

CHAPCHAP, PLAINTIFF AND APPELLEE, VS. TOMAS CACAYAN, DEFENDANT AND APPELLANT.

G.R. No. 8277. January 16, 1914

Ponente: TRENT, J.

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TRENT, J.:

The disposition of this case, which was commenced in the court below on December 20, 1911, depends upon the authenticity of Exhibit 1, a notarial document of purchase and sale executed in 1896, and duly registered on June 16, 1903, under the terms of which the defendant, Cacayan, purchased from Cayat, the deceased husband of the plaintiff, the land in dispute for the sum of P300.

There is no question that the document is on its face regularly executed. It is stated therein that Cayat could not sign his own name, while it was satisfactorily proven at the trial that he could. It is admitted by the plaintiff that a transaction occurred between Cacayan and Cayat with regard to the land in question, but she insists that it was not one of purchase and sale but one of pledge or mortgage for a loan of P100. Two witnesses testified that this was the character of the transaction as stated to them by Cacayan about the time it occurred.

If there was any fraud in the execution of this notarial document, it consisted in someone impersonating the deceased Cayat as vendor. Under section 23 of the Notarial Law of Spain, extended to these islands by the royal decree of February 15, 1889, the notary was obliged to satisfy himself of the identity of the persons to the instrument. The presumption is that the notary who executed this document complied with the Notarial Law in this respect. The mere fact that the vendor told the notary that he could not sign his own name is not sufficient to prove fraud in the execution of the instrument. Article 64 of the Provisional Regulations for the organization and management of notarial offices in the Philippine Islands, provides that the notary shall state this fact in his certificate, which was done in the present case. The testimony as to the offer of P100 to the defendant in the presence of the provincial governor is unsatisfactory. Mr. Wagner, who was, at the time, private secretary of the governor, was called as a witness, but his testimony is so vague because of his indistinct recollection of the incident, that it is of no practical value. We do not consider the testimony of the plaintiff and her other witnesses sufficient to establish the fact that defendant was actually tendered the P100 in repayment of a loan, and that he asked for time to consider the proposition. It is quite possible that the governor sought to repurchase the land in order to gratify the desire of the plaintiff to regain possession of it. In view of the importance of the office of notary under the Spanish regime and the consequent solemnity and strong presumption of accuracy of documents certified by him, we are not inclined to adopt the theory of fraud in the very act of execution of such documents unless it is the only possible construction which can be placed upon the evidence of record. That this document was fraudulently executed is an affirmative allegation of the plaintiff which should be proved by a preponderance of the evidence. We do not believe that this has been done. As the document of purchase and sale must be held authentic, there is no basis for plaintiff's action.

The judgment of the lower court is therefore reversed and the defendant absolved from the complaint, without costs in either instance.

Arellano, C. J., Carson, Moreland, and Araullo, JJ., concur.

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