

[G.R. No. 2333. February 19, 1906]

EDWARD B. MERCHANT, PLAINTIFF AND APPELLANT, VS. ABELARDO LAFUENTE, DEFENDANT AND APPELLEE.

D E C I S I O N

WILLARD, J.:

This is an appeal from the Court of Land Registration, where the application of Merchant for the registration in his name as owner of a certain tract of land in the Island of Tanduay, in the city of Manila, was denied. He moved for a new trial, which was denied, and he has brought the case here by bill of exceptions.

The title to the property which the appellant presented in the court below is the one considered by this court in the case of *Veloso vs. Naguit*^[1] (2 Off. Gaz., 527). It was there held that the plaintiff in that case, Martiniano M. Veloso was the owner of the land involved in that suit. The deeds under which Veloso there claimed title included the land involved in this proceeding, and on the 29th day of July, 1904, Veloso conveyed to the petitioner, Merchant, the said land.

On the 14th. of September, 1893, Fernando Zamora presented po the registrar of property certain documents, which as he claimed, proved that he was the owner of the land here in question, and asked that he be inscribed in the registry of property aa the owner thereof. A definite inscription was not then made, but in lieu thereof the registrar made a precautionary entry (*anotacion preventiva*). This was done in accordance with article 32 of the royal decree of the 11th of October, 1889,^[2] the effects of which were continued by the seventh of the transitory articles of the regulations for the enforcement of the Mortgage Law. By the royal decree of *June 15, 1897*, these precautionary notices were converted into definite inscriptions.

Zamora afterwards sold and conveyed the land to Aguedo Velarde. On the 25th of January,

1894, Velarde presented his title papers to the registrar of property, and asked that he be inscribed as the owner of the land in question. The same action was taken in his case as in Zamora's, and a precautionary entry was made. On the 3d day of August, 1901, Velarde conveyed the property to Manuel Roxas. On the 4th of December, 1902, Manuel Roxas conveyed it to Ramirez Hermanos, and on the 5th day of January, 1903, Ramirez Hermanos conveyed it to the appellee, Abelardo Lafuente. All of these last-named deeds were duly recorded in the office of the registrar of property. Lafuente appeared in the court below and objected to the inscription of the property in the name of the petitioner, Merchant, claiming that he (Lafuente) was the owner thereof.

It thus appears that at the time Zamora was provisionally inscribed in the registry of property as the owner of the land here in question, and at the time Velarde obtained a similar inscription in his name, neither one was the owner of the land, but that Veloso was, and the question is, What effect had that inscription upon the rights of Veloso, or of his grantee, the appellant? For the purpose of this case we may eliminate Zamora, and consider that the first entry made was that of Velarde. The third paragraph of article 20 of the Mortgage Law is as follows:

“However, they may record without this requisite all deeds executed by persons who have acquired an interest in the same property before the day on which the mortgage law was put into operation, provided they justify their title with trustworthy documents, and the same interest is not recorded in favor of another person; but in the record requested the essential circumstances of said title will be indicated, which shall be taken from the documents necessary for this purpose.”

Velarde came within the provisions of this section. The documents presented by him indicated that he was at the time he presented the said documents the owner of the land. The land was not inscribed in the new registry in the name of any other person. The registrar was therefore not only justified in making the inscription, but was by the terms of said article 20 required to do so. The entry of Velarde was made on January 25, 1894. While the title remained in him, Veloso could have maintained an action against him for the cancellation of the inscription and for the recovery of the land, because Velarde was not the owner. (Art. 33 of the Mortgage Law.)

But when, in 1901, Velarde sold to Roxas, such an action could not be maintained by Veloso

against the latter. To Roxas, the purchaser, were applicable the provisions of article 34 of the Mortgage Law, which article is in part as follows:

“Notwithstanding the statements contained in the preceding article, the acts or contracts performed or executed by a person who, according to the registry, has a right so to do, shall not be invalidated with regard to third persons, after they have once been recorded, although later the right of the person executing them is annulled or determined by virtue of a prior deed not recorded, or for reasons which do not clearly appear from the registry. “Only by virtue of a recorded instrument may another later instrument, also recorded, be invalidated to the prejudice of third persons, with the exceptions mentioned in article 389.”

Although the title of Velarde was bad, this fact did not appear in the registry. From the registry Velarde appeared to have authority to convey. Boxas was entitled to rely upon this registry, and his grantees and subsequent purchasers have the same right. (Inocencio vs. Paguia,^[1] No. 1715, July 3, 1905.)

We do not understand that these propositions are controverted by the appellant. He bases his claim, however, upon the fact that while Veloso’s title was not recorded in the new registry it was recorded in the old one; he proved that the documents showing Veloso’s ownership were in 1865 and 1868 recorded in the books of the *anotaduria*, and he insists that the record of those documents protects him against anyone claiming under the new registry. These entries in the books of the *motaduria* have never been transferred to the new registry. This claim of the appellant requires a consideration of the provisions of the Mortgage Law and the regulations relating to the transfer of entries from the old books to the new registry. Article 397 of the law is in part as follows:

“The entries contained in the registries existing in the ‘*Contadurias*,’ ‘*Anotadurias*,’ or ‘*Receptorias*’ of mortgages shall have their proper effect, in accordance with the law in force before the Mortgage Law was put into operation in the respective colonies, if said entries have been or are transferred to the new books of the registry.

“Records of annuities (*censos*), mortgages, liens, or any other class of real rights (*derechos reales*) contained in said books existing in the *Contadurias*,

Anotadurias, or Receptorias of mortgages, must be transferred to the books of the new registry within the period of one year from the time of the promulgation of this law. This transfer must be made at the request of an interested party.

“If the transfer is solicited through a request addressed to the register within said period, the effects of the transfer shall retroact to the date of the entry in the old books, this fact being stated in the new ones. If the request is filed at a subsequent date it can not prejudice third persons.”

Article 449 of the regulations is in part as follows; “In order that the entries of ownership contained in the old books of the registry, referred to in the first paragraph of article 397 of the law, may produce with regard to third persons the effects prescribed by the legislation in force at the time of making said entries, it is indispensable that they be transferred to the new books. This transfer must be requested in writing, in accordance with the proceedings prescribed in the following articles, and may be requested at any time. If the transfer is not made they shall continue to be effective, although not against third persons, in view of the provisions contained in the first paragraph of article 397, but only between the persons interested, and notwithstanding that they do not contain some of the requisites, which, under penalty of nullity, are required by articles 9 to 13 of the law, in accordance with the last paragraph of said article 397.

“Entries which are not of ownership, referred to in the second paragraph of article 397 of the law, must be transferred in order to prejudice third persons, within the period of one year, computed from the date of the promulgation of the law; this transfer shall be requested in writing; within said period, in accordance with the following articles, having all its effects from the date of its entry in the old books, although the transfer is made subsequently, provided the request has been presented within the year mentioned.”

The case at bar concerns the ownership of the land in question and does not relate to any incumbrance thereon, and the record in the old books was the record of such ownership, and not of an incumbrance. The parties have argued in this court the question as to whether the provision relating to one year found in the law, applies to entries of ownership, or only to entries concerning incumbrances, and whether the entries as to ownership must be transferred within one year. We do not see how this question is involved in the case, as

there never was a transfer of these entries, even after the year had expired. In order to prevail, the appellant must establish the proposition that without any transfer at all, the entries in the old books continue to produce the same effect under the new law as they did under the old law, notwithstanding the provisions of the new law. There is nothing in either the Mortgage Law or the regulations which lends any support to this claim. By the terms of article 397 the entries in the old books produce the same effect as was recognized in former legislation, *if they are transferred to the new books*. There is nothing in this article or in any other article of the law which says that they shall continue to produce the same effect as before, if they are not transferred to the new books. Article 449 of the regulations emphasizes the necessity of such a transfer when the rights of third persons are involved. It declares that this transfer is absolutely necessary before such rights can be affected.

We do not agree with counsel for the appellee that the transfer of entries of ownership must be made within one year. They may be made at any time. When they are made they affect subsequent purchasers and incumbrancers, but until they are made, and while they remain in the old books, they produce no effect as to third persons. If before the transfer is made third persons have acquired rights in the property in accordance with the new law, these rights must prevail over those of the former owner who has neglected to make the transfer. As to Veloso and the appellant, the appellee is a third person within any definition which may be given of that term. (See art. 27 of the Mortgage Law.)

As we have seen, the appellee, by virtue of said article 34, acquired a title to this land which could not be attacked by showing that his grantee had no title. The right thus acquired can not be prejudiced by the fact that the appellant's title was recorded in the old books, because at the time appellee's rights were acquired these entries in the old books had not been transferred to the new ones. The appellant makes the further claim that the construction thus given to the law makes it void, because it deprives Veloso of his property without due process of law, a thing forbidden by the Spanish as well as the American legislation.

This contention can not be maintained. Veloso was the owner of the property. His title was recorded in the old registry. He had the right to transfer it to the new registry. The law gave him an opportunity to do this before any interests in the land adverse to his could be obtained. If he had caused the transfer to be made at any time between 1889 and September 14, 1893, the date when Zamora secured his precautionary entry, the latter could in no event have acquired any rights against him. The entry which Zamora then secured was only a precautionary one, and under the terms of the seventh of the transitory

articles of the regulations, it remained such for a year at least. During this time Veloso might have preserved his rights by making the transfer. If it be true that the first entry was not converted into a definite inscription until the royal decree of 1897, he had that additional time. To hold in such a case that a law is unconstitutional which says that by his failure to so transfer these entries he lost his right to deprive a third person of property which that third person has acquired in reliance upon this very failure, would be to declare void a provision which exists in all laws regulating the registry of titles. The following example illustrates this provision : A. is the owner of a piece of property. He sells it to B. B. thereby becomes the absolute owner of the same, of which ownership he can not be deprived without due process of law. B., however, does not record his deed, and A. again sells the land to C, who does record his deed. A law (art. 1476, Civil Code) which says in such a case that C.'s rights are greater than B.'s does not deprive B. art. 27 of the Mortgage Law.)

The legislative branch of the Government has power to provide a system for recording land titles. It has no power to dispose of a man's property without due process of law, but it does have the right to say that if the owner of the property does not record his title papers, and by reason of such failure a third person, relying upon the record, acquires interests in the land adverse to those of the owner, the former's right shall prevail. That is what the mortgage law has done. It is not true, as stated by the appellant, that the mere inscription by Velarde deprived Veloso of his property. Article 33 of the law declares that the record shall not make valid that which is void by law, but, as has been said, Eoxas in 1901 found that according to the record Velarde was the owner, and found nothing in that record which indicated that Veloso had any interest therein. He bought the property, and was by the provisions of article 34 protected against any claim which Veloso might afterward make.

The judgment of the court below is affirmed, with the costs of this instance against the appellant. After the expiration of twenty days let judgment be entered in accordance herewith and the case remanded to the lower court for execution thereof. So ordered.

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

Tracey, J., did not sit in this case.

^[1] 3 Phil. Rep., 604.

^[2] Gaceta de Manila of Nov. 27, 1889, page 2000.

^[1] 4 Phil. Rep., 577.

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