

AGUSTINA RAFOLS, PETITIONER AND APPELLANT, VS. EMILIA RAFOLS ET AL., OPPONENTS AND APPELLEES.

G.R. No. 7117. March 14, 1912

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Agustina Rafols, of the city of Cebu, Island of Cebu, applied for the entry in the new land registry, and for the ownership title, of an improved urban property consisting of a lot, a house of masonry, a warehouse, and another house of strong materials, whose possession thereof is recorded in the books of the old registry.

Emilia Rafols, Arcadia Rafols, and Angela Rafols, as heirs designated in her will by their collateral relative, Luisa Rafols, who was the original owner of the said property, opposed the application for the registration of the same, made by Agustina Rafols.

The following facts were proved:

- That Luisa Rafols was the owner of the said property.
- That, on June 25, 1869, by a public instrument, Luisa Rafols sold the said land and its improvements, under a pacto de retracto, or agreement of sale with right to repurchase, to the commercial firm of Koch & Brunner (Otto Koch and George Brunner), doing business in the city of Cebu, for the price of 4,600 pesos, it being stipulated, to quote literally:

"That the said Dona Luisa may redeem the house and the other buildings sold, with their lots, after the lapse of four years counted from this date, that is, June 24, 1893, and for the same sum of 4,600 pesos, and if, on the said date, she does not redeem the said property, by this mere fact the sale shall be converted into an actual and perpetual sale, without the need of a new instrument." (Applicant's Exhibit I, 188.)

- That, by another public instrument of June 12, 1893, the term for the maturity of the said pacto de retracto was extended, in the following language:

"And the term being about to expire during which Dona Luisa may redeem the property sold by virtue of the stipulated agreement, and as she has not the necessary sum wherewith so to do, she states that from the 24th of the present month the said property shall be considered as sold to Messrs. Koch and Brunner, until the 24th of June, 1897, under the same conditions and agreement as it is now sold, and she adds that, for the purpose of enabling her to carry the instrument of sale and repurchase into effect before the last date above mentioned, she as the redeemer shall return, in addition to the price of 4,600 pesos, the expenses of the present instrument; and if she should let the said term elapse without redeeming the property, the sale shall be definitely consummated in favor of the purchasers, in which case it shall be sufficient merely to record this fact in the registry by means of a marginal note." (Applicant's Exhibit I, 196.)

- That, on July 22, 1894, the said Dona Luisa Rafols solemnly executed her will before the notary public of the district of Cebu, wherein she declared that she had no forced heirs and she named as her heirs various collateral

relatives (who apparently are seventeen in number at the present time), among them the three opponents, and she appointed as her testamentary executors Ignacio Neis, Francisco Medalle, and Marcos Alo, whom she vested with the powers of expert partitioners of her estate and the extensions of time granted by law, for the fulfillment of the duties of their office; that, as guardian for her minor heirs, if any, she appointed Martin Medalle, to serve without bond, and as protutor, Gregorio Cabrera; and she forbade all judicial intervention in the matter of her said will. (Applicant's Exhibit D, 184.)

- That, at the death of the testatrix, there was no other minor heir than Felix Rafols, for whose guardianship a family council was held before the justice of the peace of Cebu, on November 20, 1894, whereby the following resolutions were adopted: (a) To grant to the guardian the authorization he solicited by motion of the testamentary executors of the deceased Dona Luisa, to enable him to proceed to the sale "of the right which belonged to the said Dona Luisa to recover a house built of strong materials with a tile roof, together with a masonry warehouse, sold under pacto de retro to Messrs. Koch and Brunner;" the council, upon granting the authorization requested, provided that the sale should be by public auction, after appraisal by experts, and the latter appraised the property at 10,000 pesos. The auction was announced by the Court of First Instance, on February 15, 1895, on a basis of 10,000 pesos. (B, of e., pp. 10, 11); (b) to grant a new authorization to the guardian in order that, in view of the failure of the auction, he might proceed to a new appraisal of the property, which was valued anew at 5,000 pesos; (c) to grant a more ample authorization to enable the selling, jointly with the said property, of other properties of the estate, such as a house of strong materials for 300 pesos, another with a nipa roof for 50 pesos, several parcels of agricultural land, and a mill for about 800 pesos—all of which in no wise concerns the present case. This authorization was given on March 30, 1895.

- That neither could this auction be held, on account of the opposition offered by the administrator of the convent of the Santo Nino of Cebu, to whom the land belonged, an ownership proved both by the documents he exhibited and by the recognition and payment of a canon or fee, sometimes by Dona Luisa, sometimes by Messrs. Koch and Brunner, for the use of the land; and it was for this reason that the testamentary executors came to an agreement with the said administrator of the Santo Niño Convent, for the purchase of the lot for the price of 1,100 pesos and for the execution of the instrument of sale by the aforementioned proprietor in behalf of the estate at such time as the repurchase of the property in question should be effected. By virtue of these stipulations, there was adopted, as in the previous cases, another resolution by the family council, on June 25, 1895; (d) granting special authorization to the protutor to enable him to give his consent to the aforesaid contract (pp. 143 to 146; applicant's Exhibit L, 99 to 146); and

- That, by virtue of this authorization and of the agreement had with the owner of the lot, the auction was newly announced for July 9, 1895, in conformity with the order of the Court of First Instance directing the announcement of the same, issued on the 2d of the said month and, as therein stated, upon the written motion, made the day before, the 1st, by the testamentary executors. (Applicant's Exhibit F. B. of e., pp. 12 and 13.)

That this third auction took place, is also a fact proven by the testimony of the applicant's two witnesses, Ignacio Neis, the testamentary executor, and Lazaro Osmeña, the highest bidder for the property at the said auction, and by that of the three witnesses for the opponents, Eduardo Lopez, Emilia Rafols, and Arcadia Rafols.

Neis and Osmeña both testified that a third auction was held and, more positively, Osmeña, who was the bidder thereat; the latter stated that he had bid in the property, so sold, at the price of 6,482 pesos—6,100 pesos for the larger and 322 pesos for the smaller house—and that delivery was made of 4,640 pesos to Koch & Brunner, who delivered to Osmeña the instruments relative to the sale under pacto de retro.

Of the opponents' witnesses, Eduardo Lopez positively testified that there was a first, a second and a third auction,

the first two of which were ineffective and the last was protested as null and void because of an excessive reduction of the price, which is equivalent to saying that it was actually held. This witness added that one of the auction sales, he believed it was the third, must have taken place in March or April, 1895, and that the second of the auction notices (Applicant's Exhibit F) was that of the second auction.

Emilia Rafols, opponent, testified that the property in question was owned by Agustina Rafols, "because they redeemed it from Koch & Brunner," this witness learned from Brunner, and that the only claim which she had made was that which was apparently still pending relative to the executor's accounts, "accounts of what has taken place, whether they have sold the property, whether there is any surplus, and whether more property remains, for they have not made any report to us."

Arcadia Rafols, opponent, testified that when she arrived at Cebu she was informed that there had been an auction and the property had been transferred to Tomas Osmena, the husband of Agustina Rafols. The only person who stated that there had been an auction with bidding and award, was Jose Felix Martinez, justice of the peace, then acting as a judge of the Court of First Instance.

In the Court of First Instance of Cebu there is at the present time pending a special action, instituted by Emilia Rafols, one of the opponents, in re the estate of Dona Luisa Rafols, registered under No. 183, from which the following documentary evidence was taken:

"Temporary receipt—For pfs 4640—Cebu, July 22, 1895. Received from Don Tomas Osmena the sum of four thousand six hundred and forty pesos.—(Signed.) Koch & Brunner." (Applicant's Exhibit H, 187.)

From these facts the following considerations arise:

First. That if, six years prior to her decease, Luisa Rafols sold the property in question to Koch & Brunner, then at the time of her death the house was no longer hers and could not figure among her hereditary assets or in the estate she left when she died; such property was not a part of her estate, but only the right to repurchase it, valid until June 24, 1897, and, also, this only it was that her heirs could inherit; from which it is concluded that it may in no wise be affirmed that the building or the land belonged to the heirs of Luisa Rafols, for that very reason, to wit, that at the latter's death neither of them longer belonged to her, nor is there any provision whatever in Luisa Rafols' will, with respect to such building or to the land, neither of which is even mentioned therein.

Second. That the 4,600 pesos received by Luisa Rafols from Koch & Brunner were the price of the sale of the property, and, at the former's death represented no debt of any kind of which mention should be made in the will; Luisa Rafols did not receive them as a loan under the security of a mortgage on her property; had she done so, it might rightly have been said that they were a debt that she left to her heirs. After the consummation of that sale, there remained no debt owing by the vendor to the vendees and nothing that might be construed as an obligation was transmitted to her heirs; what remained to the vendor and was transmitted to her heirs, was a right: that of repurchasing the property.

Third. That the title to the said property, whereby it was transferred from Koch & Brunner to Agustina Rafols, was one acquired by purchase at a judicial public sale for 6,432 pesos; and although the record no longer exists of such transaction, owing to the loss by fire of the records of the Court of First Instance of Cebu, documentary and parol evidence was presented at the trial to the effect that there were three auctions held for the sale of the said property, and that evidence is amply sufficient. The proofs of the first and the second auctions are the minutes of the family council which dealt with the minor Felix Rafols and which is referred to in paragraph 5 of this decision, and the applicant's Exhibit E, consisting of the judicial decree of February, 1895, giving notice of the first auction, as documentary evidence, and the testimony of the opponents' witness, Eduardo Lopez; but the judicial decree, applicant's Exhibit F, is not, as the latter witness declared, proof of the second auction, for the

guardian could hardly have reported to the family council, on June 22, 1895, that the second auction could not be carried out on account of the opposition offered by the Santo Niño Convent of Cebu and the council have authorized a third auction, according to its minutes of June 25 of the same year, if only on July 2, 1895, the date of that judicial decree, a second auction was announced, which was the subject of the applicant's said Exhibit F. The truth is that the judicial decree contained in this Exhibit F was published to announce a third auction, which, as stated in the decree, was to take place on the 9th of the said month and year.

Fourth. That if, as positively stated by Eduardo Lopez, a witness for the opponents, there was a third auction; if, as the opponent Arcadia Rafols testified, she was informed when she arrived at Cebu that there had been an auction held and that the property had been conveyed to Tomas Osmeña, the husband of Agustina Rafols; if, as testified by Emilia Rafols, the principal opponent, Brunner, of the firm of Koch and Brunner, had told her that the said spouses Osmeña had redeemed the property, and there appears in the special proceedings, initiated by her, a temporary receipt given by Koch and Brunner for the 4,640 pesos involved in the repurchase, said witness adding that the object of the special proceedings was to have "the testamentary executors render accounts of what had taken place, whether they had sold the property, whether there was any surplus, and, besides, whether more property remained," then, it is evident that Agustina Rafols acquired the property in question at a public sale by auction, and this is what it is endeavored to prove.

Fifth. That it is not admissible to affirm that the requisites of the auction sale were not complied with, when it is not stated which of them is lacking, especially when the presumption "that the law has been obeyed" is a presumption of law (Code of Civ. Pro., subsec. 31, sec. 334); it must, therefore, be presumed that approval was had of the auction, if such be the requisite that appears to be lacking; moreover, under the Civil Code, which was in full force in 1895 (without having been suspended in this respect, as erroneously believed by a witness), it was not necessary that either the auction sale or its approval should be judicial acts, inasmuch as it devolved upon the family council to authorize and approve the sale, in accordance with articles 269, cases 5 and 7, and 272 of the said code; so that, there being no reason for the Court of First Instance now to approve that sale held in 1895, it would not be just to subject to such a requisite, not prescribed by law, the exercise of an absolute and unconditional right, now a vested one, which the applicant has to regard herself as the selling-owner of the property since 1895, when she acquired it, and since which time she has been holding it without the least opposition or difficulty, until October 11, 1907, the date of her application whereby alone these questions have been raised; nor would it likewise be just to make dependent on the rendition and approval of the accounts of the testamentary executor, Ignacio Neis, nor on any other liability of the executorship of the estate of Luisa Rafols, the registration of the property in question, which latter, in no case and for no reason whatever may be affected by liabilities of any kind of the said estate, because, even prior to the testamentary execution, and by an act inter vivos not impugned nor attempted to be impugned, the said property ceased to belong to the predecessor in interest of the estate.

Sixth. That, even supposing for a moment that there had been no third auction, and that the applicant had not acquired the property by means of this title of acquisition, yet there would always remain the fact, hereinabove stated, shown by the record to have been fully proved, to wit, that on July 22, 1895, Koch & Brunner, the owners of the property at that time, had received from Tomas Osmeña, the husband of Agustina Rafols, the 4,640 pesos, the price of the sale of the said property to these spouses, or the price for which the latter "had redeemed it," according to a phrase used by Emilia Rafols; by reason of this fact, all the rights of Koch & Brunner were transferred to the said spouses, and one of the rights of Koch & Brunner was that if, on the 24th of June, 1897, the right of repurchase stipulated in the instrument of June 12, 1893, had not been exercised, the sale should be finally consummated; wherefore, as the property was not repurchased, the sale to the Osmeña spouses became finally consummated on June 25, 1897.

"If the vendor should not comply with the provisions of article 1518 (concerning redemption), the vendee shall irrevocably acquire the ownership of the thing sold." (Civil Code, art. 1509.)

It is a conclusion of the judgment appealed from "that she (the applicant) repurchased the property from Messrs. Koch & Brunner and has an interest therein." (B. of e., p. 20.)

And, finally, just as Koch & Brunner might have, since July 25, 1897, applied for¹ the registration of their title of absolute and full ownership to the property in question and for the issuance to them of an owner's title, pursuant to the new Land Registration Act, so also could Agustina Rafols, from the said date, obtain, and she can now obtain, the same rights, for identical reasons, to wit: because of the consolidation of the ownership and because the title of sale under right of redemption is converted into one of definite and final sale, which is a perfectly adequate title for the transfer of ownership and all other real rights in the thing sold.

Therefore, the judgment appealed from is reversed, and the Court of Land Registration shall order the registration and issuance of title applied for by Agustina Rafols, as well as the cancellation of the instruments of sale under right of redemption, executed by Luisa Rafols and mentioned in the record, especially of that of June 25, 1889. No special assessment of costs is made in this instance. So ordered.

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

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