

ALEJANDRA MINA ET AL., PLAINTIFFS AND APPELLANTS, VS. RUPERTA PASCUAL ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 8321. October 14, 1913

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Francisco Fontanilla and Andres Fontanilla were brothers. Francisco Fontanilla acquired during his lifetime, on March 12, 1874, a lot in the center of the town of Laoag, the capital of the Province of Ilocos Norte, the property having been awarded to him through its purchase at a public auction held by the alcalde mayor of that province. The lot has a frontage of 120 meters and a depth of 15.

Andres Fontanilla, with the consent of his brother Francisco, erected a warehouse on a part of the said lot, embracing 14 meters of its frontage by 11 meters of its depth.

Francisco Fontanilla, the former owner of the lot, being dead, the herein plaintiffs, Alejandra Mina et al., were recognized without discussion as his heirs.

Andres Fontanilla, the former owner of the warehouse, also having died, the children of Ruperta Pascual were recognized likewise without discussion, though it is not said how, and consequently are entitled to the said building, or rather, as Ruperta Pascual herself stated, to only six-sevenths of one-half of it, the other half belonging, as it appears, to the plaintiffs themselves, and the remaining one-seventh of the first one-half to the children of one of the plaintiffs, Elena de Villanueva. The fact is that the plaintiffs and the defendants are virtually, to all appearance, the owners of the warehouse; while the plaintiffs are undoubtedly the owners of the part of the lot occupied by that building, as well also as of the remainder thereof.

This was the state of affairs when, on May 6, 1909, Ruperta Pascual, as the guardian of her minor children, the herein defendants, petitioned the Court of First Instance of Ilocos Norte for authorization to sell "the six-sevenths of the one-half of the warehouse, of 14 by 11 meters, together with its lot." The plaintiffs—that is, Alejandra Mina et al.—opposed the petition of Ruperta Pascual for the reason that the latter had included therein the lot occupied by the warehouse, which they claimed was their exclusive property. All this action was taken in a special proceeding in re guardianship.

The plaintiffs did more than oppose Pascual's petition; they requested the court, through motion, to decide the question of the ownership of the lot before it pass upon the petition for the sale of the warehouse. But the court, before determining the matter of the ownership of the lot occupied by the warehouse, ordered the sale of this building, saying :

"While the trial continues with respect to the ownership of the lot, the court orders the sale at public auction of the said warehouse and of the lot on which it is built, with the present boundaries of the land and condition of the building, at a price of not less than P2,890 Philippine currency * * *."

So, the warehouse, together with the lot on which it stands, was sold to Cu Joco, the other defendant in this case,

for the price mentioned.

The plaintiffs insisted upon a decision of the question of the ownership of the lot, and the court decided it by holding that this land belonged to the owner of the warehouse which had been built thereon thirty years before.

The plaintiffs appealed and this court reversed the judgment of the lower court and held that the appellants were the owners of the lot in question.[1]

When the judgment became final and executory, a writ of execution issued and the plaintiffs were given possession of the lot; but soon thereafter the trial court annulled this possession for the reason that it affected Cu Joco, who had not been a party to the suit in which that writ was served.

It was then that the plaintiffs commenced the present action for the purpose of having the sale of the said lot declared null and void and of no force and effect.

An agreement was had as to the facts, the ninth paragraph of which is as follows:

"9. That the herein plaintiffs excepted to the judgment and appealed therefrom to the Supreme Court which found for them by holding that they are the owners of the lot in question, although there existed and still exists a commodatum by virtue of which the guardianship (meaning the defendants) had and has the use, and the plaintiffs the ownership, of the property, with no finding concerning the decree of the lower court that ordered the sale."

The obvious purport of the clause "although there existed and still exists a commodatum," etc., appears to be that it is a part of the decision of the Supreme Court and that, while finding the plaintiffs to be the owners of the lot, we recognized in principle the existence of a commodatum under which the defendants held the lot. Nothing could be more inexact. Possibly, also, the meaning of that clause is that, notwithstanding the finding made by the Supreme Court that the plaintiffs were the owners, these former and the defendants agree that there existed, and still exists, a commodatum, etc. But such an agreement would not affect the truth of the contents of the decision of this court, and the opinions held by the litigants in regard to this point could have no bearing whatever on the present decision.

Nor did the decree of the lower court that ordered the sale have the least influence in our previous decision to require our making any finding in regard thereto, for, with or without that decree, the Supreme Court had to decide the ownership of the lot consistently with its titles and not in accordance with the judicial acts or proceedings had prior to the setting up of the issue in respect to the ownership of the property that was the subject of the judicial decree.

What is essentially pertinent to the case is the fact that the defendants agree that the plaintiffs have the ownership, and they themselves only the use, of the said lot.

On this premise, the nullity of the sale of the lot is in all respects quite evident, whatsoever be the manner in which the sale was effected, whether judicially or extrajudicially.

He who has only the use of a thing cannot validly sell the thing itself. The effect of the sale being a transfer of the ownership of the thing, it is evident that he who has only the mere use of the thing cannot transfer its ownership. The sale of a thing effected by one who is not its owner is null and void. The defendants never were the owners of the lot sold. The sale of it by them is necessarily null and void. One cannot convey to another what he has never had himself.

The returns of the auction contain the following statements:

"I, Ruperta Pascual, the guardian of the minors, etc., by virtue of the authorization conferred upon me on the

31st of July, 1909, by the Court of First Instance of Ilocos Norte, proceeded with the sale at public auction of the six-sevenths part of the one-half of the warehouse constructed of rubble stone, etc.

"Whereas I, Ruperta Pascual, the guardian of the minors, etc., sold at public auction all the land and all the rights, title, interest, and ownership in the said property to Cu Joco, who was the highest bidder, etc.

"Therefore, * * * I cede and deliver forever to the said purchaser, Cu Joco, his heirs and assigns, all the interest, ownership and inheritance rights and others that, as the guardian of the said minors, I have and may have in the said property, etc."

The purchaser could not acquire anything more than the interest that might be held by a person to whom realty in possession of the vendor might be sold, for at a judicial auction nothing else is disposed of. What the minor children of Ruperta Pascual had in their possession was the ownership of the six-sevenths part of one-half of the warehouse and the use of the lot occupied by this building. This, and nothing more, could the Chinaman Cu Joco acquire at that sale: not the ownership of the lot; neither the other half, nor the remaining one-seventh of the said first half, of the warehouse. Consequently, the sale made to him of this one-seventh of one-half and the entire other half of the building was null and void, and likewise with still more reason the sale of the lot the building occupies.

The purchaser could and should have known what it was that was offered for sale and what it was that he purchased. There is nothing that can justify the acquisition by the purchaser of the warehouse of the ownership of the lot that this building occupies, since the minors represented by Ruperta Pascual never were the owners of the said lot, nor were they ever considered to be such.

The trial court, in the judgment rendered, held that there were no grounds for the requested annulment of the sale, and that the plaintiffs were entitled to the P600 deposited with the clerk of the court as the value of the lot in question. The defendants, Ruperta Pascual and the Chinaman Cu Joco, were absolved from the complaint, without express finding as to costs.

The plaintiffs cannot be obliged to acquiesce in or allow the sale made and be compelled to accept the price set on the lot by expert appraisers, not even though the plaintiffs be considered as coowners of the warehouse. It would be much indeed that, on the ground of coownership, they should have to abide by and tolerate the sale of the said building, which point this court does not decide as it is not a question submitted to us for decision, but, as regards the sale of the lot, it is in all respects impossible to hold that the plaintiffs must abide by it and tolerate it, and this conclusion is based on the fact that they did not give their consent (art. 1261, Civil Code), and only the contracting parties who have given it are obliged to comply (art. 1091, *idem*).

The sole purpose of the action in the beginning was to obtain an annulment of the sale of the lot; but subsequently the plaintiffs, through motion, asked for an amendment of their complaint in the sense that the action should be deemed to be one for the recovery of possession of a lot and for the annulment of its sale. The plaintiffs' petition was opposed by the defendants' attorney, but was allowed by the court; therefore the complaint seeks, after the judicial annulment of the sale of the lot, to have the defendants sentenced immediately to deliver the same to the plaintiffs.

Such a finding appears to be in harmony with the decision rendered by the Supreme Court in the previous suit, wherein it was held that the ownership of the lot lay in the plaintiffs, and for this reason steps were taken to give possession thereof to the defendants; but, as the purchaser Cu Joco was not a party to that suit, the present action is strictly one for recovery against Cu Joco to compel him, once the sale has been annulled, to deliver the lot to its lawful owners, the plaintiffs.

As respects this action for recovery, this Supreme Court finds:

- That it is a fact admitted by the litigating parties, both in this and in the previous suit, that Andres Fontanilla, the defendants' predecessor in interest, erected the warehouse on the lot, some thirty years ago, with the explicit consent of his brother Francisco Fontanilla, the plaintiffs' predecessor in interest.
- That it also appears to be an admitted fact that the plaintiffs and the defendants are the coowners of the warehouse.
- That it is a fact explicitly admitted in the agreement, that neither Andres Fontanilla nor his successors paid any consideration or price whatever for the use of the lot occupied by the said building; whence it is, perhaps, that both parties have denominated that use a commodatum.

Upon the premise of these facts, or even merely upon that of the first of them, the sentencing of the defendants to deliver the lot to the plaintiffs does not follow as a necessary corollary of the judicial declaration of ownership made in the previous suit, nor of that of the nullity of the sale of the lot, made in the present case.

The defendants do not hold lawful possession of the lot in question.

But, although both litigating parties may have agreed in their idea of the commodatum, on account of its not being, as indeed it is not, a question of fact but of law, yet that denomination given by them to the use of the lot granted by Francisco Fontanilla to his brother, Andres Fontanilla, is not acceptable. Contracts are not to be interpreted in conformity with the name that the parties thereto agree to give them, but must be construed, duly considering their constitutive elements, as they are defined and denominated by law.

"By the contract of loan, one of the parties delivers to the other, either anything not perishable, in order that the latter may use it during a certain period and return it to the former, in which case it is called commodatum * *

* " (art. 1740, Civil Code).

It is, therefore, an essential feature of the commodatum that the use of the thing belonging to another shall be for a certain period. Francisco Fontanilla did not fix any definite period of time during which Andres Fontanilla could have the use of the lot whereon the latter was to erect a stone warehouse of considerable value, and so it is that for the past thirty years the lot has been used by both Andres and his successors in interest. The present contention of the plaintiffs that Cu Joco, now in possession of the lot, should pay rent for it at the rate of P5 a month, would destroy the theory of the commodatum sustained by them, since, according to the second paragraph of the aforecited article 1740, "commodatum is essentially gratuitous," and, if what the plaintiffs themselves aver on page 7 of their brief is to be believed, it never entered Francisco's mind to limit the period during which his brother Andres was to have the use of the lot, because he expected that the warehouse would eventually fall into the hands of his son, Fructuoso Fontanilla, called the adopted son of Andres, which did not come to pass for the reason that Fructuoso died before his uncle Andres. With that expectation in view, it appears more likely that Francisco intended to allow his brother Andres a surface right; but this right supposes the payment of an annual rent, and Andres had the gratuitous use of the lot.

Hence, as the facts aforestated only show that a building was erected on another's ground, the question should be decided in accordance with the statutes that, thirty years ago, governed accessions to real estate, and which were Laws 41 and 42, title 28, of the third Partida, nearly identical with the provisions of articles 361 and 362 of the Civil Code. So, then, pursuant to article 361, the owner of the land on which a building is erected in good faith has a right to appropriate such edifice to himself, after payment of the indemnity prescribed in articles 453 and 454, or to oblige the builder to pay him the value of the land. Such, and no other, is the right to which the plaintiffs are entitled.

For the foregoing reasons, it is only necessary to annul the sale of the said lot which was made by Ruperta Pascual, in representation of her minor children, to Cu Joco, and to maintain the latter in the use of the lot until the plaintiffs shall choose one or the other of the two rights granted them by article 361 of the Civil Code.

The judgment appealed from is reversed and the sale of the lot in question is held to be null and void and of no force or effect. No special finding is made as to the costs of both instances.

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

[1] Pascual vs. Mina, 20 Phil. Rep., 202

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