

TOMAS OLINO, PLAINTIFF AND APPELLANT, VS. MARIANO MEDINA, DEFENDANT AND APPELLEE.*G.R. No. 4952. March 29, 1909*

Ponente: TORRES, J.

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On May 24, 1907, Tomas Olinó filed a complaint with the Court of First Instance of Capiz against Mariano Medina, in which he alleged that, in consideration of the sum of P175, which the plaintiff owed the defendant from about February, 1905, he mortgaged a parcel of rice land owned by him and his sister Albina Olinó. The land is situated in the barrio of Sibaguan, pueblo of Capiz, the capital town of the province, and has a seeding capacity of about three and one-half cavanés, and its boundaries are given in the complaint. Among other conditions it was stipulated that, after the harvesting of two crops of palay, to be reckoned from the year in which the contract was made, the possession of the land should be restored to the plaintiff; that in the said month of February, after the execution of a private document, delivery was made of the land to the defendant; that the time for the redemption of said land was fixed for the period subsequent to the month of November, 1906, but the defendant has unjustly refused and now refuses to permit the said redemption in spite of the demands privately made on various occasions by the plaintiff, and of the delivery or payment of the redemption price, and by reason of such unjust refusal to accede to the redemption the defendant has caused the plaintiff damages to the amount of P600; wherefore said plaintiff prayed for judgment against the defendant for the return of the possession of the mortgaged land, the payment of P500 as damages caused, and the costs of this action, the plaintiff undertaking to pay the defendant the sum of P175 due him.

In his answer to the complaint the defendant entered a denial to each and every one of the essential allegations thereof, and prayed the court that he be absolved from the complaint with the costs against the plaintiff.

The case being heard, the evidence of both sides having been submitted, and the documents presented by the defendant together with the translations thereof having been made part of the record, the court rendered judgment on July 9, 1908, absolving the defendant from the complaint and sentencing the plaintiff to the payment of the costs.

The plaintiff excepted to said judgment and moved for the reopening of the trial on the grounds that the findings of fact therein were manifestly against the weight of the evidence and that the judgment was contrary to law. His motion was denied, the petitioner excepted to the ruling of the court, and the corresponding bill of exceptions was certified and forwarded to the office of the clerk of this court.

The plaintiff claims the restitution of a piece of land which he delivered to the defendant as security for the sum of P175 which he had received from the latter, on the ground that the period within which he could recover the land had already expired, the plaintiff, moreover, obliging himself to pay him said sum.

The defendant denied the allegations of the plaintiff and testified that he acquired the land, with the knowledge and consent of the owner thereof, the plaintiff herein, by absolute purchase from Isidora or Teodora Rendon for

the sum of P175.

It appears fully proven in the records that the plaintiff Tomas Olino, at the request of Isidora Rendon, made an effort to procure money wherewith to redeem the land which he had sold to the latter on August 4, 1902, with pacto de retro. He found Mariano Medina ready to furnish the money to redeem the land, according to Olino, or according to Medina, to purchase it outright. Certain it is that they came to an agreement and went to see Isidora Rendon, the original purchaser, who, by her own statement, received from Tomas Olino the said amount for the redemption of the land, in the presence of Mariano Medina who had furnished it and had drafted the document in the local dialect. This document was signed by Rendon, and its translation into Spanish (English), is as follows:

"I indorse these documents to Mariano Medina, for the same amount of one hundred cavanes of good quality, clean, white palay, which he himself shall deliver to me within two weeks from this date, binding himself to the payment of damages in case of delay. I hereby acknowledge receipt from Mariano Medina of the sum of 150 pesos, Philippine currency, which he deposited with me or left in my possession as security for the purchase from me of the land of Tomas Olino. Capiz, January 22, 1905.-(Sgd.) Teodora Rendon.-Translated from Visayan into Spanish (English)."

The contending parties, including the witness Isidora Rendon, all agree that these transactions were had between them; they only disagree in that Olino avers that he had borrowed from Medina the sum of P175 to redeem his land from Isidora Rendon, who had bought it years previously under pacto de retro, and that he afterwards delivered the land to his creditor as security for his debt. On the other hand, Medina contends that he had acquired the land in question by absolute purchase from Isidora Rendon, who had bought it from its Original owner, Tomas Olino, and, conditioned on the execution by Rendon of the proper instrument therefor, she indorsed the document relating to said land, moreover he denies that he had entered into the contract alleged by Olino, although the latter had received from him a gratuity of P20.

From the facts alleged and proven at the trial of this cause it is gathered that there was entered, into between Medina and Olino either a contract of sale of said land with the right of repurchase, or one of loan of P175 secured by the land in question.

Inasmuch as we are in doubt as to which of the two contracts it was by reason of which Medina furnished the P175 with which Olino redeemed his land from Isidora Rendon, and Olino in turn consented to the transfer of the land to Medina, the party who furnished the money, we elect to consider that said contract was that of loan, because such a contract involves a smaller transmission of rights and interests, and the debtor does not surrender all rights to his property but simply confers upon the creditor the right to collect what is owing from the value of the thing given as security, there existing between the parties a greater reciprocity of rights and obligations. (Art. 1289, Civil Code.)

The trial judge himself, in paragraph 9 of his judgment, printed at page 5 of the bill of exceptions, says:

"We admit that the fact that both the plaintiff and the defendant went to the house of Teodora or Isidora Rendon to pay her the sum of P175, can be construed in the sense that Olino did not wish to dispose of his land, but that he borrowed money from Medina in order to redeem the property he had sold to Teodora Rendon, and that he simply turned the land over to Medina as security for the obligation he had contracted in favor of the latter."

On the theory that Olino had borrowed P175 from Medina in order to redeem his land from Isidora Rendon, and in the absence of conclusive evidence to prove that Olino had in his turn sold the land to Medina, the latter, after the payment by Olino of the sum due him, is not entitled permanently to retain the land nor to redeem the same.

If the statement of Medina were true, to the effect that he had purchased the land from Isidora Rendon outright,

inasmuch as the latter was not the exclusive owner thereof, and upon its redemption she was no longer even a temporary owner and could not have transmitted to Medina, the purchaser, any right whatever, it is seen that the defendant Medina, not being the lawful owner of the property, is not entitled to hold it nor to retain possession thereof permanently, provided that Olino pay the sum of P175 due him.

The word "indorse" (endoso), used in document No. 1, that was signed by Isidora or Teodora Rendon signifies nothing more than the transfer of the documents relating to said land, to-wit, the property in controversy herein; the word, however, does not mean that the land was absolutely sold to Medina.

In his sworn declaration Medina set forth that he acquired the land from Rendon, and for that purpose the latter signed the indorsement and obligated herself to execute an instrument of sale. This she was not able to do, because it was essential that the same should bear the signature of Tomas Olino which did not appear, although the defendant himself stated that Olino's wife went to him and endeavored to redeem the land from him, but he told her that the transaction should be made by Olino himself. By these and other contradictory statements of Mariano Medina, it becomes apparent that he recognized that Tomas Olino still had some rights over the land.

Therefore, on the supposition that the contract between the parties was not one of sale but one of loan, in spite of the denial of the defendant, and seeing that the instrument alleged by the plaintiff does not exist, for if Tomas Olino did not sell to Mariano Medina the land held by the latter, and nothing to the contrary appears on the records, and Medina himself states that he bought it, not from Olino, but from Isidora Rendon, it follows from the facts of record that the sum of P175 was given by Medina to Olino in the nature of a loan secured by the possession of the land in question by the creditor, and therefore, the latter is entitled to collect his credit and at the same time is under the obligation to return the land to its owner upon receipt of the above-mentioned sum. (Arts. 1157, 1158, 1162, 1754, Civil Code.)

In view of the above considerations we are of the opinion that the judgment appealed from should be reversed, and, holding that the contract entered into by the parties was one of loan, we hereby sentence Mariano Medina, upon payment to him by Tomas Olino of the sum of P175 due, to return to said Tomas Olino the land belonging to him and at present held by Medina, without special ruling as to costs; and, inasmuch as there is no evidence that the defendant has held possession of the land in bad faith, no provision is made herein for the payment of damages.

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

DISSENTING
WILLARD, J.,

Prior to the 22d of January, 1905, the day when Isidora Rendon received the P175, she was the owner of the land subject only to the right of Olino to repurchase it. This right did not expire till the 4th of August, 1906. The nature of the transaction of the 22d of January, 1905, should be decided relying on the document then executed rather than upon the oral evidence of the plaintiff. That document shows that there was no repurchase nor redemption by Olino. The rights acquired by Rendon by the contract of 1902 were not then extinguished. They were transferred to Medina. The use of the word endoso proves this.

If there were a redemption by Olino and a new contract between him and Medina, there would be no reason why, the debt having been extinguished, the papers evidencing it should not have been delivered to Olino. The fact that they are now found in the possession of Medina shows that he is entitled to the rights created by them. The testimony of Medina and Rendon supports this theory.

Olinio testified that, after the transaction with Rendon he made a written contract with Medina by which he had the right to redeem the land at any time after two years. The evidence clearly supports the finding of the court below that no such written contract was made, and this court is of the same opinion. Exactly what the new contract between Olinio and Medina was, the court does not state, except to say that it was a loan with the land as security. The time for the payment of the loan is not stated.

Why Medina should have been willing to give up the written contract purchased from Rendon, under which he would become the owner of the land in a year and a half if Olinio did not repurchase, and accept in place thereof a verbal agreement by which he loaned Olinio P176, for an indefinite term without any security at all, does not appear. I say without any security, for no authorities are cited by the court to show that real estate may be the subject of a pledge, or that a mortgage may be created thereon by mere delivery of the possession.

It appears from the case that Rendon desired to receive her money, saying that the land produced nothing. Olinio was not able to pay her, but he was able to find a person, Medina, who would buy her interest. The result of the transaction was that Medina took the place of Rendon and that Olinio still had more than a year and a half in which to buy from Medina,

It may be that, on the 22d of January, 1905, Medina bought Rendon's interest in the land and at the same time paid Olinio P25 for a surrender by him of his rights to repurchase, thus becoming the absolute owner. This would explain his testimony as to the execution of a deed in which both Olinio and Rendon should join. But, however this may be, he bought at all events the rights of Rendon, and Olinio, not having repurchased the property before August, 1906, was after that date the owner. I think that the judgment should be affirmed.

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