

IGNACIO REMONTAN, PLAINTIFF AND APPELLEE, VS. ALEJANDRO CABACUNGAN, DEFENDANT AND APPELLANT.*G.R. No. 4605. November 04, 1908*

Ponente: ARELLANO, C.J.

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On the 10th of July, 1907, Ignacio Bemontan filed a complaint with the Court of First Instance of Ilocos Norte praying that Alejandro Cabacungan be ordered to make immediate delivery of the lands described in the said complaint, and which according to the latter, are situated in Aguitap, barrio No. 7 of the municipality of Dingras (Solsona), in said province. These consist of two parcels, one of about 52 ares, and another of approximately 24 ares, bought by him from Alejandro Cabacungan more than twenty years ago; another parcel of 9 ares bought about the same time from Maxima Domingo, the mother of Alejandro Cabacungan, and lastly, another of nearly 28 ares which he says he bought of Mariano de los Santos; and that Alejandro Cabacungan had taken possession of the said four parcels on the 28th of June of the said year 1907.

The defendant denied all and each of the allegations in the complaint, and as a special defense alleged that he was the owner of the two first-mentioned parcels, and which he had mortgaged to the plaintiff in or about the year 1894 for a debt of 19 pesos and a carabao valued at 30 pesos; that the third parcel is owned by his sister, Juana Cabacungan, who, about the year 1890, had also mortgaged it to the plaintiff for a debt of 40 pesos in cash and one peso in goods; and that the fourth parcel is owned by Adriano de los Santos, who, about the same year 1896, had mortgaged it to the plaintiff for a debt of 10 pesos; that in the years 1904, 1905, and 1905, the defendant, his sister, and Adriano de los Santos offered P100 to the plaintiff and his wife Florencia Ramos in settlement of their debts for the purpose of redeeming the lands, and that in the year 1907, the defendant, in his own name and in that of his sister, and accompanied by Adriano de los Santos, again called on the plaintiff with P120 in order to pay the debts and redeem the lands, but the plaintiff proposed to the defendant and to Adriano de los Santos that they pay him with 25 oyones of paddy, worth P250, payable within five years at the rate of 5 ayones per annum, and finally denied being in possession of the land belonging to Adriano de los Santos.

In the judgment the court below declared that the plaintiff, Ignacio Remontan, is entitled to the possession of the lands demanded in the complaint, without special ruling as to costs.

From the above judgment the defendant appealed to this court.

Upon the hearing of the appeal and a review of the evidence it appears: That in bringing an action for the recovery of possession of certain lands, based on a title of ownership which consists of the contract of retro with the defendant, the proofs presented by the plaintiff are restricted to one witness, who testified that he knew of the purchase "because he saw the money with which Ignacio Remontan and his wife Lorenza Ramos had purchased them, for the reason that his house is situated at the extremity of the purchased lands," and that the price was P60 and a carabao delivered to Alejandro Cabacungan, P40 delivered to Juana Cabacungan, and P30 to the mother of Juana Cabacungan; that a document was executed, and that the witness was one of the subscribers thereto, and

that the said document had disappeared during the insurrection ; and that he had been informed of the robbery by reason of which the plaintiff's trunk was broken to pieces "because it happened that he had gone to the pueblo because the plaintiff was his master and owned the land that he cultivated;" and when asked if he knew which were the four parcels claimed, he said yes, that they are situated at the sitio of Bacbadoc, within the municipality of Solsona, Dingras.

It was agreed between the lawyers of both parties that the other two witnesses would testify in the same terms.

As documentary evidence the plaintiff presented an affidavit by Alejandro Cabacungan, dated April 26, 1906, wherein he states that he sold with pacto de retro to the spouses Remontan and Ramos, two parcels of land, in consideration of the sum of P60.

At the trial the defendant testified that he had not sold the land to the plaintiff, but that he had only mortgaged it, without executing any document whatever; he simply delivered to the plaintiff the title-deed of the land. This deed was returned to him four years ago, when the defendant took the money to him for the release of the mortgage, which money the plaintiff declined to receive, telling the defendant to give him each year for five years, 5 oyones of paddy in lieu of the money; and that what he stated before David Cleto, the notary who attested the affidavit above referred to, was that it was a mortgage, not a sale with pacto de retro, and that the said notary caused him to affix his mark, a cross, and then told him that he would no longer be able to redeem the land, even though he brought suit.

Inasmuch as the suit was decided with only such evidence, the grounds on which the action for the recovery of possession was based, that is, the title of purchase and sale alleged in the complaint, does not appear to be proven, since neither the identity of the thing, nor the certainty of the consideration, nor the consent of both parties appear proven; the identity of the thing has not been established because the complaint refers to land in the sitio of Aguitap, and the plaintiff's witness referred to lands in Bacbadoc; as to the price, said witness speaks of P60 and a carabao while the affidavit mentions only P60; finally, neither was consent proven because, according to the testimony of the plaintiff, the contract was of purchase, but according to the documentary evidence it was one of sale with pacto de retro and the defendant testifies that it was simply of mortgage. And this is the reason he retains possession of the first three plots of land sued for, with the obligation to pay 5 oyones of paddy every year for five years, a presumption of possession which appears supported by the title of ownership to the said parcels offered in evidence at the trial and which was not disputed or impugned by the plaintiff.

Under these conditions it does not seem possible that an action for the recovery of possession of the said parcels can prosper, and much less the claim for the fourth parcel. The defendant has denied being in possession of the latter, and the contrary has not in any manner been proven.

Therefore, it is our opinion that the judgment appealed from should be reversed, and the same is hereby reversed without any special ruling as to the costs of this instance. So ordered.

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

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