

ESTEBAN RANJO, PLAINTIFF AND APPELLEE, VS. GREGORIO SALMON ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 5001. March 15, 1910*

Ponente: TORRES, J.

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On the 27th of July, 1907, Esteban Ranjo filed a written complaint with the Court of First Instance of Ilocos Norte, against Gregorio Salmon, Francisca Gonzalez, and Valeriano Tomas, alleging that he was the owner, by inheritance from his deceased mother, Dorotea Adiarte, of a tract of land used as a truck garden and a rice field, situated in the barrio of Rangtay, pueblo of Pasuquin, Ilocos Norte, with an area of about 2 hectares and 43 ares; that the property is bounded on the north by a path and land owned by Calixto Luna; on the east by lands belonging to Ubaldo Tagabilla, Eugenio Bias, and Timoteo Caliba; on the south by lands of the same Caliba, Agustin Menor, Macario Lagac, Cipriano Daquigan, Eugenio Bias, and a sandy tract; and on the west by another sandy tract; that in 1900 (the exact date being unknown) he pledged the said land to Francisca Gonzalez for the sum of 100 pesos, with a right to redeem it upon repayment of the amount; that in 1904 Gonzalez transferred her rights in the said land upon the said conditions to Valeriano Tomas, who in 1906 transferred his right to Gregorio Salmon for the sum of P140; that the defendants having been amicably requested to return the land in question to the plaintiff, upon payment of the last-mentioned amount of the pledge made in favor of Salmon; that the latter refused to comply with the request, wherefore the plaintiff prayed that judgment be rendered ordering the defendants to deliver the above-described land to the plaintiff, upon repayment of P140 to Gregorio Salmon, and to pay the costs.

Gregorio Salmon having been summoned, made written answer to the above complaint, stating that the lands mentioned therein were not the property of the plaintiff when they were sold to him by Valeriano Tomas, who was their exclusive owner, and therefore he prayed that judgment be rendered in his favor, and that the plaintiff be adjudged to pay the costs.

The other defendant, Francisca Gonzalez, stated in her answer that she admitted as true the facts on which the plaintiff based his complaint, and that she therefore agreed to the redemption of the land described therein, and prayed that judgment be rendered in favor of the said plaintiff with the costs against the defendant Salmon.

Valeriano Tomas died on July 28, 1907, as appears from Exhibit B of the plaintiff.

After the hearing of the case and the evidence adduced by both parties, the documents exhibited having been made part of the record, the judge, on the 20th of July, 1908, rendered judgment therein, sentencing Gregorio Salmon to deliver the land claimed to the plaintiff Esteban Ranjo, upon repayment of P140, and to pay the costs. Counsel for the defendant Ranjo excepted to this decision, and asked for the annulment thereof on the ground that it was not sufficiently sustained by the evidence, that the findings deduced from the facts were clearly and manifestly contrary to the weight of the evidence, and stated that, should his petition be denied, he excepted thereto and intended to file his bill of exceptions in the usual way; the motion was denied and the annulment

asked for was declared to be improper, and his notice of intention to submit his bill of exceptions in the usual way having been admitted, the said bill of exceptions was prepared, certified, and approved, and thereafter filed with the clerk of this court.

It having been proved that Valeriano Tomas was not the owner of the land claimed by Esteban Ranjo, the allegation of Gregorio Salmon that it belonged to him can not be supported, since he acquired it by purchase from the said Tomas, who was not the owner.

Only the owner can dispose of property, without any other limitations than those prescribed by the law, and he has a right of action against the holder or possessor thereof to recover it. (Art. 348, Civil Code.) If Valeriano Tomas was not the owner, but a mere mortgage creditor of the land in question, he could not sell it nor convey any' right of ownership to the defendant Salmon notwithstanding the document exhibited by the said defendant and marked "A."

Article 1559 of the Civil Code reads as follows:

"A creditor can not appropriate to himself the things given in pledge or mortgage, nor dispose of them."

What the creditor is entitled to do, after the principal obligation has become due, is to ask for the alienation of the things constituting the pledge or mortgage, in order to secure reimbursement. (Art. 1858 of the same code.)

Valeriano Tomas, in order to obtain the 125 pesos he had loaned to Francisca Gonzalez, by way of mortgage on said land, conveyed his rights to Gregorio Salmon for the sum of 140 pesos, which was paid to him by the latter. Valeriano Tomas testified under oath to this effect in the document presented by the plaintiff (Exhibit A), which document was ratified before a notary, the contents of which confirm the statements made by Francisca Gonzalez in her written answer to the complaint, agreeing to the pretensions of the plaintiff, Ranjo, and directly contradict the contents of the document exhibited by the defendant Salmon as evidence of his allegation that he is the owner of the said land. The latter allegation is wholly unfounded, inasmuch as, if his title of ownership is derived, according to his answer to the complaint, from the right of the said Valeriano Tomas, it having been proved that the latter was not the owner of the land, but a mere creditor with the right to recover his credit from the proceeds of the sale of the property, it is undisputable that he could not dispose of the land nor sell it absolutely and finally to the defendant Salmon, as the latter pretends, basing his pretension on the said document of sale, which is notoriously inefficient because it is a contract wholly null and void.

The other defendant, Francisca Gonzalez, stated in her sworn testimony that after having held the land under mortgage for four years, and being in need of money, after having notified its owner Esteban Ranjo, she in turn mortgaged it to Valeriano Tomas, from whom she received 125 pesos; no new document was then executed, but she simply indorsed the old one executed by her and Esteban Ranjo; the latter in his sworn testimony confirmed Gonzalez's statements and added that he had inherited the said land from his mother, and that it is at present in possession of the defendant' Salmon, because the former mortgagee, Valeriano Tomas, had mortgaged it to him; and that, as Tomas assured him that upon paying Salmon the 140 pesos received as loan he could recover the land without any objection, he went to see the defendant Salmon (because Tomas was sick), to redeem the land, and presented to him a letter from Tomas; but Salmon refused to receive the money, saying that he wanted to deliver the land to the same person from whom he had received it.

From the above-stated facts it appears that the document evidencing the mortgage, and which Francisca Gonzalez avers was executed and indorsed to Valeriano Tomas, must have been delivered to the last mortgagee, Gregorio Salmon; and the latter having failed to exhibit it at the trial (since the said document contains and shows the successive mortgages to which the land in question has been subjected), it must have been because it did not suit

the defendant Salmon to produce such a document, which is evidently incompatible with the document of sale exhibited by him, the facts related by the plaintiff and Francisca Gonzalez being moreover corroborated by the notary, David Cleto, and by the witness, Alejandro Bias.

The character of the plaintiff, as owner of the land, is denied and questioned, but the defendant does not take into account the fact that he himself acknowledges and admits that he had acquired it from Valeriano Tomas; and, as it is a fact that the latter had in turn received it from Francisca Gonzalez, in whose favor it was mortgaged by Esteban Ranjo, it is undisputable that the first and true owner of the land mortgaged is the plaintiff, inasmuch as it has not been shown that it was Valeriano Tomas who, according to the defendant, sold and conveyed to him the land in controversy.

The act of selling or alienating real or personal property to another person conveys the ownership of the vendor as to the thing sold; one who is not the owner can not perform any act which would transfer the ownership, nor could his pretended transferee acquire any rights in the property, because his vendor did not convey to him any right of ownership.

Therefore, the judgment appealed from being in accordance with the law and the merits of the case, it is our opinion that it should be and it is hereby affirmed, with the costs against the appellant. So ordered.

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

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