

[ G. R. No. 17863. June 26, 1922 ]

**CENON FERNANDEZ, PLAINTIFF AND APPELLANT, VS. CESAR MERCADER AND ISABEL NOEL, DEFENDANTS AND APPELLANTS. BROADWELL HAGANS, INTERVENOR AND APPELLANT.**

**D E C I S I O N**

**OSTRAND, J.:**

This is an action for the partition of three parcels of land, referred to in the complaint as parcels (a), (b), and (c), and some carabaos, the plaintiff alleging that the property he seeks to have partitioned is owned by him in common with the defendants Mercader and Noel under an agreement with the latter's predecessor in interest Juan Melgar. Broadwell Hagans, the administrator of the estate of Juan Melgar, is also made a defendant in the proceedings. The defendants Mercader and Noel deny generally the allegations of the complaint, set up as a special defense that they have acquired title in fee simple to the entire property through a donation made by Juan Melgar and his wife Vicenta Escio in their favor, and present a counterclaim for the sum of P10,000 by way of damages for the illegal detention of the property by the plaintiff.

The trial court rendered judgment holding that parcel (a) described in the complaint was the exclusive property of the defendants Mercader and Noel and not subject to partition; that the carabaos were owned in common by the plaintiff and the defendants Mercader and Noel and should be partitioned among them; that parcels (b) and (c) were owned jointly by the plaintiff and the estates of Juan Melgar and Vicenta Escio and should be partitioned accordingly; that the plaintiff should pay rent in the sum of P500 to the defendants Mercader and Noel for the use of parcel (a) and the sum of P250 for the use of their share of the carabaos, and that he should render an accounting of the products of parcels (b) and (c) to the estates of Juan Melgar and Vicenta Escio, represented by Broadwell Hagans.

From this judgment all the parties appealed, but the appeal of Mercader and Noel has been abandoned; the appeal of Broadwell Hagans as administrator of the estates of Juan Melgar

and Vicenta Escio has been dismissed; and only the appeal of the plaintiff remains for our consideration. This appeal relates only to parcel (a) and to the award of rent for said parcel and for the carabaos.

It appears from the evidence that on February 13, 1904, the plaintiff and Juan Melgar entered into the following agreement in writing:

“We, the undersigned, have mutually agreed to enter into the following contract:

“1. Mr. Juan Melgar, married, of legal age, resident of the municipality of Dumanjug, Province of Cebu, Philippine Islands; and Mr. Cenon Fernandez, of legal age, resident of the municipality of Barili, Province of Cebu, P. I.;

“2. That we have entered into a partnership to take over a piece of land owned by Mr. Juan Melgar, situated in the barrio of Basak, within the municipality of Guijulñgan, Oriental Negros, Province of Dumaguete, Philippine Islands, the boundaries of which and area appear in the document of purchase from Mr. Pedro Macalua and are also stated in the possessory information and which land has been taken over by the partnership, one-half of it belonging to Mr. Fernandez in consideration of the amount of one thousand four hundred two pesos and fifty centavos (P1,402.50) including herein eight (8) heads of carabaos, live (5) males and three (3) females;

“3. We, Juan Melgar and Cenon Fernandez, have purchased ten (10) carabaos and some lands planted with cocoanuts from Mr. Ciriaco Mangubat, these lands are situated in the barrio of San Nicolas within the municipality of Guijulñgan, Oriental Negros, Province of Dumaguete, Philippine Islands. All of which we have bought for the sum of one thousand four hundred and sixty pesos (P1,460), the boundaries of the land being stated in the document of sale which is made a part of this contract of partnership;

“4. We have agreed that all of the lands pertaining to this partnership shall be administered by Mr. Fernandez, without any compensation, and he shall give an accounting of his administration to his copartner for his approval;

“5. Whereas in the barrio of Basak there are good business prospects such as the establishing of fisheries, manufacture of fishing nets and dragnets, we have also

agreed that the partnership enter upon these activities of which Mr. Fernandez shall also be the manager;

“6. We have also agreed that if in the said barrio of Basak there are other good business enterprises, such as the purchase and sale of any merchandise, that the partnership also enter upon such ventures;

“7. The conditions governing the partnership over these lands, fisheries and business, shall be as follows:

“That if, by the grace of God, there shall be products or utilities from the said business, they shall be divided among the partners as they shall also bear, in equal parts, the losses, if any there be.

“8. And finally we have agreed that each of us shall have a copy of the document that we have signed in the presence of witnesses in the act of the execution of this contract of partnership, the witnesses being Messrs. Vicente Lozada, Rafael Vinlot, Damaso Tapia, and Modesto Espenoso.

“Dumanjug, February 13, 1904.

(Sgd.) “JUAN MELGAR,  
“DAMASO TAPIA,  
” MODESTO  
ESPENOSO.

(Sgd.) “CENON FERNANDEZ,  
“RAFAEL VINLOT.”

The land mentioned in paragraph 2 of the foregoing document is parcel (a) of the complaint and is the land now in dispute between the plaintiff and the, defendants Mercader and Noel. Shortly after the agreement was entered into, parcels (b) and (c) were acquired by the partnership and paid for by Melgar and the plaintiff in equal shares.

The evidence shows affirmatively that the plaintiff made the payments required of him by the contract and that he faithfully complied with its terms during the life of Juan Melgar.

The plaintiff and his son, Primitivo Fernandez, managed the partnership property and rendered accounts from time to time to Melgar of his share of the profits until his death in 1915.

On March 6, 1915, Juan Melgar and his wife Vicenta Escio executed a deed of gift of parcel (a), together with the work animals "which at present exist on the land" in favor of Cesar Mercader and his wife Isabel Noel. The document is free from formal defects and the donation was duly accepted by the donees. It was recorded in the Mortgage Law Registry on August 7, 1915.

Juan Melgar died on June 19, 1915, but as early as in the month of May of the same year Mercader had a conversation with Cenon Fernandez and as a result of the conversation agreed in writing to continue the partnership between Fernandez and Melgar under the new name of Mercader-Fernandez.

A number of questions have been presented by the assignments of error and the discussion has taken a wide range, but from our point of view the problem offered may be reduced to very simple terms. The character of the partnership between Melgar and Fernandez, and whether it was properly formed, may be open to question, but there can be no doubt that under the agreement above quoted and through the contributions of money made by Fernandez he acquired, as between him and Melgar, the ownership of an undivided one-half of the property of the partnership and he could, at any time, have compelled Melgar to execute a proper conveyance of a one-half interest in the land now in dispute.

When Melgar executed the deed of gift in favor of Mercader and the latter's wife, he was the owner of only an undivided one-half of the land and that was all he could legally convey to the donees. Unless, therefore, the recording of the deed of gift with the register of deeds has cut off the rights of Fernandez in accordance with article 34 of the Mortgage Law, Mercader and his wife have only acquired a one-half interest in the land.

That the protection afforded third persons by article 34 of the Mortgage Law is subject to limitations and is not absolute is well settled. The supreme court of Spain in sentence of July 9, 1900, held that "the provisions of article 34 of the Mortgage Law presuppose that the causes of annulment or resolution of the right of the obligor which is not recorded in the property registry were unknown to the obligee at the time of contracting, because if the

latter knew those causes, he did not have the character of a third person, and the basis of that legal fiction upon which the guaranty of registry rests was lacking.”

In sentence of May 13, 1903, it was held that “there cannot be any doubt but that in accordance with the said law a party cannot be considered a third person who though he did not take any part in the act or contract, nevertheless had a full knowledge thereof.”

In sentence of May 13, 1908, it was again held that “although article 1473, in its second paragraph, creates a preference for the title of ownership of realty first registered, this provision must be understood as being based always upon the good faith required in the first paragraph thereof, as it cannot be conceived that the legislator had intended to do away with, or to sanction, bad faith by requiring compliance with a mere formality (the act of registration) which does not always control even when third persons are involved.” (*See also Obras Pias vs. Devera Ignacio*, 17 Phil., 45.)

We have no doubt whatever that Mercader had full notice of the claim of Cenon Fernandez to the property in question before the donation was recorded. He is the grandson of Juan Melgar, was in intimate relations with him, and the interests of Cenon Fernandez in the Basak property appear to have been quite generally known. True, Mercader testifies that he was under the impression that Fernandez was merely an industrial partner in the management of the property, but to this statement we can, in the circumstances, give no credence. If the statement were true, he would hardly have agreed to give Fernandez one-half of the net profits for merely overseeing the cultivation of the land. What has been said in regard to Mercader applies with equal force to his wife, who is also a grandchild of Melgar and whose relations with her grandparents appear to have been equally close judging from the recitals in the deed of gift above mentioned.

We therefore hold that the defendant Mercader and his wife are not third persons within the meaning of article 34 of the Mortgage Law; that their position was not improved by the recording of their title in the registry of deeds; and that they merely stand in the shoes of Juan Melgar as the owners of a half-interest in the land in question.

The rent allowed the defendants Mercader and Noel by the trial court is for the use of the land and carabaos by the plaintiff during the year 1916 when he failed to account to the defendant Mercader for the profits of the partnership. The findings of the court on this point were based on the assumption that Mercader and his wife were the sole owners of parcel (a). As they own only a one-half interest in the parcel, the rent allowed by the court below

for the land must be reduced by one-half.

The judgment appealed from is therefore modified in the part thereof which relates to parcel (a) described in the complaint and it is ordered that said parcel be partitioned as prayed for in the plaintiff's complaint, one-half thereof to be assigned to Cenon Fernandez and the other half to be assigned to the spouses Cesar Mercader and Isabel Noel jointly. The amount to be paid by Cenon Fernandez as rent for the land is reduced from P500 to P250. It is further ordered that the inscription of parcel (a) in the registry of deeds in the names of Cesar Mercader and Isabel Noel be cancelled. In all other respects the judgment appealed from is affirmed. The defendant Mercader will pay the costs of this instance. So ordered.

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