

PEDRO MAGAYANO, PLAINTIFF AND APPELLEE, VS. TOBIAS GAPUZAN ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 9038. February 07, 1916

Ponente: MORELAND, J.

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MORELAND, J.:

This is an action in which the plaintiff prays that, on the payment to the defendant of P105, the latter be ordered to reconvey to the plaintiff the lands described in the complaint.

The complaint alleges that plaintiff, in the year 1899, pledged the land in question to Valeriano Agcaoili and Nicolasa Albano to secure the payment of P105; that, in the year 1907, the defendants, who are father and son, asked the plaintiff to be permitted to repurchase from Valeriano Agcaoili and Nicolasa Albano the lands in question, to which plaintiff gave his consent; that the said defendants thereupon paid to the said Valeriano Agcaoili and Nicolasa Albano the sum V105, the defendants taking the land as security for said sum; that, about the beginning of the year 1909, the plaintiff offered the defendants the sum of P105 and demanded the return of the property, which defendants refused.

The answer is a general denial, coupled with an allegation that the lands in question belong to the defendants in fee simple. Plaintiff offered in evidence Exhibit A, a document showing his title to the lands. Defendants offered in evidence Exhibit 1, which is a document bearing date the 15th of March, 1902, in which plaintiff sells and transfers said lands to the defendants for the sum of P105 in hand paid, which said sum was to be used, according to the document, in the repurchase of the lands from Valeriano Agcaoili and his wife. The document provides further: "It is agreed that I myself (meaning plaintiff) will work the said lands and pay the corresponding canon; but in case I cannot pay the said sum of P105 after the harvest of the rice sown in 1905, the said lands shall belong to the purchasers and I renounce all my rights in said lands."

The defendants, on the payment of P105, were substituted in the place of Valeriano Agcaoili and his wife in the possession of said lands and have occupied them through tenants continuously from that time.

Plaintiff's case is as well stated by the court as it can be. It says:

"The defendants were substituted in the place of Valeriano Agcaoili and his wife in the sale with a right to repurchase, paying the said sum of P105 with the consent of the plaintiff; but now they deny to the plaintiff his right to repurchase the lands, alleging that the document Exhibit 1 of the defendants provides that if after the harvest of 1905 the plaintiff did not repurchase, the lands should thereupon belong in fee simple to the defendants. This agreement is denied by the plaintiff, who claims that the agreement was that he could repurchase at any time in the future and that he had tried to do so but that the defendants had refused to permit it."

We do not see how the contention can be sustained that plaintiff had all future time in which to repurchase the property. The agreement provides expressly that if the repurchase was not made after the harvest of 1905 the land " should belong in fee simple to the defendants. Nothing is said about the plaintiff having all future time in which

to make the repurchase. The evident meaning of the writing is that plaintiff must repurchase immediately after receiving the advantages of the rice crop of 1905; and if the lands were not repurchased at that time they should become the property of the defendants. There is no evidence in the record that any attempt was made to repurchase the lands within a reasonable time after the 1905 crop had been harvested and, so far as can be ascertained, no claim is made by plaintiff that such an attempt was made. Indeed, he alleges in his complaint that he offered to repurchase in 1909. There is evidence by plaintiff showing an attempt to repurchase which he claims was rendered futile by reason of the unjust and illegal refusal of the defendants to recovery on the ground that the time to repurchase had already expired; but it was not shown when such attempt was made, or that plaintiff tendered a sufficient or any amount of money. In fact, it does not appear what sum was due at the time the alleged offer to repurchase was made. In other words, no compliance has been shown with the provisions of article 1518 of the Civil Code. (Civil Code, art. 1507).

It appears from the sale with the pacto de retro that the vendor was to work the lands and pay rent. The transfer of possession was made instantly, as plaintiff became at once a tenant of the defendants, and his possession became their possession. That possession has been undisturbed from that time to the commencement of this action in 1911.

It is true that Valeriano Agcaoili claims that he occupied the lands from 1899 to 1905. This evidence, however, is in contradiction to the written instrument, which shows that the defendants paid Agcaoili P105 in the year 1902 and either left the plaintiff in possession for the following three, years or took possession themselves. Witnesses for the defendants testified that they were in possession of said lands as tenants of the defendants for 10 years prior to the trial, which occurred in 1912.

The plaintiff does not attack the sale with a right to repurchase as void and no attempt was made on the trial to show that it was not executed by the plaintiff. While at the close of the trial a statement was made by the attorney for the plaintiff to the effect that the document was void and without force or effect, such statement was based exclusively on the fact that the witnesses to the instrument did not sign as such until after it had been signed by those executing it; but it appears that, although the document was already executed when the witnesses placed their names thereon, it was read in their presence by the defendants to plaintiff who apparently understood the contents thereof and assented thereto. There having been no issue joined in the action with respect to the validity of the conveyance, we see no reason for declaring it without force or effect. That being the case, the decision of the court must necessarily give it full force and effect. Accordingly we hold, under article 1508 and following articles of the Civil Code, that, on the failure to repurchase at the time stipulated, the title passed irrevocably to the defendants and they became the absolute owners of the property.

The judgment appealed from is reversed and the complaint dismissed on the merits, without costs in this instance. So ordered.

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

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