

ALFONSO DEBRUNNER, PLAINTIFF, VS. JOAQUIN JARAMILLO, DEFENDANT.

G.R. No. 5041. December 22, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

This is an original action of mandamus brought in this court by the plaintiff against the defendant, who is the registrar of property for the city of Manila. The prayer of the complaint is as follows:

"That by virtue thereof the petitioner requests the honorable Supreme Court to order the defendant, as registrar of property of this city of Manila, to enter upon the margin of the entry of inscription of the sale with right of repurchase, the marginal note of consolidation in favor of the plaintiff."

The defendant demurred to the complaint and the case is now before us for the resolution of that demurrer.

On the 28th of December, 1907, Doña Concepcion Perello, the widow and as administratrix of the estate of Don Ramon Pazos y Carballido, sold and conveyed to the plaintiff a tract of land in the city of Manila for the sum of P6,000. The deed of conveyance contained a clause giving the vendor the right to repurchase the property within two years on the payment of P6,000. It provided also that the vendor should remain in possession of the property as tenant of the plaintiff, paying P50 a month as rent therefor, and that she should pay the taxes and insurance and keep the property in repair. The sixth clause of the deed is as follows:

"Sixth. It is also agreed that in case of the failure for two consecutive months, to pay the rent stipulated, and the nonfulfillment of any of the other obligations to which I bind myself as tenant, in the name of the estate or its successors, the lease shall be considered as terminated, and the period fixed for the repurchase shall be deemed as expired, as if it had really become due."

The vendor did not pay the rent as agreed, nor the taxes, nor the insurance, and the plaintiff commenced an action in the court of a justice of the peace to recover possession of the property. Judgment was entered therein by default on the 26th day of August, 1908. The plaintiff presented a certified copy of this judgment to the registrar of property and asked that he enter upon the margin of the inscription of the deed a note of consolidation. This the registrar refused to do, alleging that the time for the repurchase stipulated in the deed had not expired; that the rental contract was not the object of the original inscription, but rather the deed itself; and that after the deed had been recorded a third person had caused to be recorded an attachment of the interest of the widow in the land, claiming that it was conjugal property.

From this ruling of the registrar the plaintiff appealed to the Court of Land Registration in accordance with the provisions of Act No. 700, paragraph 4. That court postponed the decision of the appeal until the decision by this court of a case pending herein which in the view of that court involved the same question. The plaintiff then apparently forsaking his appeal, commenced this original action.

Several questions are presented by the record which we do not find it necessary to decide. For example, we are

not called upon now to decide the question presented in the Court of Land Registration as to whether Act No. 1108 has repealed those provisions of the Civil Code which relate to conventional repurchase. Nor is it necessary to decide whether the plaintiff, having taken an appeal to the Court of Land Registration, has a right, while that appeal is pending, to institute another independent action of this kind. The case must, in our opinion, be decided upon the ground that mandamus will not lie against the registrar of property to compel him to decide in favor of the plaintiff a question as to whether the right of the vendor to repurchase the property has expired.

That the duties of a registrar of property, when he is acting under the Mortgage Law, are to a large extent judicial, is apparent from various provisions of that law, for example articles 18 and 100 and 101, which are as follows:

"ART. 18. Registers shall determine, under their responsibility, the legality of the documents by virtue of which the record is requested, and the capacity of the parties interested by what appears from said documents.

"All the documents issued by judicial authorities shall also be determined by them under their responsibility and for the sole purpose of admitting, suspending, or refusing their record or entry.

"There shall be no further remedies than those mentioned in this law against the suspension or refusal of a record or cautionary notice, judges or courts by virtue of judicial documents not being permitted to compel the registers in any other manner to record or enter,

"ART. 100. Registers shall determine under their responsibility, the legality of documents by virtue of which cancellation is requested, and the capacity of the parties thereto.

"ART. 101. They shall determine in the same manner documents issued by judicial authorities, for the sole purpose of making' or not making the cancellation of some record in the registry.

"Against these determinations, and those mentioned in the preceding article, the remedies mentioned in article 06 of this law may be taken."

That he is personally responsible for a mistake in his view as to the legal effect of documents presented to him, is apparent from article 313 and the following articles of the law.

When the plaintiff requested the registrar to enter this note of consolidation, several questions were presented to the latter for his decision. One was, whether the express provision of the contract, that the vendor should have two years within which to repurchase was modified by the subsequent provision limiting that time in case of failure to pay the rent. Another was whether the evidence presented to him was sufficient to show that the rent had not been paid. The only evidence presented was the judgment of the justice of the peace. That judgment, by the terms of the law, was not conclusive against the vendor. Notwithstanding that judgment, in any further litigation she would be entitled to show, if she could, that as a matter of fact the rent had been paid and that she had not violated any of the conditions of the deed. Other questions might be stated which the registrar was called upon to decide, all of which involved the exercise of his judgment as to the legal effect of the acts and contracts, of the parties.

That in such a case as this mandamus will not lie, is well settled. The case of *The United States vs. The Commissioner* (5 Wall., 563), was an action of mandamus brought against the Commissioner of the General Land Office to compel him to issue a patent for certain lands.

The Supreme Court of the United States there said:

"Many of the acts of the parties, and of the officers, the registers, and commissioners of the Land Office, may be valid or void, depending upon the facts and circumstances attending them at the time, and which rest in parol, and are the proper subject of proofs. We have referred to them for the purpose of showing that this case is not one to which the remedy by mandamus can be applied. It calls for the exercise of the judicial functions of the officer, and these of no ordinary character. Indeed, however eminent it is plain no intelligible decision

could be made without the aid of facts not within his knowledge, nor attainable by proofs consistent with the proceedings in the case of mandamus. The duty is not merely ministerial, but involves judgment and discretion, which can not be controlled by .this writ."

In the case of *Merchant vs. Del Rosario* (4 Phil. Rep., 316) this court said:

"The writ of mandamus can not be used to control the discretion of a judge or to compel him to decide a case or a motion pending before him in a particular way under such circumstances as appear in this case."

In *Manotoc vs. McMicking* (10 Phil. Rep., 119), the court said at page 121:

"An officer can not be compelled, by means of a writ of mandamus, to perform an act not specially prescribed by the law as one of the duties inherent in his office, and in no case is there any provision of law imposing upon a sheriff the obligation to levy upon a specific piece of property when the writ of attachment issued is in general terms against the property of the debtor.

"Moreover, such an argument contains the defect of taking it for granted that whatever the plaintiff thinks should be attached is really subject to execution, while this question may very well be the object of controversy; and, as a matter of fact, such appears to be the case herein, judging by the various petitions presented by the parties before the filing of the amended complaint. The sheriff may, with more or less reason, believe that the thing in question is exempt from execution, in which case a question of law arises which, by reason of its nature, can not clearly be a matter for the application of the remedy of the writ of mandamus."

Neither the vendor of the property nor the person who has attached the interest of the widow therein is a party to this proceeding and any judgment which might be entered herein against the registrar would have no binding effect upon either one of these persons, who are the ones directly interested in the property. Whether in any case mandamus would lie against the registrar of property when he is acting under the Mortgage Law, is a question which we do not decide. We limit our decision to the facts of this case.

The demurrer is sustained and the plaintiff is given five days within which to amend his complaint. If no amended complaint is filed in that time, the clerk, without further order of the court, will enter a judgment acquitting the defendant of the complaint, with the costs against the plaintiff. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and Carson, JJ., concur,
Tracey, J., concurs in the result.

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