

CAGAYAN FISHING DEVELOPMENT CO., INC., PLAINTIFF AND APPELLANT, VS. TEODORO SANDIKO, DEFENDANT AND APPELLEE.*G. R. No. 43350. December 23, 1937*

Ponente: LAUREL, J.

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This is an appeal from a judgment of the Court of First Instance of Manila absolving the defendant from the plaintiff's complaint. Manuel Tabora is the registered owner of four parcels of land situated in the barrio of Linao, town of Aparri, Province of Cagayan, as evidenced by transfer certificate of title No. 217 of the land records of Cagayan, a copy of which is in evidence as Exhibit 1. To guarantee the payment of a loan in the sum of P8,000, Manuel Tabora, on August 14, 1929, executed in favor of the Philippine National Bank a first mortgage on the four parcels of land above-mentioned. A second mortgage in favor of the same bank was in April of 1930 executed by Tabora over the same lands to guarantee the payment of another-loan amounting to P7,000. A third mortgage on the same lands was executed on April 16, 1930 in favor of Severina Buzon to whom Tabora was indebted in the sum of P2,900. These mortgages were registered and annotations thereof appear at the back of transfer certificate of title.No. 217.

On May 31, 1930, Tabora executed a public document entitled "Escritura de Traspaso de Propiedad Inmueble" (Exhibit A) by virtue of which the four parcels of land owned, by him were sold to the plaintiff company, said to be under process of incorporation, in consideration of one peso (P1) subject to the mortgages in favor of the Philippine National Bank and Severina Buzon and, to the condition that the certificate of title to said lands shall not be transferred to the name of the plaintiff company until the latter has fully and completely paid Tabora's indebtedness to the Philippine National Bank.

The plaintiff company filefits articles of incorporation with the Bureau of Commerce and Industry' on October 22, 1930 (Exhibit 2). A year later, on October 28, 1931, the board of directors of the said company adopted a resolution (Exhibit G) authorizing its president, Jose Ventura, to sell the four parcels of land in question to Teodoro Sandiko for P42,000. Exhibits B, C and D were thereafter made and executed. Exhibit B is a deed of sale executed before a notary public by the terms of which the plaintiff sold, ceded and transferred to the defendant all its rights, titles and interest in and to the four parcels of land described in transfer certificate of title No. 217 for P25,300; and the defendant in turn obligated himself to shoulder the three mortgages hereinbefore referred to. Exhibit C is a promissory note for P25,300 drawn by the defendant in favor of the plaintiff, payable after one year from the date thereof. Exhibit D is a deed of mortgage executed before a notary public in accordance with which the four parcels of land were given as security for the payment of the promissory note, Exhibit C. All these three instruments were dated February 15, 1932.

The defendant having failed to pay the sum stated in the promissory note, plaintiff, on January 25, 1934, brought this action in the Court of First Instance of Manila praying that judgment be rendered against the defendant for the sum of P25,300, with interest at the legal rate from the date of the filing of the complaint, and the costs of the suit. After trial, the court below, on December 18, 1934, rendered judgment absolving the defendant, with costs

against the plaintiff. Plaintiff presented a motion for new trial on January 14, 1935, which motion was denied by the trial court on January 19 of the same year. After due exception and notice, plaintiff has appealed to this court and makes an assignment of various errors.

In dismissing the complaint against the defendant, the court below reached the conclusion that Exhibit B is invalid because of vice in consent and repugnancy to law. While we do not agree with this conclusion, we have however voted to affirm the judgment appealed from for reasons which we shall presently state.

The transfer made by Tabora to the Cagayan Fishing Development Co., Inc., plaintiff herein, was effected on May 31, 1930 (Exhibit A) and the actual incorporation of said company was effected later on October 22, 1930 (Exhibit 2). In other words, the transfer was made almost five months before the incorporation of the company. Unquestionably, a duly organized corporation has the power to purchase and hold such real property as the purposes for which such corporation was formed may permit and for this purpose may enter into such contracts as may be necessary (sec. 13, pars. 5 and 9, and sec. 14, Act No. 1459). But before a corporation may be said to be lawfully organized, many things have to be done. Among other things, the law requires the filing of articles of incorporation (secs. 6 et seq., Act No. 1459). Although there is a presumption that all the requirements of law have been complied with (sec. 334, par. 31, Code of Civil Procedure), in the case before us it can not be denied that the plaintiff was not yet incorporated when it entered into the contract of sale, Exhibit A. The contract itself referred to the plaintiff as "una sociedad en vias de incorporacion." It was not even a de facto corporation at the time. Not being in legal existence then, it did not possess juridical capacity to enter into the contract.

"Corporations are creatures of the law, and can only come into existence in the manner prescribed by law. As has already been stated, general laws authorizing the formation of corporations are general offers to any persons who may bring themselves within their provisions; and if conditions precedent are prescribed in the statute, or certain acts are required to be done, they are terms of the offer, and must be complied with substantially before legal corporate existence can be acquired." (14 C. J., sec. 111, p. 118.)

"That a corporation should have a full and complete organization and existence as an entity before it can enter into any kind of a contract or transact any business, would seem to be self evident. * * * A corporation, until organized, has no being, franchises or faculties. Nor do those engaged in bringing it into being have any power to bind it by contract, unless so authorized by the charter. Until organized as authorized by the charter there is not a corporation, nor does it possess franchises or faculties for it or others to exercise, until it acquires a complete existence." (Gent vs. Manufacturers and Merchants' Mutual Insurance Company, 107 Ill., 652, 658.)

Boiled down to its naked reality, the contract here (Exhibit A) was entered into not only between Manuel Tabora and a non-existent corporation but between Manuel Tabora as owner of four parcels of land on the one hand and the same Manuel Tabora, his wife and others, as mere promoters of a corporation on the other hand. For reasons that are self-evident, these promoters could not have acted as agents for a projected corporation since that which had no legal existence could have no agent. A corporation, until organized, has no life and therefore no faculties. It is, as it were, a child in ventre sa mere. This is not saying that under no circumstances may the acts of promoters of a corporation be ratified by the corporation if and when subsequently organized. There are, of course, exceptions (Fletcher Cyc. of Corps., permanent edition, 1931, vol. I, secs. 207 et seq.) but under the peculiar facts and circumstances of the present case we decline to extend the doctrine of ratification which would result in the commission of Injustice or fraud to the candid and unwary. (Massachusetts rule, Abbott vs. Hapgood, 150 Mass., 248; 22 N. E., 907, 908; 5 L. R. A., 586; 15 Am. St. Rep., 193; citing English cases; Koppel vs. Massachusetts Brick Co., 192 Mass., 223; 78 N. E., 128; Holyoke Envelope Co. vs. U. S. Envelope Co., 182 Mass., 171; 65 N. E., 54.) It should be observed that Manuel Tabora was the registered owner of the four parcels of land, which he succeeded in mortgaging to the Philippine National Bank so that he might have the necessary funds with which to

convert and develop them into fishery. He appeared to have met with financial reverses. He formed a corporation composed of himself, his wife, and a few others. From the articles of incorporation, Exhibit 2, it appears that out of the P48,700, amount of capital stock subscribed, P45,000 was subscribed by Manuel Tabora himself and P500 by his wife, Rufina Q. de Tabora; and out of the P43,300, amount paid on subscriptions, P42,100 is made to appear as paid by Tabora and P200 by his wife. Both Tabora and his wife were directors and the latter was treasurer as well. In fact, to this day, the lands remain inscribed in Tabora's name. The defendant always regarded Tabora as the owner of the lands. He dealt with Tabora directly. Jose Ventura, president of the plaintiff corporation, intervened only to sign the contract, Exhibit B, in behalf of the plaintiff. Even the Philippine National Bank, mortgagee of the four parcels of land, always treated Tabora as the owner of the same. (See Exhibits E and F.) Two civil suits (Nos. 1931 and 38641) were brought against Tabora in the Court of First Instance of Manila and in both cases a writ of attachment against the four parcels of land was issued. The Philippine National Bank threatened to foreclose its mortgages. Tabora - approached the defendant Sandiko and succeeded in making him sign Exhibits B, C, and D and in making him, among other things, assume the payment of Tabora's indebtedness to the Philippine National Bank. The promissory note, Exhibit C, was made payable to the plaintiff company so that it may not be attached by Tabora's creditors, two of whom had obtained writs of attachment against the four parcels of land.

If the plaintiff corporation could not and did not acquire the four parcels of land here involved, it follows that it did not possess any resultant right to dispose of them by sale to the defendant, Teodoro Sandiko.

Some of the members of this court are also of the opinion that the transfer from Manuel Tabora to the Cagayan Fishing Development Company, Inc., which transfer is evidenced by Exhibit A, was subject to a condition precedent (condition suspensiva), namely, the payment of a mortgage debt of the said Tabora to the Philippine National Bank, and that this condition not having been complied with by the Cagayan Fishing Development Company, Inc., the transfer was ineffective. (Art. 1114, Civil Code; *Wise & Co. vs. Kelly and Lim*, 37 Phil., 696; *Manresa*, vol. 8, p. 141.) However, having arrived at the conclusion that the transfer by Manuel Tabora to the Cagayan Fishing Development Company, Inc. was null because at the time it was effected the corporation was non-existent, we deem it unnecessary to discuss this point.

The decision of the lower court is accordingly affirmed, with costs against the appellant. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, and Concepcion, JJ., concur.

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