

THE HEIRS OF JUMERO, PLAINTIFFS AND APPELLANTS, VS. JACINTO LIZARES ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 5051. September 27, 1910*

Ponente: ARELLANO, C.J.

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Under the name of the heirs of Jumero, fifteen persons, as the grandchildren and great grandchildren of Benedicto Jumero, demand the restitution of a piece of land which is, and has been for the past forty years, in the possession of Jacinto Lizares. This land has an area of five hectares and sixty ares, and adjoins on the north, east, and west, the property of Aniceto Lacson, and on the south, that of Gregoria Vinco. It is alleged in the complaint that this land belonged to Benedicto Jumero, and that he willed it to his four children, all now deceased as well as the said Jumero, named Luisa, Felix, Florentino, and Pedro, and that the plaintiffs, grandchildren and great grandchildren, descend from the three last mentioned. The only descendant of Luisa, Gregoria Meruegos, is not a party to the suit and therefore appears as a defendant together with Jacinto Lizares.

At the conclusion of the trial, Florentino's children, named Anatolio, Hilaria, and Felisa, having testified as witnesses for the defendant, Lizares, in opposition to the allegations of the complaint, were likewise therein included as defendants, by an amendment authorized by the court. So that, of the heirs of Benedicto Jumero, the descendant of one entire branch, Luisa, and three of those of another branch, that of Florentino, impugned the complaint and take no part in the claim for the restitution of the land of their common predecessor in interest.

The following facts are admitted: First, that all the heirs named Jumero are actually the descendants of Benedicto Jumero; second, that the land, which is the subject of the suit, passed into the possession of Jacinto Lizares, for the sum of 50 pesos, about forty years before; and third, that the reason for this transfer was the fact that Nicolas Jumero, a son of Felix, was drafted for the army, and to secure His release from the military service, or to pay the attorney who was to negotiate the release, the 50 pesos were required.

The whole question involved is whether the 50 pesos were received as a mortgage loan, as the plaintiffs claim, or as the price of sale, as maintained from the beginning by the defendants, Jacinto Lizares and Gregoria Meruegos, and subsequently by Anatolio, Hilaria, and Felisa Jumero, the latter represented by her husband, Basilio Alferio. The plaintiffs claim that the land was delivered under mortgage in order that Lizares might have the usufruct until it should be redeemed through the payment of the 50 pesos. The defendants assert that the land was sold outright to Lizares for the price of 50 pesos.

The Court of First Instance of Occidental Negros decided the case in favor of the defendants and absolved them from the complaint. The plaintiffs appealed.

Having forwarded a bill of exceptions, with a right to a revision of the evidence, two errors are alleged in this instance against the judgment of the lower court.

First. For having admitted, notwithstanding the objection of the plaintiffs, the testimony introduced by the

appellees relative to the purchase of the land in question by Jacinto Lizares.

Second. Because the trial judge entertained doubt as to the character of the contract, by virtue of which the defendant, Jacinto Lizares, possesses the land in question, and because, by reason of this doubt, he absolved the defendants, and did not declare that there was a preponderance of evidence in favor of the plaintiff appellants.

With respect to the first assignment of error, it is alleged that, as the question involves the purchase of real estate, the testimony of witnesses is not admissible, and that at the time the land in question was supposed to have been purchased, the laws of the Partidas were in force, and, in accordance with law 6, title 5, of the 5th Partida, it was necessary for the validity of the contract that the sale be made by a public instrument. The law cited provides that the purchase and sale may be made in two ways - by a public instrument, and without one. The first is when the vendee says to the vendor: "I wish that a document of sale be made." Such a sale, although the vendee and the vendor agree on the price, is not completed until the instrument is made and executed, because, before that is done, one or the other may repent. The sale may be made without an instrument when the vendee and the vendor both agree upon the price thereof and exchange the thing for the price, without mentioning the instrument.

The first assignment of error is therefore without foundation. In accordance with the legislation of the Partidas, patterned after the Roman Law, the contract of purchase and sale is eminently consensual and, consequently, only requires consent for its perfection. In order that an instrument be necessary, it was required that this form should also be the subject of consent and that the validity of the contract be made dependent thereon: I wish a bill of sale to be made of the thing sold, was what the vendee should say to the vendor, according to the law cited, in order that he might not be bound until after the execution of the instrument.

As to the second assignment of error, it is true that the trial judge while in doubt, and by reason of his doubt, which still existed after weighing the contradictory testimony, decided the suit in favor of the defendant. In so doing, he committed no error whatever, but, on the contrary, complied with the second paragraph of article 6 of the Civil Code, which provides:

"When there is no law exactly applicable to the point in controversy, the customs of the place shall be observed, and, in the absence thereof, the general principles of law."

And it is a general principle of law that, in case of doubt, the condition of he who possesses is the better one. The defendant in whose favor the doubt was decided is the possessor.

But, in reality, it was not a case of doubt, neither with respect to the law nor the facts adduced by the witnesses, whose testimony, rationally weighed, does not show an evident preponderance of proof in favor of the plaintiffs, but all to the contrary.

By law, in conformity with article 448 of the Civil Code, this case could not but be decided in favor of the defendant.

"The possessor by virtue of ownership has in his favor the legal presumption that he holds possession by reason of a sufficient title and he can not be forced to show it."

The defendant, Lizares, who has possessed the land in litigation for forty years, alleges that he is in possession thereof by virtue of a title of purchase and sale, which is a title of transfer of ownership; he is, consequently, the possessor under title of ownership, and, in conformity with the law, he has in his favor the legal presumption that he possesses the land under sufficient title and he can not be obliged to produce it. A purchase verbally made gives a perfect title which, with the occupation or possession of the thing, confers ownership upon the possessor, provided that he holds himself out as its owner, until it be proved that he is not. It was incumbent upon the plaintiffs to prove a character distinct from that of owner, and only then could they compel the defendant to prove

(rather than to show, as very properly observes the learned commentator, Manresa) the title which actually confers upon him the status of owner. But the plaintiffs were unable to prove a character distinct from that of owner, by due and sufficient proof of a title under mortgage, or that of antichresis, which latter was certainly unknown in the Philippine Islands before the publication of the Civil Code, except in exceedingly rare cases of pretorian pledges judicially established and approved - and this they were unable to do, for the reason that, as established at the trial, no instrument whatever was executed of the alleged mortgage or of Such an antichresis; and, at all times, at least since the promulgation of the Civil Code, the mortgage and the antichresis, as restrictions of ownership, must necessarily be recorded in writing, under the first paragraph of rule 4 of the transitory provisions of the Civil Code, in connection with articles 1875, 1279, and 1280.

On these grounds alone, the judgment appealed from should be affirmed. But conceding, for a moment, some value to the testimony taken, and on the hypothesis that it were necessary to consider it critically and reasonably in order to reach a conviction beyond all doubt, by a preponderance of evidence offered by one of the litigating parties, even then, and in such a case, this preponderance could not be admitted in favor of the plaintiffs.

The following witnesses testified for the plaintiffs: Dionisio Acodo, as to the delivery of the 50 pesos under security of the land; Gregoria Vinco, Romualda Jumero, and Cosme Jumero, to the effect that, twenty years before, according to the first two, and two years before, according to the last, the defendant, Jacinto Lizares, had negotiated with their predecessors in interest, Felix Jumero and Pedro Jumero, respectively, for the conversion of the mortgage into a sale; Rufino Brasilenio, with respect to what he had heard Jacinto Lizares say to Gregoria Vinco and another woman, that if they had not sued him, he would have allowed them to redeem the land; and Aniceto Lacson, as to his attempt, at the request of Jacinto Lizares, to buy the land for the latter.

Examining all this testimony in detail, the following particular can not but be criticised:

First. Gregoria Vinco, the adjacent owner to the south of the land in litigation, testified that twenty years before Jacinto Lizares sent for her father-in-law, Felix Jumero, who went to the house of Jacinto Lizares in company with his eldest son, Nicolas, the husband of the witness, with her husband's sister, Romualda, and the witness herself, and that there Lizares told them that, as the land was mortgaged, he would add 150 pesos more, in order that the land might be sold to him. When the witness was asked on cross-examination when she had married her husband, Nicolas, she replied: "Thirty-eight years ago; that is, two or four years after he was chosen as a recruit."

Romualda Jumero testified:

"When my brother was drafted, it happened that my father did not have the money to redeem him, and he went and borrowed the sum of 50 pesos from Lieutenant Jacinto Lizares, and gave him that land as security.

"Q. Who told you that your father and Jacinto Lizares made that agreement? - A. I accompanied my father when we went to Lizares's house.

"Q. Who was your companion when you and your father went to Jacinto Lizares's house? - A. We two, my father and I.

"Q. Can you tell us when you went with your father to Lizares's house? - A. About forty years ago.

"Q. How many times were you in Lieutenant Lizares's house to talk about that land? - A. I only went once."

The conclusion is, first, that Romualda Jumero, contrary to the statement made by Gregoria Vinco, did not go to Jacinto Lizares's house, and did not hear what is asserted to have been said about the conversion of the mortgage into a sale; and, second, that this witness testified in regard to the alleged contract of guaranty, made as she herself asserted, forty years before and when questioned at the beginning of her testimony, "How old are you?" replied,

"About forty years, I believe."

The following witnesses testified for the defendant: Gregoria Meruegos, Hilaria Jumero, Anatolio Jumero, Basilio Alferio as the husband of Felisa Jumero, Simon Lizares, and Francisco Lizares. Of these, the first four, and the last, averred that the sale was made by the Jumero family; that is, by the four children of Benedicto Jumero, because of the need to redeem from the military service a son of Felix Jumero, the husband of Gregoria Vinco who, as aforesaid, is an adjacent owner of land to the south of the property in question and the same person who, according to the testimony of Hilaria Jumero, built two houses, a large and a small one, on the land in dispute "and on account of that the suit began." The witness Hilaria Jumero testified that Aniceto Lacson made her an offer to buy the land in question for 700 pesos, inasmuch as it had been acquired very cheaply. This testimony was confirmed by Aniceto Lacson, in rebuttal, who stated that he had offered her 400 pesos, but that Hilaria Jumero replied that Jacinto Lizares had also made her an offer.

Gregoria Meruegos, on cross-examination, stated that she had on some occasion said that the land in question was pledged to Lizares, but that as it had not been redeemed it was the same as though the latter had acquired it by purchase. "If you had not sued me, I would have allowed you to redeem the land," are words that the plaintiffs' witness, Rufino Brasileño, attributes to Lizares. Such are the results obtained from the oral evidence.

With all the testimony of the witnesses, proof was not adduced of the existence of the mortgage contract, which, on the other hand, would not cause the debtor's land to pass to the control of the creditor.

It is not irrational to accept as conclusive the testimony of the defendant's witnesses, although they were partners-on-shares of, or in any other manner dependent on, the defendant, because they testified against their own interest in affirming that the land had been transferred by sale.

It is likely, considering the custom of the locality, and indeed a general one throughout the Islands, that the land was sold with right of redemption, and hence that its redemption should be spoken of as possible or as a mere concession on the part of the creditor; but, on such a hypothesis, it was a redemption which could not be demanded of the vendee, by reason of the prescription acquired, whether the time is computed in accordance with the previous legislation, or whether, as it is strictly proper, such time limit, already expired, be that specified in the Civil Code; inasmuch as, even admitting that it was stipulated that the right to repurchase or redeem should last for an indefinite time, such period is restricted to ten years, under paragraph 2 of article 1508 of the Civil Code, and this period has already elapsed since its promulgation. (Art. 1939, Civil Code.)

The judgment appealed from is affirmed, with the costs of this instance against the appellants.

Torres, Johnson, and Moreland, JJ., concur.

Carson, J., concurs in the result.

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