

2 Phil. 401

[ G.R. No. 1068. August 05, 1903 ]

**LUISA ASIS, PLAINTIFF AND APPELLANT, VS. JORGE PARPO, DEFENDANT AND APPELLEE.**

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

**WILLARD, J.:**

On the 26th of August, 1898, in the capital of the Province of Capiz, Dona Luisa Asis y Diangco and Don Jorge Pardo y Acevedo, by a public document entered into a contract, the principal features of which were: (1) That Dona Luisa Asis received from Don Jorge Pardo, as a loan, without interest, the sum of 2,300 pesos. (2) That as security for this loan Dona Luisa executed a mortgage, in favor of Don Jorge Pardo, on seven parcels of real estate. (3) That Dona Luisa Asis bound herself to pay the sum loaned within five years from the date of the contract, and to apply each year toward the extinction of the indebtedness the total amount of the rents and profits received from the mortgaged property. (4) That Jorge Pardo was to have the management of the mortgaged property, and that its enjoyment should not revert to Dona Luisa Asis until the entire sum loaned should be repaid. (5) That the mortgage of the property referred to was to include all manufactories, buildings, receptacles, apparatus, and everything else thereon necessary for the distillation of nipa alcohol.

On the 22d of February, 1902, Luisa Asis filed a complaint against Jorge Pardo in which she asked that he be ordered to give an account of his management of the property referred to, and that all profits which might have accrued therefrom be applied toward the extinction of the indebtedness. Luisa Asis based her complaint on the contract of loan above referred to.

The court below made the above-mentioned contract a part of its decision, and further found that after its date the appellant, the plaintiff below, borrowed from the appellee \$470, which was to be added to the original loan; that the distillery on the place was operated by the appellee, but that some time after the making of the original contract the appellant assumed

the management of the nipa lands; that her tenants carried the tuba to the distillery, and she received credit from the appellee for the amount due to her for each delivery.

The only question in this case is thus stated by the appellant: *Has the defendant the usufruct of the distillery, or ought the revenue derived from the distillery to be also applied toward the extinction of the debt?*

If we had to decide the case upon the contract of August 26 alone, it might be difficult to sustain the judgment; but the court has found that this contract was afterwards changed by the parties. The management of the nipa lands was taken from the defendant and given to the appellant.

The court also found that the parties had two settlements—one on June 12, 1900, and the other on January 1, 1902. The written receipts delivered on the settlements stated that “on this day we have made a settlement of the products of the nipa lands and distillery.”

The court also finds :

“In the said settlements nothing was said concerning the use of the distillery or its apparatus, nor was the plaintiff given any credit therefor. The plaintiff fully understood the method employed in rendering accounts, as well as the contents of the documents executed, and at the time of the execution of these documents no opposition was made, nor were the profits claimed, or the rendering of accounts demanded, with respect to the use of the distillery and apparatus.”

This practical construction put upon the contract by the parties themselves is almost conclusive that the appellant, at the time the settlements were made, had no right to the profits of the distillery. If she had had such right, she certainly would have claimed it. The contract between the parties consisted not only of the document of August 26 but also of its subsequent modifications.

The article of chapter 4, title 2, book 4, of the Civil Code applicable to the case is not article 1283, cited by the appellant as infringed by the judgment below, but article 1282. While the present Code of Civil Procedure contains several rules for the construction of contracts (secs. 286-294), they are not inconsistent with the provisions of this article, 1282, >which therefore remains in force.

The appellant is concluded by the settlements already made, and as to the years prior to 1902 we hold that she is not entitled to any credit for the rent of the distillery for such years. As to 1902, the time for a settlement had not arrived when this action was commenced, and we decide nothing as to the appellant's rights for that and subsequent years.

The judgment is affirmed, with the costs of this instance against the appellant.

*Arellano, C. J., Torres, Cooper, and McDonough, JJ., concur.*

*Mapa, J.,* did not sit in this case.

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