

LUPO L. DIÑOSO, PETITIONER, VS. COURT OF APPEALS AND ANTONIO D. FONTILLAS, RESPONDENTS.*G. R. No. L-17738. April 22, 1963*

Ponente: REYES, J.B.L., J.

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Appeal by certiorari from a decision of the Court of Appeals (CA-G.R. No. 23886-R, 30 June 1960) affirming a judgment rendered by the Court of First Instance of Zambales. As found by respondent court, the facts are:

"On December 18, 1944 appellee (Antonio D. Fontillas) bought from Modesta Feria four parcels of land, three of which were located in San Narciso, Zambales, and the fourth-the lot in question-in sitio Cawayan Kiling, Cabangan, Zambales (Exhibit A). The vendor was given the right to repurchase the properties on or before December 1, 1946. As she failed to exercise right, the vendee consolidated his ownership and registered the deed, of sale with option to repurchase in accordance with Act 3344 on January 10, 1946. However, he failed to take possession of the property because appellant (Lupo L. Diñoso) refused to surrender possession thereof.

It also appears that on April 6, 1940 Modesta Feria executed in favor of appellant the pacto de retro sale Exhibit 1 which was registered only on May 25, 1948. After the sale appellant took possession of the land in question and was still in possession thereof when the present action was commenced on September 4, 1952.

Notwithstanding the numerous questions raised by appellant in the eight assignment of errors submitted in his brief, we believe that only two questions are decisive of this case. The first is whether or not the land sold by Modesta Feria to appellee is the same parcel of land sold to appellant; and the second is whether, assuming that the properties sold by Modesta Feria to appellant and appellee were different from each other, appellant acquired title by prescription to the land conveyed to appellee.

A comparison between the boundaries of the parcel of land sold under pacto de retro by Modesta Feria to appellee, on the one hand, and the boundaries of the land which the same vendor was claimed to have sold to appellant on April 6, 1940, on the other, shows conclusively that they are different.* * *." (Italics supplied)

This finding of non-identity is conclusive, and, as a matter of fact, appellant does not question it. His assignments of error center on the ruling of the Appeals Court disallowing his claim of title by adverse possession.

Admittedly, there is nothing in the answer which alleges, directly or indirectly, that petitioner acquired by prescription the land subject-matter of the complaint. On the contrary, petitioner expressly asserted that he bought it from the same vendor in a deed of sale with right of repurchase (Exhibit 9). For this reason, the Court of Appeals refused to consider the defense of adverse possession:

Petitioner Dinoso complains that the Court of Appeals erred in so holding, and invokes in his behalf *Recoletos vs. Crisostomo*, 32 Phil. 248, wherein it was held that adverse possession can be set up by defendant under a general denial.

This argument does not take into account that general denials have been abolished by the present Rules of Court, and a defendant is now required to allege all his defenses, both negative and positive, by specific denials and pleas

in avoidance (Rule 9, secs., 6, 7, and 8), disclosing the true facts in order to prevent surprise and unfair advantage. Explains Moran (Rules of Court, 1957, Vol. 1, p. 158):

"The purpose of requiring the defendant to make a specific denial is to make him disclose the matters alleged in the complaint which he sincerely intends to disprove at the trial, together with the matters which he relies upon to support the denial. Under the old procedure, the defendant was allowed to conceal, under a general denial, the true facts of his case, and at the same time compel the proving of facts alleged in the complaint which he, at the trial, does not even attempt to dispute. He was thus given the advantage, doubly unfair, of presenting his true facts only at the trial as a surprise to the plaintiff, and of compelling the latter to incur unnecessary expenses for proving facts not really disputed by him. The new system of specific denial removes this unfair advantage, unnecessary expenses and waste of time, by compelling both parties to lay their cards on the table, thus reducing the controversy to its true terms. * * *."

In his answer filed in the court of origin, petitioner-appellant Diñoso specifically denied respondent Fontillas' claim of ownership, and alleged that he was the true owner in fee simple of the land in question by virtue of the consolidation of the title conveyed to him under pacto de retro by Modesto Feria:

"2. That he denies specifically paragraph 2 of the complaint, for the fact is; it is the defendant who is the owner in fee simple, the ownership having, been consolidated in said defendant by virtue of a Deed of Sale with right to repurchase executed by ami between the defendant and the former owner thereof, Modesta Feria, on April 6, 1940; which date is much earlier than the supposed date of the instrument alleged by the plaintiff to have been executed. The right to repurchase under the instrument executed by and between the defendant and Modesta Feria, had not been exercised by the vendor a Retro within the time stipulated, thus mating the defendant the absolute owner of the property in question, rather than the plaintiff whose right, if any, is based on a later instrument the genuineness and due execution of which is, by the way, not admitted by the supposed Vendor a Retro, Modesta Feria;"

Diñoso never pleaded that irrespective of that conveyance, and regardless of whether his deed covered the disputed land or not, he had held it adversely for more than ten years, as required by the applicable law (Act 190, sec. 41).

The express pleading of the sole defense of conveyance from the former owner would make it unfair to admit the inconsistent claim of adverse possession that Dinoso had not interposed below, as it would deprive respondent Fontillas of the opportunity to counter Said defense by proving that the petitioner's occupancy did not comply with all the requirements of law, for example, that it lacked hostility, Openness, or continuity. In other words, the failure to plead adverse possession has misled the respondent (plaintiff below) into assuming that petitioner relied exclusively on the sale to him by Modesta Feria (which the Court of Appeals found to have referred to another piece of land), and appellant should be barred from asserting adverse possession, involving as it does a complete change of theory from that upon which the case was tried.

We further agree with the appeals court that the possession of petitioner Dinoso under the sale a retro, Exhibit "1", did not actually become hostile or adverse until the expiration of the redemption period, since until then he recognized the superior right of the vendor to oust him, and his claim of , ownership was not absolute. Authorities are to the effect that-

"Where the sale is subject to the owner's right of redemption, the purchaser's possession has been held in subordination to the title of the owner prior to the expiration of the redemption period, although it may become hostile thereafter." (2 C.J.S., p. 664, sec. 113; Morse vs. Seibold, 35 N. W. 371).

It was incumbent upon the petitioner to show when his vendor's right of redemption expired, and that he had held adversely for ten years thereafter. In truth, his own deed (Exhibit "1"). recites that Feria's right of repurchase

would expire only on 6 April 1950, so that the present suit for recovery was begun in 1952, well within the prescriptive period.

As to, the amount of damages suffered, the same is a question of fact not reviewable by this Court.

Wherefore, the decision of the Court of Appeals is hereby affirmed, with costs against petitioner Lupo Diñoso.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, Regala and Makalintal, JJ., concur.

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