

NICANORA BERNAS, ELIGIA BOTOR, JUANA BOTOR, AND PRIMO BOTOR, PLAINTIFFS AND APPELLEES VS. ARCADIO M. BOLO, DEFENDANT AND APPELANT; MARIA M. PAZ ET AL., THIRD PARTY APPELLEES.

C.A.- G.R. No. L- 650. May 14, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

In this case we have to adjudicate the application of article 1473 of the Civil Code which provides as follows:

"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 personal property.

"Should it be real property, it shall belong to the purchaser who first recorded it in the Registry of Deeds.

"Should it not be recorded, the property shall belong to the person who first took possession of it in good faith; or, in default of possession, to the person who presents the oldest title, provided there is good faith."

The land in litigation was transferred twice by its former owner, Lucio Botor, now deceased: first, in favor of Arcadio M. Bolo on December 19, 1929, through a private document of sale, and, then in favor of Simeon B. Paz, made ten years later, or on April 29, 1939, by means of a deed of session ratified before a notary public and later on registered in the Register of Deeds of Camarines Sur.

The lower court, on July 14, 1943, rendered a decision in favor of Simeon B. Paz, because the deed of cession was registered in the Register of Deeds, while the deed of sale of 1929 was not and cannot be registered, it not being extended in a public document.

Arcadio M. Bolo, as appellant, among other things, maintained that Simeon B. Paz, in whose favor the deed of cession of April 29, 1939, was executed by Lucio Botor, acted in bad faith, because he knew that the land in question had already been sold by Lucio Botor to Arcadio M. Bolo. As evidence, appellant points to the cross-complaint (Exhibit 2), filed by Simeon B. Paz, as attorney of Lucio Botor in civil case No. 6693 (Exhibit K), where said Simeon B. Paz made the following allegation:

"* * * plaintiff (Pedro Babilonia) not being satisfied of the fraudulent transaction with defendant, the former approached defendant (Lucio Botor) insisting that in as much as the debt is increased due to interest for several years, one Arcadio Bolo of Baao, Camarines Sur, thru, supplication of defendant (Lucio Botor), Paid for the latter the supposed increased debt, and defendant (Lucio Botor) in return ceded 100 coconut trees to said Arcadio Bolo as payment for the amount advanced by said Arcadio Bolo to plaintiff (Pedro Babilonia)."

The above fact, stated in appellant's brief, is not disputed by Simeon B. Paz, and is fully supported by the evidence.

Testifying as his own witness, Simeon B. Paz ratified having alleged in his cross-complaint dated February 24,

1939 that Lucio Botor had transferred the land in question to Arcadio M. Bolo. Simeon B. Paz's knowledge about the transfer made by Lucio Botor in favor of Arcadio M. Bolo is further evidenced by Exhibits N and O, the letters sent by Simeon B. Paz to Atty. Arcadio M. Bolo, dated February 23 and 28, 1939, respectively, requesting Bolo to testify in favor of Lucio Botor at the hearing of civil case No. 6693 about the fact that Bolo paid Lucio Botor's debt to Pedro Babilonia, because, as alleged in paragraph III of the complaint and amended complaint filed in this case by Simeon B. Paz, as counsel for plaintiffs, the agreement between Lucio Botor and Arcadio M. Bolo at the time the private document of sale was executed on December 19, 1929, was that the price of P300 agreed upon was to be delivered by Bolo to Pedro Babilonia, in payment of Botor's debt.

The cross-complaint in which Simeon B. Paz made the above-quoted allegation was filed on February 24, 1939, more than two months before the deed of cession was executed in his favor by his client Lucio Botor on April 29, 1939.

The fundamental premise of the preferential rights established by Article 1473 of the Civil Code is good faith. There is no question that Simeon B. Paz, in acquiring the land in question, knowing that it had already been sold to Arcadio M. Bolo, had not acted in good faith and, therefore, the cession in his favor is null and void.

There is no need of passing on the other questions raised by appellant Arcadio M. Bolo.

The appealed decision is reversed and appellant Arcadio M. Bolo is declared the owner of the land in question as described in paragraph 2 of the original complaint and amended complaint, with costs as appellees Simeon B. Paz and Maria H. Paz.

Parás, Actg. C.J., Pablo, Feria, and Tuason, JJ., concur.

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