

CALIXTO MAINIT ET AL., PLAINTIFFS AND APPELLANTS, VS. VICENTE BANDOY ET AL., DEFENDANTS AND APPELLEES.

G. R. No. 5334. January 10, 1910

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

This is a controversy concerning a parcel of land with a frontage of eight and a half meters and a depth of ten meters, bounded as described in the complaint, situated in the town of Santa Cruz, La Laguna, and owned in common by the brothers Marcelo, Calixto, Severo, and Alejandro Mainit; said land was sold under pacto de retro by Marcelo Mainit, the oldest brother, to the spouses Vicente Bandoy and Severina Tec in the year 1896, for the sum of 30 pesos. The foregoing facts were admitted by the contending parties at the trial of the case.

On the 11th of July, 1906, the other three brothers, Calixto, Severo, and Alejandro Mainit (the last named being under 17 years of age was represented by a guardian ad litem), demanded that the said contract be declared null, and that the land sold be returned to them.

The defendants, the spouses Bandoy and Tec, who are the present possessors of the land in question, answered the complaint and acknowledged that Marcelo Mainit had actually sold them the land for the price of 50 pesos.

They also agreed that, among other facts, the following be offered in evidence, to wit: (1) That in addition to the 30 pesos received by Marcelo Mainit, Calixto Mainit also received 20 pesos from the sale of the land; and (2) that both Marcelo's 30 pesos and Calixto's 20 pesos were expended in the care and maintenance of the four brothers, coowners of the land.

After all the evidence had been taken the Court of First Instance for the Province of La Laguna "absolved the defendants of the complaint demanding the nullification of the contract, without special ruling as to costs, without prejudice to the defendants' obligation to pay the plaintiffs the 30 pesos they have offered as an increase over the price paid for the land."

When plaintiffs were notified of the above judgment they moved for a new trial and gave notice of their intention to appeal therefrom. The motion for a new trial was overruled, but it does not appear that an exception was taken. The bill of exceptions has been submitted to this court with the exception to the final judgment only, on appeal, without a review of the evidence.

While the appeal was before this court, one of the appellants, Severo "Mainit, becoming of age, withdrew his appeal for the reason that he had sold his share in the land to said appellees, according to a notarial instrument which was produced. The withdrawal was approved by the court on the 27th of September, 1909.

On appeal, it appears that the following errors have been assigned: (1) that the amounts paid by the defendants had been expended for the benefit of the plaintiffs; (2) that the contract of sale under pacto de retro executed in 1896 by one of the plaintiffs in favor of the defendants was a legal one; (3) that article 1508 of the Civil Code was applicable in this case; (4) in absolving the defendants of the complaint; and (5) in not having declared null the

contract above referred to and in not granting the recovery of possession sought in the complaint.

With regard to the first, as a question of fact, it would be necessary to adhere to what the trial court has stated in its decision; but really, even though it were proven that the price of the sale had been expended for the benefit of the plaintiffs who were then minors, it does not appear that the acts of a guardian are herein involved, nor was the sale of realty in which minors were interested carried out in accordance with the provisions of the law; it therefore results that the sale of the share of the minor owners was not really a legal one, as alleged in the second assignment of error.

It was not a matter of applying the rule of prescription to the action, on account of the lapse of four years since the sale was effected, under the provisions of article 1508 of the Civil Code, inasmuch as an action for redemption is not involved but a question of the nullification of a sale in which three of the coowners of the land sold had taken no part, and for the recovery of possession of the land thus sold; therefore, the third error assigned has also been incurred.

With respect to the last allegations of error, the appellants in their brief have shown the illegality of the transaction in the following statement:

"The vendor of the lot in question was the owner of one fourth thereof; when he sold the whole of it he disposed of, as his own property, the other three fourths that did not belong to him; hence, he sold that which was not his own and which he could not validly transfer; for said reason the sale, as far as the said three fourths are concerned, was illegal and without effect." (Brief, 5.)

In a community of property "every coowner shall have full ownership of his part and in the fruits and benefits derived therefrom, and he therefore may alienate * * *." (Art. 399, Civil Code.) Consequently, the alienation by" Marcelo Mainit of his fourth part was legal, valid, efficient, and produced the effect of substituting the defendants in the enjoyment thereof.

In addition, the latter have also become coowners of another one fourth part which belonged to Severo Mainit, by virtue of the purchase made from him after judgment was rendered, and they at present stand in his place. Therefore, two fourths or one-half of the land belongs now to the defendants, unless Calixto's part has also been acquired, with regard to which no ruling is made. Consequently, there is no reason to recover from them the possession of the land, nor to declare that the sale made by Marcelo Mainit of his part is null and void.

As the judgment finally provides that by the defendants paying the plaintiffs the 30 pesos offered as an increase they may continue in the ownership of the whole land, such ruling can not be affirmed, because it would amount to imposing on the plaintiffs the necessity of effecting a sale and for a determined price, when it is not a case in which a judicial sentence may be imposed against the free consent of the parties to a contract.

In view of the fact that a coownership. is firmly established, between the defendants on the one hand and Calixto Mainit and Alejandro Mainit on the other, an action for nullification or for the recovery of possession can not be maintained. In this case, some of the remedies provided by the Civil Code in favor of coheirs and coowners with respect to the division of the property or the consolidation thereof should be resorted to; none of them, not even by implication, appears to have been applied in this case.

We therefore decide that the complaint as presented should be dismissed; without any special ruling as to the costs in both instances, it is so ordered.

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

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