

PASTOR PACCIAL, DEMANDANTE Y APELANTE, CONTRA MARIA PALERMO Y OTROS, DEMANDADOS Y APELADOS.

G.R. No. L-2185. April 29, 1950

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PABLO, M.:

Se trat de una causa elevada al Tribunal de Apelacion a mediados del ano 1941. Destruido el expediente en la toma de Manila, se pido su reconstitucion en que se emplearon mucho papeleo y tiempo. Porque se trata de cuestiones de derecho, el Tribunal de Apelacion lo transmitio a este Tribunal.

La orden apelada es la siguiente:

"When this case was called for trial on the 13th instant, the defendants moved for a dismissal on the ground that the plaintiff has no cause of action agaisnt them.

"Upon a careful consideration of the allegations of the complaint and thos made int he answer and documents attached tot he latter the court has arrived at the conclusion that the plaintiff has no cause of action agaisnt any one of the defendants except possibly against Valentin Sorongon and Marcos Dean.

"Wherefore, the case is hereby dismissed against all the defendants except Valentin Sorongon and Marcos Dean. "It is ordered.

"Iloilo, January 16, 1941."

Los parrafos esenciales de la demanda son los siguientes: (3) Que Lucas Paccial era el dueno de los lotes Nos. 5314 y 5315 del catastro del municipio de Pssi, Iloilo, por haberlos heredado de su padre Marcelo Paccial quien los adquirio en 1868 mediante informacion posesori; (4) Que Lucas Paccial encomendo a Marcos Dean y Valentin Sorongon bajo pago de P10 por sus servicios toda gestion sobre su registro a su nombre hasta la obtencion del titulo correspondiente; (5-6) Que Marcos Dean y Valentin Sorongon, violando el fideicomiso, no solamente no presentaron las contestaciones sino que registrarion los lotes a nombre de los herederos de Camilo Palermo; (7) Que Camilo Palermo nunca reclamo ser dueno de estos lotes, ni los ha registrado para fines de amillaramiento, ni ha estado en su posesion; (8) Que los herederos de Camilo Palermo que son Maria, Andres y Eulogio Palermo nunca poseyeron estos lotes y nunca reclamaron ser duenos de los mismos; (9) Que en 26 de Febrero de 1934, Maria Palermo fimo una declaracion jurada (Annex A) haciendo constar que ella y sus hermanos nunca han estado en posesion, ni han sido duenos de dichos lotes, que ella y sus hermanos renuncian al derecho de propiedad a favor de LUCas Paccial y de sus herederos; (10) Que Valentin Sorongon reclamo estos dos lotes como de la propiedad de los herederos de Camilo Palermo, habiendo el preparado la contestacion en el expediente de catastro y comparecido en la vista de los lotes, y despues, por sus maquinaciones, se realizo la venta en 15 de Febrero de 1935 al demandado Andres Paclibar sin dar a los Palermos el importe de la vent; (11) Que Andres Paclibar no es un comprador de buena fe porque sabia antes de la venta que Marcelo Paccial y su hijo Lucas eran los duenos aun antes de 1886; (16) Que el demandante y sus coherederos presentaron una peticion pidiendo la revision del decreto de registro, pero ha sido denegada; y piden que se condene a los demandados Maria, Andres y Eulogio Palermo a otorgar la escritura de traspaso de los lotes Nos. 5314 y 5315 a favor de Pastor Paccial y sus

coherederos; en el caso de que no fuese posible, que se condene a los demandados Marcos Dean y Valentin Sorongon a pagar a los demandados el valor de los terrenos que asciende a P1,500 y en su defecto, que se condene al Tesorero Insular a pagar dicha cantidad del fondo de seguro.

Los demandados, excepto el Tesorero Insular, en su contestacion, presentan entre otras la defensa especial siguiente:

"1. That the plaintiff's cause of action is now barred by the three prior judgments relating to the same parcels of land mentioned in the plaintiff's complaint, as per decisions of this Honorable Court hereto attached as annexes "A" "B" and "C" wherein the same allegations of the plaintiff in this case had been passed upon by this Honorable Court."

El Annex A es una decision del Hon. Juez Francisco Sta. Maria de 14 de Julio de 1925 adjudicando los lotes Nos. 5314y 5315 proindiviso a favor de los hermanos Crisostomo, Maria y Andres Palermo. El Annex B es un auto del mismo juez de 5 de Septiembre de 1925 denegando la mocion del demandante de fecha 31 de Agosto del mismo ano pidiendo el levantamiento de la orden de rebeldia y la admision de su contestacion para el lote No. 5314. El Annex C es decision del Hon. Juez Arsenio P. Dizon del tenor siguiente:

"Civil Case No. 11775.—Andres Paclibar et al., plaintiffs, versus Pastor Paccial el al., defendants.

"Cadastral Case No. 31, G.L.R.O. Record No. 490.—The Director of Lands, applicant, versus Serafin Advincula et al., claimants.

"DECISION

"By agreement between the parties, the above-entitled civil case was heard jointly with the petition filed by Pastor Paccial in the cadastral case above-entitled, under date of July 5, 1935.

"Lots numbered 5314 and 5315 of the Cadastral Survey of Passi, Iloilo, were the undivided property of Maria Palermo, Andres Palermo and Eulogio Palermo, as shown by Original Certificate of Title No. 51263 (Exhibit A). On March 15, 1935 Maria and Andres sold their share with right to repurchase (Exhibit F) to the herein plaintiffs but failed to exercise their right to repurchase within the time agreed upon. The pacto de retro sale was duly registered (Exhibits A and F). Eulogio Palermo, a minor and one of the plaintiffs herein, still owns 1/2 of the said lands.

"Although the plaintiffs contend that they were in possession of the lots already mentioned and it is only in the month of May, 1935 that the herein defendants deprived them of said possession, the court is inclined to believe that, as a matter of fact, the defendants have been in possession of the parcels of land in question long before the month of May, 1935, under claim of ownership and in spite of the decision, decree and certificate of title issued in Cadastral Case No. 31 in connection with lots Nos. 5314 and 5315 of the Cadastral Survey of Passi. But this possession, of course, is ineffective and in no wise weakens the validity and force of the certificate of title Exhibit A, which entitles the registered owners of the parcels of land therein described not only to their ownership but also to their possession.

"The petition filed by Pastor Paccial for the revision of the decree of registration in Cadastral Case No. 31, as far as lots Nos. 5314 and 5315 are concerned, must be denied in view of the fact that there is no evidence showing any fraud actually perpetrated by the original registered owners, much less by the plaintiff Andres Pacilibar, against the interest of Lucas Paccial and his heirs or successors. Furthermore, even granting that Marcos Dean and Valentin Sorongon practiced fraud upon Lucas Paccial, there is no showing that said fraud had ever been brought home to Camilo Palermo and to those of his heirs to whom the certificate of title Exhibit A was issued, or to the plaintiff Paclibar, who for this reason must be considered as a purchaser in good faith.

"It appears, furthermore, that Lucas Paccial, through his son Jose, had already filed a similar motion on August

22, 1935 (Exhibit C) which was denied by this court in its order of September 5 of the same year (Exhibit D). The Court has carefully gone over the decision rendered in Cadastral Case No. 31, in connection with lots Nos. 5314 and 5315, and has become convinced that there is no evidence at all showing any actual fraud practiced upon Lucas Paccial by the party in whose favor said decisions were rendered. If through fraud committed by Marcos Dean and Valentin Sorongon, Lucas Paccial failed to appear and make his claim in connection with said lots, his remedy is against them exclusively.

"In view of the foregoing, and it being evident that the plaintiffs are the owners of the two parcels of land described in Certificate of Title No. 51263 (Exhibit A), the defendants are hereby ordered to surrender the possession of the same to the said plaintiffs.

"No adjudication for damage is herein made in favor of the plaintiffs, for two reasons: first, because of lack of sufficient evidence upon which to base such adjudication, and second, because it has not been shown that defendants' possession was in bad faith.

"The petition to revise the decree of registration, filed in Cadastral Case No. 31 by Pastor Paccial on or about July 5, 1935, is hereby denied.

"The defendant shall pay the costs. It is so ordered.

"Iloilo, Iloilo, August 15, 1940."

De la misma decision se desprende que Andres Paclibar y otros en la causa civil No. 11775, reclamaron la posesion de los dos lotes con certificado original de titulo NO. 51263 y los demandados son el demandante y sus coherederos en la presente causa. El asunto civil No. 11775 se vio juntamente con la mocion de Pastor Paccial pidiendo la revision del decreto de registro sobre los lotes en cuestion, alegando el fraude que Marcos Dean y Valentin Sorongon habian empleado en la obtencion del registro de los lotes. Estas defensas de fraude y de que el demandante Paclibar fue un comprador de mala fe se habrian suscitado tambien en el asunto civil No. 11775, porque su omision es renuncia (arts. 9 y 10, Regla 9).

Las partes principales en ambas causas civiles son las mismas; el objeto del litigio: los dos lotes Nos. 5314 y 5315; la accion en la primera, accion publiciana y en la presente, otorgamiento de un documento de traspaso bajo la Ley No. 3322. El fin esencial de ambas causas es obtener la declaracion judicial de quien tiene derecho dominical sobre los dos lotes. Hay, pues, identidad de partes y de cosa; pero diferentes motivos de accion que en el fondo tienen un solo fin. Si fueron registrados mediante fraude a nombre de los hermanos Palermo, y Andres Paclibar fue un comprador de mala fe, los coherederos Paccial deben ser declarados dueños; pero si no hubo fraude en su registro, y por tanto, no hubo compra de mala fe, Paclibar y sus coherederos deben ser puestos en la posesion de los dos lotes. Estas cuestiones de fraude y compra de mala fe han sido ya resueltas por el juzgado en su decision transcrita. Y como esta decision quedo firme, sus disposiciones deben ser respetadas por todas las partes. Si Pastor Paccial y sus coherederos no estaban conformes con dicha decision, debieron de haber apelado para corregir el error en vez de presentar la demanda en la presente causa. Una decision firme, aunque sea erronea, no puede corregirse (13 Jur. Fil., 626).

Hay res judicata—dijo este Tribunal en *Lontok contra Padua* (42 Off. Ga., 521)—cuando existe identidad de partes litigantes, de cosa y motivo de accion, y hay estoppel en virtud de sentencia cuando hay identidad en las partes y cosa litigada, aunque los motivos de accion en los dos pleitos sean completamente distintos.

Es regla bien establecida en esta jurisdiccion la de que una parte no puede eludir el principio de que un mismo motivo de accion "no se liquidara dos veces entre las mismas partes o sus causahabientes," cambiando el metodo de plantear el asunto o el titulo de la demanda. (*Paz contra Inandan y otros*, 42 Off. Gaz., 714).

Confirmamos la parte dispositiva de la orden apelada.

Moran, Pres., Ozaeta, Bengzon, Tuason, Montemayor, y Reyes, MM., estan conformes.

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