

7 Phil. 232

[G.R. No. 2765. December 27, 1906]

**JOSE DOLIENDO, PLAINTIFF AND APPELLEE, VS. DOMINGO BIARNESA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

CARSON, J.:

This is an action for the possession of a certain parcel of land situated in the Province of Iloilo and specifically described in the complaint. It appears from the evidence that the plaintiff bought the land in question from one Ventura Belarmino on the 30th of November, 1888, on which day he paid the purchase price and took possession; that the vendor, Ventura Belarmino, died on the 20th of July, 1889; that thereafter proceedings were instituted against the estate of the said Ventura Belarmino, deceased, on account of certain alleged shortages in his official accounts as *cabeza de barangay*, which resulted in a sale at public auction of certain real and personal property (which, it was alleged, was bound for the payment of said shortages) by the commissioner appointed for the purpose of making such sales; that the parcel of land in question in this action was included in the property thus sold; that the defendant was the purchaser of this land at the public sale and that some time thereafter, and not later than the 31st of December, 1892, he took possession by virtue of his purchase at said public auction and continued in possession until the 18th day of February, 1903, when this action was instituted.

The plaintiff alleges that the description of the land actually sold at the public sale does not conform to the description of the land in question, but we think that the evidence introduced by the plaintiff himself leaves little doubt as to this point. At the time of the public sale, and immediately prior thereto, the plaintiff vigorously protested on the ground that the land which was about to be sold was his property and had been purchased by him from the said Ventura Belarmino, and in the light of this protest and in consideration of all the evidence of record we are satisfied that the land described in the complaint must be taken to be

included in the description of the land originally sold to the plaintiff at private sale and later sold to the defendant at public auction.

It is admitted that the defendant had been in possession more than ten years prior to the institution of this action and he must, therefore, be held to have acquired a title by prescription under the provisions of article 1957 of the Civil Code if it appear that this possession was *con buena fe y justo titulo*. The evidence conclusively establishes that the public auction did, in fact, take place; that the defendant was the highest bidder for the property sold and was declared to be the purchaser and that he took possession of the land in question under and by virtue of said sale.

This evidence, we think, was sufficient to establish the fact that the defendant was in possession *con justo titulo*— that is, such a claim of title as is defined in article 1052 of the Civil Code—because, granting that the debtor was the owner of the property at the time of the sale, this sale of land at public auction by a commissioner appointed for the making of such sales and the payment of the purchase price and occupation of the land purchased were sufficient to transfer the ownership to the purchaser provided these proceedings were had in accordance with law; and since there was no evidence which tended to show that the defendant occupied the land in bad faith, or that he had any reason to believe that the commissioner selling it had no authority to sell, or that he could not lawfully purchase at the sale, he must be deemed to have purchased in *buena fe* (good faith) in accordance with the provisions of articles 43(i and 1950 of the Civil Code.

Counsel for the plaintiff contends that since the plaintiff had purchased the land in question prior to the alleged sale at public auction, the commissioner had no lawful authority to include it in the list of property of the vendor which could be subjected to the payment of his, debts, and that the sale, therefore, was invalid and of no effect; and he insists that a prescription title can not be based on such a transaction because "*el titulo para la precripcion ha de ser verdadero y valido.*" (Art. 1953 of the Civil Code.)

We think that this contention is based on a misconception of the scope and effect of the provisions of this article of the code in its application to "ordinary prescription." It is evident that by a "*titulo verdadero y valido*" in this connection we are not to understand a "*titulo que par si solo tiene fuerza do transferir el dominio sin necesidad de la prescripcion*" (a title which of itself is sufficient to transfer the ownership without the necessity of the lapse of tile prescription period); and we accept the opinion of a learned Spanish law writer who holds that the "*titulo verdadero y valido*" as used in this article of the code prescribes a "titulo

Colorado” and not merely “*putativo*” a “*titulo colorado*” being one “which a person has when he buys a thing, in good faith, from one whom he believes to be the owner,” and a “*titulo putativo*” “being one which is supposed to have preceded the acquisition of a thing, although in fact it did not, as might happen when one is in possession of a thing in the belief that it had been bequeathed to him.” (Viso *Derecho Civil, Parte Segunda*, p.541)

Hence, even should it prove to be true upon investigation that the land in question was not lawfully included in the list of property subject to the payment of the debts of the said Ventura Belarmino, deceased, or that the documentary evidence of title introduced at the trial was deficient in form and lacks the formalities prescribed by law, the defendant’s title by prescription must still be sustained, since it is clear that the sale at public auction did in fact take place, that the transaction was in good faith, and that the defendant bought the land from one whom he believed to have the right to sell.

The trial judge gave judgment in favor of the plaintiff, but the reasons on which he based his conclusions are not fully set out in his opinion as it appears in the record. The language in which it is couched seems to suggest that the opinion in full as filed in the trial court has not been brought here on appeal, but since the bill of exceptions bears the certificate of the judge who signed the opinion, and there is no suggestion of mistake or oversight by either party, we have had no occasion to verify the record in this regard.

The judgment of the trial court is reversed without special condemnation of costs in this instance, and judgment will be entered in favor of the defendant, with the costs of first instance against the plaintiff. After expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the case remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Willard, and Tracey, JJ., concur.