

CATALINO GALLEMIT, PLAINTIFF AND APPELLANT, VS. CEFERINO TABILIRAN, DEFENDANT AND APPELLEE.*G.R. No. 5837. September 15, 1911*

Ponente: TORRES, J.

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This is an appeal raised by the plaintiff from the judgment rendered by the Honorable Judge Ramon Avanceña.

On March 10, 1908, the plaintiff filed a written complaint, twice amended with the permission of the court, wherein, after its second amendment, he alleged that the plaintiff and the defendant, while residents of the municipality of Dapitan, had acquired, in joint tenancy, in or about the month of January, 1904, a parcel of land from its original owner, Luis Ganong, under a verbal, civil contract of partnership, for the price of P44; that it was stipulated that each of the said purchasers should pay one-half of the price, or P22, and that an equal division should be made between them of the land thus purchased, situate in the place called Tangian, of the barrio of Dohinob, municipality of Dapitan, sub-district of the same name, Moro Province, and bounded on the north and east by the Tangian river, on the south and west by government forests, and containing: 19.968 square meters, approximately, planted with 200 abaca plants; that, notwithstanding the demands he had repeatedly made upon the defendant to divide the said land, the latter, after having promised him on several occasions that he would make such partition, finally refused, without good reason, and still continued to refuse to divide the land and, moreover, without the knowledge and consent of the plaintiff, gathered the abaca crops of the years 1904, 1905 and 1906, produced on the land in question, and extracted the hemp therefrom in the amount of about 12 arrobas to each crop, he being the sole beneficiary of the fiber obtained that the plaintiff, relying upon the several promises made him by the defendant to divide the said land, took to the latter 1,500 seeds to be planted in the part thereof which would have fallen to the plaintiff in the division, all of which seeds died, as an indirect result of the defendant's never having made the partition he offered to make; and, that since the year 1904, up to the time of the complaint, he alone had been paying the taxes on the land, without the defendant's having contributed to their payment. Therefore the plaintiff petitioned the court to render judgment in his favor by ordering a partition to be made of the said land through the mediation of commissioners appointed for the purpose, and by sentencing the defendant to pay to the plaintiff, as damages, the total value of the seed lost, amounting to P50, to restore to him one-half of the abaca harvested or the value thereof, and to the payment of the costs of the case. Defendant's counsel received a copy of this amended complaint.

The defendant, Ceferino Tabiliran, having been notified and summoned, in his answer to the preceding amended complaint denied each and all of the facts alleged in each and all of the paragraphs thereof and asked that he be absolved from the complaint, with the costs against the plaintiff.

After the hearing of the case and the production of oral evidence by the parties thereto, the court, on the 10th of the same month, rendered judgment by absolving the defendant from the complaint, with the costs against the plaintiff. Counsel for the latter excepted to this judgment and by a written motion asked for its annulment, and the holding of a new trial on the ground that the findings of the court were contrary to law. This motion was denied

by an order of March 11, 1909, excepted to by the plaintiff's counsel, and the proper bill of exceptions having been duly filed, the same was certified and forwarded to the clerk of this court.

This suit concerns the partition of a piece of land held pro indiviso which the plaintiff and the defendant had acquired in common from its original owner. By the refusal of the defendant to divide the property, the plaintiff was compelled to bring the proper action for the enforcement of partition, referred to in sections 181 and following of the Code of Civil Procedure.

The record shows it to have been duly proved that Catalino Gallemmit and Ceferino Tabiliran by mutual agreement acquired by purchase the land concerned, situate in Tangian, municipality of Dapitan, from its original owner, Luis Gandnong, for the sum of P44. It was stipulated between the purchasers that they each should pay one-half of the price and that the property should be divided equally between them. The vendor testified under oath that the plaintiff Gallemmit paid him the sum of P22, one-half of the price that it was incumbent upon him to pay, and that four months afterwards the defendant paid his part of the price, although, owing to the refusal of the defendant, who was then the justice of the peace of the pueblo, to comply with the stipulations made, the deed of sale was not executed, nor was a partition effected of the land which they had acquired. The defendant, instead of delivering to the plaintiff the share, that belonged to the latter, the proportionate price for which the plaintiff had already paid, kept all the land which belonged to them in common, in violation of the stipulations agreed upon, notwithstanding that he paid the vendor only one-half of the price thereof.

There is community of property when the ownership of a thing belongs to different persons undividedly. (Art. 392, Civil Code.) No co-owner shall be obliged to remain a party to the community. Each of them may ask at any time the division of the thing owned in common. (Art. 400 of the same code.)

Considering the terms of the claim made by the plaintiff and those of the defendant's answer, and the relation of facts contained in the judgment appealed from, it does not appear that any contract of partnership whatever was made between them for the purposes expressed in article 1665 of the Civil Code, for the sole transaction performed by them was the acquisition jointly by mutual agreement of the land in question, since it was undivided, under the condition that they each should pay one-half of the price thereof and that the property so acquired should be divided between the two purchasers; and as, under this title, the plaintiff and the defendant are the co-owners of the said land, the partition or division of such property held in joint tenancy must of course be allowed, and the present possessor of the land has no right to deny the plaintiff's claim on grounds or reasons unsupported by proof.

The circumstance of the plaintiff's inability to present any document whatever to prove that he and the defendant did actually purchase jointly the land in litigation can not be a successful defense in the action for partition, notwithstanding the provision contained in paragraph 5 of section 335 of the Code of Civil Procedure, inasmuch as the trial record discloses that testimony was adduced, unobjected to on the part of the defendant, to prove that the purchase was actually made by both litigants of the land in question from its original owner, Luis Ganong; furthermore, it was proved that after the contract was made the deed of sale was not drawn up on account of the opposition of the defendant, Tabiliran, to this being done, with the indubitable purpose, as has been seen, of his keeping the whole of the land purchased, though he paid but one-half of its price.

In the decision rendered in the case of Conlu et al. vs. Araneta and Guanko (15 Phil. Rep., 387), the following appears in the syllabus:

"The decisions in the cases of Thunga Chui vs. Que Bentec (2 Phil. Rep., 561) and Couto vs. Cortes (8 Phil. Rep., 459) followed to the extent of holding that "an oral contract for the sale of real estate, made prior to the enactment of the Code of Procedure in Civil Actions, is binding between the parties thereto." The contract

exists and is valid though it may not be clothed with the necessary form, and the effect of a noncompliance with the provisions of the statute (sec. 335 of the Code of Procedure in Civil Actions) is simply that no action can be proved unless the requirement is complied with; but a failure to except to the evidence because it does not conform with the statute, is a waiver of the provisions of the law. If the parties to the action, during the trial, made no objection to the admissibility of oral evidence to support the contract of sale of real property, thus permitting the contract to be proved, it will be just as binding upon the parties as if it had been reduced to writing."

So that, once it has been proven by the testimony of witnesses that the purchase of a piece of real estate was made by a verbal contract between the interested parties, if the oral evidence was taken at the petition of one of them without opposition on the part of the other, such proven verbal contract, as the one herein concerned, must be held to be valid. On these premises it is, therefore, not indispensable that a written instrument be presented in order to prove a contract of purchase and sale of real estate; neither is it necessary, that the record show proof of a contract of partnership, in order that a demand may be made for the division of a real property acquired jointly and undividedly by two or more interested parties, inasmuch as the land was acquired by the two purchasers, not for the purpose of undertaking any business, nor for its cultivation in partnership, but solely to divide it equally between themselves. Therefore, it is sufficient to show proof of the fact that a real property was actually purchased by them jointly, in order to insure a successful issue of an action brought to enforce partition, in accordance with the provisions of sections 181 to 196 of the Code of Procedure in Civil Actions, since the plaintiff is really a co-owner of the undivided land.

It is neither just nor permissible for the defendant to violate a contract made, even though verbally, with the plaintiff, and to keep without good reason, for his exclusive benefit and to the prejudice only of his co-owner, the plaintiff, the whole of the land belonging to both of them in common, because each paid a half of the value thereof.

"Contracts shall be binding," prescribes article 1278 of the Civil Code, "whatever may be the form in which they may have been executed, provided the essential conditions required for their validity exist." These conditions are enumerated in article 1261 of the same code, and they are also requisite in a verbal contract that has been proved.

As the plaintiff suffered damage through the loss of the seed which could not be planted in the part of the land belonging to him, on account of the refusal of the defendant to accede to a division of the property, in accordance with the agreement made, it is right and just that the latter be compelled to make indemnity for the amount of the damage occasioned through his fault.

With respect to the abaca obtained by the defendant, to his exclusive benefit, from the land of joint ownership: inasmuch as the amount and value of the fiber gathered is not shown in the trial record, there are no means available in law whereby a proper determination may be reached in the matter.

Therefore, we are of opinion that the judgment appealed from should be, as it is hereby, reversed. It is held to be proper to effect the partition of the land in question, and the judge of the Court of First Instance is directed to decree, through the proceedings prescribed by law, the division of the said land in conformity with the petition made by the plaintiff, and an indemnity, in behalf of the latter, in the sum of P50, the value of the seed lost. The delivery to the plaintiff of one-half of the abaca harvested on the land, or the value thereof, can not be ordered, on account of the lack of proof in the premises. No special finding is made as to costs. So ordered.

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

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