43 Phil. 770

[G. R. No. 18574. September 20, 1922]

JOSE C. MACAPINLAC, PLAINTIFF AND APPELLANT, VS. FRANCISCO GUTIERREZ REPIDE ET AL., DEFENDANTS. FRANCISCO GUTIERREZ REPIDE, DEFENDANT AND APPELLEE. J. F. BOOMER, DEFENDANT AND APPELLANT.

D E C I S I O N

STREET, J.:

This action was instituted on June 27, 1921, in the Court of First Instance of the Province of Pampanga by Jose C. Macapinlac, for the purpose of securing a decree declaratory of the rights of the plaintiff as owner of a valuable estate .located in the municipality of Porac, Pampanga, known as the *Hacienda Dolores*; to nullify a transfer of the Torrens certificate now appearing in the name of the defendant Francisco Gutierrez Repide, with certain remedial measure incident to said relief; and to recover said estate from the possession of said defendant, with damages; and to secure general relief. In addition to Francisco Gutierrez Repide several other parties are named as defendants in the complaint, for the alleged reason that they have been at one time or another holders of liens, now cancelled, upon said property, and it was deemed proper to join them as defendants in order to give them an opportunity to show cause, if any they have, why their respective liens should not be cancelled in the registry. Soon after the action was instituted Francisco Gutierrez Repide died; and his executrix, Da. Maria Sanz, was admitted as defendant in his stead.

To the original complaint the attorneys for the executrix in due time demurred, while the defendant J. F. Boomer interposed an answer and a cross-complaint directed mainly against Jose C. Macapinlac and his codefendant Repide. To this cross-complaint Jose C. Macapinlac answered with a general denial, while the representation of Repide merely demurred. By this means the case, as it reaches this court, presents itself in two branches, namely, first, that which has relation to the controversy between the plaintiff and Francisco Gutierrez Repide and, secondly, that which has relation to the controversy between the defendant Boomer and the two principal litigants. For convenience of treatment in this opinion, we

first give attention to the controversy between the plaintiff and the defendant Repide, a course which is the more proper for the reason that the cause of action stated in Boomer's cross-bill in great measure depends upon the questions arising upon the other controversy.

By an order of October 29, 1921, entered in the lower court the demurrer interposed to the complaint in behalf of the defendant Repide was sustained, and at the same time the complaint was dismissed with costs against the plaintiff. From this order the plaintiff appealed.

A preliminary point arises with respect to the conditions under which the appeal has been prosecuted, which must be disposed of before we enter into a consideration of the legal questions involved in the allowance of the demurrer; and in this connection it is suggested by the attorneys for the appellee that the appeal is premature.

The point is clearly not well taken. While it is of course undeniable that an order merely sustaining a demurrer is not forthwith appealable, and an appeal in such case is premature (Serrano vs. Serrano, 9 Phil., 142), the same cannot be said of an order sustaining a demurrer and at the same time actually *dismissing* the complaint. Such an order is definitive and "final" in the sense necessary to justify the taking of an appeal, and if an appeal had not in fact been prosecuted from that order in this case, the plaintiff would have been completely and forever out of court. This is self-evident.

On the other hand, the trial court committed manifest error when it entered the order dismissing the complaint at the same time that it sustained the demurrer, without allowing the plaintiff an opportunity to amend his complaint, if he had elected to amend. Section 101 of the Code of Civil Procedure expressly provides that the plaintiff shall have this election; and it has been repeatedly held to be reversible error on the part of a Court of First Instance to dismiss a cause immediately upon sustaining a demurrer, without giving the plaintiff an opportunity to amend, if he so desires. (Molina vs. La Electricista, 6 Phil., 519; Ibañez de Aldecoa vs. Fortis, 17 Phil., 82.) To the action thus taken by the trial court the plaintiff has duly assigned error, and said error (No. VIII, in the appellant's assignment of errors) is without doubt well taken.

As to the extent of the review which may be had at the instance of the appellant in this court, it should be noted that by the express terms of section 143 of the Code of Civil Procedure a party appealing by bill of exceptions to this court is entitled to a review of all rulings, orders, and judgments made in the action to which he has duly excepted; and this

means, as applied to the present case, that the appellant is entitled to a review of the decision of the lower court not only upon the error committed in peremptorily dismissing the cause upon demurrer, without giving the appellant opportunity to amend, but upon any error that may have been committed by said court in sustaining the demurrer. (Cancino vs. Valdez, 3 Phil., 429; Balderrama vs. Compañaia General de Tabacos, 13 Phil., 609.) Of course if the only point subject to exception had been that which relates to the right to amend, and the plaintiff had not here insisted upon the sufficiency of his complaint in point of law, the appealed judgment would merely be reversed and the cause would be remanded by ffus with direction that the plaintiff be allowed to amend, as was done in Molina vs. La Electricista, *supra*. But such is not the situation now before us; and we accordingly proceed to consider the question whether the trial judge erred in sustaining the demurrer.

Turning then to the complaint and assuming, for the purposes of this decision only, that all material facts stated therein, and well pleaded, are true, we find that the case made in the complaint is substantially this:

On and prior to August 22, 1916, the plaintiff was the owner of the *Hacienda Dolores*, a property located in the municipality of Porac, Pampanga, and assessed upon the tax books at P288,000, but having an actual value of no less than P800,000, encumbered, however, with certain debts and charges which need not be here enumerated. This property had been registered under Act No. 496, as amended, and upon May 13, 1916, a Torrens certificate of title covering the same had been issued to the plaintiff.

On the date above stated, or August 22, 1916, the said plaintiff was indebted to the Bachrach Garage & Taxicab Company, of Manila, later organized under the name of Bachrach Motor Company, for the price of an automobile, previously purchased upon credit, and certain automobile accessories; and as evidence of this' indebtedness the plaintiff executed on said date a series of fourteen promissory notes payable to the Bachrach Garage & Taxicab Company, and amounting in all to the sum of P12,960, falling due respectively upon the second of each month beginning on September 2, 1916, and ending on October 2, 1917. Each of these notes was drawn in the amount of P1,000, except the last two which together amounted to P960. On September 1, 1916, eleven of these notes were discounted by the Bachrach Garage & Taxicab Company, through its manager E. M. Bachrach, at the Philippine National Bank. The other three notes, amounting to P2,277.70, remained in the hands of the payee corporation and were subsequently paid in full by the plaintiff.

Contemporaneously with the delivery of said notes, or on August 16, 1916, and as a security

or guaranty for the payment of said notes, the plaintiff executed what on its face purports to be a deed of sale, with privilege of repurchase, to be exercised on or before October 2, 1917. This transfer comprises all the property covered by Torrens certificate No. 427 (which includes the *HaciendaDolores*), subject to the encumbrances noted thereon; and the conveyance to which reference is now made was itself extended on the back of said certificate. In this conveyance E. M. Bachrach is named as transferee, instead of the alleged real creditor, the Bachrach Garage & Taxicab Company. Upon the circumstance of the nonconformity of the promissory notes and the deed of sale as regards creditor and beneficiary, the complaint alleges that the deed of sale is void for lack of consideration as between the plaintiff and E. M. Bachrach, the nominal beneficiary; but to this suggestion, for obvious reasons, we attach little importance.

On November 8, 1917, Francisco Gutierrez Repide acquired, for the sum of P5,000, all the rights of E. M. Bachrach in the property which had been thus conveyed to the latter; and at this time Francisco Gutierrez Repide, so the complaint alleges, was well aware that the transfer to Bachrach had been made by the plaintiff for the purpose of securing a debt owing to the Bachrach Company, and he was furthermore aware that part of said debt had been paid and that the balance really due from the plaintiff to said company was less than one-half of the sum of P12,960, expressed in the fourteen promissory notes.

After Francisco Gutierrez Repide had acquired the interest above described in the *hacienda* in question, he addressed himself to the problem of procuring the certificate of title to be transferred to his own name. To accomplish this it was necessary to make it appear that the contract of sale with *pacto de retro* noted in the original Torrens certificate was really and truly what it appeared to be, that is, a contract of sale, not a mere mortgage, and that the ownership had consolidated in the purchaser by reason of the failure of the seller to repurchase the property before the expiration of the time allowed for redemption. When this question was raised, it was referred for decision to the judge of the Court of First Instance of Pampanga, who was of the opinion that the conveyance to Bachrach was a straight contract of sale with *pacto de retro*; and inasmuch as it appeared that the ownership had then consolidated in the purchaser, he directed the register of deeds of Pampanga to register the property in the name of Francisco Gutierrez Repide and to issue to him a new certificate of transfer, which was accordingly done. The order here referred to was in fact entered in case No. 104 of the Court of First Instance of Pampanga, this being the same land registration proceeding in which the title had been registered in the name of the plaintiff, and in which judicial proceedings had already been terminated.

Though not plainly so stated in the complaint, it is to be inferred that one of the decisive considerations that operated upon the mind of the judge of the Court of First Instance in making the order above alluded to was the fact that the plaintiff himself had made an affidavit which directly sustained the contention of Repide, and this affidavit was submitted to the court in support of Repide's contention. Certain it is that the inscription of the property in the name of Francisco Gutierrez Repide was accomplished with the external approval of the plaintiff and by means of his assistance or collusion.

In the complaint now before us the plaintiff alleges that his apparent acquiescence in the transfer of title to Francisco Gutierrez Repide, under the circumstances above set forth, was due to fraudulent practices on the part of said Repide and to the undue influence exerted over the plaintiff by that person. In this respect the complaint contains a very full and complete narrative of facts, which, if true—as they must here be taken to be—would undoubtedly justify any court in relieving a party from the effects of fraudulent practices, duress, or undue influence; and it seems unnecessary for us here to recount these charges in detail, more especially for the reason that the sufficiency of these allegations, considered as stating a case of fraud, has not been questioned, the defense at this point being rested on the ground that the Torrens certificate is unimpeachable in the hands of Repide and that the plaintiff's remedy to obtain relief, supposing the transfer of title to have been procured by fraud, has prescribed.

It appears from the complaint that, at the time of the filing of this complaint, the defendant Repide was in actual possession of the property in question, and that he had in effect been enjoying possession since August 24, 1917, to the alleged prejudice of the plaintiff in the sum of no less than P200,000 per annum.

The sketch above given contains, we believe, the substance of the essential allegations of the lengthy complaint in this cause, and it will at least serve as the necessary basis for a discussion of the legal problems here requiring solution. In taking up these problems we begin with the situation created by the execution of the contract of sale with *pacto de retro* between the plaintiff, Jose C. Macapinlac, and E. M. Bachrach, or the Bachrach Company, assuming, as we do, that the personality of the second party to that contract is a matter of indifference. In this connection the first and most obvious proposition to be laid down is that inasmuch as said conveyance is alleged to have been executed as security for a debt owing by the plaintiff to the Bachrach Company, it follows that in equity said conveyance must be treated as a mere security or substantially as a mortgage, that is, as creating a mere equitable charge in favor of the creditor or person named as the purchaser therein. This

conclusion is fully supported by the decision in Cuyugan vs. Santos (34 Phil., 100), where this court held that a conveyance in the form of a contract of sale with *pacto de retro* will be treated as a mere mortgage, if really executed as security for a debt, and that this fact can be shown by oral evidence apart from the instrument of conveyance, a doctrine which has been followed in the later cases of Villa vs. Santiago (38 Phil., 157), and Cuyugan vs. Santos (39 Phil., 970).

In view of the lengthy discussion contained in the first decision of Cuyugan vs. Santos, *supra*, it might seem superfluous to add to what is there said, but the importance of the subject and the paucity of our own jurisprudence on this topic—apart from that case and its two successors,—must serve as our justification for here collating a few additional passages relative to the same subject, taken from Mr. Pomeroy's treatise on Equity Jurisprudence, recognized as the leading work on this subject in all jurisdictions where the common Jaw prevails.

Speaking then with reference to the conditions under which a conveyance absolute on its face may be treated as a mortgage, this distinguished writer says:

> "Any conveyance of land absolute on its face, without anything in its terms to indicate that it is otherwise than an absolute conveyance, and without any accompanying written defeasance, contract of repurchase, or other agreement, may, in equity, by means of extrinsic and parol evidence, be shown to be in reality a mortgage as between the original parties, and as against all those deriving title from or under the grantee, who are not bond fide purchasers for value and without notice. The principle which underlies this doctrine is the fruitful source of many other equitable rules; that it would be a virtual fraud for the grantee to insist upon the deed as an absolute conveyance of the title, which had been intentionally given to him, and which he had knowingly accepted, merely as a security, and therefore in reality as a mortgage. The general doctrine is fully established, and certainly prevails in a great majority of the states, that the grantor and his representatives are always allowed in equity to show, by parol evidence, that a deed absolute on its face was only intended to be a security for the payment of a debt, and thus to be a mortgage, although the parties deliberately and knowingly executed the instrument in its existing form, and without any allegations of fraud, mistake, or accident in its mode of execution. As in the last preceding case, the sure test and the essential requisite

are the continued existence of a debt." (3 Pom. Eq. Jur., sec. 1196.)

And, speaking particularly of the contract of sale with *pacto de retro*, he adds:

"Whether any particular transaction does thus amount to a mortgage or to a sale with a contract of repurchase must, to a large extent, depend upon its own special circumstances; for the question finally turns, in all cases, upon the real intention of the parties as shown upon the face of the writings, or as disclosed by extrinsic evidence. A general criterion, however, has been established by an overwhelming consensus of authorities, which furnishes a sufficient test in the great majority of cases; and whenever the application of this test still leaves a *doubt*, the American courts, from obvious motives of policy, have generally leaned in favor of the mortgage. This criterion is the continued existence of a debt or liability between the parties, so that the conveyance is in reality intended as a security for the debt or indemnity against the liability. If there is an indebtedness or liability between the parties, either a debt existing prior to the conveyance, or a debt arising from a loan made at the time of the conveyance, or from any other cause, and this debt is still left subsisting, not being discharged or satisfied by the conveyance, but the grantor is regarded as still owing and bound to pay it at some future time, so that the payment stipulated for in the agreement to reconvey is in reality the payment of this existing debt, then the whole transaction amounts to a mortgage, whatever language the parties may have used, and whatever stipulations they may have inserted in the instruments." (3 Pom. Eq, Jur., sec. 1195.)

Again says he:

"* * * The doctrine has been firmly established from an early day that when the character of a mortgage has attached at the commencement of the transaction, so that the instrument, whatever be its form, is regarded in equity as a mortgage, that character of mortgage must and will always continue. If the instrument is in its essence a mortgage, the parties cannot by any stipulations, however express and positive, render it anything but a mortgage, or deprive it of the essential attributes belonging to a mortgage in equity. The debtor or mortgagor cannot, in

> the inception of the instrument, as a part of or collateral to its execution, in any manner deprive himself of his equitable right to come in after a default in paying the money at the stipulated time, and to pay the debt and interest, and thereby to redeem the land from the lien and encumbrance of the mortgage; the equitable right of redemption, after a default is preserved, remains in full force, and will be protected and enforced by a court of equity, no matter what stipulations the parties may have made in the original transaction purporting to cut off this right." (3 Pom. Eq. Jur., sec. 1193.)

And finally, concerning the legal effects of such contracts, the same author observes:

> * * * Whenever a deed absolute on its face is thus treated as a mortgage, the parties are clothed with all the rights, are subject to all the liabilities, and are entitled to all the remedies of ordinary mortgagors and mortgagees. The grantee may maintain an action for the foreclosure of the grantor's equity of redemption; the grantor may maintain an action to redeem and to compel a reconveyance upon his payment of the debt secured. If the grantee goes into possession, he is in reality a mortgagee in possession, and as such is liable to account for the rents and profits." (3 Pom. Eq. Jur., sec. 1196.)

In Cuyugan vs. Santos, *supra*, the action to enforce the right of redemption was brought directly against the immediate grantee in the conveyance there held to be a mortgage, and no account had to be there taken of the situation resulting from a transfer of the property to a stranger. In the present case the rights of the immediate grantee (E. M. Bachrach) passed by transfer for a valuable consideration to Francisco Gutierrez Repide and this transfer had been effected before the action in this case was begun. But it is obvious that this circumstance cannot be any obstacle to the enforcement of any rights that the plaintiff may have had as against Bachrach (or the Bachrach Company) since it is alleged that at the time Repide acquired the interest of Bachrach, he was fully aware of the nature of the transaction between Bachrach and the plaintiff and knew that part of the debt secured by the conveyance of August 22, 1916, had been paid.

In this connection the cardinal rule is that a party who acquires any interest in property with notice of an existing equity takes subject to that equity. "The full meaning of this most just rule," says Mr. Pomeroy, "is, that the purchaser of an estate or interest, legal or

equitable, even for a valuable consideration, with notice of any existing equitable estate, interest, claim, or right, in or to the same subject-matter, held by a third person, is liable in equity to the same extent and in the same manner as the person from whom he made the purchase; his conscience is equally bound with that of his vendor, and he acquires only what his vendor can honestly transfer." (2 Pom. Eq. Jur., sec. 688.)

In other words, having acquired the interest of Bachrach in the *Hacienda Dolores,* with knowledge that the contract of August 22, 1916, had been executed as security for a debt, Francisco Gutierrez Repide—or his estate, now that Repide is dead—must be understood to stand towards the present plaintiff in exactly the same position that would have been occupied by Bachrach, if the transfer to Repide had never been effected.

But it is insisted that the title of Repide has become indefeasible, owing to the fact that the conveyance of the land to him has been followed by the issuance of a transfer certificate of title in his name, and the original certificate in the name of the plaintiff has been cancelled,—all of which had been accomplished more than one year before the present action was begun. The unsoundness of this contention can be easily demonstrated from several different points of view.

In the first place, it must be borne in mind that the equitable doctrine which has been so fully stated above, to the effect that any conveyance intended as security for a debt will be held in effect to be a mortgage, whether so actually expressed in the instrument or not, operates regardless of the form of the agreement chosen by the contracting parties as the repository of their will. Equity looks through the form and considers the substance; and no kind of engagement can be adopted which will enable the parties to escape from the equitable doctrine to which reference is made. In other words, a conveyance of land, accompanied by registration in the name of the transferee and the issuance of a new certificate, is no more secured from the operation of this equitable doctrine than the most informal conveyance that could be devised.

In the second place, the circumstance that the land has been judicially registered under the Torrens system does not change or affect civil rights and liabilities with respect thereto except as expressly provided in the Land Registration Act (*see* sec. 70) ; and as between the immediate parties to any contract affecting such lands their rights will generally be determined by the same rules of law that are applicable to unregistered land. A judicial decree of registration admittedly has the effect of binding the land and quieting the title thereto, to the extent and with the exceptions stated in section 38 of the Land Registration

Act. But an ordinary transfer of land, effected in any of the ways allowed by law, even when followed by registration and the issuance of a new certificate, as contemplated in sections 50 to 55, inclusive, of the Land Registration Act, has a different character.

One of the differences between an original decree of registration and the subsequent registration by transfer of the certificate of title, pertinent to the present controversy, is that which may be noted in regard to the period within which relief may be obtained from fraud. Thus, under section 38 of Act No. 496, any person deprived of land by a decree of registration procured by fraud is limited to the period of one year after the entry of the decree within which to file a petition for review, and even this remedy is unavailable if any innocent purchaser for value has acquired the property; while under section 55, if a subsequent transfer is infected with fraud or the title is procured by any fraudulent means to be registered in the name of the transferee, the injured party may pursue all his legal and equitable remedies against the party, or parties, to such fraud, saving the rights of any innocent holder of the title for value. This means of course that the person thus defrauded may bring any appropriate action to be relieved within the ordinary period of limitation applicable in other cases of fraud, or within the four-year period prescribed in subsection 4 of section 43 of the Code of Civil Procedure.

Applying said provision to the facts of the present case, it must follow that the cause of action of the present plaintiff to annul the registration of this property in the name of Francisco Gutierrez Repide did not prescribe at one year, as the trial judge erroneously supposed, and the plaintiff’s cause of action upon this branch of the case had not in fact been barred at all when the present action was begun.

Before leaving the topic of this alleged fraud committed by Repide in procuring a Torrens certificate to be issued in his own name, thereby making it appear that the absolute and indefeasible title had become vested in himself, it will be well to point out that the complaint reflects a mistaken point of view as to the consequences of that act. Upon perusal of the complaint it will be noted that it proceeds upon the assumption that, if the alleged fraud should be proved, the plaintiff will be entitled to have the premises at once restored to himself, with an accounting for profits, and an award of damages adequate to compensate the plaintiff for the wrong supposed to have been done. But the circumstance must not be overlooked that the supposed fraud relates only to the registration of the title in the name of Repide, and even supposing that this act had never been accomplished, the Repide estate would merely be in the position occupied by Repide after he had acquired the interest of Bachrach in the property, without prejudice to the rights acquired by that purchase. But of

course in the case supposed the plaintiff would be entitled to have the certificate of title cancelled and another issued in such form as to show the correct state of facts with respect to the ownership and incumbrance of the property.

The preceding discussion conducts us to the conclusion that, so far as this case is concerned, the estate of Francisco Gutierrez Repide occupies substantially the position of a mortgagee in possession. The question then arises as to what are the legal rights of the plaintiff as against the Repide estate, judged by the facts alleged and relief sought in the complaint as at present framed, and in this connection the circumstance is not to be ignored that the complaint contains in usual form the prayer for general relief.

The solution of this problem is to be found in the application of the doctrine formulated by this court in Barretto vs. Barretto (37 Phil., 234). In that case the heirs of a mortgagee of an estate were found in possession of mortgaged property more than thirty years after the mortgage had been executed; and it was shown that the mortgage had never been foreclosed. Upon this state of facts it was in effect held that the rights of the parties, heirs respectively of the mortgagor and mortgagee, were essentially the same as under the contract of antichresis.

By reference to the appropriate provisions of the Civil Code (arts. 1881-1884), in the chapter dealing with anti-chresis, it will be at once seen that while non-payment of the debt does not vest the ownership of the property in the creditor, nevertheless the debtor cannot recover the enjoyment of the property without first paying in full what he owes to his creditor. At the same time, however, the creditor is under obligation to apply the fruits derived from the estate in satisfaction, first, of the interest on the debt, if any, and, secondly, to the payment of the principal. From this is necessarily deduced the obligation of the creditor to account to the debtor for said fruits and the corresponding right of the debtor to have the same applied in satisfaction of the mortgage debt, as recognized in Barretto vs. Barretto, *supra*.

The respective rights and obligations of the parties to a contract of antichresis, under the Civil Code, appear to be similar and in many respects identical with those recognized in the equity jurisprudence of England and America as incident to the position of a mortgagee in possession, in reference to which the following propositions may be taken to be established, namely, that if the mortgagee acquires possession in any lawful manner, he is entitled to retain such possession until the indebtedness is satisfied and the property redeemed; that the non-payment of the debt within the term agreed does not vest the ownership of the

property in the creditor; that the general duty of the mortgagee in possession towards the premises is that of the ordinary prudent owner; that the mortgagee must account for the rents and profits of the land, or its value for purposes of use and occupation, any amount thus realized going towards the discharge of the mortgage debt; that if the mortgagee remains in possession after the mortgage debt has been satisfied, he becomes a trustee for the mortgagor as to the excess of the rents and profits over such debt; and, lastly, that the mortgagor can only enforce his rights to the land by an equitable action for an account and to redeem. (3 Pom. Eq. Jur., secs. 1215-1218.)

From the complaint it appears that, even before acquiring the interest of Bachrach in the *Hacienda Dolores*, the defendant Francisco Gutierrez Repide had taken over from the Archbishop of Manila a mortgage on the property in favor of said Archbishop, paying therefor the sum of P35,000; and we infer from the complaint that Repide had probably discharged other liens on the property either before or after he acquired the interest of Bachrach. If so, his executrix will be entitled to charge the plaintiff with the amount paid to free the property from such liens, and to retain possession until all valid claims against the estate are satisfied, in obedience to the maxim that he who seeks equity must do equity.

A question has been made as to whether, in an action like this, it is necessary for the plaintiff to tender the amount necessary to effect the redemption of the property; and we note that in paragraph XII of the complaint it is alleged that the plaintiff had made a written offer to the defendant Repide to pay all debts and charges held by Repide against the property, which offer said defendant had refused to accept. This paragraph of the complaint was doubtless inserted in view of section 347 of the Code of Civil Procedure which declares that a written offer to pay a particular sum of money is, if rejected, equivalent to the actual tender of the money. The allegation contained in paragraph XII of the complaint is not sufficient to comply with the provisions of the section cited, for the reason that it does not appear that the written offer mentioned a particular sum as the amount to be paid. There was therefore no valid tender.

But the case is not one where a tender is necessary, because the amount actually due cannot be known until an accounting is had and the extent of the plaintiff’s indebtedness reduced to certainty. When this has been accomplished, it will become the duty of the court, upon such amendment of the complaint as may appear desirable, to make the proper decree, allowing the plaintiff to redeem and requiring the executrix of Francisco Gutierrez Repide to surrender the property in question to the plaintiff.

In what has preceded we have demonstrated the error of the trial judge in sustaining the demurrer interposed to the original complaint on behalf of the Repide estate, and we have at the same time indicated the character of the relief to which the plaintiff appears to be entitled on the showing made in the complaint. It is hardly necessary to add that we must not be understood as defining the rights of the parties further than is necessary to dispose of the case as presented to us upon demurrer; and it is obvious that if the litigation proceeds further, many questions will be presented which cannot and should not here be anticipated.

Directing our attention now to the appeal of the defendant Boomer, we note that this litigant asserts by way of cross- complaint a right to the *Hacienda Dolores* hostile to both Jose C. Macapinlac and Francisco Gutierrez Repide, basing his claim upon a contract (Exhibit 1) between Macapinlac and Boomer, of a date anterior to the contract of sale with *pacto de retro* of August 22, 1916. It is unnecessary here to enter into the details of Boomer's contention. Suffice it to say that, if the allegations of the cross-complaint are true, as is to be assumed upon demurrer, it shows a cause of action proper to be ventilated in this suit. The trial judge, however, sustained the demurrer to the cross-complaint, apparently for the reason that his Honor believed that the transfer of certificate of title to the name of Repide constituted an insuperable obstacle to the cross-action. This point has been fully discussed by us in connection with the controversy between the two principal litigants, and for the rest it may be said that the action of the trial judge in sustaining the demurrer to Boomer's cross-complaint involves the same errors that were committed in the other branch of the case.

From what has been said it follows that the action of the trial judge in sustaining the two demurrers interposed in behalf of Francisco Gutierrez Repide to the original complaint and to Boomer's cross-complaint must be reversed and said demurrers are hereby overruled, with costs; and the cause will be returned to the lower court with directions to require the appellee to answer within the time allowed by the rules. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, Ostrand, Johns, and *Romualdez, JJ.,* concur.

Johnson, J., dissents.

Date created: June 06, 2014