7 Phil. 20

[G.R. No. 2017. November 24, 1906]

THE MUNICIPALITY OF OAS, PLAINTIFF AND APPELLEE, VS. BARTOLOME ROA, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The plaintiff brought this action for the recovery of a tract of land in the pueblo of Oas, claiming that it was a part of the public square of said town. The defendant in his answer alleged that he was the owner of the property. Judgment was rendered in favor of the plaintiff and the defendant has brought the case here by bill of exceptions.

As we look at the case, the only question involved is one of fact. Was the property in question a part of the public square of the town of Gas? The testimony upon this point in favor of the plaintiff consisted of statements made by witnesses to the effect that this land had always been a part of the public square, and of certain resolutions adopted by the *principalia* of the pueblo reciting the same fact, the most important of these being the minutes of the meeting of the 27th of February, 1892. In that document it is expressly stated that this land was bought in 1832 by the then parish priest for the benefit of the pueblo. It recites various proceedings taken thereafter in connection with this ownership, including among them an order of the *corregidor* of Nueva Caceres prohibiting the erection of houses upon the land by reason of the fact above recited—namely, that the land belonged to the pueblo. This resolution terminated with an order to the occupant of the building the standing upon the property that he should not repair it. The defendant signed this resolution.

It further appears that the same building was almost entirely destroyed by a *baguio* on the 13th and 14th of May, 1893, and that the authorities of the pueblo ordered the complete demolition thereof. The resolution of the 31st of May, 1893, declared that the then owner of the building, Jose Castillo, had no right to reconstruct it because it was situated upon land which did not belong to him. This resolution was also signed by the defendant.

The evidence on the part of the defendant tends to show that in 1876 Juana Riarte and Juana Riquiza sold the land in question to Juan Roco, and that on the 17th day of December, 1894, Jose Castillo sold it to the defendant. No deed of conveyance from Juan Roco to Jose Castillo was presented in evidence, but Castillo, testifying as a witness, said that he had bought the property by verbal contract from Roco, his father-in-law. The defendant, after his purchase in 1894, procured a possesory information which was allowed by an order of the justice of the peace of Oas on the 19th day of January, 1895, and recorded in the Registry of Property on the 28th of March of the same year.

In this state of the evidence, we can not say that the proof is plainly and manifestly against the decision of the court below. Unless it is so, the finding of face made by that court can not be reversed. (De la Rama vs. De la Rama, 201 U.S., 303)

The two statements signed by Roa, one in 1892 and the other in 1893, are competent evidence against him. They are admissions by him to the effect that at that time the pueblo was the owner of the property in question. They are, of course, not conclusive against him. He was entitled to, and did present evidence to overcome the effect of these admissions. The evidence does not make out a case of estoppel against him. (Sec. 333, par. 1, Code of Civil Procedure.)

The admissibility of these statements made by Roa do not rest upon section 278 of the Code Civil Procedure, which relates to declarations or admissions made by persons not a party to the suit has himself made an admission of any face pertinent to the issue involved, it can be received against him.

This action was commenced on the 17th of December, 1902. There is no evidence of any adverse occupation of this land for thirty years, consequently the extraordinary period of prescription does not apply. The defendant can not rely upon the ordinary period of prescription of ten years because he was not a holder in good faith. He knew at the time of his purchase in 1894, and had so stated in writing, that the pueblo was the owner of the property. So that, even if the statute of limitations ran against a municipality in reference to

a public square, it could not avail the defendant; in this case.

It appears that Roa has constructed upon the property, and that there now stands thereon, a substantial building. As early as 1852 this land had been used by the municipality for other purposes than that of a public square. It had constructed thereon buildings for the storage of property of the State, quarters for the *cuadrilleros*, and others of a like character. It therefore had ceased to be property used by the public and had become a part of the bievivs *patrimoniales* of the pueblo. (Civil Code, arts. 341, 344.) To the case are applicable those provisions of the Civil Code which relate to the construction by one person of a building upon land belonging to another. Article 364 of the Civil Code is as follows:

> "When there has been bad faith, not only on the part of the person who built, sowed, or planted on another's land, but also on the part of the owner of the latter, the rights of both shall be the same as if they had acted in good faith.
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> "Bad faith on the part of the owner is understood whenever the act has been executed in his presence with his knowledge and tolerance and without objection."

The defendant constructed the building in bad faith for, as we have said, he had knowledge of the fact, that his grantor was not the owner thereof. There was bad faith also on the part of the plaintiff in accordance with the express provisions of article 304 since it allowed Roa to construct the building without any opposition on its part and to so occupy it for eight years. The rights of the parties must, therefore, be determined as if they both had acted in good faith. Their rights in such cases are governed by article 361 of the Civil Code, which is as follows:

> "The owner of the land on which building, sowing, or planting is done in good faith shall have a right to appropriate as his own the work, sowing, or planting after the indemnity mentioned in articles 453 and 454, or, to oblige the person who has built or planted, to pay to him the value of the land and to force the person who sowed to pay the proper rent."

The judgment of the court below is so modified as to declare that the plaintiff is the owner of the land and that it has the option of buying the building thereon, which is the property of

the defendant, or of selling to him the land on which it stands. The plaintiff is entitled to recover the costs of both instances.

After the expiration of twenty days let judgment be entered in accordance herewith and at the proper time thereafter let the record be remanded to the court below for proper action. So ordered.

Johnson, Carson, and *Tracey, JJ.,* concur.

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