44 Phil. 924

[G. R. No. 18341. September 18, 1922]

GENEROSO AVILES AND HER HUSBAND RUFINO VILLAFUERTE, PLAINTIFFS AND APPELLANTS, VS. SEGUNDA ARCEGA AND FORTUNATO DE LEON, DEFENDANTS AND APPELLEES.

D E C I S I O N

ROMUALDEZ, J.:

The plaintiffs bring this action to recover title to a house of mixed materials erected on a leasehold land of the Nagtahan estate, more particularly described in the complaint. While the plaintiffs claim the ownership of said house, the defendants assert title in themselves.

At the trial of the case, the parties entered into the following stipulation of facts:

> "1. That the house in dispute in this case was on October 10, 1917, sold by the spouses Venancio Alcantara and Vicenta Capulong to the plaintiff Generosa Aviles, as evidenced by the document marked with the letter A, and acknowledged on the 8th of November of the same year, 1917, before the notary public Jose Galang Serano, for the sum of P497, it having been stipulated that during four months from the 10th of October, 1917, the vendors would continue in possession of the house, the expenses for repairs, land and other tax to be for their account, as well as the payment of the rent for the lot on which it is erected.
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> "2. That in a document dated March 13, 1918, and acknowledged on the following day before Ariston Rivera, notary public, the same property was sold by the same spouses Venancio Alcantara and Vicenta Capulong for P500 to the spouses Fortunato de Leon and Segunda Arcega, who took possession of the property, as stated in the third paragraph of the complaint, the plaintiff Generosa Aviles never having taken possession thereof.
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> "Under the foregoing facts the case is submitted to the consideration of the court

> for the determination of the question of law as to which of the two purchasers acquired title to the property."

In view of these stipulated facts the trial court rendered judgment declaring the defendants to be the owners of the house and absolving them for the complaint with costs. From this judgment the plaintiffs appeal, alleging that the trial court erred (a) in not rendering judgment in their favor; (b) in not giving preference to the sale made to them of the house in question; (c) in not declaring them owners of said house; (d) in not sentencing the defendants to deliver the same to plaintiffs; (e) in not sentencing the defendants to pay damages; (f) in declaring the latter owners of the house when they did not make a prayer to that effect; (g) in drawing from the facts stipulated a conclusion inconsistent therewith; and (h) in not granting a new trial.

These assignments of error raise but two questions: First, in which of the two sales was the title to the house in dispute transferred? And second, whether or not it was an error to declare the defendants owners of said house, the latter not having expressly prayed in their answer for such a declaration. The other errors assigned are but a consequence of these two point.

As to the first question, we have, by virtue of the stipulation and the documents presented, the following facts, which must be considered proven:

The house in question belonged originally to the spouses Venancio Alcantara and Vicente Capulong. On the 10th of October, 1917, these spouses sold this house in a public document to Generosa Aviles, the herein plaintiff, it having been stipulated, in the document executed for the purpose, that "during four months from the 10th of October, 1917, the vendors would continue in possession of the house" (to use the language of the stipulation of facts). We italicize the words would continue, which show that the vendors were in possession of the house before, and at the time of, its conveyance, and continued thereafter in said possession. It is, further, to be noted that the plaintiff never had possession of the house, as stated at the end of the second paragraph of the stipulation of facts, which says "the plaintiff Generosa Aviles never having taken possession thereof." From this it appears that the purchaser never took possession of the house either at the execution of the deed of sale, or at any other time. It thus being admitted by the appellants that the purchaser Generosa Aviles, one of the plaintiffs, never had possession of this house, it cannot be presumed that she took possession thereof at the expiration of the four months following the sale, as

stipulated by the parties. Such positive fact having been expressly admitted, there can be no presumption to the contrary.

On the 13th of March, 1918, the same spouses Venancio Alcantara and Vicenta Capulong (who are presumed to have been in possession of the house until them, inasmuch as it is positively known that they were uninterruptedly prior to the first sale, during the time the sale was in force and until atleast four months thereafter, and it is a fact that the purchaser Aviles never had possession of the house to the spouses Fortunato de Leon and Segunda Arcega, the herein defendants, who then and there took possession of said house.

None of the two sales appears to have been registered; therefore the question at issue is, which of these purchasers was the first to take possession (art. 1473, Civil Code).

We have already seen that the first purchasers, the plaintiff, never took possession of the house, while the second purchasers, the defendant spouses, did. Under the Civil Code, the conclusion is inevitable that the title to the house was transmitted not to the plaintiff but to the defendants.

We are of the opinion that the plaintiff cannot invoke symbolic delivery by the execution of the public document of sale, inasmuch as there was not, nor could there have been, such delivery, the same being prevented by the express stipulation contained in the deed of sale, to the effect that the vendors did not part with the possession of the house but would continue therein for four therein. Article 1462 of the Civil Code says:

> "If the sale should be made by means of a public instrument, the execution thereof shall be equivalentto the delivery of the thing which is the subject-matter of the contract unless the contract appears or may be clearly inferred from such instrument."

At the time, therefore, of the execution of the deed in favor of the plaintiff, the first purchaser, there was no symbolic delivery because there was an express stipulation to the contrary. It cannot be said that after the lapse of the four months following, during which the vendors were to continue in possession of the house, according to the stipulation, any symbolic delivery subsisted. Nothing can subsist that did not exit before.

It cannot be said that symbolic delivery spontaneously took place after the lapse of the four months stipulated, for there is no law providing that it should take place after the execution

of the document where there is a stipulation to the contrary.

The law does not say that such a symbolic delivery is suspended when at the execution of the document a stipultion to the contrary is made. What the law simply says is that no such symbolic tradition can take place,-can exist-when there is a stipulation to the contrary.

As we understand the law, there is symbolic delivery when the sale is made in a public document, and nothing appears therein to the contrary either expressly or impliedly; and no such symbolic delivery can be held to take place when, as in the instant case, there is in the document a stipulation to the contrary.

> "We do not hesitate to term symbolic such delivery of the thing as is supposed to the made by the execution of the document, as provided in article 1462, although in that case it must be considered to take place partly by operation of law. This kind of tradition finds its precedent in law 8, title and Partida aforecited, which provides that 'when one grants another any property or thing, the latter acquires possession thereof, if the grantor delivers to him the letters whereby the same is made, or makes a new one and hands it to him, although he is not given physical possession of the thing.'
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> "It must be noted that this manner of delivering the thing through the execution of a public document is common to personal as well as real property, for the Code does not distinguish, and besides, taking this rule in connection with the following article, 1463, a conclusion to this effect seems to be clearly justifiable.
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> "This kind of tradition, however, is, as to its efficaciousness, subject to the terms of the document, for if it appears therein, or can be inferred therefrom, that it was not the intention of the parties to make delivery, no tradition can be deemed to have taken place. Such would be the case, for instance, where a certain date is fixed when the purchasers should take possessions of the thing, or where in the case of a sale by instalments, it is stipulated that until payment of the last instalment is made, the title to the property should not be deemed to have been trasmitted, or where the vendor reserves the right to use and enjoy the property until the gathering of the pending crops." (10 Manresa, Codigo Civil, p. 129.)

The instant case is one of those above mentioned by the eminent commentator Mr. Manresa.

To use the phraseology of the above quoted passage, a certain date was fixed (namely, at the end of four months, because id certum est quod certum reddi potest), when the purchaser should take possession of the thing.

Neither can it be said that the house must be presumed to have been delivered to the first purchaser after the lapse of the four months aforesaid, for such a presumption is overthrown by the fact stipulated by the parties that this first purchaser never took possession of the house.

We entertain no doubt, either under the facts or under the law of the case, as to the right of the defendants to the house in question, with absolute exclusion of the plaintiffs. Turning to the second point which is of a procedural nature, we hold that the trial court did not commit any error in declaring the defendants owners of the house in question. It is true that the answer does not expressly pray for such an affirmative relief. But both parties expressly and solemnly stipulated that they submitted the case to the trial court for the determination of the question as to which of the two purchasers acquired title to the house, when in the stipulation of facts, they said the following to the court:

> "Under the foregoing facts, the case is submitted to the consideration of the court for the determination of the question of law as to which of the two purchasers acquired title to the property."

This statement made to the court below by both parties is tantamount to an amendment of the prayer of the answer, and to a waiver by the party plaintiff of the right to question such a defect, if is at all, of the prayer of the answer.

The question having thus been raised, and both parties having requested the lower court to determine which of the two litigating parties acquired the house in question, the lower court did but fulfill its duty in determining the question presented and declaring upon the facts and the law of the case, that the defendants, and not the plaintiffs, are the owners of the house in dispute.

As above stated, the other assignments of error are but a corollary of the two points already decided.

The judgment appealed from is affirmed, with the costs against the appellants. So ordered.

Johnson, Street, Ostrand, and *Johns, JJ.,* concur.

DISSENTING

ARAULLO, C. J., Malcolm, Avaceña, and Villamor, JJ.,

Under the facts stated in the majority opinion, this case presents a double sale of a house of mixed materials. The first was made to the plaintiffs on October 10, 1917, with a stipulation that during the four months following said date the vendors should continue in possession of the house for the reasons therein stated. The second was made on March 13, 1918, to the defendants who took possession of the property, which is one month after the expiration of the term stipulated in the first one. Both sales appear in a public document. None of the documents was registered in the registry of property.

To which of the two purchasers was the title to the property in question transferred?

Article 1473 of the Civil Code provides:

> "If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have firsy taken possession thereof in good faith, if it should be personal property.
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> "Should it be real property it shall belong to the purchasers who first recorded it in the registry of deeds.
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> "Should it not be recorded, the property shall belong to the person who first took possession, to the person who presents the oldest title, provided there is good faith."

Applying this provision to the instant case, there is no doubt that the ownership was transferred to the purchaser who first gained possession in good faith. But who was the first to gain possession? The defendants, according to the opinion of the majority. But with all the respect due to the authoritive opinion of the majority, the undersigned think that it was the plaintiffs.

Article 1462 of the Civil Code provides:

> "The thing sold shall be deemed delivered when the vendee is placed in the control and possession thereof.
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> "If the sale should be made be means of a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the subject-matter of the contract unless the contrary appears or may be clearly inferred from such instrument."

The majority opinion says: "At the time, therefore, of the execution of the deed in favor on the plaintiff, the first purchaser, there was no symbolic delivery because there was an express stipulation to the contrary. It cannot be said that after the lapse of the four months following, during which the vendors were to continue possession of the house, according to the stipulation, any symbolic delivery subsisted. Nothing can subsist that did not exist before."

This reasoning, in our opinion, is applicable only where the stipulation inserted in the public documents involves a resolutory condition. But to our mind the stipulation under consideration constitutes a suspensive condition. The essential difference in law between these two kinds of condition is that the fulfillment of the suspensive condition makes the obligation effective, whereas that of the resolutory resolves the obligation-makes it entirely ineffective.

The symbolic tradition, which is effected by the execution of the public document, was suspended for four months by virtue of the stipulation. It cannot be said that it did not exist because suspension. The four montus elapsed, the condition was fulfilled. It seems clear to us that that symbolic tradition, which was temporarily suspended, recovered its efficaciousness, as a necessary consequence of the execution of the public document. To hold otherwise is to give the stipulation a meaning contrary to the evident intention of the contracting parties.

The doctrine we maintain finds support in the very opinion of the authorites commentator of the Civil Code, Mr. Manresa.

> "This kind of tradition, however, is, as to its efficaciousness, subject to the terms of the document, for if it appears therein, or can be inferred therefrom that it was not the intention of the parties to make delivery, no tradition can be deemed to

> have taken place. Such would be the case, for instance, where a certain date is fixed when the purchaser should take possession of the thing, or where in the case of sale by instalments, it is stipulated that until payment of the last instalment is made, title to the property should not be deemed to have been transmitted, or where the vendor reserves the right to use and enjoy the property until the gathering of the pending crops." (10 Manresa, Codigo Civil, p. 129.)

Manresa does not say that, at the expiration of the term fixed, or upon the payment of the last instalment, in the examples given by him, the public document ceases to produce legal effect-the symbolic tradition. Neither can it be said in the case at bar that the lapse of the term stipulated renders the document ineffective in so far as the effecting of tradition by its execution is concerned, because this would amount to annulling an obligation by the fulfillment of a suspensive condition.

For the foregoing the undersigned dissent from the opinion of the majority.

Date created: June 09, 2014