

[G.R. No. 34021, March 03, 2010]

RICARDO PARDO Y PUJOL, PLAINTIFF AND APPELLANT, VS. THE MUNICIPALITY OF GUINOBATAN, DEFENDANT AND APPELLEE.

D E C I S I O N

VILLA-REAL, J.:

This is an appeal taken by the plaintiff, Ricardo Pardo y Pujol, from the judgment of the Court of First Instance of Albay, the dispositive part of which reads as follows:

"Upon the forgoing considerations, the complaint is hereby dismissed, afd it is held that the plaintiff is not entitled to such income as may be derived from the market of Guinobatan for a period of six years, seven months, and sixteen days, beginning on July 30, 1928; and the preliminary injunction issued is hereby dissolved. The defendant's counterclaim is also dismissed, without special pronouncement as to costs."

In support of his appeal, the appellant assigns the following alleged errors as committed by the court below in the judgment appealed from, to wit:

"1. In finding that the plaintiff's claim was decided on December 18, 1920, in civil case No. 2603 of Albay.

"2. In finding that the plaintiff attempted to sell to the defendant corporation the remainder of the term of his franchise for the sum of P1,500.

"3. In finding that one of the principal causes why the plaintiff, delayed the reconstruction of the public market was his lack of funds for that purpose.

"4. In finding that the defendant municipality had no power to authorize the plaintiff to complete the full term of his franchise; and that its contract so to do, was null and void.

"5. In finding that the plaintiff had no right to complete the enjoyment of the full term of 40 years' franchise interrupted from 1912 to 1918.

"6. In failing to find that the plaintiff is entitled to continue the enjoyment of his right of exclusive public market for 6 years, 7 months, and 16 days.

"7. In failing to grant the final injunction as prayed for by the plaintiff."

The present case originated in a complaint filed by the plaintiff, Ricardo Pardo y Pujol, against the municipality of Guinobatan, praying, for the reasons given: (a) That a preliminary injunction be issued against the defendant municipality, its president, vice-president, councillors, secretary, treasurer, constables, and other employees and officials, restraining them from depriving the plaintiff of his right to the income derived from the public market of Guinobatan ; (6) that after due hearing the injunction be declared final for a period of six years, seven months, and nine days; and (c) that the plaintiff be granted any other adequate remedy, with costs against the defendant.

The defendant filed an amended answer on October 14, 1929, denying generally and specifically each and every allegation in the complaint, and setting up five special defenses, and one counterclaim. The

defendant prays that the complaint be dismissed, dissolving the preliminary injunction issued, and that the plaintiff be ordered to make the necessary repairs on the rebuilt old market of Guinobatan so as to make it sanitary, or, in default thereof, to pay the defendant the amount necessary to have such repairs made, that is, P1,500; to return possession of said building to the defendant and to reimburse to it the amount collected as rent from August 1, 1928 to the middle of November, 1928, that is, P1,500, with costs.

For the determination of the questions raised in this appeal the following facts, established by a preponderance of the evidence, must be stated:

On August 4, 1888, Ricardo Pardo y Cabanas, father of the plaintiff and appellant, Ricardo Pardo y Pujol, obtained from the former Spanish Government an administrative franchise (Exhibit A) to build and control a public market on his land, situated in the municipality of Guinobatan, Province of Albay, with the privilege of enjoying the rent thereof for a period of forty years, after which both the market building and the lot, as well as the subsequent rent, would become the exclusive property of said municipality.

On July 30, 1888, the building was completed; it was thrown open to the public with the due approval of the government, and the period of forty years began to run. (Exhibit C.)

On January 2, 1912, the building was totally destroyed by fire.

On January 31 of the same year, the municipal council of Guinobatan, through resolution No. 17, series of 1912, granted to one Francisco Olaguera, as the highest bidder, the privilege of establishing and controlling a public market for a period of four years at an annual rental of P1,500.

On March 30, 1912, the said municipal council of Guinobatan, by means of resolution No. 51, series of 1912, authorized its president to offer the plaintiff, Ricardo Pardo y Pujol, the amount of P1,500 to waive his exclusive right to establish the market.

On April 16, 1912, the plaintiff, Ricardo Pardo y Pujol, signified his willingness to accept the offer, but payment had to be deferred on account of the difficulty in raising the necessary amount. (Exhibit B; resolutions Nos. 57 and 58, series of 1912.)

On April 30, 1912, one Vergo D. Tufexis, a judgment creditor of the plaintiff, notified the municipal council of Guinobatan that he had acquired, at a judicial sale made by the sheriff on September 30, 1911, the right of the plaintiff to operate a market granted in said franchise, so that the council had to suspend the effects of the aforementioned resolution No. 51. (Exhibit B; resolution No. 61, series of 1912.)

On August 31, 1912, the municipal council of Guinobatan resolved to construct a modern market, indemnifying the plaintiff, Ricardo Pardo y Pujol, for the rescission of his franchise. (Exhibit B; resolution No. 134, series of 1912.)

On July 31, 1913, the municipal council paid Francisco Olaguera the sum of P1,000 for the rescission of his contract of lease of the market, which was to expire on February 1, 1916 (Exhibit B; resolutions Nos. 114, 119, 122, and 130, series of 1913), pursuant to a satisfactory settlement of his claim against the municipality of Guinobatan in civil case No. 1801. (Exhibit D.)

On November 26, 1914, the modern market of the municipality of Guinobatan was thrown open to the public (Exhibit B; resolution No. 180, series of 1914) in a different place, and it remained as a public market belonging exclusively to the municipality of Guinobatan.

On December 24, 1915, this court rendered the judgment in G. R. No. 9865, civil case No. 1804 of the Court of First Instance of Albay, entitled Tufexis vs. Olaguera and Municipal Council of Guinobatan, affirming the order of the lower court sustaining the demurrer set up by the municipality of Guinobatan on the ground that the plaintiff had not set up in his complaint facts sufficient to constitute a cause of action.