

MANUEL JIMENO ET AL., PLAINTIFFS AND APPELLEES, VS. LOPE GACILAGO, DEFENDANT AND APPELLANT.*G.R. No. 4859. August 18, 1909*

Ponente: TORRES, J.

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On the 7th of June, 1905, Manuel Jimeno, Clara Jimeno, Emilio Jimeno, Filomena Jimeno and her husband, Salvador Trono, filed a complaint with the Court of First Instance of Occidental Negros, alleging: that by means of a public instrument which was attached to the complaint a contract for partition of property had been entered into between them and Lope Gacilago; that, according to the possessory information, the hacienda or land partitioned between both parties is situated in the pueblo of Binalbagan, Occidental Negros, and is bounded on the north and east by the lands of Bias Gerona and the Pangiplan River; on the south by the said river and the lands of Agapito Gayacao, Pedro Labayen and Bias Gerona; on the southeast by those of Placido Insay, Vicente Librado and Alvaro Gigantoca; on the west by those of Genoblasa, Hipolito Orendain and Inocentes Grecia; and on the northwest by those of Chino Jose Gonzalez; that the defendant, Gacilago, is in possession of all the property described in the instrument of partition, but, with the exception of two cocoanut groves described in clause 7 thereof, he refuses to deliver to the plaintiffs, as per agreement, the portion that pertains to them; that the defendant, Gacilago, refuses to comply with the terms of the said instrument, under the pretext that clause 2 thereof is slightly obscure, the obscurity being due to erroneous data furnished by the defendant himself, consisting in the inverted placing of the words north and south used in said clause, which should have been stated in the reverse order, as may be easily inferred from the text of the said instrument; and that, by reason of this act of the defendant, the plaintiffs have suffered loss and damages to the extent of P600, wherefore they prayed that judgment be entered against the defendant compelling him to comply with the terms of the attached instrument of partition, and that the plaintiffs be allowed damages, sentencing the defendant to pay the costs in addition.

After the demurrer presented by the defendant, Lope Gacilago, had been withdrawn, his counsel on the 28th of August, 1905, answered in writing to the complaint and denied each and every one of its allegations with the exception of those contained in paragraphs 1 and 2 of the same, which he admitted as true; and, as a defense, he alleged that the defendant had strictly complied with everything stipulated in the public instrument of partition to which the complaint referred, and for said reason he prayed the court to absolve him of the same and to sentence the plaintiffs to pay the costs.

At the trial of the case evidence was adduced by both parties, and the documents exhibited by them were made of record; on the 2d of March, 1908, the lower court entered judgment, holding that clause 2 of the said contract should be understood as stated in the decision; that the word south should be used instead of the word north, and where north appears written the word south should be placed, and it sentenced the defendant to pay the plaintiffs the sum of P600 as rental for two years or the last crops of the portion of the property pertaining to them, and the costs of the proceedings. The defendant excepted to said judgment, and on the 3d of March moved for a new trial on the ground that the conclusions contained in the said judgment were manifestly and evidently contrary to the

weight of the evidence; the motion was overruled on the 4th of April following, to which the defendant excepted and presented a bill of exceptions which was approved by the lower court on the 18th of the said month of April, 1908, and forwarded to this court together with the original documents and the evidence adduced by both parties.

The principal question involved in the appeal before us is merely of fact, that is, whether in the preparation of the second clause of the instrument of partition of certain undivided property, dated August 29, 1904, an error was committed in the designation of the portions divided up with relation to two of the cardinal points of the horizon, and to the true situation of the estate that is the subject of the division.

The fact was also alleged that the plaintiff had agreed to the proposition of the defendant whereby he was to be granted a small parcel of a capacity of 4 or 5 cavanese of seed in the central or intermediate part of the land that belonged to the plaintiffs on the west to serve as a means of communication between the two parcels, north and south, that went to him; but said fact was not admitted; on the contrary, it has been positively denied by the said plaintiffs.

It appears stipulated in clause 2 of the said instrument that the hacienda Filomena de Payao should be divided into three parts between the plaintiffs and the defendant; the northern and southern part of the estate to go to, the defendant, Gacilago, and the central part of the same, lying between the said hacienda road and the old road to the pueblo of Soledad, both of which run parallel from east to west through the central part of the property, to go to the plaintiffs.

If the old road which runs from east to west to the pueblo of Soledad is found toward the north, in view of the situation of the land that forms said hacienda in its entirety with relation to the four cardinal points of the earth, and if the hacienda road is on the south as shown on the map, Exhibit A, which the defendant himself admitted to be a true and faithful one to the best of his knowledge and understanding, declaring that he had drawn it himself (folio 42), it is unquestionable that a material error was committed in the preparation of the aforesaid clause 2 of the instrument of partition, and in so considering it, the court below acted rightly and in accordance with the law.

As to the assignment of a parcel of 4 or 5 cavanese in extent in the central part adjudicated under the agreement to the plaintiffs, and denied by the latter, it does not appear duly proven, nor is it mentioned in the document executed before the notary wherein the parties agreed to the final division of the estate and other property which so far had not been divided.

Allegations not duly substantiated by the record can not prevail against the validity and efficiency of the stipulations contained in authentic documents, whether they be public or private, inasmuch as whatever may have been agreed to in a contract, where it does not violate the prohibitive provisions of the law or public morals, is binding upon the contracting parties, (Arts. 1254 and 1278, Civil Code.)

If the alleged assignment of a portion of the land that went to the plaintiffs for furnishing communication between the two separate portions adjudicated to the defendant had been stipulated between them, it would so appear in the instrument of partition, and when such a cession does not appear therein, it is because it was not the subject of an agreement between the contracting parties.

When the terms of a written contract are clear and leave no doubt, the literal sense of its stipulations should be observed, and there should not be understood as included therein things and cases different from those with regard to which the persons interested intended to contract. (Arts. 1281 and 1283, Civil Code.)

From the foregoing it is inferred that there was no just or lawful reason for failure to comply with the stipulations of the written contract in question; therefore, the party that failed to fulfill the agreement is responsible for the loss occasioned to the other party, and is obliged to indemnify him in accordance with the law and the principles of

justice.

For the above considerations, and in view of the fact that the judgment appealed from is in accordance with the law and the merits of the case, it is our opinion that the same should be, and is hereby affirmed with the costs against the defendant appellant. So ordered.

Arellano, C. J., Johnson, Carson, and, Moreland, JJ., concur.

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