

A. M. BABRETTO, PLAINTIFF AND APPELLANT, VS. E. J. LANE, DEFENDANT AND APPELLEE.

G.R. No. 8987. February 12, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the city of Manila dismissing the complaint on the merits after trial, with costs.

The action is one to recover P85,000, with interest thereon from the 12th day of April, 1911, the purchase price of a certain option to purchase the property and assets of the corporation known as the Tayabas Sawmill and Lumber Company.

It appears from the evidence that on the 12th day of April, 1911, Antonio M. Barretto was the owner of an option to purchase all the property of the Tayabas Sawmill and Lumber Company, a corporation, consisting of real and personal property, for the sum of P315,000. On that day, by an instrument in writing, he sold and conveyed the option to the defendant. In the agreement for the transfer of the option the defendant covenanted as follows:

"I. In consideration of the premises the said A. M. Barretto has granted, bargained, and sold, and by these presents does grant, bargain, sell, and transfer all his right, title, and interest in and to said option for the purchase of the said Tayabas Sawmill and Lumber Company according to said option of August 19, 1910, as hereinbefore referred to and stated, and the said E. J. Lane hereby undertakes and agrees to pay unto the said A. M. Barretto, on or before the 31st day of December, 1913, the sum of eighty five thousand pesos (P85,000) together with interest thereon at the rate of eight per cent (8%) per annum from the 19th day of August, 1911; * * *."

The defendant also covenanted and agreed, and this is the paragraph around which the controversy turns, as follows:

"VII. It is furthermore stipulated and agreed that in the event that the said E. J. Lane shall transfer or mortgage all or any part of the property to be acquired by him from the Tayabas Sawmill and Lumber Company by virtue of the option hereby assigned to him, prior to the payment by him of the full amount of the consideration for the transfer to him of the said option, as herein provided, he shall require the purchaser or mortgagee of the said property to assume the payment of the amount to be paid Mr. Barretto under the terms of this contract and to agree to impose a like condition upon all subsequent purchasers or mortgagees of the said property, and in the event of the failure or refusal of the said E. J. Lane, or any subsequent owner of the property, to comply with the condition hereby established, the entire amount due A. M. Barretto from E. J. Lane under this agreement shall become immediately due and demandable."

The sole question presented to this court is whether the action was prematurely brought. It was commenced on the 6th day of August, 1912, whereas, from the terms of the contract, the purchase price of the option was not payable until the 31st of December, 1913, except on the contingency mentioned in paragraph seven quoted above.

It is apparent from what has already appeared that, before the contingency on which the earlier payment of the purchase price of the option could have been demanded, two things at least must have occurred: (1) The acquirement by the defendant of the property of the Tayabas Sawmill and Lumber Company by virtue of the option referred to; and (2) the subsequent transfer or mortgage by him of the said property without requiring the purchaser or mortgagee to assume the payment of the amount due for the option in favor of the plaintiff.

The question, therefore, is did the defendant acquire the property of the Tayabas Sawmill and Lumber Company, and did he thereafter transfer or mortgage the same without requiring the purchaser or mortgagee to assume the payment of the amount due plaintiff from defendant? It is clear, of course, that, before the defendant could transfer the property, he must have become the owner of it because, at the time the contract for the conveyance of the option was entered into, the defendant was not the owner of the property of the Tayabas Sawmill and Lumber Company and, therefore, could not convey it. It was necessary that he become the owner before the contingency could be created by which the earlier payment of the purchase price of the option could be demanded.

Plaintiff claims that the contingency mentioned in paragraph 7, whereby he could demand the earlier payment of the P85,000, actually occurred. He contends that a sale of the property of the corporation to the defendant was actually made and that there was a reconveyance thereof by the defendant to the corporation without the defendant requiring the corporation to assume the payment of the said sum as required by said paragraph.

The alleged conveyance from the Tayabas Sawmill and Lumber Company to the defendant, on which plaintiff relies to show that the title to the property passed to the defendant, is, so far as material, as follows:

"Whereas, within the term for which said option was granted, the said A. M. Barretto, by letter dated in Manila the 11th day of February, 1911, advised the Lumber Company of his desire to make use of the said option, with certain modifications in said letter specified, and nominated the said E. J. Lane as the person to whom the property in question should be conveyed; and

"Whereas, at a duly convened and constituted meeting of the stockholders of the Lumber Company held at its offices in Manila, P. I., the 23d day of February, 1911, after a full report by the officers of the company of the state of its affairs and of the advantages of the sale of its assets, good will, and business as a going concern, and a statement of the terms of the offer of the said A. M. Barretto for the purchase of the said property by his nominee, the said E. J. Lane, upon motion duly seconded, the following resolution was unanimously adopted by the stockholders present or represented at said meeting:

"The offer contained in the letter of Mr. A. M. Barretto, dated February 11, 1911, addressed to the manager of this company, is hereby accepted. Don Benjamin Ayesa, the manager of the company, is hereby authorized to execute for and on behalf of the company, in favor of Mr. Barretto, or such person as he may designate, the corresponding instruments of conveyance of all the property of the company, both real and personal, together with its good will as a going concern (delivery of the property to be made upon receipt of the first installment to be paid on account of the purchase price) for the sum of three hundred fifteen thousand pesos payable as follows: * * *

"In consideration of the sum of three hundred fifteen thousand pesos (P315,000), Philippine currency, to be paid by the said E. J. Lane, as hereinafter specified to the 'Banco Español Filipino,' as the agent of the Tayabas Sawmill and Lumber Company hereby duly authorized and empowered to receive and receipt for the same, the said Tayabas Sawmill and Lumber Company does hereby sell and convey unto the said E. J. Lane, his heirs, executors, administrators and assigns forever, the following described property, * * *

"Provided, nevertheless, That the vendee, the said E. J. Lane, or his assigns or successors, shall not be entitled to take possession of the property hereinabove described prior to the payment by him of the first installment of the purchase price as hereinafter provided.

"And, provided, further, That the sale and conveyance of the property hereinabove described is made upon the express condition that in the event that the said E. J. Lane, his successors or assigns, shall fail or refuse to make payment of the first installment of the purchase price of the said property as hereinafter provided on or before the 19th day of August, 1911, the Lumber Company may at its option, treat this contract and conveyance as rescinded and may dispose of the property which is the subject matter hereof as freely to all intents and purposes as though this instrument had not been executed."

The position taken by the appellant is stated in his brief as follows:

"The proof shows that after the purchase of the option contract from plaintiff the defendant entered into negotiations with the Tayabas Sawmill and Lumber Company which resulted shortly after in the transfer to him of the property of that corporation for the sum of P315,000, to be paid upon the terms and conditions set forth in the deed of transfer (Exhibit B-1) ; that one of the terms of the contract by which the property of the Tayabas Sawmill and Lumber Company was conveyed to the defendant was that while the title to the whole property passed to him at the time of the execution of the deed of purchase, it was stipulated that the delivery thereof should not be made until the purchaser should have paid the first installment on the purchase price, viz the sum of P30,000, and that in the event of his failure to make such payment at the time agreed, that the title to the property conveyed to him should immediately revert to the vendor. It also appears from the admissions of defendant's answer that he failed to make the payment of the first installment of the purchase price of the property bought by him from the Tayabas Sawmill and Lumber Company and that the ownership thereof, under the terms of the contract (Exhibit B-1) thereupon reverted to the Tayabas Sawmill and Lumber Company free from any lien or incumbrance to secure the payment to plaintiff of the unpaid purchase price of the option."

As is seen, it is the contention of the appellant that the instrument from which the quotations pertinent to this case were taken, as above set forth, constituted a conveyance of the property from the Tayabas Sawmill and Lumber Company to the defendant and that his failure to make the first payment of P30,000 on the purchase price reconveyed the property to the company; and that such reconveyance having been made without protecting the interests of the plaintiff as required by paragraph 7, the condition on which the purchase price of the option became due was thereby created.

We are not inclined to take that view of the case. In the first place, we strongly doubt if there was a conveyance in the legal sense of the term from the Tayabas Sawmill and Lumber Company to the defendant. The instrument which it is alleged constitutes the conveyance expressly withholds delivery of the property to the defendant until after the happening of a stipulated event. As a matter of fact, admitted by all, that event never happened and, therefore, the property was never delivered. Articles 1461 and 1462 of the Civil Code read:

"A vendor is bound to deliver and warrant the thing which is the object of the sale.

"A thing sold shall be considered as delivered, when it is placed in the hands and possession of the vendee.

"When the sale should be made by means of a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if in said instrument the contrary does not appear or may be clearly inferred."

It is conceded in this case that no delivery of the property in question was made. While a public instrument was executed, that did not take the place of delivery, as that instrument contained a prohibition against delivery of possession until the happening of a certain event. In the case of *Gonzalez vs. Rojas* (16 Phil. Rep., 51), there had been a sale of a fishery with the condition that possession thereof should not be delivered until the expiration of a lease then operative transferring the right to occupy and use the said fishery to persons not a party to the sale. Discussing the question whether such a sale was in law a sale, delivery of possession having been withheld, this

court said, after citing article 1462 of the Civil Code above set out:

"No actual delivery was made of the possession of the realty in question. There was no public instrument, the execution of which could have constituted a form of delivery of the thing sold. On the contrary, from the instrument executed, which is only a private one, it clearly appears that the delivery of the fishery was postponed to a fixed date, to wit, that of the termination of the contract of lease then pending, which was to be six years from the date thereof.

* * * * *

"Consequently, at the death of the vendor, Juliana Samonte, the fishery sold was a specific property bound by an obligation, but not delivered, and continued to form part of the mass of her property, subject to an eventual right unknown to her heirs, who were those upon whom it was incumbent, in 1907, to fulfill her obligation to make the delivery."

It is evident that there was no intention on the part of the sawmill company to convey title to the property. It would be distinctly in disaccord with the clear intention of the parties to hold that the defendant could have transferred title to the property to others before he had paid the P30,000. What sort of title could he have conveyed? Would a transfer from him have passed anything more than the right to acquire the fee by payment of P30,000 on or before August 13, 1911? The purpose of the agreement evidently was to give the defendant title to the property only after he had paid P30,000; and, accordingly, to withhold from him any interest in the property except the right to acquire it by such payment.

Nor do we believe that, if there had been a retransfer of the nature and quality claimed by plaintiff, it would have been such a transfer as was contemplated by plaintiff and defendant in executing the contract relating to the purchase of the option in question. As we have seen, the purpose of those clauses in the conveyance of the option, to which we have heretofore adverted, was to protect the plaintiff by requiring the defendant, if he should transfer or mortgage the property, to require the purchaser or the mortgagee to assume the payment of the purchase price of the option. Applying that theory to the alleged retransfer from defendant to the sawmill company, it would have required defendant to compel the sawmill company to assume the payment of the P85,000. The absurdity of such a requirement is evident. The sawmill property had never come into defendant's possession and he had never paid anything on it. How would it have been possible for him, on the retransfer of the property to its original owner, to incumber it for P85,000 in favor of a third person? Would the sawmill company have respected such a request from defendant?

We are of the opinion that the defendant never purchased the property of the Tayabas Sawmill and Lumber Company in such manner as to bring it within the terms of the agreement between plaintiff and defendant and we are also satisfied that there was never such a sale of the property by the defendant as was contemplated by that agreement. That being so, and the only question before us being whether or not this action is premature, we must hold that it is and that plaintiff is, therefore, not entitled to recover in this action.

We are fully aware of the fact that the defendant never lived up to his contract with the plaintiff in other particulars but his failure to do so in no way touches the question before us.

The judgment appealed from is affirmed, with costs against the appellant.

Arellano, C. J., Torres, Johnson, and Carson, JJ., concur.

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