

TOMASA QUIMSON AND MARCOS SANTOS, PETITIONERS, VS. FRANCISCO ROSETE, RESPONDENT.

G.R. No. L-2397. August 09, 1950

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal by certiorari from a decision of the Court of Appeals reversing the judgment of the Court of First Instance of Zambales. The case involves a dispute over a parcel of land sold to two different persons.

The facts as found by the Court of Appeals are these:

"Esta finca pertenecia originariamente al hoy difunto Dionisio Quimson, quien, en 7 de junio de 1932, otorgo, la escritura Exhibit A de traspaso de la misma a favor de su hija Tomasa Quimson, pero continuó en su posesion y goce. La vendió a los esposos Magno Agustin y Paulina-Manzano en 3 de mayo de 1935, con pacto de recomprar dentro del plazo de seis años; y dos años escasos después, en 5 de abril de 1937, la volvió a vender a Francisco Rosete, también con pacto de retro por el término de cinco años, después de haber verificado su recompra de Agustin y Manzano, con dinero que le había facilitado Rosete, otorgándose a este efecto la escritura de venta Exhibit 1. Desde entonces Rosete es el que está en su posesion y disfrute, de una manera pacífica y quieta, aún después de la muerte de Dionisio Quimson, ocurrida en 6 de junio de 1939, hasta el enero de 1943, en que Tomasa Quimson acudió al Juez de Paz de San Marcelino, Zambales, para que este interviniera en un arreglo con Rosete sobre dicha finca, cuyo fracaso motivó una carrera hacia Iba, la capital de Zambales, para ganar la prioridad del registro e inscripción de las escrituras de venta Exhibits A y 1 que Dionisio Quimson otorgara a favor de Tomasa Quimson y Francisco Rosete, respectivamente, carrera que aquella ganó por haber llegado a la meta una hora antes, a las 9:30 a.m. del 17 de febrero de 1943, en tanto que este la alcanzó a las 10:30 a.m. de ese mismo día."

Two questions are raised: (1) What were the effects of the registration of plaintiff's document? and (2) Who was prior in possession? The Court of Appeals' answer to the first question is, None, and to the second, the defendant or second purchaser.

We do not deem it necessary to pass upon the first issue in the light of the view we take of the last, to which we will address ourselves presently.

Articles 1462 and 1473 of the Civil Code provide:

"Art. 1462. The thing sold shall be deemed delivered, when it is placed in the control and possession of the vendee.

"When the sale is made by means of a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the said instrument the contrary does not appear or may not be clearly inferred.

"Art. 1473. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

"Should it be immovable property, the ownership shall belong to the person acquiring it who first recorded it in the Registry.

"Should there be no inscription, the ownership shall belong to the person who in good faith was first in the possession; and, in the absence of this, to the person who presents the oldest title, provided there is good faith."

In the case of *Buencamino vs. Viceo* (13 Phil. 97), Mr. Justice Willard, speaking for the Court and citing Article 1462 says: "Upon a sale of real estate the execution of a notarial document of sale is a sufficient delivery of the property sold."

In the case of *Florendo vs. Foz*, (20 Phil. 388), the Court, through Mr. Chief Justice Arellano, rules that "When the sale is made by means of a public instrument, the execution thereof is tantamount to conveyance of the subject matter, unless the contrary clearly follows or be deduced from such instrument itself, and in the absence of this condition such execution by the vendor is per se a formal or symbolical conveyance of the property sold, that is, the vendor in the instrument itself authorizes the purchaser to use the title of ownership as proof that the latter is thenceforth the owner of the property."

More decisive of the case at bar, being almost on all fours with it, is the case of *Narcisa Sanchez vs. Ramos*, (40 Phil., 614). There, it appeared that one Fernandez sold a piece of land to Marcelino Gomez and Narcisa Sanchez under pacto de retro in a public instrument. The purchasers neither recorded their deed in the registry of property nor ever took material possession of the land. Later, Fernandez sold the same property by means of a private document to Ramos who immediately entered upon the possession of it. It was held that, according to Article 1473 of the Civil Code, Gomez and Sanchez were the first in possession and, consequently, that the sale in their favor was superior. Says the Court, through Mr. Justice Avanceña later chief justice:

"To what kind of possession does this article (1473) refer? Possession is acquired by the material occupancy of the thing or right possessed, or by the fact that the latter is subjected to the action of our will, or by the appropriate acts and legal formalities established for acquiring possession (art. 438, Civil Code). By a simple reasoning, it appears that, because the law does not mention to which of these kinds of possession the article refers, it must be understood that it Defers to all of these kinds. The proposition that this article, according to its letter, refers to the material possession and excludes the symbolic does not seem to be founded upon a solid ground. It is said that the law, in the gradation of the causes of preference between several sales, fixes, first, possession and then the date of the title and, as a public instrument is a title, it is claimed that the inference is that the law has deliberately intended to place the symbolic possession, which the execution of the public document implies, after the material possession. This argument, however, would only be forceful if the title, mentioned by this article, includes public instruments, and this would only be true if public instruments are not included in the idea of possession spoken of in said article. In other words, the strength of the argument rests in that this possession is precisely the material and does not include the symbolic. Consequently, the argument is deficient for it is begging the same question, because if this possession Includes the symbolic, which is acquired by the execution of a public instrument, it should be understood that the title, mentioned by the law as the next cause of preference, does not include public instruments.

"Furthermore, our interpretation of this article 1473 is more in consonance with the principles of justice. The execution of a public instrument is equivalent to the delivery of the realty sold (art. 1462, Civil Code) and its possession by the vendee (art. 438). Under these conditions the sale is considered consummated and completely transfers to the vendee all of the vendor's rights of ownership including his real right-over the thing. The vendee by virtue of this sale has acquired everything and nothing, absolutely nothing, is left to the vendor. From this moment the vendor is a stranger to the thing sold like any other who has never been its owner. As the thing is considered delivered, the vendor has no longer the obligation of even delivering it. If he continues taking material possession of it, it is simply on account of vendee's tolerance and, in this sense, his possession is vendor's possession. And if the latter should have to ask him for the delivery of this material possession, it

would not be by virtue of the sale, because this has been already consummated and has produced all its effects, but by virtue of the vendee's ownership, in the same way as said vendee could require of another person although same were not the vendor. This means that after the sale of a realty by means of a public instrument, the vendor, who resells it to another, does not transmit anything to the second vendee and if the latter, by virtue of this second sale, takes material possession of the thing, he does it as mere detainer, and it would be unjust to protect this detention against the rights to the thing lawfully acquired by the first vendee.

"We are of the opinion that the possession mentioned in article 1473 (for determining who has better right when the same piece of land has been sold several times by the same vendor) includes not only the material but also the symbolic possession, which is acquired by the execution of a public instrument."

The Supreme Court of Spain and Sr. Manresa are of the same opinion. On pp. 157, 158, Vol. X, of his treatise on the Spanish Civil Code, Manresa comments:

"II. Observacion comun a la venta de muebles y a la de inmuebles.—Hemos interpretado el precepto del art. 1.473, en sus parrafos 1.º y 3.º, en el sentido ma's racional, aunque no tal vez en el mas adecuado a las palabras que se emplean. Las palabras tomar posesion, y primero en la posesion, las hemos considerado como equivalentes a la de la tradicion real o fingida a que se refieren los articulos 1.462 al 1.464, porque si la posesion material del objeto puede otorgar preferencia en cuestiones de posesid'n, y asi lo reconoce el articulo 445, no debe darla nunca en cuestiones de propiedad, y de la propiedad habla expresamente el art. 1.473. Asi, en nuestra opinion, robustecida por la doctrina que rectamente se deriva de la sentencia de 24 de Noviembre de 1894, vendida una finca a A. en escritura publica, y despues a B., aunque se incaute materialmente este del inmueble, la propiedad pertenece a A., primero en la tradicion, con arreglo al art. 1.462, puesto que a partir del otorgamiento de la escritura que envuelve la entrega de la cosa, el vendedor carecia ya de la facultad de disponer de ella."

The statement of Sr. Manresa which is said to sustain the theory of the Court of Appeals, expresses, as we understand that statement, the literal meaning of Article 1473, for the decision of November 24, 1894 reflects, according to the learned author, the intention of the lawmaker and is in conformity with the principles of justice. Now, under both the Spanish and the Philippine rules of interpretation, the spirit, the intent, of the law prevails over its letter.

Counsel for defendant denies that the land was sold to plaintiff Tomasa Quimson or that the Court of Appeals so found. All that the latter court declared, he says, was that a deed of sale of the land was executed by the original owner on June 7, 1932.

The finding that a deed of conveyance was made by Dionisio Quimson in favor of his daughter could have no other meaning, in the absence of any qualifying statement, than that the land was sold by the father to his daughter. Furthermore this was the trial court's explicit finding which was not reversed by the Court of Appeals and stands as the fact of the case. Looking into the document, itself, Exhibit A states categorically that the vendor received from the vendee the consideration of the sale, P250, and acknowledged before the notary public having executed the instrument of his own free will.

The expression in this Court's decision in the case of Cruzado vs. Escaler (34 Phil. 17), cited by the Court of Appeals, apparently to the effect that physical possession by the purchaser is essential to the consummation of a sale of real estate, is at best obiter dictum; for the Court distinctly found that the sale to plaintiff Cruzado's father was a sham, executed with the sole purpose of enabling the senior Cruzado to mortgage the property and become procurador. And with reference to the failure of the second vendee, Escaler, to register his purchase, the Court disregarded the omission as well as the entry of the first sale in the registry because that entry was made by the plaintiff, son and heir of the first supposed vendee, more than a score years after the alleged transaction, when the plaintiff "was no longer or had any right therein (in the land), because it already belonged to the defendant

Escaler, its lawful owner." When Escaler, the second purchaser was sued, he had become the owner of the land by prescription. The defendant's possession in the present case fell far short of having ripened into title by prescription when the plaintiff commenced her action.

For the reasons above stated, we are constrained to set aside the decision of the Court of Appeals. Because the Appellate Court found for the defendant, it made no findings on damages for the latter's use of the property in controversy. Not being authorized in this appeal to examine the evidence, we have to accept the trial court's appraisal of the damages. Judge Llanes assessed the damages at P180 for the occupation of the land for the agricultural years 1943-44, 1944-45 and 1945-46, and P60 a year thereafter until the possession of the property was restituted to the plaintiffs.

Let Judgment be entered in accordance with the tenor of this decision, with costs against the defendant.

Moran, C.J., Ozaeta, Pablo, Bengzon, and Montemayor, JJ., concur.

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