

APOLINARIA TAÑIDO, AS THE ADMINISTRATRIX OF THE INTESTATE ESTATE OF THE CHINAMAN JOSE MARTINEZ, PLAINTIFF AND APPELLEE, VS. ANTONIA JUMAUAN ET AL., DEFENDANTS. – ANTONIA JUMAUAN...

G.R. No. 5699. November 19, 1910

Ponente: TORRES, J.

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TORRES, J.:

On January 29, 1908, Apolinaria Tañido, the administratrix of the intestate estate of the Chinaman Jose Martinez, filed a written complaint in the Court of First Instance of Misamis, alleging that Prudencio Velez, during his lifetime and during his marriage with Antonia Jumauan, owed the Chinaman Jose Martinez the sum of P983, as ascertained from the settlement had after the death, of the debtor, Prudencio Velez, in July, 1901, between the creditor, Martinez, on the one hand, and Mariano Velez and Antonia Jumauan, on the other, the father and the widow, respectively, of the deceased Velez and the latter's sole heirs; and that, on the same date, July, 1901, the aforesaid Mariano Velez and Antonia Jumauan, in payment of the said debt, deeded to the said creditor Martinez all the property that belonged to the deceased debtor, among which were the following:

- (a) A parcel of land, containing several coconut trees and measuring 51 and 57 meters on its north side, 18 and 70 meters on its east and south sides, and 82 meters on its west side, and adjoining the lands of Juan Portacion in the sitio of Bulalo, barrio of Baliangao, Langaran, Misamis.
- (b) Another parcel of coconut land in the same sitio of Bulalo, bounded on the north by the lands of Francisco Cabrenes, Apolinaria Tañido, and Juan Portacion, on the south by that of Gertrudis Villanueva, on the east by that of Juan Portacion, and on the west by that of Apolinaria Tañido.
- (c) Another parcel of coconut land in the same sitio, bounded on the north and east by the land of Juan Portacion, on the south by that of Gertrudis Villanueva, and on the west by that of the said Portacion.
- (d) Another parcel of land in the same sitio, bounded on the north by the seashore, on the south and east by the lands of Apolinaria Tañido, Pedro Ytong, and Juan Portacion, and on the west by those of Francisco Cabrenes and Esteban Sobrado.
- (e) Another parcel of coconut land in the barrio of Baliangao, bounded on the north by the lands of Vicente Cabaza, Alipio Sambulan, and Bernardino Jumauan, on the south by mangrove swamps, on the east by the land of Macario Jurane, and on the west by a mangrove swamp.
- (f) Another parcel of coconut land in the same sitio of Baliangao, bounded on the north by the land of Francisco Duhaylunsud, on the south and east by that of Ignacio Caroro, and on the west and east by that of Francisco Duhaylunsud.
- (g) A fishery, in the cove of the barrio of Baliangao and sitio called Naburos, which belonged exclusively to the

deceased Velez.

(h) A house and lot where the defendant Jumauan resides, in Baliangao, bounded on the north by the land of the plaintiff, on the east by that of Magdalena Caroro, on the south by a public road, and on the west also by land of the plaintiff.

Moreover, on the land situated in the sitio of Dao, bounded on the north by those of Ynday Magusara and Saturnino Villanueva, on the south by the seashore, on the east by the horse trail, and on the west by the land of Lucio Caroro, in the southeastern part thereof, there are planted twenty coconut trees, adjacent to the property of the intestate, and on the western boundary line of the property described under letter h, there are eight coconut trees, which also belonged to the intestate.

The complaint further recited that the defendant, Antonia Jumauan, illegally detained the properties designated under the letters (a), (b), (c), (d), (g), and (k), and retained the 28 coconut trees mentioned; that she refused to deliver the same to the plaintiff and thereby caused the latter damages to the extent of P1,000; that the defendant, Calixto Velez, likewise illegally held the property, specified under letter (e), by order of Antonia Jumauan, refusing to deliver it to the plaintiff, thereby occasioning her damages to the amount of T60; that the defendant Isidra Caroro, also, illegally held the property designated under letter (f), likewise by order of Antonia Jumauan, and refused to deliver it to the plaintiff, thereby causing the latter damages in the sum of P80. Plaintiff therefore prayed that the defendants be sentenced to deliver to her the said properties which they respectively held in their possession, to pay an indemnity to the plaintiff for the damages caused by each of them, and the costs.

The defendants, Antonia Jumauan, Calixto Velez, and Isidra Caroro, in their answer, denied each and all of the facts alleged in the complaint and each and all of the paragraphs thereof, and prayed that they be absolved, with the costs against the plaintiff.

On June 2, 1909, the case came to trial, testimony was adduced by both parties to the action, the documents exhibited being attached to the record, and the court, on July 29 of the same year, rendered judgment sentencing Antonia Jumauan to return to the plaintiff the properties described under Nos. 1, 2, 3, 4, 5, 6, 7, and 8, and absolved Calixto Velez from the complaint, with respect to the property No. 9, and likewise the other defendant, Isidra Caroro, with respect to the property No. 10, without special finding as to costs. Counsel for Antonia Jumauan took exception to this judgment and by a written motion asked for a new trial on the ground that the said judgment was contrary to the law and to the evidence. This motion was overruled, exception was taken by the appellant who duly filed the proper bill of exceptions which was admitted and forwarded to the clerk of this court, together with a transcript of the evidence and the original documents, duly certified.

In this suit a demand is made for the return of several parcels of land, described in the complaint as detained by the defendant Antonia Jumauan, on the ground that they belonged to the deceased Jose Martinez by reason of their having been deeded to the latter during his lifetime, together with other property, by Prudencio Velez, the father of the debtor, Mariano Velez, now deceased, and by the latter's widow, the defendant, in payment of an amount greater than the value of the said property deeded, all in accordance with the instrument executed before the municipal president of Baliangao and witnesses, on July 3, 1901, appended to which document appear the signatures of the conveyors, the successors of the debtor, and that of the creditor, Jose Martinez.

From the evidence produced at trial, it appears that the defendant refused at first to sign the said instrument or deed of the property in payment of the debt in favor of the creditor, the Chinaman Jose Martinez, saying¹, between sobs, that she would be left without means of support, inasmuch as she would be deprived of all the lands left by her deceased husband and even of the house in which she was living, whereupon the Chinaman, the creditor, perhaps moved to compassion, promised that he would return some of the properties deeded if she would

sign the instrument of transfer or deed, and under this promise the defendant Jumauan signed it; and within a month thereafter, the Chinaman Martinez, fulfilling the promise made to the defendant, returned some of the lands conveyed, together with the house and a fishery, and for this purpose executed, on August 2, 1901, the instrument marked "Exhibit 1" (p. 56 of the record), drawn up in the Visayan dialect and signed by the said Jose Martinez, the defendant Antonia Jumauan, and several witnesses, a translation of which appears on pages 59 to 61 of the record, and is accompanied by a note stating that it was presented before the two councilors of the town whose names are Mariano Villanueva and Roman Ocao, who identified their respective signatures and certified to the truth of the contents of the instrument and to the authenticity of the signatures affixed to the foot thereof, among which is that of the Chinaman Jose Martinez.

So that the defendant Jumauan agreed to the transfer of property set forth in the said first instrument in favor of the Chinaman Martinez and signed the document under the condition offered by the latter, that he would afterwards return to her some of the property transferred to him; and by the creditor's complying with the condition offered by him and accepted by the defendant, one of the transferrers, and executing the instrument Exhibit 1 within a month after that transfer, the Chinaman, the creditor, merely complied with the condition agreed upon to return to the debtor some of the property transferred, and such act does not constitute a gift, but a renunciation of the right to collect a part of the credit which the said Martinez held against the deceased husband of the defendant Jumauan.

In order to judge the intention of the contracting parties, says article 1282 of the Civil Code, attention must principally be paid to their acts, contemporaneous with and subsequent to the contract. The creditor Chinaman returned a part of the property transferred in payment of his credit, not as an act of mere liberality, but in compliance with the condition under which the defendant agreed to the transfer and signed the proper instrument.

The truth and authenticity of the instrument recording the return of some of the property delivered in payment of the debt of the deceased Prudencio Velez are unquestionable, and the legitimacy of the signature of the Chinaman Jose Martinez, affixed to the said instrument (p. 1 of the record), which, moreover, does not appear to have been impugned or assailed as false, can not be doubted. This same instrument evidences the fulfillment of the promise made by the creditor Chinaman to return the property therein mentioned because of the defendant Jumauan signing the deed of the date of July 3, 1901, as required of her by the said creditor.

The certainty and authenticity of the aforementioned promise being conceded, which promise constitutes a condition precedent proposed by Jose Martinez to the defendant Antonia Jumauan, it may well be affirmed that not until after the return promised by Martinez did the latter acquire an absolute right of ownership over all the property deeded to him, since the selection of the property which he was to return depended entirely on his free will, a condition established in order that the defendant Jumauan should sign the instrument of deed, and once the latter had been signed, the creditor Martinez voluntarily and in good faith complied with the condition offered by returning the house and other property which he himself had selected, and which of course were accepted by Jumauan, and therefore the fulfillment of a promise, a condition agreed upon in order that the said deed might be signed, can in no manner be construed as an act of gift, but as one of fulfillment of a condition stipulated between the parties.

Article 1255 of the Civil Code provides:

"The contracting parties may make the agreement and establish the clauses and conditions which they may deem advisable, provided they are not in contravention of law, morals, or public order."

The creditor Jose Martinez, moved by the tears of the defendant, the widow of the debtor, and by the thought of the precarious situation in which she would be left were she deprived of all the property left at death by his

deceased debtor, including the house in which she was living, was impelled to promise that he would return a part of that property, together with the house, if she signed the deed. This promise, made as a condition for the perfection of the contract of deed and the signing of the instrument drawn up for the purpose, implying a renunciation of the collection of a part of his credit, is not contrary to law, to morals, or to public order.

When the creditor Chinaman made such renunciation by returning a part of the property deeded to him, he must have had reasons and motives therefor; and it is certain that, of his own free will, he thought it proper to remit the payment of a part of the sum owing him by leaving in the possession of the widow of his deceased debtor a part of the property which the latter had left at his death, especially the dwelling in which the said widow was living, and by executing for the purpose the instrument Exhibit 1, by reason of his friendship for the deceased; wherefore it is unquestionable that the second instrument is an expression of the fulfillment of the promise made at the time of the execution and signing of the first instrument.

Pursuant, then, to the terms of the instrument shown on page 1 of the record, and as property whose transfer the creditor renounced in favor of the defendant, the latter is entitled to hold, as owner, the house, the five parcels of land, and the location on the seashore used for fish weirs, described in the said instrument, and the sentence appealed from is deemed to be accordant with law and the merits of the case as disclosed by the record, with respect to the other property claimed by the plaintiff from the defendant Jumauan, and also with respect to the lands of Calixto Reyes and Isidra Caroro, against whom the plaintiff did not succeed in establishing the propriety of his claim.

For the foregoing reasons it is proper, in our opinion, with a reversal of such part of the judgment appealed from as is in conflict with this decision, to absolve, and we hereby absolve, Antonia Jumauan from the complaint filed by Apolinaria Tañido, whereby claim is made to the house, lands, and fishery site described in the instrument Exhibit 1 dated August 2, 1901 (p. 56 of the trial record) ; and the said Antonia Jumauan is sentenced to return to the plaintiff the lands designated in the judgment appealed from as Nos. 7 and 8, which are not included in the said instrument Exhibit 1; and, in this wise, the part of the judgment appealed from consistent with this decision is affirmed, as are the findings thereof whereby Calixto Velez is absolved from the complaint with respect to the property No. 9, and Isidra Caroro with respect to the property No. 10. No special finding is made as to costs. It is so ordered.

Johnson, Moreland, and Trent, JJ., concur.

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