

**MARCIANA CONLU ET AL., PLAINTIFFS AND APPELLANTS, VS.
PABLO ARANETA, FOR HIMSELF AND AS ADMINISTRATOR OF THE
ESTATE OF VITO TIONGCO, AND ESPIRIDION GUANKO, DEFENDANTS
AND APPELL...**

G.R. No. 4508. March 04, 1910

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 16th day of January, 1906, the plaintiffs commenced an action against the defendants to recover, as owners, certain parcels of land located in the pueblo of Molo, Province of Iloilo, together with damages, which parcels of land are more particularly described in paragraph 6 of the complaint.

The defendants, by their answer, allege that they are the owners of the parcels of land in question. The question thus presented by the complaint and answer was simply, Who are the owners of said parcels of land?

After hearing the evidence adduced during the trial of the cause, the lower court found that the plaintiffs were the owners and were entitled to the possession of all of the parcels of land described in said paragraph 6 of the complaint, except that parcel, together with the house located thereon, described in subsection (d) of said paragraph 6. This latter parcel of land the lower court held belonged to the estate of Vito Tiongco.

In discussing the evidence adduced during the trial relating to the question of ownership of said house and parcel of land, the lower court said:

"The preponderance of evidence in this case establishes the fact that the house in question, with the tile roof, was originally the property of Catalina Tiongco, sister of Anselma, which was afterwards left to Anselma by virtue of the will made by Catalina before her death, and that after that time, probably in 1887, her nephew, Vito Tiongco, was appointed gobernadorcillo of Molo, whose appointment was contested with much animosity, among other objections adduced against him being the allegation that he was not the owner of any realty. In order to counteract his opposition and avoid his being defeated for that reason, Anselma, who then possessed many properties, put him into possession of the said tile-roofed house as apparently his own property. He lived in the house from that date up to the time of his death in 1904, and, as it appeared to everybody, he considered it as if he was the real owner thereof. He made many repairs as well as alterations in the house on his account and to suit his own wishes. From the weight of the evidence I find that, after being put into possession of the house in the manner above mentioned, Anselma agreed that he could have the house as his own if he would pay to her P3,000, which sum is alleged to be the amount paid by her sister Catalina for the erection of said house; and that afterwards, and before the death of Anselma, he had paid this sum to the satisfaction of Anselma, and, while I can not find any formal conveyance of the property on the part of Anselma, I do find that some time subsequent to that date he claimed it as his property and it was recognized as his own, therefore, I am inclined to find that the house with tile roof was, at the time of the death of Anselma, really the property of Vito Tiongco, her nephew."

From this decision of the lower court the plaintiffs appealed and made the following assignments of error in this

court:

"First. In allowing the defendants to prove, by means of oral evidence, the ownership of the said realty.

"Second. In declaring that Anselma Tiongco sold the realty in question to Vito Tiongco."

The appellant in his brief said:

"The question now at issue in this court is limited to the said house."

The appellant contends, in his first assignment of error, that the lower court committed an error by allowing the defendants to prove the sale of said parcel of land by Anselma Tiongco to Vito Tiongco, in or about the year 1887, by oral proof. The simple question presented is, May the sale of real property made in 1887 be proven by oral testimony? In support of his contention the appellant cites articles 1278, 1279, and 1280 of the Civil Code. These articles of the Civil Code have already been construed by this court in the cause of Couto vs. Cortes (8 Phil. Rep., 459) as well as in the cause of Thunga Chui vs. Que Bentec (2 Phil. Rep., 561), where the court held that "An oral contract for the sale of real estate, made prior to the enactment of the Code of Civil Procedure, is binding between the parties thereto, although it may still be necessary for the parties, seeking to enforce such contract to take some action to secure the execution of proper documents, but this requirement will not render the agreement invalid."

Section 335 of the Code of Procedure in Civil Actions, now in force, has established a rule relating to the method of proving contracts of sale of real property, and an oral contract for the sale of real property can not now be proven under said section 335 except "some note or memorandum thereof be in writing and subscribed by the party charged or by his agent." However, said section (335) makes no attempt to render such contracts [oral contracts] invalid. It simply provides that the contract shall not be enforced by an action, unless the same is evidenced by some note or memorandum. This provision (sec. 335) of the code simply provides how contracts for the sale of real property shall be proved. It does not attempt to make contracts invalid which have not been executed in writing. This provision does not go to the existence of the contract, except when made by an agent (par. 5 of sec. 335). It simply requires a form of contract. The contract exists and is valid, though it may not be clothed with the necessary form and the effect of a noncompliance with the provisions of the statute is simply that no action can be proved unless the requirement is complied with; but a failure to except to the evidence because it does not conform with the statute is a waiver of the provisions of the law. (Anson on Contracts, p. 75.) If the parties to the action, during the trial make no objection to the admissibility of oral evidence to support a contract of sale of real property, and thus permit the contract to be proved, it will be just as binding upon the parties as if it had been reduced to writing. In the present case the defendants called thirteen witnesses, who each testified concerning the sale of the parcel of land and the house in question by Anselma Tiongco to Vito Tiongco, in or about the year 1887, and no objection was made by the plaintiffs to the admissibility of this testimony. The plaintiffs did not invoke the provisions of section 335. They permitted the defendants to prove the oral contract of sale. The contract of sale, therefore, being fully proven, and under the provisions of the law an oral contract for the sale of real property being binding and valid between the parties, we see no escape from the conclusion that if the evidence was sufficient to show the sale, that the contract was binding, even though it had not been reduced to writing.

The second question is, then, Was the evidence adduced during the trial sufficient to show that Anselma Tiongco sold the parcel of land in question to Vito Tiongco in or about the year 1887? The lower court found that a preponderance of the evidence showed that the sale had actually been made. Upon a full consideration of the evidence adduced during the trial upon this question, we are satisfied and so hold that a large preponderance of the evidence shows, beyond question, that said sale took place and that Vito Tiongco, at the time of his death was

the owner of the said parcel of land.

For the reasons heretofore stated, the judgment of the lower court is hereby affirmed, with costs. So ordered.

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

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