

**EVARISTO SALVORO AND GAUDENCIA C. SALVORO, PETITIONERS,
(PLAINTIFFS-APPELLANTS) VS. PABLO D. TAÑEGA AND JOSEFA
TAÑEGA, RESPONDENTS, (DEFENDANTS-APPELLEES) JUAN TISMO
AND DOLORES...**

G.R. No. L-32988. December 29, 1978

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals in CA-G.R. No. L-32811-R, entitled "Evaristo Salvoro, et al., plaintiffs-appellants, versus, Pablo D. Tañega, et al., defendants-appellees; Juan Tismo, et al., defendants-in-counterclaim," promulgated on October 28, 1970, the dispositive part of which reads:

"IN VIEW OF ALL THE FOREGOING, the decision of the lower court is hereby AFFIRMED. Furthermore, the Register of Deeds of the Province of Leyte is hereby ordered to cancel Transfer Certificate of Title No. 848 in the name of Juan and Dolores Tismo and, in lieu thereof, to issue a new transfer certificate of title in the name of the appellees, Pablo and Josefa Tañega. Costs in both instances against the appellants.

SO ORDERED."[1]

On September 5, 1960 the spouses Evaristo Salvoro and Gaudencia C. Salvoro commenced in the Court of First Instance of Leyte an action principally to annul a deed of sale of land dated August 9, 1959 executed by them in favor of the defendants, the spouses Pablo D. Tañega and Josefa Tañega. The plaintiffs alleged that the said deed of sale should be annulled because the defendants failed to comply with certain resolutive conditions imposed in the contract. The action was docketed as Civil Case No. 2826.[2]

The sale in favor of the defendants was executed in 1959 but the same was not registered. However, the defendants immediately took possession of the land upon the sale thereof to them.

The defendants filed on April 15, 1961 an amended answer with a counterclaim including the spouses Juan Tismo and Dolores Tismo allegedly because after issues had been joined, the plaintiffs sold and conveyed their interests in the property in question to said spouses, resulting in the issuance of a certificate of title in favor of the latter.[3]

The plaintiffs actually sold the property in question in favor of the Tismos on August 26, 1960.

Meanwhile, the defendants, Pablo D. Tañega and Josefa Tañega, had registered on September 15, 1960 a notice of lis pendens on the land in question with the Register of Deeds of Leyte. However, despite said notice of lis pendens, the second vendees, Juan Tismo and Dolores Tismo, were able to register the sale in their favor in December 1960 and to secure the issuance to them of Transfer Certificate of Title No. 848 which cancelled Transfer Certificate of Title No. T-900 in the name of Evaristo Salvoro and Gaudencia C. Salvoro.

On March 8, 1962, the parties entered into the following:

"STIPULATION OF FACTS

COME NOW the parties and their undersigned attorneys, and unto this Honorable Court, respectfully submit the following stipulation of facts:

1. That the plaintiffs were the owners of that certain parcel of land together with its improvements at P. Zamora street, Tacloban City, and more particularly described under Certificate of Title No. T-900;
2. That the said plaintiffs on December 19, 1951 mortgaged the aforementioned properties to the Development Bank of the Philippines for P27,000.00, copy of said mortgage contract is herein attached as Exhibit 'A';
3. That on June 7, 1955 the plaintiffs executed a deed of sale in favor of the defendants of a portion of the property above-mentioned in consideration of the sum of P30,000.00, P3,000.00 of which was to be paid in cash upon the execution of the document and P27,000.00 representing the balance due on the loan of plaintiffs to the Development Bank of the Philippines which was to be assumed by the defendants, copy of the deed of sale is herein attached as Exhibit 'B';
4. That on March 23, 1959, the defendants executed a deed of absolute sale, copy of which is herein attached as Exhibit 'C', in favor of the plaintiffs of a portion of that parcel of land designated as Lot No. 520, situated in Tacloban City in consideration of the sum of P10,000.00, which consideration was part of the purchase price in the deed of sale referred to as Exhibit 'B' and as amended by the deed of sale referred to as Exhibit 'D', and the aforementioned deed of sale (Exhibit 'C') was legalized on August 9, 1959;
5. That on the same date the plaintiffs executed in favor of the defendants an absolute deed of sale covering the entire property mentioned in paragraph 3 hereof and the consideration for the said sale was increased from P30,000.00 to P35,000.00, copy of the said deed of sale is herein attached as Exhibit 'D';
6. That of the various instruments executed by the plaintiffs and the defendants none of them had been registered under the provisions of the Registration Law although the execution of Exhibits 'B' and 'D' were known to the Development Bank of the Philippines, Tacloban City Branch;
7. That the defendants did not and have not paid the plaintiffs the sum of P3,000.00 herein above-mentioned which was part of the consideration of the deed of sale on June 7, 1955, and which was made payable within three (3) years from the said date, in spite of repeated demands made by the plaintiffs prior to August 25, 1960;
8. That in the deed of sale executed by the defendants over Lot No. 520 (Transfer Certificate of Title No. 160),

they made it appear that the said properties were free from any lien or encumbrance when in fact it was mortgaged to the Philippine National Bank for P4,320.00 on November 25, 1955, and that mortgage is still subsisting up to the present, according to the plaintiffs, which assertion defendants deny;

9. That the Development Bank of the Philippines did not approve the assumption by the defendants of the mortgage of plaintiffs for the reasons stated in the communication of Mr. Luis Fabella, Branch Manager, Development Bank of the Philippines, to the Chairman, Development Bank of the Philippines, dated September 7, 1960, copy of which is herein attached as Exhibit 'F';

10. That the defendants from June 14, 1955, to July 25, 1959 paid the sum of P20,583.16 to the Development Bank of the Philippines, which payments were receipted for in the name of the plaintiffs;

11. That the failure of the defendants to pay the obligation of the plaintiffs with the Development Bank of the Philippines, the latter foreclosed the mortgage of the plaintiffs and sold the same at public auction on August 25, 1959, of which the said Bank was the successful bidder;

12. That as a result of the foreclosure of the mortgage and the subsequent sale at public auction of the mortgaged properties under Act 3135 of which the Bank was the highest bidder, on August 26, 1960 under a special power of attorney executed by the plaintiffs in favor of the said bank, the Development Bank of the Philippines executed in its favor a deed of sale over the properties foreclosed, which sale was made a day after the period of redemption had expired, a copy of which is herein attached as Exhibit 'G';

13. That the plaintiffs repurchased the properties aforementioned from the Development Bank of the Philippines for P28,197.87, copy of the deed of repurchase dated October 25, 1960 is herein attached as Exhibit 'H';

14. That the plaintiffs executed in favor of the spouses Juan S. Tismo and Dolores D. Tismo a deed of sale over the aforesaid property dated August 26, 1960, after the former had deposited the repurchase price with the local branch of the Development Bank of the Philippines; copy of which is hereto attached as Exhibit 'I';

15. That on September 7, 1960, the defendants filed a civil suit against the plaintiffs for breach of contract with damages, which was docketed as Civil Case No. 2825, copy of which is herein attached as Exhibit 'J', and in connection with the said case a notice of lis pendens was registered by the defendants, (plaintiffs in the said case), copy of which is herein attached as Exhibit 'J-1';

16. That the said complaint was made under oath and the defendants never claimed to be the owners of the properties above-mentioned;

17. That the defendants (plaintiffs in Civil Case No. 2825) asked for the dismissal of the said Civil Case No.

2825, which was granted by the Honorable Court;

18. That after the filing of the present case, on September 15, 1960 the defendants registered a notice of lis pendens in connection herewith, copy of which is herein attached as Exhibit 'K';

19. That the defendants have been in possession of the building and the land occupied by the same subject of this controversy since June, 1955 up to the present without paying any rentals therefor to the plaintiffs or the intervenors;

20. That Juan S. Tismo and Dolores D. Tismo had demanded from the defendants the possession of the property but the defendants have refused and continue to refuse to deliver the same to the former;

21. That on January 12, 1961, the said Juan S. Tismo and Dolores D. Tismo filed Civil Case No. R-541 for unlawful detainer;

22. That on August 8, 1961, the Honorable Municipal Court of the City of Tacloban rendered judgment against the defendants and from which decision the defendants appealed;

23. That in the aforesaid decision of the Honorable Municipal Court of Tacloban City, the monthly rentals to be paid by the defendants was fixed at P500.00, a copy of which is herein attached as Exhibit 'L', but the amount was reduced on the order of the Court to P460.00.

WHEREFORE, it is most respectfully prayed that the foregoing stipulation of facts together with the exhibits attached therein be made a part of evidence of the parties and after trial all the issue not herein stipulated upon judgment be rendered.

EVARISTO SALVORO

PABLO TAÑEGA

Plaintiff

Defendant

JUAN S. TISMO

Defendant

(Counterclaim)

GAUDENCIA C. SALVORO

JOSEFA TAÑEGA

Plaintiff

Defendant

DOLORES D. TISMO

Defendant

(Counterclaim)

SEGUNDO M. ZOSA

ANTONIO MONTILLA

Counsel for plaintiffs & defendants in counterclaim

Counsel for defendants"[4]

The trial court rendered a decision dated November 29, 1962 dismissing the complaint and ordering the defendants to reimburse the plaintiffs in the sum of P28,197.80, with legal interest from August 26, 1960 until the total amount was paid.[5]

The plaintiffs appealed from the judgment to the Court of Appeals.[6]

The appeal was docketed as CA-G.R. No. 32811-R.

The Special Third Division of the Court of Appeals promulgated its decision on October 28, 1970, affirming the judgment of the trial court and ordering the Register of Deeds of the Province of Leyte to cancel Transfer Certificate of Title No. 848 in the name of Juan and Dolores Tismo and, in lieu thereof, to issue a new transfer certificate of title in the name of appellees, Pablo and Josefa Tañega, with costs in both instances against the appellants.

In their brief, the petitioners assign the following errors:

"I

"THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE DEFENDANTS-IN-COUNTERCLAIM, TISMO SPOUSES, THE SECOND BUYERS OF THE SUBJECT PROPERTY, WERE VENDEES IN BAD FAITH OR WITH NOTICE SOLELY 'IN VIEW OF THE LIS PENDENS FILED BY APPELLEES ON SEPTEMBER 15, 1960' THIS DESPITE THE FACT THAT THE TISMO SPOUSES BOUGHT SAID PROPERTY BEFORE THE AFORESAID DATE, MORE SPECIFICALLY ON AUGUST 26, 1960, AND DESPITE THE COMPLETE ABSENCE OF ANY EVIDENCE OF BAD FAITH OR NOTICE ON THEIR PART REGARDING THE PRIOR SALE IN FAVOR OF DEFENDANTS TAÑEGAS.

II

"THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE SALE MADE BY THE PLAINTIFFS SALVOROS TO THE TISMO SPOUSES 'CANNOT PROSPER' AND THAT THE FIRST

SALE TO THE DEFENDANTS TAÑEGAS SHOULD BE PREFERRED-DESPITE THE UNDISPUTED FACTS THAT (A) THE TISMOS REGISTERED THE SALE IN THEIR FAVOR WHEREAS THE TAÑEGAS NEGLECTED AND FAILED TO REGISTER THEIR PURCHASE; (B) THE LAND INVOLVED IS A REGISTERED PROPERTY; AND (C) THE TISMOS HAD NO NOTICE OF THE FIRST SALE AT THE TIME THEY BOUGHT THE PROPERTY.

III

"THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING THAT, AS INNOCENT PURCHASERS FOR VALUE, THE TISMOS SHOULD BE THE PREFERRED VENDEES IN ACCORDANCE WITH ARTICLE 1544 OF THE CIVIL CODE.

IV

"THE HONORABLE COURT OF APPEALS ERRED IN ORDERING THE REGISTER OF DEEDS OF LEYTE TO CANCEL T.C.T. NO. 848 IN THE NAME OF THE TISMO SPOUSES AND IN LIEU THEREOF, TO ISSUE A NEW TRANSFER CERTIFICATE OF TITLE IN THE NAME OF THE TAÑEGAS."[7]

The main issue is: When real property is sold to two different persons by the same vendor, the first immediately taking possession of the property as owner but neglecting to register the sale to him while the second vendee had the document in his favor duly registered, who, as between the two vendees, has the better right over the property under Article 1544 of the Civil Code of the Philippines?

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

"The plaintiffs, as the owners of a parcel of land as well as of the building and improvements thereon, located at Padre Zamora Street, Tacloban City, and evidenced by Transfer Certificate of Title No. T-900, mortgaged on December 19, 1951 said parcel of land and its improvements to the Development Bank of the Philippines (then Rehabilitation Finance Corporation) for P27,000.00. Plaintiffs failed to pay any amount to the Development Bank; hence, in June, 1955, the said Bank gave notice to foreclose the mortgage.

"On June 7, 1955, plaintiffs executed in favor of the defendants a Deed of Absolute Sale over a portion of the above-described land including the building of strong materials constructed thereon, in consideration of the sum of Thirty Thousand (P30,000.00) Pesos. The sum of P30,000.00 mentioned in said Deed of Absolute Sale was agreed to be payable within three (3) years from June 7, 1955.

"On the same date when the said Deed of Absolute Sale was executed, defendants immediately took possession of the land and building and exercised acts of ownership over them. The building, however, was not ready for occupancy since the construction was not yet fully completed at the time, thereby compelling defendants to make necessary improvements thereon for which they spent P7,000.00.

"Under their assumption of the mortgage under the Deed of Absolute Sale of June 7, 1959, defendants made several payments in the name of plaintiffs to the Development Bank covering the period from June 15, 1955 to July 24, 1959 in the total sum of P20,583.16.

"Plaintiffs executed on August 9, 1959, another Deed of Absolute Sale whereby they conveyed absolutely and unconditionally in favor of defendants the ownership of the entire land and building and improvements described and covered by Transfer Certificate of Title No. T-900 in consideration of the sum of Thirty-Five Thousand (P35,000.00) Pesos. The cash consideration of P8,000.00, representing the difference between P35,000.00 in the said second Deed of Absolute Sale, was agreed to be paid for by the consideration of a Deed of Absolute Sale executed by defendants in favor of plaintiffs on March 23, 1959 over a portion of a parcel of land containing an area of 795 square meters and designated as Lot 520, in the sum of P10,000.00.

"On August 25, 1959, or sixteen (16) days after plaintiffs executed the said second Deed of Absolute Sale of August 9, 1959, and before the Development Bank could act on the assumption by the defendants of the mortgage of plaintiffs, the said Bank foreclosed the mortgage and, at the public auction sale, the Development Bank was the sole and highest bidder.

"On August 26, 1960, the plaintiffs redeemed the property from the Development Bank pursuant to the provisions of Act No. 3135 by paying the sum of P28,197.87. Thereafter, and before the Deed of Repurchase could be executed by said Bank, plaintiffs executed a deed of sale in favor of the defendants-in-counterclaim Juan Tismo and his wife Dolores Tismo allegedly for the amount of P40,000.00. This was the same land and building which they had previously sold to defendants and covered by Transfer Certificate of Title No. T-900.

"On August 27, 1960, the day following the repurchase by plaintiffs above-mentioned, defendant Pablo Tañega, upon his arrival from Manila, tendered payment of the repurchase price plus 2%, but plaintiffs refused to accept the same.

"On September 5, 1960, plaintiffs filed the present complaint and on September 15, 1960, defendants filed a notice of lis pendens with the Register of Deeds of Leyte. Notwithstanding said notice, defendants-in-counterclaim Juan Tismo and Dolores Tismo were able to register the sale in their favor on December 19, 1960, and to secure Transfer Certificate of Title No. 848 in lieu of Transfer Certificate of Title No. T-900 which was cancelled.

"In the complaint filed on September 5, 1960 against defendants, plaintiffs prayed for annulment of the contract of sale of real property, with damages, on the ground that the conditions thereof had not been complied with, and claiming the property as owner both by rescission and as redemptioner from the judgment buyer thereof, mortgage creditor Development Bank of the Philippines (DBP).

"Defendants answered alleging to be the owners of the property because the sale to them by plaintiffs was absolute and because while plaintiffs only acquired the right to be reimbursed what they had paid to the Development Bank of the Philippines, plaintiffs had unjustly refused reimbursement from the defendants.

Defendants prayed for dismissal of the complaint, for damages, attorney's fees and expense of litigation.

"On April 15, 1961, defendants filed a motion to bring in spouses Juan and Dolores Tismo as second vendees of the property from the plaintiffs, and buyers in bad faith. Said Motion was granted by Court Order of April 22, 1961." [8]

The petitioners have correctly stated that "This case involves double sale of the same real property to different vendees; hence, Article 1544 of the New Civil Code applies." [9]

Article 1544 of the Civil Code of the Philippines provides:

"Art. 1544. 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 in good faith first recorded it in the Registry of Property.

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

The undisputed facts are that the sale to the Tañega spouses was not registered but that they immediately took possession of the property and introduced improvements thereon; that the second sale to the Tismo spouses was executed on August 26, 1960; that the Tañega spouses caused to be recorded with the Register of Deeds of Leyte a notice of lis pendens on the property in question on September 15, 1960; that the Tismo spouses registered the deed of sale in their favor in December 1960; and that Transfer Certificate of Title No. 848, covering the land in question, was issued to said Tismo spouses.

To be entitled to preference, the Tismo spouses must have registered the deed of sale in their favor in good faith.

The petitioners contend that the notice of lis pendens could not have affected the presumption of good faith of the Tismo spouses because the deed of sale in their favor was executed on August 26, 1960, prior to the registration of the notice of lis pendens on September 15, 1960.

The undisputed fact, however, is that when the deed of sale in favor of the Tismo spouses was executed on August 26, 1960 the Tañega spouses were already in possession of the land in question and had introduced valuable improvements thereon. The actual possession of the Tañega spouses is admitted in the following portions of the Stipulation of Facts:

"19. That the defendants have been in possession of the building and the land occupied by the same subject of this controversy since June, 1955 up to the present without paying any rentals therefor to the plaintiffs or the intervenors;

"20. That Juan S. Tismo and Dolores D. Tismo had demanded from the defendants the possession of the

property but the defendants have refused and continue to refuse to deliver the same to the former;”[10]

Indeed, the Court of Appeals has found that the Tañega spouses bought the property on August 9, 1959 and immediately took actual physical possession of the property, finishing the uncompleted improvements thereon; that as stipulated in the sale, the Tañegas made payments to the DBP in the name of and for the account of the Salvoros, the vendors, while the application for the assumption of the mortgage by the vendees remained unacted by the Board of the Development Bank of the Philippines; that the mortgage was foreclosed by the DBP and the latter then acquired the property as highest bidder in the public auction on August 26, 1959; and that one year after the auction sale, or on August 26, 1960, the Salvoros reacquired it from the DBP and on the same day sold the property for the second time to Juan Tismo and his wife Dolores D. Tismo.

The undisputed fact which militates against the claim of lack of knowledge on the part of the second vendees of the prior sale of the property is that the same was, at the time of the second sale, peaceably possessed by the first vendees, the Tañegas. This fact alone should have made the Tismo spouses inquire into the true status of the immovable they were proposing to buy. They should have investigated why the Tañega spouses were in possession of the land. If the Tismos failed to exercise the ordinary care expected of a buyer of real estate, they must suffer the consequences. The rule of caveat emptor requires the purchaser to be aware of the supposed title of the vendor and one who buys without checking the vendor's title takes all the risks and losses consequent to such failure.[11]

This Court has held in one case,[12] that the basic premise of the preferential rights established by Article 1473, Civil Code, (now Article 1544) is good faith. To enjoy the preferential right, the second vendee must not only have a prior recording of his sale but must, above all, have acted in good faith, that is, without knowledge or notice of the previous and existing alienation made by his vendor to another. Contrary to the contention of the herein petitioners that good faith at the time of purchase was sufficient, this Court has ruled that the rights given under this law do not accrue with the mere inscription of the deed of conveyance unless such inscription is done in good faith.[13] The trial court as well as the appellate court have both held that when the Tismos on December 19, 1960 registered the deed of sale executed in their favor of the property previously sold to the Tañegas, they could not have failed to know the existence of the *lis pendens* then annotated on the title of the property. In short, when they were about to register the deed of sale in their favor, they acquired knowledge that the land had been previously sold to the Tañega spouses. Indubitably, there was bad faith on the part of the Tismo spouses when they went ahead with the registration despite such knowledge. This Court had occasions to rule that if a vendee in a double sale registers the sale after he has acquired knowledge that there was a previous sale of the same property to a third party, or that another person claims said property in a previous sale, the registration will constitute a registration in bad faith and will not confer upon him any right. It is as if there had been no registration, and the vendee who first took possession of the real property in good faith shall be preferred.[14]

Applying the foregoing rulings to the present case, this Court holds that the Respondents-Appellees Pablo D. Tañega and his spouse Josefa Tañega are the owners of the land in question inasmuch as they, in good faith, were first in possession of said land.

In *Carbonell vs. Court of Appeals*,[15] this Court said:

“Article 1544, New Civil Code, which is decisive of this case, recites:

"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 in good faith first recorded it in the Registry of Property.

"Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith (*italics supplied*).

"It is essential that the buyer of realty must act in good faith in registering his deed of sale to merit the protection of the second paragraph of said Article 1544.

"Unlike the first and third paragraphs of said Article 1544, which accord preference to the one who first takes possession in good faith of personal or real property, the second paragraph directs that ownership of immovable property should be recognized in favor of one 'who in good faith first recorded' his right. Under the first and third paragraphs, good faith must characterize the prior possession. Under the second paragraph, good faith must characterize the act of anterior registration (*DBP vs. Mangawang, et al., Magale, et al., 8 SCRA 489*).

"If there is no inscription, what is decisive is prior possession in good faith. If there is inscription, as in the case at bar, prior registration in good faith is a pre-condition to superior title."

Since the Tismos were registrants in bad faith, the situation is as if there was no registration at all. Therefore, the vendees who first took possession of the property in good faith shall be preferred.

It is to be noted that only the plaintiffs, Evaristo Salvoro and Gaudencia C. Salvoro, petitioners herein, had appealed from the decision of the Court of First Instance of Leyte. The Tismo spouses cannot be joined as petitioners in this case inasmuch as they did not appeal. They cannot assail the decision of the Court of Appeals.

The petition for review was filed out of time. On this ground alone this case may be dismissed.

WHEREFORE, the petition is hereby denied and the decision of the Court of Appeals sought to be reviewed is affirmed, with costs against petitioners.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Santos, and Guerrero, JJ., concur.

[1] Annex "A", Rollo, pp. 30-47. Written by Justice Jose S. Rodriguez and concurred in by Justice Ramon O. Nolasco and Justice Edilberto Soriano.

[2] Record on Appeal, pp. 1-26.

[3] *Idem.*, pp.39-49.

[4] Idem, pp. 53-60.

[5] Idem, pp. 81-82.

[6] Idem, p. 82.

[7] Brief for the Petitioners, pp. 1-3.

[8] Annex "A", Rollo, pp. 30-33.

[9] Brief for the Petitioners, p. 25.

[10] Record on Appeal, pp. 58-59.

[11] Dacasin, et al. vs. Court of Appeals, et al., L-32723, October 28, 1977.

[12] Bernas vs. Bolo, 81 Phil. 16.

[13] Paylago vs. Jarabe, 22 SCRA 1247.

[14] Palarca vs. Director of Lands, 43 Phil. 146; Cagaoan vs. Cagaoan, 43 Phil. 554; Fernandez vs. Mercader, 43 Phil. 581.

[15] 69 SCRA 99, 107.

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