

CRISANTO LICHAUCO ET AL., PETITIONERS AND APPELLEES, VS. RAYMUNDA SORIANO, OPPONENT AND APPELLANT.

G. R. No. 8450. January 29, 1914

Ponente: TRENT, J.

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TRENT, J.:

This is an appeal from a judgment of the Court of Land Registration, ordering the registration of several parcels of land in the names of the petitioners. The appeal is limited to parcels A and C, there being no question as to the location or identity of the same under the proofs offered by either party. The objection to the registration of these two parcels is based principally on the following notarial instrument:

"The undersigned scriptory creditors of the spouses Don Ramon Henson and Dona Matilde Magdangal, residents of the pueblo of Arayat, Province of Pampanga, have entered into the following agreement for effecting the transfer by sale and delivery of their property, as payment, on the grounds set forth.

"1. Don Ceferino Revilla, in representation of the spouses Don Lino Cardenas Reyes and Dona Raymunda Soriano under power of attorney duly acknowledged, obligates him-self to withdraw the complaint in the court of the Province of Pampanga which Don Manuel Murciano filed, raising the attachment levied on the hacienda belonging to those spouses, Don Ramon Henson and Dona Matilde Magdangal, situated in the barrio of Lacmit of the pueblo of Arayat, and leaving it free to the disposition of the undersigned.

"2. The amount of seven thousand four hundred pesos, the subject matter of Don Manuel Murciano's complaint wherein Don Lino Cardenas Reyes was subrogated, shall fix the proportion in which he shall participate in both the expenses and the assets of said hacienda; likewise, Dona Joaquina Caldes shall participate in proportion to her two thousand and ninety-two pesos; Dona Concepcion Gruet de Atayde and Dona Cornelia Laochanco, in both expenses and assets, and these last two credits shall be liquidated on the current thirty-first of December; and all these credits shall be passed upon by the creditors themselves in order to determine the total liabilities, as the joint partnership capital.

"3. After the expenses have been deducted, Messrs. Cardenas and Caldes shall take from the net profits the proportionate part corresponding to each, as set forth in the preceding clause, while the remainder shall be divided equally between the two creditors, Dona Concepcion Gruet de Atayde and Dona Cornelia Laochanco, without reference to the amounts of their credits.

"4. These allotments of assets shall serve for extinguishing their respective credits, with the rate of interest made uniform at six per cent a year.

"5. Care shall be taken by all the interested parties that the management be the most economical possible, with the maximum of production, and sale of the products of the hacienda at the best price.

"6. Dona Joaquina Caldes also agrees to withdraw the complaint she has filed in the said court of Pampanga, raising the attachment levied in part on the products of said land, leaving them free to the disposition of the interested parties themselves.

"7. A book of minutes shall be kept for the decisions they may reach in regard to the administration and management of the hacienda, which book shall be in care of a person chosen by the creditors themselves; and they will submit, without appeal, to the decision of friendly arbiters, whenever they may disagree in a tie vote on subjects not expressly provided for in this agreement, each partner to have in the meeting only one vote, regardless of the amount of his credit; and all are obligated to perform what the majority decides.

"8. With reference to his general credit of eight thousand and odd pesos, Mr. Cardenas agrees to collect the same after the undersigned shall have secured their respective credits.

"9. As the first expense charged against the products of the hacienda, there shall be assigned to the spouses Henson and Magdangal a pension of thirty pesos a month from the first of January, 1889.

"10. When everything shall have been paid, at some more or less remote time, the hacienda and its dependencies shall be restored to the spouses Henson and Magdangal.

"11. In their own interest and on account of the monthly allowances assigned to them, the spouses Henson and Magdangal shall be obligated to direct and to aid in the care of the hacienda, if the partnership so deem expedient, in order to utilize the knowledge and experience they may have of it.

"12. In case need should arise for an administrator or manager of said hacienda to look after the cultivation and kindred labors, including milling, with the status of a genuine manager, action shall likewise be taken by vote among the creditors.

"13. Each partner in person or by proxy shall have the same intervention and inspection for all the operations of the hacienda, but shall cease to have any right or participation under this agreement after his credit has been paid.

"14. If, as is not to be expected in view of the new management and resources the hacienda will have, and there should not have intervened any public calamity or force majeure, such as a typhoon, flood, locust pest, earth-quake, epizooty, or fire, etc., it should be seen that in two consecutive years, counting from the crop of 1889-1890, and excluding the present one, not even enough should have been produced to pay the indispensable cost of cultivation, with merely unproductive expense to the undersigned, the creditors shall agree among themselves upon the best plan they may deem expedient in accord with the instrument of delivery.

"15. Any one failing to comply with the decisions reached and with these conditions shall be liable on his proportionate share of profits and on his credit for the damages his negligence or opposition may cause.

"16. The parties to this agreement shall seek the best method of arranging with Messrs. Smith, Bell & Co. in regard to the debt of Don Ramon Henson for the machinery installed on the hacienda.

"17. The present instrument shall be made a public document after execution of the instrument of sale and delivery.

"In witness whereof, we sign herewith on five copies to the same effect, in Manila, on the seventh of December, 1888.—Corrections valid.—Attest: Ceferino Revilla.—At-test: Concepcion Gruet de Atayde.—Attest: Cornelia Laochanco.—With my consent: Juan Atayde.—Attest: for my mother, Dona Joaquina Caldes: Enrique Barrera y Caldes.—Ramon Henson.—Matilde Magdangal."

By a notarial document of the same date, numbered 16, the two spouses attempted to make an absolute sale of parcels A and C to Concepcion Gruet and Cornelia Laochanco. On December 7, 1894, the former assigned her rights in the premises to the latter, who was the mother of the present petitioners.

The claim of ownership on the part of the petitioners to parcels A and C cannot be sustained. The document of December 7, 1888, copied above, constituted a novation of the preexisting claims of the creditors who affixed

their names thereto, regardless of whether such claims were se-cured by mortgage liens on the real property of the spouses, or were merely personal debts. It is self-evident from this document, that a contract of antichresis was created upon the property of the spouses; and that, as between the cred-itors themselves, a partnership was formed, as is specific-ally stated in clause No. 2 thereof. The attempted sale of the property to two of these creditors shortly thereafter appears to have been made, on the part of the spouses, under a misunderstanding of its signification. It was made without the consent of the other parties to the original contract. The fact that at the time this contract of sale was entered in the property registry, the original contract did not appear therein, can make no difference under the facts of this case. The original contract was binding on the parties thereto and their privies, without registration.

Viewed in another light, the sale of January 12, 1889, was an attempt on the part of two of the partners to with-draw from the partnership for their own personal profit before the termination of the partnership at the expense of the partnership, an act which was expressly prohibited by Law 12, Title 10, Fifth Partida, and is now so prohibited by article 1706 of the Civil Code. The notarial document of January 12, 1889, did not therefore convey the title to the land in dispute to the would be purchasers, and as the claim of ownership of the petitioners is necessarily based on that document, it results that the certificate of registra-tion ought not to include those parcels.

For the foregoing reasons, the judgment of the Court of Land Registration, in so far as it orders the entry of a decree of registration in favor of the petitioners of parcels A and C, is hereby reversed, and the petition as to those parcels is denied. Otherwise, the judgment is affirmed. Without costs in this instance.

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

Moreland, J., concurs in the result.

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