

ATANASIO PANDAQUILA, PLAINTIFF AND APPELLEE, VS. MIGUEL GAZA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4737. February 01, 1909

Ponente: TORRES, J.

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TORRES, J.:

Subject to the issue of a separate statement setting forth the principles upon which this court has confirmed the judgment of the 29th of December, 1907, appealed from, whereby the defendants are sentenced to deliver to the plaintiff the land in question, and to pay the costs, with other relief stipulated therein, the same is hereby affirmed with the costs against the appellant. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

BASIS OF THE DECISION.

FEBRUARY 10, 1909.

TORRES, J.:

On July 30, 1906, Atanasio Pandaquila filed in the Court of First Instance of La Laguna a complaint against Miguel Gaza, Felix Gaza, Eusebio de Austria, and Wenceslao Tabia, stating that on or about the morning of the 30th of June previous, he repurchased from the defendant Tabia a rice field that he had sold to the latter under pacto de retro; the said land is situated in the barrio of Palayan of the town of Lumbang, Province of La Laguna, its boundaries and extension being described in the complaint; that on or about the afternoon of the aforesaid 30th of June the defendants Gaza and Austria began the usurpation of the land under the pretext that the defendant Tabia had delivered it to them for the purpose of cultivation; that the plaintiff, on making the repurchase, had undertaken to allow other persons to cultivate the land and that he will therefore suffer serious damages if he is not allowed to take possession so that said land may be cultivated by the said third persons; that then was the time to commence work in the fields in that barrio, so that if he were not able to cultivate his land at that time he would lose all the crop of that agricultural year; that the land produced a yearly crop of about 40 or 45 cavanese of rice; that the defendants had been requested to turn over the land in question but that they had failed to do so and actually continue to retain and cultivate it. For these reasons the plaintiff prayed the court to order the defendants to deliver him the possession of the aforesaid land, to prevent them from cultivating it and from disturbing the plaintiff in the possession and cultivation thereof, and that during the pendency of the suit the defendants be restrained from working said land and disturbing the plaintiff and his associates in their labor, and to this end offered to furnish the bond attached.

The defendants, on September 4 of that year, presented a demurrer to the complaint on the ground that the court had no jurisdiction over the subject-matter of the action; that there was a defect or misjoinder of parties defendant; that the complaint did not set forth facts sufficient to constitute a cause of action; that the same was vague,

ambiguous, and unintelligible, and that there was another action pending between the same parties for the same cause before the said court; the defendants objected to the order of the court of August 31, entered in the record, and prayed that they be acquitted of the complaint with the costs against the plaintiff.

By an order dated October 13, 1906, the court below overruled the said demurrer, to which order the defendants duly excepted.

The defendants, with the exception of Wenceslao Tabia, that is, Miguel Gaza, Felix Gaza, and Eusebio de Austria, filed their answer to the complaint on October 17, 1906, in which they denied each and all the specific allegations contained in said complaint and, as a special defense, alleged: That the land described in the complaint is a communal property belonging pro indiviso to Atanasio Pandaquila, the plaintiff, Fernanda Pandaquila, widow of the late Candido Gaza, and Francisca Pandaquila, the two latter having the right to the legal possession thereof; that the defendants Miguel and Felix Gaza are the sons of Fernanda Pandaquila and nephews of Francisca Pandaquila; that Eusebio de Austria is the son-in-law of Fernanda Pandaquila; that these defendants were in possession of the land merely as associates and representatives of the aforesaid Fernanda and Francisca Pandaquila, for which reason they prayed the court to absolve them from the complaint with the costs against the plaintiff.

The defendant Wenceslao Tabia, in his answer to the complaint, alleged that he had no interest, real or substantial, in the land in controversy, or in the determination of the question as to whether said land should or should not be declared to be the property of the plaintiff, and therefore asked that he be acquitted of the complaint with the costs against the plaintiff.

On August 22, the plaintiff filed a motion asking the court to dismiss the prayer of the defendants as to the payment of costs by him, and also asked that his complaint be understood to be amended as follows: That the part of the petition which reads: "That during the pendency of the suit the defendants be restrained from cultivating the land and disturbing the plaintiff and his associates in their labor, for which purpose he furnished the attached bond," be substituted by the words: "That the defendants be sentenced to pay the plaintiff P150 as value of the crop for the agricultural year above referred to." His petition was admitted without objection on the part of the defendants.

The case was heard On August 5, 1907. Both parties submitted their respective proofs, and the exhibits were attached to the record. The court refused to admit as evidence the four land-tax receipts presented by the defendants for the purpose of proving the ownership and right to possession on the part of the defendant Miguel Gaza, for the reason that such documents were not title deeds in favor of said defendants. The latter, on being informed of the ruling of the court, duly excepted thereto. On December 29, 1907, judgment was entered sentencing the defendants to deliver the land in question to the plaintiff, to pay the latter 95 cavanas of rice or the value thereof, and to the payment of the costs of the suit. To this judgment the defendants excepted.

By a motion dated February 8, 1908, the defendants stated that neither they nor their counsel had been notified of the decision of the court until February 4, 1908, on which date said counsel received a letter from the clerk of court, informing him that he had been notified of the final judgment on the 3d or 4th of January, 1908, and therefore the defendants excepted to the decision in the case.

On February 10, 1908, counsel for defendants asked that said judgment be annulled and that a new trial be ordered, with the immediate suspension of the order of the court issued on the 5th of that month for the execution of the judgment, during the pendency of the suit, alleging that said judgment was contrary to law and that the findings of fact were manifestly contrary to the weight of the evidence, the motion being accompanied by an affidavit of the attorney-at-law, Pedro G. Paraiso, as well as by affidavits by each of the defendants, 'wherein they

allege that they had not received trustworthy information of the decision entered in the case until February 8, 1908, on which date they were notified thereof by the attorney Paraiso. By an order of the 11th of the same month, the execution of the above-mentioned judgment was stayed under a bond of P2,000 filed by the defendants.

The plaintiff, in his turn, on February 25, presented a motion objecting to the admission of the bill of exceptions on the ground that it was improper and was filed after the time fixed by law for its preparation had more than expired, and he asked that the judgment be declared final and that the execution be accomplished, and, in the event that the court should not grant the motion, that the bill of exceptions be amended by making the proceedings mentioned in paragraph 3 of his petition part thereof.

On March 10, 1908, the court approved the bill of exceptions with the amendments proposed by appellee, and ordered it forwarded to the clerk of this court, holding that it was beyond the jurisdiction of the court to decide the question of law raised by the appellee as to the admissibility of the appeal presented by the appellants.

By another order, which must have been of April 6, the court below overruled the motion for a new trial filed by the defendants on February 10, 1908, to which ruling counsel for defendants duly excepted.

The following are indisputable facts admitted and acknowledged by the contending parties: That the land in question was the property of the late Lucio Pandaquila, father of the plaintiff Atanasio and of Francisca and Fernanda, all of the surname of Pandaquila, the two last being the antecessors of the defendants Gaza and Austria; and that the said deceased, during his lifetime, parted with the land first to Anton Patalim, and later to other parties, so that the plaintiff, on returning to his town after an absence of several years in the military service of the former sovereignty, in order to recover said land, was obliged to repurchase it from the spouses named Jacob and Salvadora, who were then in possession of the land as the owners thereof.

The land having been recovered, plaintiff in his turn sold it under pacto de retro to Wenceslao Tabia, from whom he repurchased it on June 30, 1906; but Tabia, in spite of having received the price of the repurchase, did not return the land to the purchaser, but, on the same date on which the repurchase took place, delivered to and permitted the defendants Miguel and Felix Gaza and Eusebio de Austria to take possession of the land, thereby failing to comply with the obligation contracted with the plaintiff who had paid him the repurchase price.

During the trial of the case, and at the time of making his sworn statement, Atanasio Pandaquila, in order to prove that he it was who had sold the land in litigation to Wenceslao Tabia and afterwards repurchased it for the sum of P340., presented in court the document marked "A," executed by Tabia. The latter immediately acknowledged the authenticity of said document, as well as the signature appearing at the foot as being his own. That document was written in Tagalog, the translation of which appears on the following page and is of the following tenor:

"I, the undersigned, Wenceslao Tabia, hereby declare that I have received from Atanasio Pandaquila the sum of three hundred and forty pesos, as the redemption price of the land in Palayan which he mortgaged to me. The instrument of mortgage was burnt, so that I could not deliver it to him. I also declare that of the sum of three hundred and forty pesos, which is the price of the redemption, three hundred pesos only is the amount of the mortgage, and that the sum of forty pesos is an increase, for which reason the redemption price amounted to three hundred and forty pesos. In witness whereof I sign. Lumban, June 30, 1906. (Sgd.) Wenceslao Tabia."

With this translation the counsel for defendants does not at all agree, and on appeal presented another translation of said Tagalog document, which is of the following tenor :

"I, the undersigned, Wenceslao Tabia, hereby declare that I have received from Atanasio Pandaquila the sum of three hundred and forty pesos, as the redemption price of the land in Palayan which he mortgaged to me (isinanla). The instrument of mortgage was burnt, so that I could not deliver it to him. I also declare that of the

sum of three hundred and forty pesos, which is the amount of the redemption, three hundred pesos only is the amount of the mortgage, and that the sum of forty pesos is an increase asked by them (paragdag nila), for which reason the redemption price amounted to three hundred and forty pesos. In witness whereof I have signed. Wenceslao Tabia."

Although this difference exists between the translations, in the first of which is omitted the translation of the Tagalog word nila and in the second, the same word is translated as by them, the truth is that the plaintiff Atanasio Pandaquila was the one who mortgaged or sold the said land under pacto de retro to Wenceslao Tabia and was also the only one who redeemed it, by paying the sum of P340, as appears in the document, Exhibit A, above referred to, without any intervention on the part of his sisters Francisca and Fernanda, or of other relatives who might have an interest in said land.

Whatever hereditary rights the above-mentioned sisters may have to the land derived from their father, such rights can always be enforced against any coheir or coowner, but in no manner could they be an obstacle to compliance by Wenceslao Tabia, who resold the land to the man who had previously sold it to him under pacto de retro, with the obligation to deliver to the endor Atanasio Pandaquila the and repurchased or redeemed.

Article 1461 of the Civil Code provides that a vendor is bound to deliver and warrant the thing which is the object of the sale. Article 1462 also provides that a thing sold shall be considered as delivered when it is placed in the hands and possession of the vendee. Wenceslao Tabia, far from complying with this obligation, violated the law governing it and delivered the redeemed land to third persons who, it seems, were his former associates in the land, and who, of course, are unable to show title and have no rights whatever thereto. As the sisters of the plaintiff, Francisca and Fernanda, are living, and even though they have certain rights in the land in question, yet the sons and son-in-law of one of them, i. e., the defendants Miguel and Felix Gaza and Eusebio Austria, can have no right to the possession of the land, and the fact that they retain it in connivance with the purchaser Wenceslao Tabia, makes them but mere usurpers and unlawful detainers of property which does not belong to them and to which they have absolutely no rights. Article 1510 of the Civil Code provides:

"The vendor may bring his action against every possessor whose right arises from that of the vendee, even though in the second contract no mention should have been made of the conventional redemption; without prejudice to the provisions of the Mortgage Law with regard to third persons."

In accordance with the foregoing legal provision the plaintiff, Atanasio, as the vendor of the land, is entitled to bring suit against every possessor whose right arises or is derived from any that the purchaser Wenceslao Tabia may have had, and with still greater right can such an action be brought against those who occupy the land by means of illegal actions on the part of said Tabia. It is unnecessary for us to deal with the question as to whether the defendants herein should be considered as the third parties referred to in the Mortgage Law, inasmuch as they do not show nor allege any right duly recorded in the registry of property.

If the plaintiff Atanasio Pandaquila complied with his obligation by paying to Tabia the redemption price, as proven by the document executed and signed by the first purchaser, Wenceslao Tabia, it is just and equitable that the latter, in his turn, should comply with the unavoidable obligation to deliver the thing redeemed to the person who paid the redemption price, without prejudice to the right of those who consider themselves entitled to the ownership of said land, which would not have been returned to the possession of the plaintiff if lie had not redeemed it.

From the foregoing considerations the conclusion is that the judgment appealed from should be affirmed, except in so far as it refers to the restitution of 95 cavanos of rice, or the value thereof, on account of lack of sufficient evidence upon which to base a finding to that effect, with the understanding, however, that in the decision

confirming the judgment of the lower court there must necessarily be included the overruling of the motion filed by the counsel for appellants in this instance, asking leave to amend the complaint so as to include therein, as parties defendant, the above-mentioned Fernanda and Francisca Pandaquila, because the confirmation of the judgment appealed by the defendants involves the holding that its reversal and the acquittal of said defendants be denied, as also the amendment to the complaint is considered improper for the reasons above stated and because there is no legal provision which authorizes its admission under the circumstances. In affirming the judgment it is not possible to grant the motion to amend the complaint; on the contrary, it must necessarily be understood that said motion is denied.

By virtue of the foregoing considerations the assignment of errors imputed to the judgment appealed from were answered or refuted; and with regard to the jurisdiction of the judge who tried the suit in the court below, it appears that said judge, Mr. Cui, heard this and other cases of the court of La Laguna by virtue of express authority of the Executive, and entered the judgment therein according to the provisions of Act No. 867.

In view, therefore, of the reasons above stated, we are of the opinion that the judgment appealed from should be affirmed, except only in so far as it orders the return of the fruits, or the value thereof, as appears in said judgment, with the costs against the appellants.

Arellano, C. J., Mapa, Johnson, and Willard, JJ., concur.

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