

CARLOS MARTELL ONG, PLAINTIFF AND APPELLANT, VS. CARLOTO JARIOL ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 5922. October 18, 1910*

Ponente: TORRES, J.

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On February 16, 1909, counsel for Carlos Martell Ong filed a written complaint with the Court of First Instance of the district of Lanao, against Carloto Jariol, Leandro Jariol, Gregorio Nanaman, and M. W. Friel, wherein he alleged: That he was the owner and proprietor of a parcel of land at the place called Cababalahan, barrio of Santa Filomena, pueblo of Uigan, of the said district, Moro Province, bounded on the north by the land of Can dido Molo, on the east by Government land, on the south by the land of Gregorio Manaloto, and on the west by the seashore, having an area of 72 hectares, approximately, and planted with fruit trees; that the plaintiff mortgaged the said property for P400 for an unspecified period and without interest, in favor of Carloto Jariol y Agana, from whom he received the said sum upon the condition that, should he return it, together with the expenses incurred in the improvement of the land, the mortgagee would return the property to the mortgagor, the plaintiff; that the plaintiff demanded from Carloto Jariol, and afterwards from Alejandro Jariol, the return of the said land and offered to pay to them the said sum and to refund the expenses incurred when duly verified by vouchers and other requisites; that after the lapse of the time necessary to enable the plaintiff to require the fulfillment of the agreement, he learned from trustworthy sources that Alejandro Jariol, Carloto's son, had conveyed the said property to Gregorio Nanaman and the latter to the American, Abae or Abaid; that by the defendants' refusal to transfer to the plaintiff the property mentioned, he failed to collect the fruits produced by the land and thereby suffered loss and damages to the extent of P200; that the plaintiff believed that his property was in danger of being lost or materially damaged unless a receiver should be appointed for its care, preservation, and administration during the course of the litigation, and for this purpose he offered to give bond to respond for all loss and damage which might be caused to the defendants by reason of the receivership and any action taken by the receiver, in case it should finally be determined that there was not sufficient ground for such receivership; that the plaintiff would deposit with the clerk pf the court the sum of P400, the amount of the mortgage on the land, at the disposal of the defendants, and he prayed that a receiver be appointed for the land described, after the execution of such bond as might be required of him, and that, in case any transfer or conveyance of the property had been made, the instruments whereby the same was effected be declared null and void.

It was further prayed in the complaint that the defendants, or whoever held the land through the latter, be ordered to return the same, together with all its trees, fruits, and buildings, to the plaintiff, and that the said P400, so deposited, be delivered to Carloto Jariol y Agana, to his heirs and successors in interest, and that the defendants or the persons who gave rise to this suit, be sentenced to pay P200 as an indemnity for loss and damage, and the costs. It was further petitioned that a person chosen by the plaintiff be appointed, after acceptance of the bond offered, as receiver with orders to take charge of the property.

The defendants, M. W. Friel, Leandro Jariol, and Gregorio Nanaman, on August 14, 1909, filed, through their

counsel, an amended answer to the complaint and set forth: That they withdrew their demurrer, and admitted paragraph 1 of the complaint; that they denied each and all of the other paragraphs of the same, and, as a special defense, alleged: That, on April 6, 1906, the plaintiff Carlos Martell Ong unconditionally sold to Carloto Jariol the aforesaid land, as shown in the instrument ratified on the same date before the notary public of Iligan; that on July 25, 1908, by an instrument ratified on the same date before the said notary, Leandro Jariol and Tomasa Sabilla, son and widow, respectively, of the deceased Carloto Jariol, sold the said land outright to Gregorio Nanaman who, in turn, on February 6, 1909, sold it to another of the defendants, M. W. Frield, for P1,200, according to the instrument ratified on the same date before the notary above referred to; that the plaintiff Martell y Ong filed a complaint on September 2, 1908, before the justice of the peace for the recovery from the defendant Leandro Jariol, Carloto's son, of the sum of P200 as loss and damage caused by the latter's having sold the land to another person, and that a judgment favorable to the plaintiff was rendered with costs; that the said Leandro Jariol, before selling the land to Gregorio Nanaman, offered it to Carlos Martell y Ong, who did not wish to pay more than P300 for it; that the improvements made thereon, from the 6th of April, 1906, up to the date when the administrator took charge of the property, amounted to P800, Carloto Jariol having died on June 1, 1908; that the defendants filed a counterclaim, inasmuch as, on the petition of the plaintiff, a receiver was appointed for the land, thereby depriving the defendant M. W. Frield of the possession and use of the same and causing him loss and damage to the amount of P175 for each trimester: Wherefore the defendants prayed that judgment be rendered against the plaintiff by absolving the former and sentencing the latter to the payment of loss and damages at the rate of P175 for each trimester comprised between the date when the receiver took charge of the land and that when he was dismissed and the property delivered over to M. W. Frield, with the costs against the plaintiff.

The parties to the suit agreed that Exhibits A and I were authentic; that the house referred to in the testimony of Leandro Jariol was mortgaged by Tomasa Sabilla in the agency of Carlos Martell Ong & Co., on April 27, 1908, for P100; and that, on September 10, 1908, Tomasa Sabilla redeemed the said house, which, after its redemption, was acquired by Silverio Echavez from Tomasa Sabilla and by him mortgaged together with other land belonging to him, for P150.

The case came to trial, testimony was adduced by both sides, the documents exhibited were attached to the record, and the court, on September 3, 1909, rendered judgment absolving the defendants from the complaint and dismissing the preliminary injunction issued against them. The plaintiff was absolved from the payment of damages, but the costs were assessed against him. From this judgment the plaintiff excepted and made a written motion for a new trial on the grounds that the evidence did not justify the judgment of the court and that the same was contrary to law.

A new trial was held in conformity with the plaintiff's petition, and the judge, after hearing both parties and reconsidering the evidence, sustained his judgment of September 3, 1909, with the sole amendment that the words "preliminary injunction" were changed to read "receivership." The plaintiff excepted to this last judgment, and on the same date again moved for a new trial on the same grounds before stated. This motion was overruled and exception was taken thereto by the plaintiff who filed the required bill of exceptions which was certified to and forwarded to the clerk of this court together with the evidence and documentary exhibits.

The purpose of this suit is to recover a parcel of land transferred by the plaintiff, by unconditional sale, to one of the defendants, Carloto Jariol y Agana, the claim being founded on the allegation that the vendee bound himself to return the property to the vendor whenever the latter should refund to the former the selling price and pay him the amount of the expenses incurred in the improvement of the land.

The sale of the land was made in clear and unmistakable terms, without condition or other proviso, on April 6, 1906, as shown by the instrument Exhibit 1, ratified on the same date before a notary, which document was not

impugned nor assailed as false; and although at first it was alleged that the contract therein contained was a mortgage, in this second instance, however, it is claimed that the contract was one of sale under pacto de retro, a covenant of resale which certainly is not found and does not appear in the said Exhibit 1.

The plaintiff founds his claim on the contract contained in the instrument Exhibit A, drawn up in the Visayan dialect and translated into Spanish in Exhibit B, by which instrument, executed on the same date as the notarial document Exhibit 1, April 6, 1906, it appears that the vendor of the land, Carloto Jariol y Agana, declared, for himself and his heirs and successors in interest, that the land which he had bought of Carlos Martell Ong, situated in Cababalahan, barrio of Santa Filomena No. 8, Uigan, would be returned by him to the vendor Martell Ong for the sum of P400 on such day and at such time as the latter should pay him that amount, provided that the said Martell Ong should also refund to him the money invested in the improvements on the said land. On the exhibition of this document at the trial of the case, in August, 1909, when it was no longer possible for the party who executed the instrument, Carloto Jariol y Agana, to be present, he having died on June 1, 1908, it was not impugned nor rejected by the defendants, one of whom is the son and successor of the deceased, but the defendants in their answer denied each and all the paragraphs of the complaint, except the first.

It is alleged that the judge who rendered the judgment appealed from erred in finding that the intention of the contracting parties appears solely from the instrument Exhibit 1, considered separately and independently from that of Exhibit A, which, it is said, is a complement of the former since it is stated therein clearly and categorically, by Carloto Jariol, that the land which he had bought of Carlos Martell for the sum of 3N00 would be returned by him to the latter for the same amount, and it is further alleged that the instrument Exhibit A, as a complement of the said Exhibit 1, may not be considered solely and independently, as was done in the judgment appealed from, both instruments having been drawn up and executed on the same date, April 6, 1906.

So that the appellant, Carlos Martell Ong, understands that the notarial instrument Exhibit 1 should be considered as amended by the private instrument Exhibit A. If such a claim were correct and lawful, the result would be that the widow and heirs of the deceased Carloto Jariol, having acquired the land in question through an unconditional sale, according to Exhibit 1, and being therefore the owners, could not dispose of the same nor, consequently, sell it on July 25, 1908, to Gregorio Nanaman, according to Exhibit 2, ratified before a notary, and this latter vendee likewise could not legally dispose of the aforesaid property by selling it to M. W. Field on February 6, 1909, as per Exhibit 3, also ratified before a notary.

The contents of the instrument Exhibit A, on which the plaintiff bases his right of action, may be true, although, due to the death of the vendee, Carloto Jariol y Agana, the latter's signature, which appears at the foot of the document, is not shown in the record to have been authenticated; nevertheless, whatever the force and effects of the said instrument with respect to the heirs of him who appears as the executor of the document, it is unquestionable that the said instrument can in no manner affect the rights acquired by the defendants Gregorio Nanaman and M. W. Field, especially those of the latter as the present possessor and owner of the land in dispute, since Nanaman bought the land of the widow and heirs of Carloto Jariol under the instrument Exhibit 1, wherein it appears that Jariol, his predecessor in interest, lawfully acquired the property from the plaintiff through a contract of absolute and unconditional purchase and sale, and as Gregorio Nanaman also acquired the realty from its true owners in a lawful manner, it can not be denied that M. W. Field, the last vendee, is now the absolute owner of the said land, for both Nanaman and the widow and heirs of Carloto Jariol could freely dispose of the property without any restriction whatever.

Assuming the truth of the statements contained in the instrument Exhibit A, as they appear in the translation Exhibit B, it may be concluded that the said instrument, although it was drawn up on the same date as the notarial instrument Exhibit 1, was undoubtedly written and drawn up after the execution of the notarial document Exhibit

1, and under this hypothesis, if it be true that the instrument Exhibit A was executed by Carloto Jariol to alter the stipulations of the notarial instrument Exhibit 1, the existence of the said document Exhibit A produces no legal effect against the third parties, Gregorio Nanaman and M. W. Frield, who are the successive vendees of the said property.

Article 1230 of the Civil Code provides:

"Private instruments executed for the purpose of changing the agreements made in a public instrument shall produce no effect against a third person."

The probatory effect of an authenticated or legalized private document is generally limited to the interested parties and to their heirs, or successors in interest, and does not extend to third persons, especially when the latter were not aware of the alteration of the stipulations of the public document made in the private document drawn up subsequently.

The complaint also prays that should the land in litigation have been transferred, the deeds of conveyance be declared null and void. In deciding whether this petition may properly be granted or not, article 1302 of the Civil Code must be taken into account, which is as follows:

"The action for nullity of contracts may be brought by those who are principally or subsidiarily obligated by virtue thereof. Persons with capacity can not, however, allege the incapacity of those with whom they contracted; neither those who caused the intimidation or violence, or employed deceit, or caused the error, can base their action on these defects of the contract."

The plaintiff is not the party obligated principally nor subsidiarily in the deeds, of sale, whose nullification he asks for, and even though the Exhibit A were recognized as authentic and efficacious, it would be improper to admit that the said plaintiff was injured in his rights by reason of the successive transfers of the said property and is on such account entitled to exercise an action for nullification, inasmuch as the widow and heirs of the supposed executor of the said instrument acted in good faith in selling the land, since they were not aware of the existence of the document. With still more reason must this circumstance be recognized in favor of the other purchasers, Nanaman and Frield, for it can be asserted that the said transfers were not effected fraudulently and to the detriment of the plaintiff.

Moreover, if, in accordance with the preinserted article 1230 of the code, the said private document produces no legal effect whatever against third persons, such as the successive vendees of the property, with much less reason can it give rise to an action for rescission seeking the annulment of the said contracts of sale in which the plaintiff had no right whatever to intervene.

It is to be noted that when the widow of the deceased Carloto Jariol, Tomasa Sabilla, and her son, Leandro Jariol, unconditionally sold the said land to Gregorio Nanaman, on July 25, 1908, already more than a month and a half had elapsed since the death of their predecessor in interest, and they had no knowledge of the existence of the instrument Exhibit A. Leandro Jariol only learned that there was such a document on being sued in the justice of the peace court by the plaintiff Carlos Martell for loss and damage on account of the sale of the land in litigation by Jariol, and because of which claim Leandro Jariol was sentenced to pay to the plaintiff P200 for loss and damage, and the costs, a judgment which had to be executed for the reason that it was not appealed. Likewise it must be borne in mind that it was proved that the said widow and the heir of the deceased owner of the land, being in need of money, before they sold the property to Nanaman, offered to sell it to the plaintiff who then only offered for the land the sum of P300, an offer which does not harmonize with Carlos Martell's allegation that he was entitled to recover the property by the payment of the same sum for which he had sold it, to wit, P400, because, were it true that he did not unconditionally sell it, in spite of the proof to the contrary, according to the

notarial instrument Exhibit 1, on the offer being made to him to sell him the same parcel of land, he would naturally have alleged his right to repurchase it, in accordance with the contents of the private document Exhibit A.

Besides, even though the petition were proper, that the defendant Leandro Jariol be sentenced to pay P200 as an indemnity for loss and damage, yet, since he was so sentenced in a judgment rendered by the justice of the peace, by virtue of an express petition made by the plaintiff, it would neither be just nor reasonable that he be sentenced to pay such indemnity again in this instance.

For the foregoing reasons, and finding the judgment appealed from to be in accordance with law, it is proper, in our opinion, to affirm the same, which we hereby do, with the costs against the appellant.

Arellano, C. J., Johnson and Trent, JJ., concur.

CONCURRING

MORELAND, J.,

I base my concurrence in this decision upon two grounds: (1) That the sale of the lands by the plaintiff to the defendant Carloto Jariol y Agana was absolute on the face of the instrument of transfer and that, at the time it was by him sold to the other defendants, he was in full, complete, and visible possession under said instrument. There appeared no defect in the title in any public record. (2) That the plaintiff had, before the commencement of this action, recovered a judgment in his favor for damages resulting from the failure of the defendant Carloto Jariol y Agana to fulfill his verbal agreement to return the land in question to the plaintiff on payment of a specified sum of money. Having that judgment, which represents to the full the damages he suffered by reason of the loss of the land, he can not now recover the land itself without alleging and proving facts additional to those appearing in this case.

I place no faith or confidence in the mere fact that the document conveying the land in question was executed before a notary public. That fact is devoid of signification. Its registry in a designated public place, viz, the office of the register of deeds, is that and nothing else which lends it virtue and significance as a public document. The instrument in question was not so registered. It has, therefore, no more efficacy than it would have had if a notary public had not intervened in its execution.

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