

**PAULINO DOLIENDO ET AL., PLAINTIFFS AND APPELLEES, VS.
SANTOS DEPIÑO ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 4415. February 13, 1909*

Ponente: ARELLANO, C.J.

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Upon the death of the married couple Martino Depiño and Fructuosa Disolong, there remained as inheritance to their six children or to the descendants thereof, thirty-six parcels of land. The said thirty-six parcels of land were attached at the request of Ildefonso Doronila as against Santos Depiño, one of the six children. The land was sold at public auction by the sheriff, with reservation of the debtor's right to redeem it within one year. The sale took place on the 8th of February, 1905, so that the period for the legal redemption was to expire on the same day in 1906. On the 28th of February, 1905, Doronila sold the thirty-six parcels of land to Ruperto Montinola under pacto de retro in favor of the vendor Doronila and of the heirs of the above named spouses, Depiño and Disolong, until the 24th of February, 1906.

All of the above facts are established and have been admitted by both the parties plaintiff and defendant. The material facts of the case are :

Three persons, Paulino Doliendo, Bruno Paredes, and Fermin Desa, filed a complaint against Santos Depiño, Dionisio Depiño, and Bernabe Belandres for "the return to the plaintiffs of the aforementioned parcels of land," with costs of the proceedings, inasmuch as they purchased the same from Ruperto Montinola.

The defendants moved for the dismissal of the complaint for the reason that the said thirty-six parcels of land are the property of the six heirs of the above-mentioned married couple, namely: Santos Depiño, Consolacion Depiño, Dionisio Depiño, the children of Pio Depiño, the children of Brigida Depiño, and the children of Anastasio Depiño who, up to the present time are in possession thereof pro indiviso; and that in consequence, all acts carried out by virtue of the complaint filed by Doronila, and the subsequent ones such as the attachment, the judicial sale, the adjudication, the sale to Montinola and the sale to the plaintiffs, are null and void.

After the documentary and oral evidence was presented, the Court of First Instance of Iloilo found in favor of the plaintiffs for "the possession of the thirty-six parcels of land as against these defendants who are present, in conformity with the terms of the agreement, Exhibit No. 5, without said judgment being effective as against any person who is not present in court and is not a party to the suit"

By means of a bill of exceptions the defendants submitted their appeal to this court with the following statement of errors:

"1. The court below erred by declaring valid the attachment levied by Ildefonso Doronila on the thirty-six parcels of land in question and the sales that took place in consequence thereof.

"2. The court below erred by declaring that an agreement was entered into between the heirs of the spouses Martin Depiño and Fructuosa Disolong for the purchase, from Ruperto Montinola, of the said thirty-six parcels

of land.

"3. The court below erred when admitting as evidence Exhibit No. 5 of the plaintiffs."

With respect to the first error, it is incorrectly affirmed that the court below declared valid the attachment levied by Ildefonso Doronila and the sales subsequently made. The trial judge has stated quite clearly that the sale carried out at the request of Doronila could only prejudice Santos Depiño; that the property of one person could not be sold by reason of the debts of another; that the sale was valid as far as it referred to the interest of Santos Depiño, that is, as to the one-sixth part that could be disposed of, and that with respect to Santos Depiño, in view of the fact that he did not exercise his right of legal redemption with respect to his share, the sale of said sixth part became final or absolute, "and it is probably true that it was not so with reference to all the others." (B. of E. 10.)

The correctness of the opinion of the trial judge with regard to the efficacy of all such acts wherein none of the other coheirs of Santos Depiño had taken part, is a point that is beyond all doubt.

But the court below considered that it was proven that some of the coheirs of Santos Depiño entered into an agreement with Paulino Doliendo, the husband of one coheiress, to the effect that he should look for some money, about P800, to be used in purchasing from the last possessor, Montinola, the thirty-six parcels of land, rather than in the prosecution of claims; after the purchase they were to remain in their possession in order to work the land and with the products of the same to reimburse themselves for the money paid, and, after reimbursement, to divide the land between all the coheirs.

The existence of this agreement, as alleged by the plaintiffs and which they attempted to prove by means of document Exhibit No. 5, is the only question in this suit; the only one decided upon in the judgment of the lower court, and the only one which can be decided on appeal to this superior court.

In connection therewith, the plaintiff Paulino Doliendo declared that when he heard that Montinola was selling these properties, he sent a message to him asking if it were true; that he took this step in consequence of an agreement made with Santos and other coheirs who told him to go and see the said gentleman, and they compelled him to purchase the land; that the heirs Santos, Dionisio, Bernabe, Perpetua, and Buenavista, because the wife of the witness is also an heir, met at his house on the 15th of June, 1906, and, together with the witness, there agreed that he should obtain the money in order to purchase the land before it passed into the hands of any outside party; that he dealt with Montinola, securing the money at a high rate of interest, and made the purchase at the price of P800.

On the 28th of the same month of June, 1906, Montinola, by means of a notarial instrument executed for the purpose, sold to Paulino Doliendo, Bruno Paredes, and Fermin Liza the thirty-six parcels of land in question for the sum of P800, stating therein:

"Which lands are my own property, acquired by purchase on the 24th of February, 1905, from Ildefonso Doronila, who sold them to me under pacto de retro; the period of time for redemption expired on the 24th of February, 1906, and in consequence thereof the sale was irrevocably consummated."

In proof of the agreement entered into on the 15th of June, 1906, at the house of Doliendo, the plaintiffs presented Exhibit No. 5, executed by the plaintiffs herein, Doliendo, Parodes, and Liza or Desa; it consisted of several clauses and was signed by them and two witnesses for the purpose of insuring the farming of the lands as tenants thereof, "for humanitarian reasons" with respect to "the heirs named Dionisia Depiño, Bernabe Belandres, Dionisio Depiño, Perpetua Buenavista, and Santos Depiño, and, after reimbursing the purchasers in the sum of P800 to acknowledge all the heirs as owners, including Paulino Doliendo, the purchaser, who is also one of the heirs, with the exception of the said Fermin Desa because he is not an heir," and, on the other hand, providing that

the heirs could not demand partition until the P800 had been reimbursed, to the payment of which the products of the lands were to be devoted.

The defendants objected to the admission of the said document for the reason that 'it was not signed by the parties; the lower court, however, admitted it and based its decision on the opinion that it had formed of the motives and the conditions of the purchase, and the tenancy of the lands according to what has been hereinbefore set forth.

Juan Cartagena, the notary who was to have signed the notarial declaration that was made out at the end of the document, but which was later scratched out, declares:

That on the 30th of June, 1906, the plaintiffs and the defendants, with the exception of one, Santos Depiño, called on him in order to have the said agreement drawn up.

"They (the defendants) were the only ones who asked me to legalize and make out the document, and I certified the same as a notary, and after the document was certified they wanted to keep it in their hands.

"Q. And why did you say that the defendants had no need to sign the document because it was in their favor; what did you mean by it?-A. They were the only ones who insisted on my writing out the document and that they would pay me my fees."

Dionisio Depiño says that when his father died, his mother and his brother, Santos Depiño, were in possession of the lands.

Bernabe Belandres, one of the defendants, admits that he went to the house of the notary in company with three coheirs, Dionisio Depiño, Perpetua Buenavista, and Dionisia. Perpetua Buenavista states that she went with Dionisio, Dionisia, and Consolacion. All of them, including Dionisio Depiño, deny having assented to the agreement because there was no reason why they should buy what belonged to them.

The judge below, assuming that the proceedings instituted by Doronila for the collection of his credit were legal, says: "I believe that they were regular, and as such we have accepted them in this matter." The result of the public auction, and of the adjudication thereof to Doronila was that he entered into possession of the lands, although the said possession was subject to redemption, the right to which devolved upon the debtor, and at the risk of intervention on the part of the other coheirs of the debtor.

Doronila could transmit his possession, as he did, to Montinola, subject, however, to the two contingencies, and in addition thereto, to the exercise of a conventional redemption in favor of the same vendor, Doronila, and to the heirs as successors of the original debtor.

The periods for the redemptions expired on the 8th and 24th of February, 1906, respectively, and the possession was consolidated in Montinola upon whom, as upon Doronila, devolved the right declared by section 466 of the Code of Civil Procedure; ever since that time every right, title, interest, and right of action of the party against whom execution was accomplished, and which from the time of the judicial sale were subject to the right of redemption, became definitely acquired.

Therefore, and at a later date, Montinola was the owner of the share that Santos Depiño had in the thirty-six parcels of land in question, and he continued in possession of the whole, as his possession was never made the subject of any action whatever.

And the said possession obtained by Doronila of the whole of the lands and transferred upon the sale by Doronila to Montinola, and in turn sold by Montinola to the three plaintiffs, is the same, and it is the sole possession that the court below has declared in its decision to finally belong to the three defendants by virtue of the aforesaid agreement.

This court finds that no error can be charged to the estimation of the lower court with respect to the said agreement; the evidence was considered by it in this sense, and against it there was only alleged the rule contained in article 1280 of the Civil Code which provides that acts and contracts, the objects of which are the creation, transmission, modification, or extinction of property rights in real property, must appear in a public instrument; this provision does not require such form in order to validate the act or contract but to insure its efficacy, so that after the existence of the act or contract has been admitted, under the said article of the Civil Code, the party bound may be compelled to execute the document, as has already been held by this court.

Neither was error committed by the court below in admitting the existence or truth of the agreement, although it was not signed by the defendants.

The lower court was convinced by the preponderance of the evidence, not simply on account of the existence of the document marked Exhibit 5. The court found that some of the heirs met on the 15th of June, 1906, at the house of Paulino Doliendo; that without said agreement the plaintiffs would not have exerted themselves to procure money in order to buy the lands that could not be acquired without the risk of litigation; and that the agreement tended to avoid it, and instead of using the money for the purposes of litigation they thought it better to invest it in the purchase of the parcels of land so that they would revert to the family and that the effect of the said agreement would be: (1) The acquisition of the right of possession of the thirty-six parcels of land such as Montinola had after the 24th of February, 1906; (2) the possession, under antichresis, of the thirty-six parcels of land; (3) the right on the part of the other coheirs to work the land as the tenants thereof; and (4) the division of the property upon the expiration of the antichresis.

In this sense the court below confirms the right of the plaintiffs to the possession of the thirty-six parcels of land as against these defendants who appeared before the court, in conformity with the terms of the agreement Exhibit No. 5.

"Upon issuing this decree-states the trial judge-I do not wish to pass on the rights that Santos may have, because his rights were sold at the sheriff's sale made by Doronila, and said sale may have extinguished his rights, and this probably has happened, but the other heirs would be owners in common, each of them probably possessing one-fifth; but such a question need not be decided in this case, and what I have said in connection therewith must not be considered as a decision."

And this is the reason why, in the judgment, the trial judge expressly declared: "This decision does not, of course, bind any person who was not present in court, and who is not a party to the suit."

With this analysis of the judgment, it is hereby fully confirmed with the costs of this instance against the appellants.

Torres, Mapa, Johnson, and Willard, JJ., concur.

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