

BONIFACIO FERNANDEZ, PLAINTIFF AND APPELLANT, VS. NICOLAS DAYAN, DEFENDANT AND APPELLEE.

G. R. No. 42960. January 17, 1936

Ponente: DIAZ, J.

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DIAZ, J.:

The question to be determined in this appeal taken by the plaintiff from the decision of the lower court, is whether he is the owner or has any right to the ownership of the land described in paragraph 8 of the complaint.

During the trial, the plaintiff attempted to prove that the land in question was conveyed to him by the original owners thereof Maximo Dayan and Maria Belsonda, deceased parents of the defendant and appellee, as indemnity for the damages suffered by him for the loss of the land described in paragraph 4 of the complaint, which they had sold to him with pacto de retro some days before, without being able to repurchase it or to return any part of the sum of P4,000 received by them for it, because it appeared that they had also sold it to the Peoples Bank and Trust Company. He likewise tried to prove that the defendant ejected him from said land a few months after he had occupied it with his family.

The defendant and appellee, in turn, proved that the land under consideration had never belonged to his parents and that he had purchased it for the sum of P4,000 from its original owners, Petronilo Fernandez and Matea Gesmundo, after the latter, through the proper proceedings, had obtained original certificate of title No. 4806, which was issued in their name in 1928 by the register of deeds of Laguna.

The plaintiff-appellant contends that the lower court erred in dismissing his complaint and in not ordering the defendant and appellee to indemnify him in the sum of P4,000.

The evidence of record shows that on March 3, 1927, the appellee's parents, Maximo Dayan and Maria Belsonda, sold with pacto de retro to the appellant the parcel of land described in paragraph 4 of the complaint, for the sum of P4,000; that the appellant could not take possession of the land in question notwithstanding the lapse of the period for the repurchase stipulated between him and the vendors, because it appeared that the latter had also sold it to the Peoples Bank and Trust Company which, unlike him, took the precaution to register the deed of sale executed by them in its favor in the corresponding registry; that sometime prior to the death of the vendors, or in May, 1933, they promised to convey to him the parcel of land described in paragraph 8 of the complaint, which is precisely the one in question, in order to compensate him for his loss in the other land; that by virtue of said promise, he went to live there with his family, with the acquiescence of the vendors and the appellee; and that after the death of the former, the appellee ejected him therefrom claiming that the land, the house and the other improvements thereon belonged to him.

Aside from the appellant's testimony that the appellee's parents had purchased the land in question from the original owners thereof, Petronilo Fernandez and Matea Gesmundo, and that they had promised to convey it to him, there is no evidence of record that such promise has ever been made to him. To have a valid transfer of real property, a mere promise is insufficient particularly when the same, as in this case, is not in writing. There must

be something more than a promise; the transfer itself which must be valid and enforceable and, furthermore, contained in a public instrument, or at least in an authentic document (section 127, Act No. 496). The law deems and declares unenforceable all contracts of sale and transfer of real property unless made in writing (section 335, Act No. 190; *Gorospe and Gorospe vs. Ilayat*, 29 Phil., 21).

Explaining how the realty in question came to his possession, the appellee stated that he had purchased it from the spouses Petronilo Fernandez and Matea Gesmundo after the latter had obtained their certificate of title No. 4806 following the proceedings provided by Act No. 496. It is absolutely certain, as evidenced by Exhibits 1 and 2, consisting of a deed of sale executed by said spouses Petronilo Fernandez and Matea Gesmundo in favor of the appellee and of the certificate of the register of deeds of Laguna at the foot of said instrument, that said spouses sold to the appellee the land described in said certificate of title No. 4806 of the registry of deeds of Laguna, which is the very land under consideration.

The appellant's contention that the land belonged to the parents of the appellee is not supported by the evidence. On the contrary, the evidence shows that while it is true that the appellee's parents had intended to purchase it from Petronilo Fernandez, their intention was never realized because they could not pay him the stipulated price, for which reason said Fernandez later instituted registration proceedings wherein certificate of title No. 4806 was issued to him.

We hold that the appeal taken by the appellant is without merit and the appealed judgment is hereby affirmed, with costs to said appellant. So ordered.

Avancena, C. J., Abad Santos, Hull, and Vickers, JJ., concur.

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