

**MARIANO GONZALEZ ET AL., PETITIONERS AND APPELLANTS, VS.
ALEJANDRO ROJAS, RESPONDENT AND APPELLEE.***G.R. No. 5449. March 22, 1910*

Ponente: ARELLANO, C.J.

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Mariano Gonzalez, in his own behalf and in the name of his brother and sisters, Juan, Silvestra, Cipriana, and Candida Gonzalez, petitioned for the registration of a parcel of land used for the purposes of a fishery or vivarium, situated in Pitass, barrio of Talipit, in the town and Province of Bulacan, the boundaries and area of which are specified in the application and plan filed, the total area thereof being 16 hectares, 10 ares, 95 centares, and 25 square decimeters, appraised in the last assessment at \$1,650, United States currency.

Alejandro Rojas opposed this petition for registration, alleging that he was the owner of the same fishery that was the subject of the application of Mariano Gonzalez and the copetitioners.

The following facts are admitted: (1) That this land or fishery belonged to the sisters Juliana Samonte and Atanasia Samonte, during their lifetime, who are said to have inherited it from their grandfather, Jose Samonte; (2) that while these sisters were still living, and being coowners of the said land, they leased the same to Mamerto Siaoson on March 21, 1895. There is to be noted in this contract the period covered by the lease, which was for twelve years, so that, beginning on March 21, 1895, it was not to terminate until the same day and month of 1907. It is also to be observed that this contract was executed in the form of a public instrument, registerable in the registry of property, though it does not appear as actually registered therein; (3) that the two sisters, Juliana and Atanasia Samonte, obtained, each one of them, a title of ownership to this land, by halves, on March 26, 1895, both titles being obtained by composition with the Government; (4) that Juliana Samonte left at her death four legitimate children, to wit, Brigido, Matias, Natalia, and Felisa Villanueva y Samonte; and (5) that Atanasia at her death also left three children, Eugenio, Margarita, and Leon Reyes y Samonte.

The petitioners, Mariano Gonzalez, his brother and sisters, alleged, as a basis for their petition, the purchase that they had made from the four heirs of Juliana Samonte and the three heirs of Atanasia Samonte of all the land, and they filed public instruments attesting the respective acquisitions made by them from Brigido and Matias Villanueva y Samonte, as heirs of Juliana Samonte, and from Felix Villanueva, the widower of Juliana Samonte, as the legal representative of his minor children, Natalia and Felisa (authorization therefor first having been obtained from the Court of First Instance of Bulacan), one-half of the said fishery which, during her lifetime, belonged to Juliana Samonte, and the other half, from Eugenio Reyes, as the heir of Atanasia Samonte, and from Brigido Villanueva, as guardian (likewise authorized by the Court of First Instance of Bulacan) of the minors Margarita and Leon Reyes, also heirs of Atanasia Samonte. The respective dates of these contracts of purchase and sale are: July 23, 1902, that of the contract of Brigido Villanueva; July 31, 1902, of the contract of Matias Villanueva and of Eugenio de los Reyes; October 25, 1902, that of Felix Villanueva, widower of Juliana Samonte, as the father and legal representative of his minor children Natalia and Felisa; and May 11, 1903, that of Brigido Villanueva, as the guardian of the minors Leon and Margarita Reyes.

Alejandro Rojas in turn filed as grounds for his opposition two private contracts, one of which he says he made with Felix Villanueva and his wife, Juliana Samonte, on February 24, 1900, and the other with the brothers Eugenio de los Reyes and Leon Reyes on August 22 of the same year. The said Rojas claims to have acquired by purchase, by means of these private documents, the two halves of the land in question, and to prove his acquisition of the first half he filed a contract, a private one, as aforesaid, executed in Tagalog in his favor by Juliana Samonte and signed by the latter's husband, Felix Villanueva, and the witnesses Catalino Morelos, Florencio Samonte, and Vidal Marcelo.

The purport of this document is that Juliana Samonte declares therein that she is the owner of a fishery which she inherited from her grandfather, Jose Samonte, the situation, measurements and boundaries of which are shown in her title of ownership, made a part of this document, and states further that the said fishery is now leased to another person for a period of time which will not expire for six years; and it is covenanted that she sells the said land to Alejandro Rojas and his wife, Faustina Meneses, for 1,100 pesos, the receipt of which she acknowledges, and that as soon as the six years of the lease in force shall have elapsed and the possession of the land shall be returned to her, she will immediately deliver the property to the said husband and wife, without the necessity of any judicial proceeding, guaranteeing them peaceful possession.

This is respondent's Exhibit No. 1, and the title of ownership alluded to by the seller Juliana Samonte, considered as a part of the contract, is respondent's Exhibit No. 2, which is precisely the instrument of composition or title of ownership of the said Juliana Samonte that was introduced in this suit by the respondent. Respondent's Exhibit No. 5 is a petition from Alejandro Rojas, addressed to the municipal president of the pueblo of Bulacan, on August 30, 1901, soliciting a sort of ratification of the contract executed by Juliana Samonte in his favor, for the reason that, up to that date, there was neither a justice of the peace in the pueblo nor a notary in the province; and, as a consequence of this writing, respondent's Exhibit No. 4 was introduced, which contains a record of the proceedings had before the municipal president of the pueblo of Bulacan, which consisted of the testimony of all who subscribed to the said contract of purchase and sale executed by Juliana Samonte in favor of Alejandro Rojas.

Felix Villanueva testified that he identifies the contents of the said document and also the signature of his name and surname, with his rubric, which appears at the end thereof, and that this document was executed during the lifetime of his wife, Juliana Samonte, of her own free will, with the consent of the witness, and that she received from the purchasers the sum of 1,100 pesos as the price of the sale. The three remaining witnesses, Catalino Morelos, Florencio Samonte, and Vidal Marcelo, testify that they also identify the said document and the signatures of their names and surnames, with their rubrics, which appear at the end of the same, and that the document was executed in their presence by Juliana Samonte y Rodriguez with the consent of her husband, Felix Villanueva, by their free and wife received in cash the sum of 1,100 pesos as the price of the property.

The other private document, also drawn up in Tagalog, appears to set forth that the brothers Eugenio de los Reyes and Leon de los Reyes sold their fishery to Alejandro Rojas and his wife Faustina Meneses for 1,100 pesos, of which they acknowledge to have already received 634 pesos, and the document is signed, instead of by those who appear to be the executors, by another Eugenio de los Reyes, apparently an uncle of the same, and by two others surnamed Mendoza (respondent's Exhibit No. 3). As will be seen hereinafter, this document is of no importance and may be considered as excluded from the record, as may also the respondent's claim with respect to the other half of the fishery that belonged to the deceased Atanasia Samonte whose children are, as before stated, Eugenio and Leon de los Reyes, who appear as the executors of the document, and Margarita de los Reyes, of whom no mention is made therein.

And finally, respondent's Exhibit 6 is the instrument of composition or of ownership of Atanasia Samonte,

without the least explanation as to how or why it was made a part of the record.

With this documentary evidence and the testimony of the witnesses on both sides, the Court of Land Registration decided the case by denying the registration solicited by the applicants of that part of the fishery in question which belonged to the deceased Juliana Samonte, and ordered the adjudication and registration of the other half of the said fishery in the name of the petitioners Mariano, Silvestra, Candida, Juan, and Cipriana, surnamed Gonzalez y Silva, as the coowners of the same in equal undivided shares.

The petitioners appealed from the first finding of the judgment, but the respondent did not appeal from the second. It therefore became final, and for this reason that document, Exhibit No. 3 of the respondent, must be considered as excluded and all claim on his part to the second half of the fishery is abandoned.

The appellants alleged error in the judgment appealed from, for the following reasons:

- Because respondent's Exhibit No. 1, or the private instrument executed in his favor by Felix Villanueva, was admitted as evidence;
- Because a part of respondent's Exhibit No. 4, that is, the ratification of his Exhibit No. 1 by Felix Villanueva before the former municipal president of Bulacan, was admitted as evidence;
- Because respondent's Exhibit No. 1 was not declared to be false, and therefore the sale which it is alleged was executed by Juliana Samonte in favor of Alejandro Rojas, was supposed to have been effected;
- Because article 1473 of the Civil Code was not applied to this case; and
- Because the registration in favor of the petitioners of the part of the fishery that belonged to the deceased Juliana Samonte was denied.

With respect to the first assignment, this court reiterates the doctrine that the necessity of a public instrument is not for the validity of the contract, but for its efficacy. The validity of the contract being admitted, the parties are entitled to exercise the proper action for the purpose of afterwards complying with this other formal requisite concerning the efficacy of the contract.

With respect to the second assignment of error, the appellants merely say that the said document No. 1 was executed after the death of the alleged seller, before an unqualified official, and that it was not duly identified. As the question is made a supposition, and what was argued in the trial can not be said to be supposed, this court can not consider such assignment of error.

With respect to the third assignment, or the alleged falsity of the document referred to, the honorable judge a quo states this conclusion: "The weight of the evidence is in favor of the opinion that Juliana Samonte, with the consent of her husband Felix Villanueva, sold to Alejandro Rojas that part of the fishery concerned. The testimony of Alejandro Rojas, Catalino Morelos, and Florencio Samonte sufficiently proves the authenticity of the instrument of sale, Exhibit No. 1." To oppose this opinion so expressed and powerfully reasoned in accordance with the rules of rational criticism, no conclusive arguments are advanced on which to found a contrary decision. To note incoherencies and contradictions in the matter of details, without offering serious argument, can not lead to a different judgment than that formed by the judge a quo.

The fourth and fifth assignments of error, which are the principal bases of the appeal, involve the real questions that this court must decide.

The appellants allege that half of the fishery was sold to two purchasers, Alejandro Rojas and his wife, and themselves; that none of the titles of either of the purchasers was inscribed in the registry of property; that, in

accordance with article 1473 of the Civil Code, if one and the same thing were sold to different purchasers, and it were a real property, the ownership thereof would pertain to the acquirer who first had inscribed it in the land registry, and when not registered, to him who in good faith was first in possession of the same; that as they, the appellants, were the first in possession, the ownership of half of the fishery in question pertains to them.

But the trial judge, citing in support of his interpretation the renowned authors Manresa, in his commentaries on the Civil Code, and Morell, in his studies on the Mortgage Law, says the same as the first of these authors, to wit, that article 1473 has left unexpressed a concept that is understood, though not expressed, that is, the preexistence of the right in the transmitter. And so he concludes in the following terms:

"Accepting the doctrine set forth and applying the same to the case at bar, it is evident that, if in fact a contract of sale was made between Juliana Samonte and Alejandro Rojas, the subsequent sale of the same property effected by the heirs of Juliana Samonte in favor of the petitioners must be null and void, inasmuch as the said heirs could not legally and validly transmit what at the time of the sale did not belong to them, and vice versa, if the said contract was not made, then the alleged defects warranting the nullity of the purchase and sale made between the petitioners and the heirs of Juliana Samonte, do not exist." (B. of E. 9.)

The conclusion is established that the contract that was entered into by Juliana Samonte and Alejandro Rojas, Exhibit No. 1, is authentic. But this conclusion by itself is not sufficient to conclude on the other hand that the second sale effected by the heirs of Juliana Samonte in favor of the appellants, is null.

Facts proven which must be taken into consideration:

First. The first sale was made by Juliana Samonte to Alejandro Rojas, on February 2, 1900.

Second. Juliana Samonte died on March 10 of the same year.

Third. From March 21, 1895, to the same date of 1907, Mamerto Siaoson was entitled to the possession and lease of the fishery.

Fourth. For this reason, Juliana Samonte, on February 24, 1900, said that the lease still had six years to run.

Fifth. Juliana Samonte and Alejandro Rojas expressly stipulated, in the document of contract, Exhibit No. 1, that as soon as the said six years of the lease should have expired "and this land is returned to us Juliana's words - immediately and without delay we will deliver the same to this married couple * * *" (Rojas and his wife, Meneses).

Sixth. On November 14, 1907, the delivery of this land had not yet been made to Alejandro Rojas; hence, by means of a notarial proceeding, the latter demanded of two sons of Juliana Samonte, Brigido and Matias Villanueva, the said delivery. These are the terms of his demand:

"Whereas the said sale was on the condition that the fishery sold should not be delivered to the vendee until after the termination of the six years' encumbrance or lease that burdened the property at the time of the execution of the said contract of sale, and on the present date the said six years' lease having expired, therefore I, Alejandro Rojas, demand of the brothers Brigido and Matias, heirs of my vendors, their parents Dona Juliana Samonte and Don Felix Villanueva, that they deliver to me the fishery sold in my favor by their predecessors, and that, in accordance with the contract of purchase and sale, they give me possession of the said fishery with all the rights and actions pertaining thereto." (Exhibit 7.)

In view of these facts, it is evident that the sale made by Juliana Samonte to Alejandro Rojas in 1900 remained in a state of dependency on the completion of the contract and was not consummated; for the consummation, as is known, consists in the delivery of the thing sold. Article 1462 of the Civil Code provides that -

"A thing sold shall be considered as delivered when it is placed in the hands of the vendee.

"When the sale is made by means of a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if in said instrument the contrary does not appear or may be clearly inferred."

No actual delivery was made of the possession of the realty in question. There was no public instrument, the execution of which could have constituted a form of delivery of the thing sold. On the contrary, from the instrument executed, which is only a private one, it clearly appears that the delivery of the fishery was postponed to a fixed date, to wit, that of the termination of the contract of lease then pending, which was to be six years from the date thereof.

"This form of delivery, says Manresa, is subject, however, with respect to its efficacy, to the terms of the instrument ; for, if from the latter it should appear, or can be deduced, that it was not the purpose of the contracting parties to effect the delivery, it could not be understood that the delivery had taken place. Such a case would arise, for example, when a fixed date was set when the vendee must take possession of the thing * * * (10 Civil Code, 122.)"

Alejandro Rojas himself expresses the purpose of the contracting parties. He says:

" * * * the said sale was made on the condition that the fishery sold should not be delivered to the vendee until after the termination of the six years' lease of the property which was in operation at the time of the execution of the said contract of sale."

Consequently, at the death of the vendor, Juliana Samonte, the fishery sold was a specific property bound by an obligation, but not delivered, and continued to form part of the mass of her property, subject to an eventual right unknown to her heirs, who were those upon whom it was incumbent, in 1907, to fulfill her obligation to make the delivery.

Her heirs, being entirely unaware of such an obligation, for in nowise could they have known that that fishery had been sold and was a thing owing and obligated to a third party, disposed of it by selling it to the petitioners. In good faith, they possessed the fishery; in good faith, they sold it; and in good faith, the petitioners acquired it.

Against this sale so effected there is nothing that can be set up as a vice of the said contract. The heirs of Juliana Samonte did not sell a thing, the fishery, which did not belong to them, for the ownership thereof had not yet been transmitted by Juliana Samonte, and they continued to hold it until it should be demanded of them and the transfer or tradition should be effected by them.

"Ownership and other property rights are acquired and transmitted by law, by gift, by testate or intestate succession, and, in consequence of certain contracts, by tradition." (Art. 609, Civil Code.)

Such was the true legal condition of the fishery on the 10th of March, 1900, when Juliana Samonte died. Her heirs, having no knowledge of this obligation and making the fishery materially a part of the inheritance left by their mother, conveyed the property that had been held by her and which had been transferred to her successors in interest, without any complaint from a third party. And in fact, such was the status of the fishery; in proof of which, Felix Villanueva, the widower of Juliana Samonte, who appears as a signer of the instrument of sale executed by his wife in favor of Alejandro Rojas, took part in the sale of the fishery in the name of his minor children Natalia and Feliza, and solicited judicial authorization for the purpose. And his children, the petitioners, saw all these acts performed by their father with respect to the property left as an inheritance by their mother, and there is not a word in the record opposing these acts of Felix Villanueva.

It must be concluded that the sales effected by the heirs of Juliana Samonte to the petitioners were true, valid, and

efficacious. Therefore, the judgment appealed from is reversed in so far as the first finding is concerned, and the Court of Land Registration shall declare the part of the fishery which belonged to the deceased Juliana Samonte to be the property of the petitioners and shall decree the adjudication and registration thereof in the name of the petitioners in the same manner as the other half of the fishery which it adjudged to them in the second finding.

No special finding is made as to the costs of this instance. So ordered.

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

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