

[G.R. No. 1975. November 10, 1905]

THE CITY OF MANILA, PLAINTIFF AND APPELLANT, VS. EL MONTE DE PIEDAD Y CAJA DE AHORROS DE MANILA, DEFENDANT AND APPELLEE.

D E C I S I O N

WILLARD, J.:

It was admitted during the trial of this case that the city of Manila was, on and prior to the 6th day of July, 1887, the owner of the land in the Plaza de Goiti, on which the building of defendant now stands.

On the 1st day of July, 1887, the defendant presented a petition to the city of Manila, in which it asked that the city give to the defendant permission "*edificar en su terreno bajo la condiciOn de que si llega a abandonarse la edificacion o deja de estar destinada a Monte de Piedad y Gaja de Ahorros, la propiedad del terreno revertira al Municipio, condicion con la que cedio hace anos terreno de su propiedad en el campo de Arroceros para la edificacion del Teatro del Principe Alfonso.*"

On the 6th day of July, 1887, the city of Manila adopted the following resolution :

"Information being received with reference to a communication from the most reverend archbishop of Manila, president of the administrative board of the 'Monte de Piedad y Caja de Ahorros' of this city, dated 1st instant (July 1887), stating that the offices of those charitable establishments are installed since the same were opened, in the insalubrious and small place occupied by them on the ground floor of the 'Santa Isabel College,' and the members of this

board having acknowledged by unanimous vote the necessity of situating the above offices in a proper place of this city, by acquiring or erecting a building which, on account of its conditions, may meet the increasing requirements of the same, the above mentioned board has decided to erect a building for its offices, with the independence and security required, among other reasons, by the fact that property of great-value was to be kept in it, and to this effect the said board applies to the municipal corporation, whose feelings of rectitude and Christian piety are well known, asking the above corporation to take an active part in these noble purposes and to grant gratuitously for said building the land occupied in the 'Plaza de Goiti' by the Paseo de Santa Cruz,' which is of no use to anybody, on condition that should the building be abandoned or cease to be devoted to the purpose for which it will be erected, the possession of the land will revert to the municipal corporation in the same form as a land was granted in Arroceros some years ago, in which the 'Principe Alfonso' theater was situated."

"The corporation having been informed of the contents of the above communication, and wishing to cooperate, within the limit of its powers, with the charitable purpose intended by the board of administration of the 'Monte de Piedad,' decided by general consent to grant 'the gratuitous use of the land' asked for the erection of the above-mentioned building and with the stated condition, this resolution having to be submitted previously to the superior authority."

This resolution was submitted to and approved by the Governor-General of these Islands, the superior authority therein mentioned. The defendant constructed its building upon the land in question, where it has since remained. From its construction until the present time the building has been and is now devoted to the purposes mentioned in the petition and resolution.

On the 14th of May, 1901, the defendant presented to the Court of First Instance of Manila, a petition asking that its possession as

owner of the land and building in question be inscribed in accordance with the provisions of article 390 of the Mortgage Law. The proceedings usual in such cases were taken, the prayer of the petition was granted by the Court of First Instance, and on the 13th of June, 1901, the inscription was made in the registry of property for the city of Manila.

On the 13th of October, 1903, the plaintiff brought this action against the defendant, asking that the above-mentioned inscription be canceled, and that judgment be entered in favor of the plaintiff for the possession of the property and the sum of \$14,000, money of the United States, as damages. Judgment was entered in the court below in favor of the plaintiff so far as to order that the inscription be so modified as to show that the plaintiff was the owner of the land, and that the defendant had a right to occupy it gratuitously, so long as it devoted the land to the purposes above mentioned. The judgment denied the plaintiff any other relief. Plaintiff has appealed from the judgment, but the defendant has not.

The appeal is based upon two grounds:

The appellant claims that the grant to the defendant was made upon the same terms as those found in the grant to the *Teatro del Principe Alfonso*, and that by the terms of the latter grant the grantee was bound to vacate the premises whenever the grantor desired to use them. Evidence was introduced by the plaintiff to sustain its claim as to the terms of the grant to the theater. There is some doubt as to the exact conditions upon which that grant was made, but we will assume, for the purposes of this case, that they were as claimed by the appellant.

In the petition presented by the defendant, the conditions upon which it desired to acquire the land are plainly and distinctly stated. It desired to obtain the right to hold the land so long as it should be devoted to the maintenance of the institution in question. The petition there after stated that this was the same condition upon which land had previously been granted to the theater. It is evident that the petitioner then believed that the grant to the theater was made upon

the terms which had been before stated, and the evidence shows that the city of Manila did make the grant to the theater upon those precise terms, but that this action of the city was afterwards modified by the Governor-General to the effect claimed by the appellant. We do not think that this mistake made by the petitioner in regard to the terms on which the grant was made to the theater, had the effect of modifying or changing in any way the conditions stated by it as the ones upon which it desired to acquire the use of the land.

The resolution of the city shows that it intended to grant the prayer of the petition. It recites the condition in the same way as it is stated in the petition. It adds also a statement in regard to the grant to the theater, but we do not think that by this reference it intended to cut down or limit the grant to the *Monte de Piedad*. If the city had intended to do this it would have said simply that it granted the land upon the same terms upon which it had previously granted land to the theater. It did not do that. It distinctly said that it granted the land upon the condition that if the building should be abandoned, or should cease to be devoted to a *Monte de Piedad* it should revert to the municipality. This distinct and positive statement as to what the condition was must prevail, even if it should be discovered that there was a difference between that condition and the condition upon which the grant had been previously made to the theater.

And we hold that the defendant has a right to occupy the land in question so long as the building is not abandoned, and so long as it is devoted to the purposes of a *Monte de Piedad y Caja de Ahorros*.

The appellant also bases its appeal upon the ground that the defendant, by claiming, in the proceedings relating to the possessory information to be the absolute owner of the land and building, forfeited all the rights which it acquired by virtue of the cession of 1887; that by this claim it repudiated the relation which had theretofore existed between it and the appellant, and virtually said that it no longer occupied the land under the terms of the grant, but was the absolute owner thereof. At the trial below evidence was

introduced by the defendant to show that this claim of ownership was made by the officers then in charge of the defendant institution under a mistake of fact; that the only documents which the then officers had before them at the time the proceeding was commenced, indicated that the city had conveyed in 1887 to the defendant an absolute title to the land. The evidence tended to show that the then managers of the *Monte de Piedad* were not informed of and did not see copies of the petition to which we have referred, nor of the resolution of the city of Manila making the cession, and the claim of the defendant is that there was no intention on its part in presenting the petition for the inscription, to make any claim which was not justified by the grant made to it by the city in 1887. We do not think it necessary to pass upon this question of good faith.

Did the laws in force in these Islands, at the time this grant was made in 1887, impose the penalty of forfeiture upon a person in the condition of the defendant who asserted a claim to the ownership of the land? The appellant has cited no law which so provides. It has limited itself, so far as the laws in force in the Islands are concerned, to the citation of various articles of the Civil Code. Even if the Civil Code could be considered as governing the rights which the defendant acquired in 1887, we do not think that any of the articles cited support the claim of the appellant. Its claim is that the defendant is to be considered as a usufructuary, and that by claiming to be the owner of the property it surrendered its rights as such usufructuary. The surrender mentioned in paragraph 4 of article 513 to our minds does not include such an act as this. It refers to a voluntary surrender of the very rights which the usufructuary has, made by him with the intent to so surrender them. It does not relate to a forfeiture which may be claimed to be the result of some act performed by the usufructuary inconsistent with the relation which exists between him and the owner of the property. The appellant, however, seems to rely chiefly upon the law in force in the United States upon this point. That law has never been extended to these Islands, is not in force here now, nor was it in 1887.

The judgment, however, should, we think, be modified in one respect.

The defendant had its possession registered on the ground that it was the owner. It was not the owner, and the inscription should be canceled in its entirety. The defendant has never asked to have its real interest registered. If it desires to have this done it can present a petition to that effect, and the question as to its right to such registry can then be decided.

The judgment of the court below is modified so that the disposing part shall read as follows:

“It is therefore ordered that possessory inscription, as above mentioned, be canceled in its entirety, and that a copy of this decision be sent to the register of deeds of Manila for its execution, and that the defendant institution pay the costs of this trial.”

In other respects the judgment of the court below is affirmed. No costs will be allowed to either party in this court, and after the expiration of twenty days judgment should be entered in accordance herewith, and the case remanded to the court below for execution of said judgment. So ordered.

Arellano, C.J., Torres and Mapa, JJ., concur.

DISSENTING

JOHNSON and CARSON, JJ. :

We dissent from the conclusions of the majority opinion and hold that the defendant should be dispossessed of the land in question for the following reasons:

First. The defendant was granted the use of the land in question for a particular purpose only, without any right or title in said land for any other end or purpose than that indicated in its grant by the city of Manila, dated the 6th of July, 1887.

Second. When the defendant on the 14th day of May, 1901, attempted to secure *title* to said land, it thereby renounced its former relation with the plaintiff and forfeited its right to continue in possession of said land. The defendant, in its application to obtain a possessory title to said land, alleged that it was the *owner* of said land and presented three witnesses to prove the fact. When it asserted that it was the *owner* of the land and not merely the possessor, under a grant for a particular purpose, it thereby renounced its relation with the city of Manila, which relation was created by the concession of the 6th day of July, 1887. The defendant only had the *usufruct* of said land and not the title thereto, and whenever it attempted to exercise ownership over said land, it thereby renounced its former relation with the grantor, the plaintiff herein. The very moment that the defendant exercised a control over the said land which was hostile or contrary to the interests of the city, other than the usufruct indicated in the said grant, it thereby forfeited its right to continue in possession of the land. Whenever the defendant *asserted a right* over the land or an interest therein antagonistic to the interests of the city of Manila, it became an adverse holder thereof. (Doe vs. Wells, 10 Alderson and Ellis, 427; Sherman vs. Transportation Co., 31 Vt., 162; Wilson vs. Watkins, 28 U. S., 42.)

When the defendant asserted that it owned the fee in said land, its possession became a tortious one and it thereby forfeited its right under its original grant. (Peyton vs. Stith, 30 U. S., 483; Walden vs. Bodley, 39 IT. 8., 156; McGinnis vs. Porter, 20 Penn. State, 80; Civil Code, art. 513, par, 4.)

Whenever the defendant impugned the title of the city of Manila, affirming by a matter of record or otherwise the fee to said land to be in itself or another, or claimed a greater estate in said land than it was entitled to, it thereby forfeited its right to continue in possession of said land. (Fenn vs. Smart, 12 East, 444; Goodwright vs. Davides, Cowper, 803.)

The act of the defendant, by which it attempted to secure a possessory title to the land in question, under the provisions of the mortgage law in force in the Philippine Islands, alleging that it was the owner of said land, had the effect of putting into operation the

statute of prescription, so that in due time it might transfer a good title to third persons as against the city of Manila. This act was certainly antagonistic to the interests of the city of Manila and amounted to a renunciation of the relation existing between the defendant and the plaintiff, thereby giving the plaintiff the right to terminate the contract and bring an action to eject the defendant.

The prayer of the petition of the plaintiff should be granted and the defendant should be dispossessed of said land.

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