

AMBROSIO MARASIGAN, PLAINTIFF AND APPELLANT, VS. PATRICK J. MOORE ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 5483. August 03, 1910*

Ponente: ARELLANO, C.J.

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Nicolas Calayag was the owner of a parcel of nipa land, of about 44 hectares in area, situated in the barrio of Tibagan, municipality of Hagonoy, Province of Bulacan, which land he had acquired at an auction sale, through an adjudication made in his favor in foreclosure proceedings prosecuted by him before the Court of First Instance of the said province against Claro Cordero and his wife Felipa Alfaro.

On the 11th of November, 1893, he sold this land to Ciriaco Cabral and Benigno Cabral for the price of P1,500, the right of redemption being reserved in favor of the vendor at the expiration of a period of ten years.

On the 5th of September, 1894, Ciriaco Cabral, and on the 10th of October, 1895, Benigno Cabral, sold their respective halves to Francisco Icasiano, the former for P1,000 and the latter for P750, with the same right of redemption within a term of ten years, reckoning from November 11, 1893, as covenanted with Nicolas Calayag.

Francisco Icasiano, in an instrument executed on January 20, 1904, set forth that in November, 1899, he sold the said land to Adriano Gatmaitan, married to Maria Concepcion Achuy, for P1,500, encumbered with the aforesaid right of redemption in favor of Nicolas Calayag during the term of ten years hereinbefore mentioned, reckoning from November 11, 1893.

In 1902, Patrick J. Moore began proceedings for the settlement of the intestate estate of the spouses Claro Cordero and Felipa Alfaro, and on the 22d of August of the said year 1902 - when he had not yet taken the oath of office as administrator of the estate and which it appears he did not do until the 23d of that month - he seized the land referred to, and made a formal inventory of it as property of the intestate estate of Cordero and Alfaro, enjoying¹ the usufruct and collecting the products thereof until the termination of his administration, which appears to have occurred two years afterwards by reason of an injunction, not found in the trial record and only therein referred to by witnesses.

The spouses Adriano Gatmaitan and Maria Concepcion Achuy also died; and on the institution of intestate proceedings, the appointed administrator, Ambrosio Marasigan, on May 3, 1906, filed the present suit against Patrick J. Moore, praying for the restitution of the property despoiled, a declaration of ownership, and payment of damages.

The administration of Patrick J. Moore being terminated, he was substituted by Attorney Ramon Salinas, who answered the complaint and alleged, in cross complaint, that the intestate estate of Felipa Alfaro and Claro Cordero had a positive right of redemption with respect to the realty described in the complaint, and therefore prayed that it so be declared and that the plaintiff be obliged to receive the redemption price. The plaintiff, in answer to the cross complaint, after a general denial of the facts, alleged, as a special defense, the prescription of

the right of redemption. The Court of First Instance of Bulacan rendered judgment as follows: "Therefore this court finds that the ownership and the right of possession claimed by the plaintiff, that is, the intestate estate of Adriano Gatmaitan, with respect to the property in litigation are subject to the right of redemption, as a condition subsequent, which is declared to be subsisting" and that judgment should be rendered in such terms that the cross complainant shall be entitled, under the facts set forth in the body of this judgment, to redeem the said property, by virtue of the instrument of sale executed by Nicolas Calayag on November 11, 1893, and of that executed by Francisco Icasiano in favor of the deceased Adriano Gatmaitan, on the 20th of January, 1904, by returning the price of P1,500, in addition to the expenses occasioned by the proper instrument of resale.

"Patrick J. Moore is personally sentenced to pay the sum of P1,175.71, as loss and damages, to the intestate estate of Adriano Gatmaitan, in addition to the legal interest on this amount at the rate of 6 per cent per annum from May 3, 1906, which is the date of the filing of the amended complaint, and, in addition, to pay one-half of the costs; and the intestate estate of Felipa Alfaro and Claro Cordero is also to pay to the intestate estate of Adriano Gatmaitan the sum of P60, collected by Apolinario Pasco, at the same legal rate of interest, from the time of the filing of the amended complaint, without special finding as to costs with respect to the other half." (Pp. 19 and 20 of the B. of E.)

The defendant alone appealed from the judgment pronounced in accordance with these findings, and his appeal was admitted with right to a review of the evidence.

The bill of exceptions having been submitted, at the hearing of the appeal the appellant prayed in this instance that the judgment appealed from be reversed, and it be declared that the ownership and the right of possession claimed by the plaintiff, with regard to the property in litigation neither was nor is subject to the right of redemption in favor of the intestate estate of Felipa Alfaro and Claro Cordero; that this intestate is liable for the payment of the sum of P1,175.71 to which, as loss and damages, Patrick J. Moore was sentenced; and further, that the rest of the judgment appealed from be affirmed, with the costs of both instances against the defendant intestate estate. He alleged the following assignments of error:

- The acceptance of Exhibit F of the defendant.
- The failure to strike from the record, in accordance with the objection made and exception taken at trial, a certain statement of the defendant Salinas.
- The declaration that the intestate estate of Felipa Alfaro and Claro Cordero has a right of redemption with respect to the disputed property.
- The finding, on the supposition of the existence of such right of redemption, that the same subsists and has not been lost through prescription.
- The conclusion that Patrick J. Moore personally and not in his character of administrator of the intestate estate of Felipa Alfaro and Claro Cordero, that is, not the intestate estate, is liable for the payment of the losses and damages suffered by the plaintiff, and
- In holding that the Gatmaitari estate shall resell the property, without Moore, the administrator of the Alfaro-Cordero estate, previously paying for the loss and damages caused by him to the former.

It is evident, from the facts related, that the personal, not the real, right of redemption was neither covenanted nor agreed upon with the intestate estate of Felipa Alfaro and Claro Cordero, nor was it at any time transmitted to this estate. The right to repurchase the lands sold on the 11th of November, 1893, by Nicolas Calayag, was stipulated in favor of this vendor. The estate of Felipa Alfaro and Claro Cordero is neither the estate of Nicolas Calayag, nor does it originate with Nicolas Calayag: the first proposition is very apparent from the context of the instruments

executed in connection therewith and hereinabove mentioned; the second could be denied only if the document Exhibit F stated the contrary.

This document F is an agreement made on August 14, 1902, between the heirs of Nicolas Calayag, named Nazario, Margarita and Estefania Calayag, and a minor, then 21 years of age, named Nicolas Dimagiba y Calayag, on the one hand, and on the other, Francisca Cordero y Alfaro, as the daughter of Claro Cordero and Felipa Alfaro. The agreement contains seven clauses, of which three are merely historical in character, relating to the alienation of the property made by Nicolas Calayag and to the successive transfers effected by the transferees thereof, as set forth in the beginning of this decision.

The fourth and fifth clauses, literally transcribed, read as follows:

"Fourth. That Dona Francisca Cordero y Alfaro, as the legal successor-in-interest of her deceased mother Felipa Alfaro, believes she has an exclusive right to the ownership of the said parcel of land.

"Fifth. That, for the purpose of avoiding troublesome and expensive suits, the parties aforesaid, as the legal successors-in-interest of Don Nicolas Calayag y Sacdalan, have agreed with Dona Francisco Cordero y Alfaro, as the successor-in-interest of her mother, to settle their differences ; and to the end that the transaction may be recorded in due form, the parties aforementioned execute this public instrument by virtue whereof they solemnly set forth that they settle their differences with Dona Francisca Cordero y Alfaro on the following condition:

" (a) The legal successors-in-interest of Don Nicolas Calayag y Sacdalan bind and obligate themselves to redeem the before-described parcel of land from the present possessor of the same (Dona Maria Concepcion Achuy, widow of Don Adriano Gatmaitan, according to clause 3), through judicial or extrajudicial proceedings, as may be most suitable, they all being represented by Don Nazario Calayag y Gonzalez, upon whom, for this purpose, their coparticipants, Dona Margarita and Dona Estefania Calayag and Don Nicolas Dimagiba, confer full power of attorney.

" (b) On the parcel of nipa land being redeemed, the same shall be divided between the parties hereto, except the piece of land now cultivated by Dona Francisca Cordero y Alfaro, in the following manner: Two-thirds shall be delivered to the latter and the remaining one-third shall remain in the possession of the executors of this instrument, pro indiviso, share and share alike.

"(c) All the expenses occasioned in effecting the redemption and until it shall be completely accomplished, shall be borne by Dona Francisca Cordero y Alfaro and the executors of this instrument in the same proportion as the partition is to be made, once the land shall have been redeemed.

" (d) It shall rest exclusively upon the executors of this instrument to perfect the juridical personality of Don Nicolas Dimagiba y Calayag in the manner established by the laws in force."

First. This documentary evidence, Exhibit F, might have been admitted had it been presented in a suit between the heirs of Calayag and Francisca Cordero, who made the contract thereby shown; but in this suit, between the intestate estate of Gatmaitan and the intestate estate of Alfaro-Cordero neither of which is in anywise concerned in the said contract, it was in nowise admissible; and the allegation of the first assignment of error would be supported in law, if its admission had been objected to in first instance, an objection not shown by the record.

Second. In that document Francisca Cordero states that she believes that she has an exclusive right with respect to the ownership of the land in question; and even supposing it to be so, for it is shown that she had no such right, such a right would not vest exclusively in her, but would also pertain to her brother and sister, Benigno and Maria, whom she testified at this trial that she had, and to her nephew Constancio and her nieces Melencia and Trining, children, the second of her brother Santiago, and the first and third of her sister Eladia. Hence, the present

representative of the intestate estate of Alfaro-Cordero, Attorney Salinas, declared at the trial that "notwithstanding that it was she who contracted with the heirs of Nicolas Calayag, she consents, in order not to cause detriment to her brother and sister, nephew, and nieces, that the redemption of the land, the subject of this case, be made by me in representation of the intestate estate of her parents Claro Cordero and Felipa Alfaro" - a statement which the appellant requested be struck from the record, but the court denied the motion and an exception was taken by the former. This exception is now the ground of the second error alleged.

This assignment of error is absolutely without importance; in view of the one involving the principal question, it is proper to omit its consideration.

Third, and, in the present suit, as a decisive feature of such a contract against one of the parties, the right to redeem from the heirs of Calayag was not transmitted to Francisca Cordero, still less to the intestate estate of Alfaro-Cordero. If all the right to redeem that it is believed Francisca Cordero has originates from that contract, it is erroneous to allow it, because the only right that she could acquire by such contract is that to oblige the heirs of Calayag to exercise the right of redemption through the mediation of the elder of them, Nazario Calayag, and, when the parcel of land had been redeemed, to divide it between the contracting parties in the portions agreed upon; but she herself was not entitled, much less the intestate estate of her parents, to exercise such a right of redemption, which is a private one appertaining to the heirs of Nicolas Calayag, even by the tenor of the contract itself. So the third assignment of error is substantial and is well founded.

It having been conclusively shown, adverse to the appellee and by means of his own and only documentary proof, that the intestate estate of Felipa Alfaro and Claro Cordero did not have and has not the right to redeem the lands sold by Nicolas Calayag with such a right for himself and his heirs and successors-in-interest, it follows consequently that, solely upon the ground of the third assignment of error alleged in the appeal, the judgment appealed from should be reversed.

However, it appears to be established that Ambrosio Marasigan, the judicial administrator of the Gatmaitan intestate estate, verbally treated with Patrick J. Moore, the judicial administrator of the intestate estate of Alfaro-Cordero with regard to the said redemption; that for this purpose Francisco Pasco delivered to Moore, on the 11th and 14th of November, 1903, P2,400, which Marasigan had specified for the redemption; that, on the 16th of the same month of November, 1903, Moore notified Marasigan that the price of the redemption or repurchase was in the custody of the court; that Moore absented himself, abandoned the estate he was administering, and the redemption could not be accomplished, and judicial steps had to be taken, in case No. 106, which concerns the proceedings had in the matter of the intestate estate of the deceased Alfaro and Cordero, in order to compel Moore to refund the money he had received from Pasco.

In the proceedings just above mentioned, to which Ambrosio Marasigan was not a party, oral evidence was adduced to demonstrate to Moore his shortage, in order to oblige him to make the said restitution; and from those proceedings, united with the record of the case, an argument is drawn for the purpose of showing the existence of the verbal agreement which it is claimed was made between Moore and Marasigan.

This court in its review of the case, No. 339 in the lower court, must be guided by the testimony adduced at trial by the witnesses.

Francisco Pasco testified that Eulalio Bundoc, the husband of Francisca Cordero, took him to see Mr. Moore, telling him that the latter was the administrator of the land, and that he should redeem it; that he delivered to Mr. Moore P2,400 for the redemption, and that on this occasion Mr. Moore told him that Miguel Pasco was holding the land under lease and that as soon as the lease expired he would give him possession "as under a mortgage;" that in fact he entered into the possession of the property, but that approximately three months thereafter the

injunction was served and his possession ceased.

Miguel Pasco confirmed this account of Francisco Pasco's entry into the possession of the property, after he himself had occupied it about three months through a lease made with Mr. Moore, who received from the witness P500 on such account; and he further stated that Eulalio Bundoc, the husband of Francisca Cordero, was the occupant of the land before him.

Eulalio Bundoc testified that Mr. Moore put him in charge of the land which he afterwards leased to Miguel Pasco; that Mr. Moore occupied the land by reason of his having been bonded by the Government as administrator.

"Q. And how did Mr. Moore come to be the administrator of that land, do you know? - A. Yes, sir.

"Q. Tell what you know about it? - A. Mr. Moore occupied my father-in-law's land as administrator because they attempted to redeem the land and had not succeeded."

Ambrosio Marasigan denied that Moore placed 2,400 pesos at his disposal with which to effect the redemption, but acknowledged having received the letter addressed to him by Moore on November 16, 1903, advising him that the amount aforesaid was deposited with the court. When asked whether he had authority from the court to make the redemption, he replied that he had not; asked as to who it was that furnished the money for the redemption, he said that it was Jose Tionson, but that owing to certain misunderstandings which arose between Moore and Tionson the instrument was not executed.

The clerk of the court stated that he did not remember the fact of Moore's having deposited 2,400 pesos with the court, and that it was certain that he did not, inasmuch as the proceedings in case No. 106 show that steps had to be taken to compel Moore to return the said sum.

And, finally, the parties agreed that it was an established fact that, through misunderstandings which arose between Moore and Tionson, the latter withdrew his promise to furnish the money, and for this reason the redemption could not be effected. This is all that is shown by the testimony of the witnesses, and from which it is inferred:

First. That the redemption of the property was not to be effected with Francisco Pasco's money; if perchance, the 2,400 pesos were received by Moore with the security of the land in question "as under mortgage," and, consequently, the dates of November 11 and 14, 1903, proved in the record to be those on which the money came into Moore's possession, first 1,700 pesos and then 700 pesos, do not show that the possessor of the land, Marasigan, or Father the Gatmaitan intestate estate, had been duly and properly called upon to make the redemption in favor of the Alfaro-Cordero intestate estate.

Second. That Marasigan had formally entered into negotiations with Moore for the repurchase of the property, Jose Tionson, who was to furnish the money for the redemption, being present; but it is not shown that these negotiations were carried on in due season and in a legal manner, nor did they finally acquire any legal status beyond a mere design.

Third. That although Marasigan should have acceded to the repurchase and effected it, the courts would have been unable to give force and validity to his consent, inasmuch as Marasigan's consent, as the administrator of the Gatmaitan intestate estate, was not nor could it be the origin of a right in favor of Moore, as the administrator of the Alfaro-Cordero intestate estate, so that the latter might effect a redemption which the contract did not stipulate should be made by the said intestate estate, nor by Francisca Cordero as a party interested in the said estate.

Fourth. That the redemption, so effected by the mere will of Marasigan, incorrectly informed as to who had a right to redeem, would have been null, of no value and effect, clearly contrary to the terms of the contract according to which Marasigan could only defer, upon a demand upon him by Nicolas Calayag or by the heirs or successors-in-interest of the Calayag spouses, the sole parties who were entitled to the right to redeem.

Fifth. That by himself alone, as such judicial administrator of an intestate estate, even on the demand of the Calayag spouses or of their successors-in-interest, he would not have been able to execute a reversion sale, to which in due time the successor-in-interest of the intestate estate which he was administering was obliged, without the proper authorization of the court. (Sec. 725, Code of Civil Procedure.)

So that, at the present time, neither can the courts declare this property and possession subject to any right of redemption whatever, although a representative of the estate of Adriano Gatmaitan, the last owner and possessor of the land in question, may wish them to do so; still less can the property be declared subject to a right of redemption in favor of the intestate estate of Felipa Alfaro and Claro Cordero, or of Francisca Cordero, either alone or jointly with her coheirs, inasmuch as alone, or jointly with all the heirs of Felipa Alfaro and Claro Cordero, it is not shown that the personal right of redemption, which on November 11, 1903, had been acquired by Nicolas Calayag, was lawfully transmitted to them. Neither can the courts declare in this suit that the right of redemption of Nicolas Calayag does or does not subsist, inasmuch as such a declaration would be absolutely out of place.

The intestate estate of Adriano Gatmaitan can not be compelled in any manner, nor for any reason, to execute an instrument of resale in favor of the intestate estate of Felipa Alfaro and Claro Cordero. There is therefore no occasion for any decision with reference to assignments of error Nos. 4 and 6.

With regard to the fifth assignment, as to the action for loss and damages, to the total amount of P1,175.71, with legal interest thereon from May 3, 1906, the payment of which is imposed upon Moore personally, the rentals and fruits unduly collected by the latter have been considered in the judgment of the court below as losses suffered by the plaintiff. With respect to the amount thereof, the same is accepted by the appellant, and only the personal responsibility imposed upon Moore, instead of that which should have been imposed upon him as the administrator of the Alfaro- Cordero intestate estate, is the subject of complaint.

It appears: First, that in none of his acts did Moore proceed in accordance with the authorization of the court which had appointed him as judicial administrator; and, second, that, as stated in the testimony of Eulalio Bundoc, the husband of Francisca Cordero, Moore seized the land in question because they had tried to redeem it and had not succeeded; thus the absolute arbitrariness of his procedure is shown, and such an act constitutes a real spoliation which it was improper for him to do in the name of the intestate estate he was administering. Although, as it appears, he acted upon an understanding with Francisca Cordero and her husband, Eulalio Bundoc, yet the entity, the intestate estate which he was administering, were not the persons Francisca Cordero and Eulalio Bundoc, nor were these two persons the sole parties interested in that estate. It is not just that the estate bear the consequences of a purely personal and notoriously illegal and unjust act performed by him to whom its administration was commended.

We therefore do not consider the fifth assignment of error, as the finding upon this point, in the judgment appealed from, is in accordance with the law.

The judgment of the court below is reversed in so far as it declares the ownership and possession, shown to pertain to the intestate estate of Adriano Gatmaitan over the property in litigation, to be subject to the right of redemption in favor of the defendant, the intestate estate of Felipa Alfaro and Claro Cordero, and in so far as it declares subsistent the condition subsequent or right of redemption contained in the instrument of sale executed

by Nicolas Calayag on November 11, 1903, together with the rest of the first finding, and the second finding is affirmed, without special order as to the costs of this instance. So ordered.

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

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