J.:

The subject matter of this suit is the ownership and possession of the land or lot /described in paragraph II of the amended complaint and more particularly described in transfer certificate of title No. 3429, with the improvements thereon consisting of a house and a camarin of strong materials, situated in the center of the town of the municipality of San Jacinto of the Province of Pangasinan.

The lower court declared said lot and its improvements as the property of the plaintiff and ordered the defendants to turn them over to him, and the plaintiff in turn, to surrender to the defendants the ownership and possession of two parcels of land that he received from Rafael Oller, predecessor in interest of the defendants, by virtue of a contract of barter formerly entered into between the two and declared null and void by the court. No pronouncement was made as to costs.

From this judgment of the lower court, the defendants appealed to this court, attributing to it the seven alleged errors relied upon in their brief as follows:

"I. The trial court erred: (a) In computing Rafael Oller's one year period of repurchase from the date of the public auction sale of the properties mortgaged to the Philippine National Bank; (b) in not computing the one year period of repurchase, at least from the date when the order of confirmation of the public auction sale became final; (c) in not computing the one year period of repurchase from the notation of the order of confirmation, inasmuch as the case involves real estate registered under Act No. 496.

"II. The lower court erred in not holding that the sale or the negotiations for the sale of the lands to Biagtan by the bank took place during Oller's period of repurchase. It likewise erred in not holding that the exclusive, or at least principal consideration of the transfer of the lot, house and camarin by Biagtan to Oller was the latter's cession or renunciation of his right of repurchase from the bank in favor of Biagtan.

"III. The lower court erred in not declaring that Biagtan is already in possession of the lands described in taxes Nos. 10915 and 10916 (Exhibits 12 and 11), in addition to those described in taxes Nos. 10911, 10913 and 10914 which he had already received and are now in his possession.

"IV. The lower court clearly erred in holding that one of the parcels of land which Oller promised to give to Biagtan contained an area of five hectares situated on the western side of the land bought by Biagtan from the bank.

"V. Granting, without admitting, that Biagtan is not yet in possession of the lands described in Exhibits 11 and 12, the lower court erred in not ordering Biagtan to accept the transfer in his name of the Torrens titles of said two parcels of land.

"VI. The lower court erred in not considering Oller at least as an agent or broker when Biagtan bought the parcel of 45 hectares from the bank at an enormous profit, and in not considering said concept and other parcels of land belonging to Oller as sufficient consideration for the transfer of the lot, house and camarin by Biagtan to Oller.

"VII. The lower court erred in not absolving the defendants from the complaint and in not entering judgment against the plaintiff-cross-defendant in conformity with the prayer of the cross-complaint."

The pertinent facts of the case which have not been disputed by the parties may be summarized as follows: Rafael Oller, father of the defendant Carmen Oller who is the defendant Telesforo Sipin's wife; husband, in life, of the other defendant Concepcion or Consuelo Pasana Viuda de Oller with whom he had four children who are the defendants Rafael, jr., Juanita, Zuraida and Emiliano Oller; and grandfather of the other defendant Miguel Oller, was originally the owner of the two parcels of land described in transfer certificate of title No. 3429 of the registry of deeds of Pangasinan (Exhibit I). He mortgaged them to the Philippine National Bank for the sum of P10,000, on November 29, 1919 (Exhibit A), and as he had failed to pay his obligation to the bank, the latter brought civil case No. 3942 (Exhibit C) to foreclose the mortgage in its favor. Inasmuch as Rafael Oller was unable to pay his obligation within the period of three months granted him in the court's decision and judgment which, by the way, was adverse to him, the order of the court in said judgment was executed and the two parcels of land in question were sold at public auction to the Philippine National Bank as the highest bidder. The sale took place on July 28, 1924, and the price paid for said property was W,210 (Exhibits E, F, F-1 and F-2). The sale was not confirmed by the court until April 13, 1926, but it was expressly provided in the order confirming it that said sale would be considered effective from July 28, 1924, the date on which the public auction sale was made (Exhibit 6).

Nine months later, or on January 8, 1927, the Philippine National Bank succeeded in registering transfer certificate of title No. 3166 in its name in the registry of deeds of Pangasinan after cancellation of original certificate of title No. 604 (Exhibit J), which covered the very properties in question; and on June 1st of said year, it sold said properties to the plaintiff for the sum of P12,000 (Exhibit K). On the 28th of said month and year transfer certificate of title No. 3429 (Exhibit I) was issued to the plaintiff.

The defendants alleged and attempted to prove that while Rafael Oller's right of repurchase was yet subsisting, he consented to the purchase of the two properties in question from the Philippine National Bank by the plaintiff because the two had agreed that the plaintiff should keep only one of the properties, that described as parcel No. 1 in transfer certificate of title No. 3429 (Exhibit I), and that he would turn over the other, or that described as parcel No. 2 in said certificate, to Rafael Oller.

They furthermore alleged and attempted to prove that when the plaintiff had already obtained the complete transfer to him of the two parcels of land in question through the execution of the necessary document in his favor by the Philippine National Bank, he then not only refused to acknowledge his verbal contract with Rafael Oller but imposed the condition that in order that he might transfer the second parcel to Oller it was necessary for the latter to convey to him the other lands which Oller had in the barrio of San Jose of the municipality of San Jacinto, Pangasinan; and that under such circumstances, Rafael Oller was compelled to convey the lands described in Exhibits 8, 9, 10, 11 and 12 to the plaintiff.

The plaintiff, in turn, attempted to prove that the only contract entered into by him and Rafael Oller was that whereby he bound himself to convey to Oller parcel No. 2 of transfer certificate of title No. 3429, provided Oller, in turn, conveyed to him his five parcels of land situated in the barrio of San Jose, described in said documents Exhibits 8, 9, 10, 11 and 12; and that he received two of said five parcels of land—those described in Exhibits 9 and 10—from Rafael Oller, but to date the remaining three—those described in Exhibits 8, 11 and 12—have not yet been delivered to him either by said Rafael Oller or his heirs.

It is true that neither Rafael Oller nor the plaintiff had executed any formal document to prove the existence of the contract of barter entered into by them but it is a fact that such contract existed. The parties have admitted it impliedly; and furthermore it is so shown by the very documentary evidence presented by the defendants and appellants, consisting in the letters written by the plaintiff to Rafael Oller during the period of May 7th to August 12, 1929 (Exhibits 1 to 7). This documentary evidence proves not only this but something more. It shows, in addition to the testimony of the defendants and their witnesses, that while said plaintiff complied with his obligation under the terms of their contract of barter, conveying parcel No. 2 of transfer certificate of title No. 3429 (Exhibit I) to Rafael Oller, the latter failed to do the same, much less his heirs or the defendants. They have not yet delivered to him the lands described in said documents Exhibits 8, 11 and 12. They could not deliver them to him because they then were in the hands of third persons and now they are in the possession of Miguel Oller in whose name transfer certificate of title No. 5860 of the registry of deeds of Pangasinan was issued on November 26, 1930 (Exhibit 31), some months after Rafael Oller's death. Parcels Nos. 3 and 4 referred to in said transfer certificate of title are the same lands described in Exhibits 11 and 12. It does not appear that the land described in Exhibit 3 has been delivered to the plaintiff by Rafael Oller or his heirs, or that the plaintiff already has it in his possession, because the testimony of some of the witnesses for the defendants, affirming that it had already been actually delivered to him, did not state when it was delivered, what the nature of the land is and where it is situated. It cannot be believed to be included in the land described as parcel No. 1 in transfer certificate of title No. 3429 because, taking into consideration its boundaries, it appears to be impossible. In order to be considered as included therein, it must necessarily abut on all sides on Rafael Oller's land, that is, the one described in said certificate as parcel No. 1, but it is at once noticeable that it adjoins said land only at its southern side and partly at its eastern side.

The foregoing is a summary of the salient facts which we consider as clearly established at the trial. It follows therefore that it is unnecessary to discuss assignments of error I, II, III and IV relied upon by the applicants; because whether the period within which Rafael Oller could repurchase his lands bought by the Philippine National Bank at public auction, by virtue of a judicial order, had expired or not when said bank resold the lands to the appellee, a question now altogether unimportant because he did not exercise said right when he should have done so; and whether or not there has been an understanding or a contract between him and the appellee that in purchasing the lands in question the plaintiff bound himself to convey to Oller the land described as parcel No. 2 in transfer certificate of title No. 3429 (Exhibit I) which is no other than the land in question; the existence of such understanding or contract is of no avail to him because another thing was later stipulated between the two thus novating the former; inasmuch as it is inferred from said Exhibits 1 to 7 and also from the testimony of the appellee that the two agreed that for Rafael Oller again to become the owner of the land in question, he should bind himself, as he so did in fact, to give to the plaintiff his five parcels of land situated in the barrio of San Jose, in addition to the land described as parcel No. 1 in said transfer certificate of title No. 3429. It is a fact that although Oller received the land promised him in exchange, he delivered only two of the five parcels which he, in turn, had promised. He did not deliver the three parcels to the appellee while he was still alive, nor did his heirs do so after his death, because they did not belong to him. They were in the hands of other persons and the transfer certificate of title covering them is in the name of Miguel Oller since November 26, 1930.

Barter, for such is the contract lastly entered into between Rafael Oller, predecessor in interest of the appellants, and the appellee, is a contract conveying ownership for the consummation of which the mutual delivery by the contracting parties of the things which they promised in barter is necessary. When Rafael Oller entered into it, he was not the owner of all the lands promised by him and, if he were, he would not have the free disposal thereof. He owned only two of them which are those actually in the possession of the appellee and described in Exhibits 9 and 10. Therefore, the contract as to him could not be effective for lack of one of the requisites essential to its

validity: the under-taking or promise to give entirely five parcels of land in the barrio of San Jose, which promise could not be fulfilled and in fact was not fulfilled by him. Under such circumstances, the appellee cannot be compelled to fulfill his promise. On the contrary, he can resolve his obligation created by his contract of barter with Rafael Oller. The provisions of articles 1539 and 1541, in connection with those of articles 1508 and 1124 of the Civil Code, support the appellee in his demand for the return to him of the lot in question with all the improvements thereon. Said articles read, respectively, as follows:

"ART. 1539. If one of the contracting parties should have received the thing promised to him in barter, and should prove that it did not belong to the person who gave it, he cannot be compelled to deliver the thing he offered in exchange, and shall be discharged of his obligation upon returning the thing received by him."

"ART. 1541. Barter shall be governed by the provisions relating to sales as to all matters not specially provided for in this title."

"ART. 1503. Should the vendee have reasonable grounds to fear the loss of any real property sold and of its price he may immediately sue for a rescission of the sale,

"Should such grounds not exist, the provisions of article 1124 shall be applicable."

'Art. 1124. The right to resolve reciprocal obligations, in case one of the obligors should fail to comply with that which is incumbent upon him is deemed to be implied.

"The person prejudiced may choose between exacting the fulfillment of the obligation or its resolution with indemnity for damages and payment of interest in either case. He may also demand the resolution of the obligation even after having requested its fulfillment, should the latter be found impossible. * * *"

"The court shall decree the resolution demanded, unless there should be grounds which justify the allowance of a term for the performance of the obligation. * * *"

Inasmuch as Rafael Oller has failed to comply with the terms of his contract of barter, and as the appellee has chosen to resolve his obligations created by the contract in question, it is but just that he be granted the remedy correctly granted him by the lower court. The fact that Miguel Oller, one of the appellants, has offered to convey to him the two parcels of land described in said Exhibits 11 and 12, or as parcels Nos. i and 4 in transfer certificate of title No. 5860, because such step is out of time and it is the appellee to whom the law grants the right to choose. On the other hand, he has not, as already stated, been given the fifth parcel, that is, the one described in Exhibit 8.

Having arrived at this conclusion, it becomes unnecessary to discuss or pass upon the other three last assignments of error relied upon by the appellants because it clearly appears from the foregoing that they are not entitled to any indemnity particularly if it is borne in mind that they have been occupying and taking advantage of the lot, house and camarin in question.

Wherefore, the appealed judgment of the lower court being in accordance with law and supported by the evidence, it is hereby affirmed, with the costs of both instances to the appellants. So ordered.

Villa-Real, Abad Santos, Vickers, and Recto, JJ., concur.

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