

**TOMAS AMANCIO, PLAINTIFF AND APPELLANT, VS. JORGE PARDO ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 5928. October 04, 1911*

Ponente: TORRES, J.

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This is an appeal by the plaintiff from a judgment rendered by the Hon. Jose Abreu.

On November 30, 1907 [1908], Tomas Amancio filed a written complaint against Jorge Pardo and Isaac Andrada, the latter as the provincial sheriff of Capiz, wherein he alleged that he was the legitimate owner of a building lot situated in Calle Rizal of the municipality of Capiz, Province of Capiz, the location, area and boundaries of which land are specified in the said complaint; that for a long time past he had been in uninterrupted possession of the said lot and had been paying the taxes thereon; but that, on October 14, 1908, the aforesaid sheriff Andrada, at the request of Jorge Pardo, proceeded to attach the lot in question, without the plaintiff being previously notified thereof, for the purpose of selling the same at public auction as belonging to Alvaro Alcantara, under authority of a writ of execution issued by the court in favor of the said Pardo and against Alcantara in a case instituted to enforce the payment of P697.50 together with the legal interest thereon, while in the said writ the property of the judgment debtor Alcantara, which was to be attached, was not specified; that the plaintiff, by a written petition presented to the sheriff, asked him to release the attached lot, for the reason that it did not belong to Alcantara, and stated to him under oath that he owned and possessed the said lot, and set forth the grounds in support of his ownership; but that the defendant Pardo opposed his claim and insisted on the maintenance of the attachment, made at his instance, and that the sale at public auction should be proceeded with, for which purpose he furnished a bond in the sum of P2,000; that, therefore, the defendant sheriff, maintaining the attachment, proceeded with the sale of the said lot at public auction, as belonging to Alcantara, on the 28th of November, 1908; that it was sold for only P824, when it was worth at least P1,200, at which latter amount more than two persons had offered to buy it, although the plaintiff did not wish to sell it, as he intended to erect thereon a building of strong material; that the said lot was then producing an annual rent of P75, as he had leased it to some Chinamen who were occupying it; and that, as a result of the said attachment and execution sale made at the request of the defendant Pardo, he suffered loss and damage in the amount of P800. The complaint concluded by asking that judgment be rendered in the plaintiff's favor and against the defendants, by ordering the return of the said lot to him, together with reimbursement of the rents he failed to collect, in addition to an indemnity for loss and damage, and the costs of the trial. The plaintiff, by motion, prayed to be allowed to amend the petitionary part of his complaint, in the following terms: "Therefore he prays that judgment be rendered in his behalf against the defendants, by awarding him an indemnity for the value of his said lot already sold and for other loss and damage suffered, and the costs of the trial; and that the title of the action be amended thus: 'For an indemnity for the value of a lot sold and for other loss and damage.' "

The sheriff, Isaac Andrada, in his written answer, stated that he admitted the fact that the attachment of the land claimed had been made, pursuant to the provisions of the law, but denied all the allegations relative to the

ownership and possession of Tomas Amancio to the land sold under execution of judgment and described in the complaint.

The other defendant, Jorge Pardo, in his amended answer, stated that he denied each and all of the paragraphs contained in the complaint, and, as a special defense, alleged that the attached lot did not belong to the plaintiff Tomas Amancio at the time the attachment was made, but to Alvaro Alcantara.

The case having come up for trial, and after evidence had been furnished by both parties, the court, on October 4, 1909, rendered judgment disallowing the said complaint and holding that the plaintiff was not entitled to the remedy solicited by him against the defendants Pardo and Andrada, and assessed the costs against the plaintiff. Counsel for the latter excepted to this judgment and asked for the annulment of the same and a rehearing, which motion was overruled and an exception was taken thereto by the plaintiff and appellant; the proper bill of exceptions having been filed, it was admitted, certified and forwarded to the clerk of this court.

It is to be noted that the document, Exhibit C, rejected by the lower court, was likewise forwarded, but that the same was not done with respect to the document Exhibit 1 of the appellee, for the reason that the latter failed to secure its separation from Civil Case No. 66, where it is on file, and did not pay the required fees for the certified copy thereof, which must have remained among the papers of the said case (p. 2 of the record).

Reduced to its bare terms, the issue raised in this litigation, through the pending appeal, is to be resolved by deciding definitely who was the real owner of the disputed lot, on October 14, 1908, whether it was the plaintiff, Tomas Amancio, or his son-in-law, Alvaro Alcantara, the judgment debtor of the defendant Jorge Pardo.

At the instance of this creditor, who obtained a judgment and then a writ of execution against his debtor, Alcantara, for the collection of his claim of P697.50, together with legal interest, the lot in litigation was attached and afterwards sold at public auction to Federico Habana for P824, a bond having been given by the said creditor to cover any possible liability that might be incurred by the sheriff, in view of the plaintiff Amancio's claim that he was the owner of the property.

The original owner of the lot was Estanislao Alvarez who, on November 29, 1889, sold it, by a notarial instrument, to Ramon Amancio for the sum of 400 pesos (Exhibit B), and the latter, in turn, sold it to his father, Tomas Amancio, for 1,000 pesos, according to a private instrument executed on December 2, 1898, Exhibit A.

These two instruments were presented by the plaintiff to prove that he was the owner and proprietor of the aforesaid lot; he also exhibited five receipts proving that he had collected rents paid by two Chinamen who, as tenants, occupied portions of the lot in question.

For the purpose of proving that, on the date of the attachment, the attached lot did not belong to the plaintiff, but to Alvaro Alcantara, as alleged in the answer to the complaint, the defendant presented the will executed by the defendant Tomas Amancio on November 3, 1898, before the notary public Jose Maria Garcia. This will is attached to the record, No. 66, of the probate proceedings had in the Court of First Instance of Capiz, in re the estate of the deceased Manuela Amancio, who was a daughter of the plaintiff and the wife of the defendant.

The will herein referred to must have been executed pursuant to the provisions of the Civil Code, article 694 of which prescribes:

"An open will shall be executed before a notary, qualified to act at the place of its execution, and three competent witnesses who can see and understand the testator and of whom one, at least must know how and be able to write."

On the hypothesis that the said will was executed in conformity with this article, it is unquestionable that it is

vested with the character of a public document, like any instrument authenticated by a notary public, and is therefore proof, even against third parties, of the facts which were the cause of its execution and of the date when it was executed, for the reason that it is a document authenticated by a public official of this character, pursuant to the provisions of articles 1216, 1217 and 1218 of the Civil Code.

In the judgment appealed from there appear several clauses of the aforementioned will, which are:

"On folio 125 of the said public instrument the following is to be found: 'He certifies that with the consent of his aforesaid wife he has bequeathed to his said children the following properties and effects: To Ramon Amancio \* \* \* six hundred pesos, three-fifths of the one thousand pesos which is the value of a lot owned by the testator, situated on called Rivera of this provincial seat and containing lumber, stone and sand, which lot was sold by him to his brother-in-law, Don Alvaro Alcantara y Ardeia, for the said sum of one thousand pesos \* \* \* P600.'

"Further on, folio 130, is found: 'To Rosario \* \* \* two hundred pesos, a fifth part of the one thousand pesos, the value of a lot containing lumber, stone and sand situated on calle Rivera, of this town and which was sold to D. Alvaro Alcantara de Santos y Ardeia for the said sum of one thousand pesos \* \* \* P200.'

"And, finally, on folios 130 and 131 there is the following: 'To Concepcion \* \* \* two hundred pesos, a fifth part of the one thousand pesos, the value of a lot containing lumber, stone and sand, situated on Calle Rivera of this town and which was sold to D. Alvaro Alcantara de Santos y Ardena for the said sum of one thousand pesos \* \* \* P200.'"

The record in the present case shows it to have been duly proven that the lot in question is the same one referred to in the will executed before a notary by the plaintiff Tomas Amanio who declares therein that his son, Ramon Amancio, had sold the said lot to the latter's brother-in-law, Alvaro Alcantara, for the sum of 1,000 pesos; therefore, the testator being no longer able to dispose of the said lot, as it was no longer his, directed in his aforementioned will that the amount derived from the sale of the lot to his son-in-law Alcantara should be distributed in the manner detailed in the preinserted clauses of his will.

This document exhibited at the trial was not impugned, nor assailed as false; therefore, being a public instrument executed with the formalities required by law, it is efficacious, produces all the effects that flow from a valid instrument and constitutes, in so far as it concerns the lot and its value, a true admission or statement against the testator's own interests. Such a voluntary statement of his, made in his will, is entirely incompatible with his present claim that he is still the owner of the land already sold to Alcantara. As a result of all this, it is evident that the plaintiff's testator comes within the rules of estoppel referred to in section 333 of the Code of Procedure in Civil Actions. (Alconaba vs. Abinez, 11 Phil. Rep., 152.)

In the syllabus of the decision of this court, Gomez Medel vs. Avecilla, 15 Phil. Rep., 465, the following doctrine was established:

"1. Open wills under the old law. - An open will, executed before a notary public with the requisite number of witnesses, was a public instrument having the force and effect of this class of public documents under the old law.

"2. Id.; Acknowledgment of a debt in a defective will. - The acknowledgment of a debt, in such a will, by the testator in favor of another person, although the document may be insufficient as a will because of the lack of some legal formality required to give it validity, is nevertheless sufficient as Written and authentic evidence of the existence of the obligation."

Although the suit and the decision just above alluded to concerned the collection of a debt, nevertheless the first two paragraphs of the syllabus are cited with respect to the force and effect of a will as written evidence of the

existence of an obligation, the fulfillment of which is independent of the date of the death of the testator.

The plaintiff avers that, as the purchaser had not completely paid the price of the said lot, the property was reacquired by him; but this allegation was not proven, nor was any document presented as proof of such alleged resale which, in any event, should have been made in favor of Ramon Amancio.

The said lot does, indeed, appear as having been sold on December 2, 1898, by Ramon Amancio to his father, the plaintiff, for the sum of one thousand pesos, according to Exhibit A, as aforesaid; but this document, of a private character, can not prevail against a previous public instrument to the prejudice of a third person who did not intervene in its making and execution, nor in the obligation therein concerned.

It being a certain and positive fact that Ramon Amancio did sell the lot in question to his brother-in-law, Alvaro Alcantara, according to a statement made by the plaintiff, Tomas Amancio, in a notarial instrument executed on November 3, 1898, and as it was not reacquired by the said Ramon Amancio from the purchaser Alcantara, it is impossible to conceive that the former could legally have sold it to the plaintiff on the 2d of the following month of December, because he was no longer the owner of the property nor could he, on the date just mentioned, dispose of it, since Alvaro Alcantara was the real proprietor thereof.

The private document, Exhibit A, can not establish the equity of a right of intervention of a third person in the ownership of real property attached for the payment of a debt contracted by its owner, because this would be to permit the employment, in suits of all kinds, of means tending to render illusory a final judgment which sanctioned the fulfillment of an obligation protected by the law.

It is an established legal doctrine, constantly maintained in practice by the courts of justice, that he who alleges a right of intervention based on ownership, must prove that he is the owner of the thing claimed; and if the claimant has not fulfilled this requisite, as determined by the trial judge, according to the weight given by him to the evidence, such judicial opinion must be respected.

The plaintiff, as has been shown, did not prove his ownership of the disputed lot and, therefore, the defendant had a perfect right to ask for and obtain the attachment and sale of the lot, which belonged exclusively to his debtor Alvaro Alcantara, for the collection of his claim; and the sheriff, in fulfilling the executory judgment rendered in behalf of the defendant creditor, proceeded in compliance with the law.

For the foregoing reasons, whereby the errors attributed to the judgment appealed from, held to have been rendered in accordance with the law, are deemed to have been refuted, it is proper, in our opinion, to affirm and we hereby affirm the judgment and absolve the defendants from the complaint, with the costs against the appellant.

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

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