

[G. R. No. 17900. June 21, 1922]

EUGENIO CAGAOAN, PLAINTIFF AND APPELLANT, VS. FELIX CAGAOAN AND THE REGISTER OF DEEDS OF THE PROVINCE, OF PANGASINAN, DEFENDANTS AND APPELLEES.

D E C I S I O N

OSTRAND, J.:

It appears from the evidence that the plaintiff and the defendant Felix Cagaoan are brothers, the sons of Gregorio Cagaoan. On November 3, 1915, Gregorio Cagaoan executed a deed of gift of four parcels of land situated in the municipality of Tayug, Province of Pangasinan, in favor of Felix Cagaoan and on October 26, 1918, he executed a similar deed in favor of Eugenio Cagaoan for a parcel of land which, apparently, is the same as that described as parcel No. 4 in the deed of gift executed in favor of Felix. Both of the deeds of gift are free from formal defects and were duly accepted by the donees.

Eugenio Cagaoan went, into possession of the parcel donated to him immediately after the execution of the deed of gift in his favor, but on account of variance between the land description given in the deed and that appearing in the registry, he failed to get the donation recorded with the register of deeds. The deed given Felix was duly recorded on June 10, 1919, but though he appears to have held possession of parcels Nos. 1, 2, and 3 described in his deed, at least since the year 1915, he has never had possession of parcel No. 4. Gregorio Cagaoan died on December 16, 1918.

This action was brought to have Eugenio Cagaoan declared the owner of the parcel donated to him, to set aside for fraud the donation made in favor of Felix Cagaoan and to have the record of the same in the registry of deeds cancelled. The defendant Felix Cagaoan has presented a cross-complaint asking that he be awarded the possession of the land, with damages for its unlawful detention by the plaintiff.

The trial court rendered judgment for the defendant ordering that the plaintiff surrender

possession of the parcel in question to him and pay the costs. From this judgment the plaintiff appealed.

There is no doubt that Gregorio Cagaoan signed both of the deeds of gift by means of his thumb-print and that therefore both of them are authentic, but there are strong indications in the evidence that some form of deception was practised upon him at the time of the execution of the deed in favor of Felix Cagaoan and that he never intended to donate the parcel now in dispute to Felix. In fact, in view of the difficulty of obtaining direct evidence of fraud where the person deceived cannot be produced as a witness, we might, perhaps, be justified in holding that the circumstances shown by the evidence and which remain unexplained by the defendant, constitute sufficient evidence of fraud. But, be this as it may, we think the judgment of the court below must be reversed for another reason. The case seems to us to be analogous to one where the same real property has been sold by the same vendor to two different vendees. In such cases, under article 1473 of the Civil Code, the property goes to the vendee who first records his title in the registry of property. If the sale is not recorded by either vendee, the property goes to the one who first takes possession of it in good faith, and in the absence of both record and possession, to the one who presents the oldest title, provided there is good faith.

The supreme court of Spain has frequently held that inscription in the registry of property gives no preference or priority where the person relying on the inscription had full notice beforehand of the adverse claim. For instance, in sentence of July 9, 1900, the court held that "the provisions of article 34 of the Mortgage Law presuppose that the causes of annulment or resolution of the right of the obligor which is not recorded in the property registry were unknown to the obligee at the time of contracting, because if the latter knew those causes, he did not have the character of a third person, and the basis of that legal fiction upon which the guaranty of registry rests was lacking."

In sentence of May 13, 1903, it was held that "there cannot be any doubt but that in accordance with the said law (the Mortgage Law) a party cannot be considered a third person who though he did not take any part in the act or contract, nevertheless had a full knowledge thereof."

In sentence of May 13, 1908, it was again held that "although article 1473, in its second paragraph, creates a preference for the title of ownership of realty first registered, this provision must be understood as being based always upon the good faith required in the first paragraph thereof, and it cannot be conceived that the legislator had intended to do

away with, or to sanction, bad faith by requiring compliance with a mere formality (the act of registration) which does not always. control even when third persons are involved." (See also *Obras Pias vs. Devera Ignacio*, 17 Phil., 45.)

It clearly appears that Felix Cagaoan had full notice of the plaintiffs claim to the land before he had his deed of gift recorded with the register of deeds. Under the decisions above cited he was therefore not a third person within the meaning of article 34 of the Mortgage Law, and his position was, consequently, in no wise improved by the inscription of his document. The plaintiff Eugenio Cagaoan having first taken possession in good faith must therefore be considered to have the better right to the land in question.

The judgment appealed from is therefore reversed, the plaintiff Eugenio Cagaoan is declared the owner of the land in question, the cross-complaint of the defendant Felix Cagaoan is dismissed, and it is ordered that the register of deeds cancel the inscription of the land in question in the name of Felix Cagaoan, who will pay the costs of this action in both instances. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.