

HERMOGENA SANTOS, PLAINTIFF AND APPELLANT, VS. MIGUEL ROBLEDO ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 9197. October 22, 1914*

Ponente: TORRES, J.

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In this action to recover possession of a parcel of land with three light-material warehouses and the collection of unpaid rents, together with the recovery of damages to the amount of P1,200, the plaintiff appealed by a bill of exceptions from the judgment rendered on May 6, 1913, by the Honorable Charles S. Lobingier, judge, wherein he held that the plaintiff had not established any right to the relief sought and therefore adjudged that she take nothing by her complaint and that the first two defendants recover their costs.

On March 5, 1913, counsel for Hermogena Santos filed a complaint in the Court of First Instance of this city and alleged therein that on March 1, 1905, Santiago Herrera and his wife Basilia Tolentino, in an instrument ratified before a notary, deeded to the plaintiff a building lot with three warehouses, the boundaries and area of the said land being described in the complaint; that the plaintiff entered into possession of this property on the date above mentioned and held the same without opposition or interruption of any sort and collected the rents therefrom until January 28, 1913; that on this date, Miguel Robledo, who was found to be a creditor of the said Santiago Herrera by a judgment rendered in case No. 9874 against the said Herrera, prayed for the execution of the said judgment; that at the instigation of Robledo, the sheriff proceeded to seize the said lot and, after the publication of notice, sold the same at public auction on the 17th of the following month of February; that, although the plaintiff had intervened and prayed for the recall of the writ for the reason that the lot levied upon was her property, the sheriff, under security of the bond furnished by the creditor Robledo, sold the said lot and Robledo himself purchased it; that the plaintiff was thus deprived of her property and of the rents accruing therefrom from the said 28th day of January up to the date of the complaint, and that she had suffered considerable damage because she had missed the opportunity to sell the property for P1,200, the price she had been offered for it. Counsel therefore prayed that judgment be rendered for the plaintiff ordering the defendants immediately to return and deliver to her the said lot, together with the uncollected rents therefrom, and to pay an indemnity of P1,200 and the costs.

Counsel for the deputy sheriff of Manila alleged that his client had no personal interest in the subject matter of the complaint nor in the remedies sought; that he only took part in the action brought by Robledo against Herrera for the purpose of executing the orders of the court; that consequently he levied on the said lot and its three warehouses belonging to Santiago Herrera and subsequently, on February 17, 1913, sold them; that the lot was awarded to Robledo, the only bidder, for the sum of P1,000, and that the plaintiff, by an affidavit dated February 5, claimed the said property as the owner thereof, but, by reason of the bond furnished by Robledo, he, the deputy sheriff, proceeded to sell the property, since it was recorded in the property registry in the name of Santiago Herrera in August, 1901, as being free of all encumbrance and that on January 28, 1913, a record was made of the levy thereon. Said counsel therefore prayed that the defendant be absolved from the complaint, with the costs against the plaintiff.

The other defendants, Robledo and Azarraga, alleged, among other things, that the plaintiff had no legal capacity to sue and that her action was improper; that, by a judgment rendered in case No. 9874, Santiago Herrera was ordered to pay to his creditor, Miguel Robledo, the sum of M.,170, with legal interest thereon at the rate of six per cent per annum from September 24, 1912, and the costs of the suit, and that, in executing the said judgment, the deputy sheriff of Manila, on January 28, 1913, levied upon the said lot, which was exclusively owned by the debtor Herrera, and upon all its improvements; that the first inscription of the aforementioned property was recorded in the property registry in August, 1901, in the name of Santiago Herrera, wherein it appears as being free of all charge and encumbrance; that on the 28th of the said month of January, 1913, the writ of execution on the aforementioned land which, together with the three warehouses thereon, was sold at public auction and knocked down to the said Robledo on February 17, 1913, for the sum of P1,000 Philippine currency, was recorded in the registry and the proper certificate of sale was issued to him by the sheriff; that the new owner, Robledo, then took possession of the property in good faith and was now peaceably holding the same; that the conveyance made to the plaintiff by Herrera and his wife Tolentino was effected by them with intent to defraud their creditors and could in no wise prevail as against the creditor Robledo, and that for this reason, the latter had suffered losses and damages to the amount of P200. These defendants therefore prayed that the plaintiff's petition be denied; that the defendants be absolved from the complaint and that the said Hermogena Santos be ordered to pay them P200 as losses and damages, and to pay the costs.

Counsel for Miguel Robledo, in a supplementary answer dated April 21, 1913, set forth that, subsequently to his original answer, Santiago Herrera sold and conveyed to him on March 24 of the same year, through a public instrument and for the sum of P85, Herrera's right to redeem the property in litigation within the period of one year counting from the 17th of February, 1913, the date of the sale of the lot at public auction; and prayed that his supplementary answer be admitted in accordance with section 105 of the Code of Civil Procedure.

After a hearing of the case and the evidence submitted by both parties, the court rendered the judgment aforementioned.

The question raised in the claim made by the plaintiff, Hermogena Santos, is whether or not the levy and sale of the lot and improvements in dispute, effected on petition of the creditor, Miguel Robledo, can prevail against the right of ownership she acquired by virtue of the gift made in her favor by the spouses Santiago Herrera and Basilia Tolentino.

If the said lot and its improvements actually belonged to Hermogena Santos, and not to the debtor, Santiago Herrera, then it is unquestionable that the land could not be levied upon for the payment of a debt of the latter that in no wise concerned Hermogena Santos, as the latter was not a debtor of Miguel Robledo.

The property acquired by the plaintiff in the said land is derived from the gift made to her by Santiago Herrera and his wife Basilia Tolentino in an instrument ratified before the notary Eugenio de Lara on March 1, 1905 (Exhibit A). In this instrument, after reciting that the contracting parties had mutually agreed to live separately and to divide the conjugal partnership property therein inventoried and appraised at P2,494, the said spouses state, in paragraph 3, that they convey to the girl Hermogena Santos the said lot with its warehouse, item No. 4 of the inventory, with the express condition that the proceeds or rents derived from the lot and warehouse so conveyed should be collected by the wife Basilia Tolentino as long as she lived. It was also provided therein, among other things, that the value of the lot and its warehouse should be deducted from the total value of the conjugal property which was to be divided between the two spouses and which amounted to P2,200, a sum that, divided equally, would amount to P1,100 each.

According to article 618 of the Civil Code, a gift is an act of liberality by which a person disposes gratuitously of

a thing in favor of another, who accepts it. Herrera and his wife Tolentino freely and gratuitously disposed of the said lot and its improvements in favor of the plaintiff; but it does not appear, however, that the latter accepted the gift in the manner provided by law.

Article 633 of the same code prescribes:

"In order that a gift of real property may be valid it shall be made in a public instrument, stating therein in detail the property bestowed as a gift and the amount of the charges, which the donee must satisfy.

"The acceptance may be made in the same instrument bestowing the gift or in a different one; but it shall produce no effect if not made during the life of the donor.

"If made in a different instrument the acceptance shall be communicated to the donor in an authentic manner, and this proceeding shall be recorded in both instruments."

The said instrument (p. 21 of the record) sets out the conveyance of the lot by the donor spouses to the donee, but the acceptance of that gift by the plaintiff Santos does not appear therein and the record reveals no other instrument that evidences such acceptance and notifies the donors thereof in an authentic manner. Therefore, the provisions of the law not having been complied with, the gift was invalid and could have no effect whatever, for the Civil Code prescribes, in article 629, that a gift does not bind the donor nor produce any effect until it has been formally accepted by the donee in accordance with law. Because of this essential defect, the gift was not perfected and the donee could not acquire any real and positive right in the warehouse (land) and its improvements.

So important is the donee's acceptance with the notice to the donors of his acceptance in order that the latter may have full force and effect, that when the instrument which has been drawn up is recorded in the registry of property, the document that evidences the acceptance—if this has not been made in the deed of gift—should also be recorded. And in one or both documents, as the case may be, the notification of the acceptance as formally made to the donor or donors should be duly set forth. These requisites, definitely prescribed by law, have not been complied with, and no proof that they have appears in the record.

Neither does it appear that Exhibit A, the instrument conveying the gift, was recorded in the property registry, an essential requisite of article 23 in connection with article 2 of the Mortgage Law to make it effective against third persons, but still supposing it were there recorded, even improperly, it could not produce any legal effect, inasmuch as it does not show the donee's acceptance and the proper notification thereof to the donors. Therefore, with these defects, even if the said instrument of gift had been recorded, it could not in any way legally affect Robledo's rights.

So, the gift in question, as specified in Exhibit A, an instrument that was executed for other purposes, to wit, conjugal separation and division of conjugal property between the parties, could not transmit to the donee any positive and effective right in the lot in litigation, to the prejudice of the donors' creditor.

Furthermore, on March 1, 1905, when the said instrument was executed, Santiago Herrera had owed Miguel Robledo, from March 12, 1903, the sum of P1,170, with interest at the rate of 6 per cent per annum. For the collection of this debt the creditor had to bring suit against the debtor. As the record does not show that the donors had reserved sufficient funds or property to satisfy the debt, nor that they possessed property other than the lot given away by them, we must conclude that the conveyance or gift made to the plaintiff by the spouses Herrera and Tolentino was for the purpose of defrauding the creditor, Miguel Robledo, by preventing him from collecting his credit.

Article 643 of the Civil Code prescribes:

"Should there be no stipulation as to the payment of debts, the donee shall be liable for them only if the gift has been made to defraud creditors.

"The gift shall always be presumed as having been made to defraud creditors when, at the time of bestowing it, the donor has not reserved to himself property sufficient to pay the debts contracted prior thereto."

Although some boats, a fishing device with nets, a light material warehouse erected on another's land, and the lot in litigation, are listed in the inventory contained in the said instrument, the fact is that when demand was made upon the debtor for the payment of his debt to Robledo, he was unable to pay it, and the said lot was levied upon and afterwards sold at public auction in satisfaction thereof.

The indebtedness was contracted by Santiago Herrera in 1903, during his marriage and before he and his wife gave the said lot away; consequently, its payment is a charge against the conjugal partnership. (Civil Code, art. 1408.)

Santiago Herrera was the lawful and absolute owner of the lot in litigation and his ownership is shown to have been recorded in the property registry of Manila, Tondo section, first inscription, No. 1340, in August, 1901. The entry discloses that the property was then free of all charge and encumbrance and that, on January 28, 1913, a note was therein made of the writ of execution issued against the said lot and warehouses, issued in the proceedings instituted by the creditor Robledo against the debtor Herrera, the unquestionable owner of the property levied upon. Moreover, the right of the judgment debtor to redeem the lot in litigation was purchased by the creditor Robledo for P85 on February 17, 1913, the date of the sale of the land at public auction.

The appellant alleges that as she was a minor, her mother, Gregoria Tolentino, appeared before the notary to accept the said gift in the name of the appellant, and that since the execution of the instrument making such bestowal her mother has been in possession of the donated land and has been collecting the rents from the tenants occupying it.

This allegation is unfounded and cannot be sustained. The instrument Exhibit A does not show that the plaintiff's mother appeared or that she accepted the said gift in the name of the plaintiff. Her verbal acceptance, if made, would not be sufficient, since the law requires that the acceptance shall be in writing either in a separate public instrument or in the instrument whereby the gift is made, requirements which do not appear to have been fulfilled in the present case. Neither is it true that the plaintiff was in possession and collected the rents of the lot in question from the tenants who were occupying it.

The strangest and most peculiar feature of this case is the testimony given by Santiago Herrera himself, the husband of Basilia Tolentino, these two being the donors. This witness stated under oath that he identified the signature which appears at the foot of the instrument Exhibit A, although he had not read this document, because he did not know how to read and was only able to write his own name thereon; that at the time the instrument was executed, the notary Lara merely told him that the paper he was about to sign referred to the conjugal separation, and that Lara did not tell him that a gift of the lot was therein made to Hermogena Santos; that, according to the terms of the separation agreed upon between himself and his wife, he conveyed to the latter his fishing tackle and was to keep the real estate for himself; that the said tackle was then worth P300 and the lot P500; that, upon his separating from his wife on account of her infidelity, he received no money from her, and denied having received any sum whatever from the hands of Eugenio de Lara; that he did not remember having signed the instrument relative to the apportionment of the property, the payment to him of P500 and the gift of the lot; that he identified his signature at page 24 of the record, but not that on page 25; that a daughter of his had by his wife was still living and that it was the latter who collected the rents of the said lot. The certificate of baptism of the girl Catalina, the daughter of the said spouses, was exhibited at the trial (Exhibit 3, p. 40 of the record).

This testimony and the contents of the said instrument, if we except from this latter the agreements relating to the conjugal separation and the division of the partnership property, give rise to the presumption that this instrument with regard to all else therein contained was framed by the direction of the woman Basilia Tolentino without the knowledge or consent of her husband, Santiago Herrera, especially with respect to the gift of the lot, the subject matter of the claim presented by the donee.

However, leaving aside these circumstantial details which cast doubt upon a large part of the said instrument, and restricting ourselves to the matter of the gift of the lot in litigation, it is unquestionable that this gift is null and void in itself and can produce no effect whatever, since it fails to comply, with the requirements of article 633 of the Civil Code, and because the said gift was made without proper consideration and for the purpose of defrauding the defendant creditor, whom it is to be presumed the donors intended seriously to prejudice when bestowing the property upon the plaintiff (arts. 643 and 1297, Civil Code). This intended injury to the defendant would be iniquitously consummated, should the plaintiff obtain a decision contrary to the judgment appealed from, which, moreover, is in accordance with the law and the merits of the case.

Therefore, in consideration of the foregoing reasons whereby the errors assigned to the lower court have been refuted, the said judgment should be and is hereby affirmed, and the defendants are absolved from the complaint, with the costs against the appellant.

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

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