

CIRIACO PACHECO, ESTRELLA RAZO-REY AND BENVENUTO ABITRIA, PETITIONERS, VS. HONORABLE COURT OF APPEALS, DANIEL HERNANDEZ AND ANASTACIO RANESES, RESPONDENTS.

G.R. No. L-48689. August 31, 1987

Ponente: CRUZ, J.

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CRUZ, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals dated April 19, 1978, which reversed the decision of the Court of First Instance of Sorsogon declaring the petitioners as the owners of the lands subject of this case.[1]

The antecedent facts are as follows:

1. Emiliano Pacheco owned a parcel of unregistered land covered by Tax Declaration No. 12490, later changed to Tax Declaration No. 3420 and then to Tax Declaration No. 6704, with an area of 4,698 square meters, more or less.[2]
2. In 1939, Emiliano Pacheco sold to Rafael Pacheco some 1,170 square meters of the said land, which portion was then covered by Tax Declaration No. 3431.[3]
3. This portion was mortgaged by Rafael Pacheco to the Philippine National Bank, sold at public auction upon foreclosure of the mortgage in 1959, and repurchased by Rafael Pacheco on April 20, 1960.[4]
4. On September 7, 1964, Rafael Pacheco sold the said land to Ciriaco Pacheco, who thereafter sold a portion thereof to his co-petitioner, Estrella Razo-Rey.[5]
5. In a civil case entitled "Daniel Hernandez v. Emiliano Pacheco," a decision was rendered on October 10, 1963, in favor of the plaintiff. To enforce it, certain properties, including the land in question, were levied upon and sold at public auction. Hernandez, herein private respondent, was the purchaser.[6] These properties were covered by new Tax Declarations Nos. 6522 and 5924, which canceled the earlier tax declarations covering the portions claimed by the herein petitioners.
6. On December 2, 1969, private respondent Hernandez filed a complaint against the petitioners, alleging that the lands the latter were occupying and which they refused to vacate were part of the property covered by Tax Declaration No. 6704 which he had acquired in the judgment sale.[7]
7. This complaint was dismissed, the Court of First Instance* declaring the petitioners as the lawful owners of the disputed property, which they had acquired through prescription, except as to Arbitria who had bought his lot from Emiliano Pacheco.[8] From this decision, the private respondents appealed to the Court of Appeals,** which reversed the lower court.[9]

The respondent court held that the petitioners' claim of acquisitive prescription was untenable because their possession of the property in dispute was interrupted when the Philippine National Bank acquired it at the

fore-closure sale in 1959 and held it for one year before it was repurchased by Rafael Pacheco in 1960. The ten-year period for prescription had not been completed. It also held that, not having registered his opposition to the attachment and execution sale of the lots he was claiming as his own, petitioner Abitria was now barred from asserting ownership over the said properties.[10]

From the aforesaid decision of the Court of Appeals and its subsequent resolution denying their motion for reconsideration, the petitioners have brought this petition for review, alleging that they are the owners of the disputed property by virtue either of prescription or of sale.[11]

The issues are as follows:

1. Whether or not the petitioners may be allowed to claim the property by purchase.
2. Whether or not the petitioners acquired the pro-perty by acquisitive prescription.

Petitioners' claim to the disputed property was based not only on prescription but also on the alleged sale of the same by Emiliano Pacheco in January 1939, and its sale by Rafael in September 1964, to Ciriaco Pacheco, who sold a portion thereof, Lot No. 4, to Estrella Razo-Rey on December 23, 1965. Petitioner Abitria likewise claimed that he purchased Lot No. 5 from Emiliano Pacheco on April 28, 1950.[12]

On these claims, the Court of First Instance of Sorsogon declared as follows:

"x x x. Be that as it may, Ciriaco Pacheco asserted that after his father bought the property from Emiliano Pacheco sometime in 1939, he and his father occupied the land and their possession was public, open, peaceful, continuous, uninterrupted, adverse and in concept of owner. The land they occupied is the very land which he is at present occupying or Lot 3 indicating Lot 4 which he later sold to Mrs. Rey. He further alleged that his late father even constructed a house where they lived on Lot 4. Unfortunately, the house built by his father was burned down during the conflagration that hit that district of Donsol in 1963. However, after the conflagration, Ciriaco was able to construct his own house but already on Lot 3. Considering the long and uninterrupted possession of Ciriaco Pacheco under claim of ownership starting from 1939 up to the present, it is believed that he has acquired Lot 3 as well as Lot 4 by acquisitive prescription." [13] (Underscoring supplied.)

The above finding was not disputed by Ciriaco Pacheco and Estrella Razo-Rey. In fact, they impliedly agreed with the trial court that they had acquired the disputed property by virtue of prescription and thereafter kept silent about the alleged sale. Although it was only the purchase made by Benvenuto Abitria which the trial court held as valid and binding, the other two petitioners did not challenge its ruling insofar as it impliedly rejected their own claim of purchase. Having failed to do so, they are now estopped from asserting that they had bought the lands they are now claiming.

The respondent court held that as the land was acquired in the foreclosure proceedings by the PNB in 1959, the ten-year period of acquisitive prescription was not completed.[14] As a consequence of the cut-off caused by the take-over of the land by the bank, Rafael Pacheco ceased to be the possessor of the property for more than one year and the period of prescription was thus interrupted.[15] The applicable provision is Article 1121 of the Civil Code, reading as follows:

"Art. 1121. Possession is naturally interrupted when through any cause it should cease for more than one year.

"The old possession is not revived if a new possession should be exercised by the same adverse claimant."

Briefly stated then, the argument of the private respondents runs as follows: Rafael Pacheco repurchased the land in question from the PNB on April 20, 1960. Since Ciriaco Pacheco derived his title from Rafael Pacheco, the

latter's possession from April 20, 1960 up to September 7, 1964, when the land was sold to the former, could be tacked to the possession taken over by Ciriaco Pacheco when he bought the land. However, his total possession did not ripen into acquisitive title because the ten-year prescriptive period was not completed. Reckoned from April 20, 1960, when Rafael Pacheco repurchased the land from the Philippine National Bank, the period would have been completed on April 20, 1970. The trouble is that on December 2, 1969, before prescription could set in, the complaint for the recovery of the land was filed by the private respondents, thus interrupting the running of the period.[16]

This argument, however, has not taken into account an earlier possession, to wit, that of Rafael Pacheco also, but beginning 1939, when he bought the land in question from Emiliano Pacheco.[17]

Although both the trial court and respondent court accepted the petitioner's claim of such a sale, the subject thereof was, however, not positively identified. The land purchased by Rafael from Emiliano Pacheco was covered by Tax Declaration No. 12490 with an area of 4,698 square meters, and in his name. On the other hand, the land fore-closed by the bank, which Ciriaco's father later repur-chased and then sold to him, was covered by Tax Declaration No. 3431 with an area of 1,170 square meters, and in the name of Rafael Pacheco. It was not shown by Ciriaco that Tax Declaration No. 3431 revised in part or in whole Tax Declaration No. 12490. Nevertheless, whether or not the subject of the sale was the land in dispute, it was clearly established that Rafael Pacheco started occupying the same since 1939 and that his possession was public, open, peaceful, continuous, uninterrupted, adverse and in the concept of owner until and even beyond 1949. After ten years of such possession, acquisitive prescriptive title was vested in Rafael Pacheco, pursuant to Article 1134 of the Civil Code. Consequently, when he mortgaged the land to the PNB, he did so not as a mere possessor but as an owner by virtue of prescription under Article 1134 of the Civil Code. Article 1121 could no longer apply to him because the ten-year prescriptive period had already been completed at the time.

It follows that when Rafael Pacheco sold the land to Ciriaco Pacheco, the latter acquired the rights of the former as owner of the property, and not as a mere pos-sessor thereof, and so did the other petitioners who derived their title from Ciriaco Pacheco.

The rule in execution sales is that an execution creditor acquires no higher or better right than what the execution debtor has in the property levied upon.[18] The purchaser of property on sale under the execution and levy takes as assignee only, as the judicial seller possesses no title other than that which would pass by an assignment by the owner.[19] "An execution purchaser generally acquires such estate or interest as was vested in the execution debtor at the time of the seizure on execution, and only such interest, taking merely a quit-claim of the execution debtor's title, without warranty on the part of either the execution officer or of the parties, whether the property is realty or personalty. This rule prevails even if a larger interest in the property was intended to be sold. Accordingly, if the judgment debtor had no interest in the property, the execution purchaser acquires no interest therein." [20]

Applying the above principles, we hold that the judgment sale in favor of private respondent Hernandez did not and could not cover the lands claimed by the petitioners as these lots no longer belonged to the judgment debtor when they were levied upon and sold. That sale covered only the lands still under the ownership of the judgment debtor and did not affect the ownership of the property titled in the name of the herein petitioners. None of them was a party to the civil case brought by the private respondent against Emiliano Pacheco.

Finally, as to the effect of Abitria's failure to oppose the sale of this land in 1963 to enforce the judgment against Emiliano Pacheco, it suffices to point out that under Rule 39, Section 17, of the Rules of Court, the claimant who does not file a third-party claim to the property being levied upon is not prevented "from vindicating his claims

to the property by any other action." Hence, Abitria is not precluded now from asserting in the present petition his claim of ownership over the disputed property.

WHEREFORE, the decision of the respondent court dated April 19, 1978, is REVERSED and that of the trial court dated July 25, 1975 is REINSTATED. Costs against the the private respondents.

SO ORDERED.

Teehankee, C.J., Narvasa, Paras, and Gancayco, JJ., concur.

[1] Rollo, pp. 38-48.

[2] Ibid., p. 5.

[3] Id.

[4] Id., pp. 5-6.

[5] Id., p. 6.

[6] Id., p. 38.

[7] Id., p. 39.

* Presided by Judge Ubaldo Y. Arcangel.

[8] Id., p. 44.

** Justices L. B. Reyes, ponente, Mama Busran, and Nestor B. Alampay.

[9] Id., p. 48.

[10] Id., pp. 47-48.

[11] Petition, pp. 7-24.

[12] Id., pp. 5-6.

[13] Id., p. 42.

[14] Id., p. 46.

[15] Id.

[16] Id., pp. 45-46.

[17] Id., p. 41.

[18] Laureano v. Stevenson, 45 Phil. 252; Cabuhat v. Ansery, 42 Phil. 170.

[19] Fore v. Manove, 18 Cal. 436.

[20] 21 Am. Jur., 140-141.

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