

PERFECTO DE LA VEGA ET AL., PLAINTIFFS AND APPELLEES, VS. TOMAS BALLILOS (OR BALIELOS), DEFENDANT AND APPELLANT.*G.R. No. 9957. August 08, 1916*

Ponente: TORRES, J.

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This appeal by bill of exceptions was raised by counsel for the defendant from the judgment of January 23, 1914, in which the Court of First Instance of Batangas absolved the defendant from the complaint with respect to the parcels of land Nos. 2, 3, 4, and 8 in the rough sketch admitted by agreement of the parties, and ordered him to return and deliver to the plaintiffs the parcels of land designated on the said sketch as Nos. 1, 5 and 7, upon the plaintiffs paying to the defendant the sum of P430; with the costs of the proceedings against the appellant.

By a writing of May 9, 1913, plaintiffs through their counsel filed a complaint in the Court of First Instance of Batangas, alleging as a cause of action that they were the sole heirs of their common predecessors in interest, Victor de la Vega and Ursula de Guzman, who at their deaths were in possession of a parcel of land measuring six cavanos and a half, situated in the barrio of Dao of the pueblo of Balayan, Batangas, with the metes and bounds given and described in the rough sketch specifically mentioned in Paragraph I of the complaint; that the plaintiffs had continued in the common and pro indiviso possession of the said parcel of land, which was divided into seven parts or lots, as seen by the rough sketch attached to the complaint; that about the year 1895, Fidel de la Vega, one of the coowners of the said property, in consideration of a loan of P430 which he had received from the defendant Tomas Balielos (or Ballilos) conveyed to the latter the parcels of land Nos. 1, 4, and 6, by means of a contract of antichresis, until such time as the said debtor, or some one of the coowners of the land, should return the said borrowed sum; that subsequently, to wit, in the year 1905, the plaintiffs, with the exception of Policarpo de la Vega, successively borrowed from the defendant the sums of P40, P18 and P60, under the same contract of antichresis, but this time they gave as security the lots marked Nos. 2, 3, and 7, from which lots the defendant was to collect the interest due, as in fact he did, from the date of the encumbrance of the said parcels of land up to the time the complaint was filed when they offered to pay the defendant the said sums of P430, P40, P18, and P60, a total of P548, in order to reacquire the said parcels; but that the defendant refused and still unlawfully refuses to receive the said sums and has appropriated to himself the said parcels of land. The plaintiffs therefore prayed that the defendant be ordered to deliver and restore the said parcels of land to them, after they should have paid him the sum of P548, and that he be further ordered to pay to the plaintiffs the sum of P500 for the losses and damages suffered by them, with the costs of the proceedings against the defendant.

His demurrer having been overruled, the defendant in his answer denied each and all of the allegations contained in the complaint, and in special defense set forth that the description of the parcels of land in question was that found in the map inserted in paragraph (a) of his special defense. He added that the lots Nos. 1, 4, and 6, shown in the said sketch, were sold to him in July, 1896, by Fidel de la Vega with the consent of the other plaintiffs for the price of P430 on the condition that they might be repurchased, but that no period whatever was fixed for their redemption; that as the property had not been redeemed within the legal period, the ownership of the said parcels

of land had become consolidated in the purchaser by force of law; that in about the same year, 1896, Roberta de la Vega, with the consent and authorization of the other plaintiffs, also sold to the defendant, for the sum of P40, lot No. 3, a parcel which measured one-half cavan of seed; that parcel No. 2 likewise had been sold to him by Felina Alino with the consent of the plaintiffs, in or about the month of February, 1901, for the sum of P28; and, finally, that parcel No. 5 was sold to him by Fidel de la Vega with the consent of the other plaintiffs, in the year 1891, for the price of P80, on condition that it might be redeemed by the vendors at the same price; that no period was fixed within which it was to be repurchased and that as it was not repurchased by the plaintiffs within the period fixed by law, the ownership of the land had consequently become consolidated in the defendant; and that the latter had for many years been in the quiet, public, and continuous possession of the parcels of land in question as the owner thereof, to the exclusion of every other person. Defendant therefore prayed that he be absolved from the complaint, with the costs against the plaintiffs.

After the hearing and the introduction of evidence by both parties, the court rendered the aforementioned judgment to which the defendant excepted and in writing moved for a reopening of the case and a new hearing. To the order overruling his motion defendant excepted and duly filed the proper bill of exceptions which was approved and transmitted to the clerk of this court.

The appeal in this case is therefore restricted to the parcels of land Nos. 1, 5, and 7 which defendant in the judgment appealed from is ordered to deliver and restore to the plaintiffs upon payment to him of the sum of P430, and the question here raised is whether the deed of conveyance of the said parcels of land, executed by Fidel de la Vega in favor of the defendant on July 29, 1896, and found in the document Exhibit 0 is a contract of antichresis, as contended by the plaintiffs, or whether it is a sale under pacto de retro, as the defendant-appellant in this instance alleges it to be.

According to the stipulation of the parties, the lots referred to on this appeal are those marked Nos. 1, 5, and 7 on the rough sketch shown on page 22 of the bill of exceptions, three parcels of land that were the subject matter of the contract executed between Fidel de la Vega and the defendant and contained in the document Exhibit O, dated Balayan, Batangas, July 29, 1896.

In order to determine the nature of and to classify the said contract, the essential part of the document Exhibit 0, as found at pages 16 to 18 of the bill of exceptions, is transcribed here below. The parts thereof which refer to the names of the coowners of the two parcels of land mentioned in the contract, and to the area, metes, and bounds of each one of these two parcels, have been omitted. The said essential part is as follows:

"* * * and whereas on this day I have mortgaged the two parcels of land above-mentioned to the said D. Tomas Ballilos for the sum of P430 and for the term of eight years, counting from this date, at the expiration of which I may redeem them; that should I not then do so, the said lands shall continue to be mortgaged until I have the money available wherewith to redeem them; therefore, I hereby mortgage the two parcels of land hereinabove mentioned to D. Tomas Ballilos for the said sum of P430, which I have received from him in current coin, and as the same was not received in our presence, we waive the exception of money not paid in cash; therefore, henceforth and during the period above stipulated, I grant and convey my ownership and possession in the said two parcels of land to the said D. Tomas Ballilos in order that he may manage and enjoy the same in consideration of the sum for which they are mortgaged.

"There being present D. Tomas Ballilos * * *, he stated that he had received in mortgage, to his entire satisfaction, the two parcels of tillable land above mentioned, under the conditions and for the time stipulated, for the sum of P430, which he has already delivered to the said D. Fidel de la Vega, who in turn states that the said lands are free of all charges and encumbrances and binds himself to warrant this mortgage in case of legal proceedings."

The said contract apparently records a loan of P430, secured by a mortgage of the aforementioned two parcels of land and payable within the period of eight years, or within such time as the debtor Fidel de la Vega might be able to pay his debt and redeem the said land. However, notwithstanding the terms of the document, legally there is no mortgage inasmuch as the said instrument is not of the nature of a public instrument. And even though it were, it was not recorded in the property registry as it ought to have been. Furthermore, the instrument recites that the debtor thenceforth ceded and conveyed his ownership and possession in the said two parcels of land to the creditor Ballilos in order that Ballilos might manage and enjoy the same in consideration of the sum for which the lands, free of all burden and encumbrance according to the debtor, were mortgaged.

If the instrument above mentioned can not be construed as a mortgage of the said two parcels of land in security for P430, the amount loaned, and for the payment of the debt within eight years or some other period, neither can it be held to be a sale under pacto de retro inasmuch as the said document contains no mention whatever of any sale with right of redemption, although it does say that the debtor ceded and conveyed to the creditor the ownership and possession of the lands in order that he might manage and enjoy them in consideration of the sum for which they were mortgaged.

As it is not shown that the said document is a contract of mortgage executed as security for a loan, still less does it appear to be a contract of pacto de retro, in view of the terms of the agreement Exhibit 0, as stipulated between the contracting parties, of the allegations of both parties, and of the findings of the court in regard to the allegations, made and proven at the trial by the contending parties, we find the classification of the said contract as one of antichresis to be correct and proper, taking into account the intention of the contracting parties as revealed by the words and terms employed by them and recorded in the said document.

Several articles of the Civil Code relating to the contract of antichresis, are as follows:

"Art. 1881. By antichresis a creditor acquires a right to receive the fruits of real property of his debtor, with the obligation to apply them to the payment of interest, if due, and afterwards to the principal of his credit."

"Art. 1883. The debtor can not recover the enjoyment of the real property without previously paying in full what he owes to his creditor.

"But the latter, in order to free himself from the obligations imposed on him by the preceding article, may always compel the debtor to reenter upon the enjoyment of the estate, unless there be an agreement to the contrary.

"Art. 1884. The creditor does not acquire the ownership of the real property by nonpayment of the debt within the term agreed upon.

"Any stipulation to the contrary shall be void. But in this case the creditor may demand, in the manner prescribed in the law of civil procedure, the payment of the debt or the sale of the realty.

"Art. 1885. The contracting parties may stipulate that the interest of the debt be set off against the fruits of the estate given in antichresis."

This contract is somewhat similar to those of pledge and mortgage and for this reason article 1886 prescribes that certain articles relative to these latter contracts are applicable to contracts of antichresis, for both the former and the latter contracts are comprised in title 15, book 4, of the Civil Code.

The court's construction as to the form of the contract entered into by the parties as found in the judgment appealed from, is fully supported by the law, the pleadings, and the evidence. The contract entered into by the contracting parties which has produced between them rights and obligations is in fact one of antichresis, for article 1281 of the Civil Code prescribes among other things that if the words should appear to conflict with the evident

intent of the contracting parties, the intent shall prevail. Article 1283 provides that however general the terms of the contract may be, they should not be understood to include things and cases different from those with regard to which the interested parties intended to contract; and, further, article 1284 of the same code says that if any stipulation of a contract should admit of several different meanings, that most suitable to give it effect should be applied.

In the said Exhibit O it was stipulated that even after eight years the debtor, the owner of the property, might redeem it whenever he should have the means to pay his debt and recover the lands given in antichresis to his creditor who might hold them in usufruct in consideration for the money he had loaned; and as the foregoing articles of the Civil Code fixes no term for the recovery of the enjoyment of immovables given in antichresis, provided that the debtor previously pay what he owes to this creditor, the plaintiffs have an unquestionable right to recover parcels Nos. 1, 5 and 7 of the land designated in the map or plan admitted by agreement of the parties, after first paying the debt of P430 to the defendant-creditor.

By the foregoing reasons, the errors assigned by the appellant to the judgment rendered in this suit have been fully refuted, and, therefore, as the said judgment is in accordance with the law and the evidence, it should be, as it is hereby, affirmed, with the costs against the defendant-appellant. So ordered.

Johnson, Moreland, Trent and Araullo, JJ., concur.

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