

**JUAN MERCADO, PLAINTIFF AND APPELLEE, VS. FLORENCIO NOEL, DEFENDANT AND APPELLANT.***G.R. No. 6787. December 04, 1911*

Ponente: MORELAND, J.

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It appears in this case that in the year 1903 Matea Rosales leased to the defendant Florencio Noel the piece of land in litigation in this suit. The lessee immediately erected thereon a camarin which first served as a tienda for his daughter-in-law and later for a number of Chinamen to whom he sublet it. Matea Rosales died in the year 1904 and her niece Filomena succeeded her. The latter on the 15th of February, 1905, sold to Juan Mercado (through Mateo Mercado), with the right to repurchase, a certain parcel of land which is claimed by the plaintiff to have been all of the land which she inherited from her aunt Matea, including the portion leased to the defendant, and by the defendant to have been only such part of the land so inherited as had not been so leased. On the 21st of March 1905, Filomena Rosales by a written instrument transferred to the defendant the land which in 1903 had been leased to him by Matea Rosales. After these transactions had occurred Filomena Rosales died intestate and an administrator was duly appointed to administer upon her estate. Sometime during the year 1907 it seems that the plaintiff presented to the commissioners appointed to receive claims against the estate of the said Filomena Rosales, deceased, the debt which had formed the consideration for the sale with the right to repurchase made to him by Matea Rosales, which claim was duly allowed as a valid and subsisting claim against said estate. From the record it appears that to satisfy said claim it was necessary to sell the land which had formed the subject matter of said sale with the right to repurchase and pursuant to such necessity said land was sold at public sale by the administrator of said estate sometime during the year 1907. The land so publicly sold was purchased by the plaintiff. The land advertised and sold by the administrator was described as all of the land of which the said Matea Rosales died seized, including the land theretofore leased and sold to Florencio Noel as heretofore mentioned. The defendant, on being notified of the attempt of said administrator to sell the parcel of land of which he claimed to be the owner, entered a protest to said administrator against such sale. Notwithstanding the protest the administrator sold or attempted to sell the land described, including that belonging to the defendant. The defendant is now in possession of the land and has been ever since the execution of the lease in 1903. This action was commenced by the plaintiff to quiet title to the said land and for a mandatory injunction prohibiting the defendant from exercising any rights in relation thereto or of performing any acts in contravention of the rights asserted by the plaintiff. While the prayer for relief does not in terms ask for the delivery of possession of the land and is not the prayer usually found in an action of ejectment to test the title to land and to recover possession thereof, we, notwithstanding, treat it as such, the parties having themselves during the whole course of the proceedings acted upon that theory.

Upon the trial the learned court below found in favor of the plaintiff, declaring that he was the owner of the land, and ordered restitution of possession, the defendant to pay the costs of the action.

We are of the opinion that the judgment cannot stand upon the facts. Th§ lands of which Matea Rosales died

seized are described as measuring 38 meters and 30 centimeters front and 33 meters and 30 centimeters deep. The lands which form the subject matter of the pacto de retro are described as being 30 meters and 48 centimeters front and 30 meters and 88 centimeters deep. It appearing that the lands in dispute in this litigation are located upon the corner of the lot described as 38 meters and 30 centimeters front, and it appearing that said lot so claimed by the defendant would occupy the space which is indicated by the difference between the description of the lot of which Matea died seized and the description of the lot sold by her to the plaintiff under pacto de retro, it is clear to our minds that the change in the description from the original lot to that sold under pacto de retro indicates a clear intention to exclude from the pacto de retro the lot occupied by the defendant as lessee. As a matter of fact, the description in the pacto de retro does not cover the lot in litigation. The plaintiff, relying upon the pacto de retro, must stand or fall by its terms reasonably interpreted. There is no part of the record from which we could draw the inference that Matea Rosales in executing the pacto de retro intended to convey more land than was actually described therein. Neither does it appear from the record that, prior to the dispute which terminated in this litigation, the plaintiff himself was under the impression or had the belief that he had acquired more land than that actually described in the instrument which he accepted. There being, then, nothing in the whole case from which we can adjudge that the intention of the parties was to deal with other or different land than that described by the instrument which they executed, we must construe that instrument according to its terms. By so doing we exclude the transfer of the land in litigation from the terms of said instrument.

It being clear that the sale with the right to repurchase was not intended to include and did not include the piece of land here in litigation, it necessarily follows that the sale by Filomena Rosales to Florencio Noel, the defendant, of said land was a valid sale and conveyed the ownership of said land. Therefore, at the time of the sale by the administrator in the year 1907, the defendant had been the owner and in undisturbed possession of the land in question for more than two years. The sale by the administrator was not really a sale at all but merely an attempt to sell which, for the reasons we have just presented, was wholly futile. The administrator, being powerless to sell the land in dispute, could convey nothing whatever to plaintiff in this case by virtue of said attempt to sell.

For these reasons we hereby reverse the judgment and dismiss the complaint upon the merits. So ordered.

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

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#### **DISSENTING:**

#### **TORRES, J.,**

I am of the opinion that, upon other grounds, the judgment should be affirmed.

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