

ANDRES ELUMBARING PLAINTIFF AND APPELLANT, VS. HERMOGENES ELUMBARING, DEFENDANT AND APPELLEE.

G.R. No. L-4000. January 05, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 11th day of March, 1907, the plaintiff commenced an action against the defendant for the purpose of recovering the possession of a certain parcel of land more particularly described in paragraph two of the said complaint, situated in the sitio denominated Sulangon, in the municipality of Dapitan in the Moro Province, and for damages for the illegal detention of the same by the defendant.

The plaintiff alleged that he had purchased the said parcel of land on the 3d of September, 1896; that about two-thirds of said land was devoted to the cultivation of rice and that the rest was devoted to the cultivation of fruit trees; that on or about the year 1900, he had constructed a house upon said land; that said land produced annually fifteen piculs de copra and one hundred cavanese de palay; that the actual price of copra is P9.50 a picul y el de palay a P3 el cavan; that the defendant had on or about August 1905, by force and intimidation, dispossessed the plaintiff of said parcel of land; that during the period which the defendant had occupied the said land he had caused the plaintiff damages in the sum of P663.75.

On the 14th day of March, 1907, the defendant answered the said complaint by-

(a) A general denial; and

(b) He alleged as a special defense that the land, which he occupied and was cultivating, was land which had belonged to his father and that his father had left the same to him by testament, and that the plaintiff had no interest in the said land whatever.

After hearing the evidence adduced during the trial, the lower court decided that the plaintiff had not shown that he was the owner of said land, and therefore dismissed the action with costs to the plaintiff. From this decision of the lower court the plaintiff appealed and made the following assignments of error :

"1. The court erred in refusing the admission of the document, Exhibit A, as a public instrument.

"2. The court erred in refusing the admission of the stubbooks and the duplicate of the affidavit, Exhibits B and C, on account of the mere fact that these documents say Banonong and the complaint says Sulangon.

"3. The court erred in rendering its decision on the ground that there was no evidence of the fact that Timoteo Carreon was the owner of this land at the time he sold it to the plaintiff.

"4. The court erred in resting its decision on the allegation that, in an action for eviction, the plaintiff must not base his claim upon the insufficiency of the title of the defendant but on the validity of his own title."

During the trial of the cause it was clearly proved that the plaintiff had been in the possession of the land in question at least from on or about the 3d day of September, 1896 to 1903 or 1904, and that on or about the latter

date the defendant had forcibly taken possession of the same.

The plaintiff attempted to show that upon the 3d day of September, 1896, he had purchased the land in question from one Timoteo Carreon and had actually delivered to the said vendor a carabao and some rice in payment therefor. To support this claim the plaintiff offered in evidence a certified copy of a deed or conveyance of the said land, executed and delivered by the said Carreon before the justice of the peace of the pueblo of Dapitan (Exhibit A). The defendant objected to the admission of this document in evidence upon the ground that the same had not been duly identified. The lower court sustained the objection. The appellant assigns this ruling as one of the errors committed by the lower court. To demonstrate that the lower court committed an error in rejecting this document, the appellant in this court cites articles 3 and 9 of the Real Decreto del Rey de España de 29 de Mayo, 1885. (See Appendix (a), p. 210, Code of Civil Procedure, old code.)

Article 3 of said decree is as follows:

"Justices of the peace, and, in their absence, the gobernadorcillos, shall perform the duties of such offices before a testigo de asistencia of legal age, who is in the enjoyment of all his civil rights and who can read and write correctly."

Article 9 of said decree is as follows:

"In the places where no escribanos reales or notaries public may exist, and it is impracticable to appoint ad interim officials, as provided in the preceding article, they shall be substituted in the exercise of the judicial authority by testigos de asistencia, in accordance with the laws and provisions now in force."

The contention of the defendant is that article 9 of said decree permits a justice of the peace, assisted by witnesses, to perform the duties of a notary public when there are no notaries public or clerks of courts in the district. A careful reading of said decree, however, will show clearly that this contention of the appellant is not tenable. Articles 1, 2, 3, 4 and 5 of said decree relate to justices of the peace and their duties, together with the gobernadorcillos, in relation to the duties of the judges of the Courts of First Instance, during the absence or inability of said judge.

Articles 6, 7, 8 and 9 of said decree relate to the clerks of the Courts of First Instance and notaries public and persons who may be substituted for them in their absence and before others are appointed. The phrase, therefore, "they shall be substituted in the exercise of the judicial authority" has no relation whatever to the substitution of a justice of the peace in the place of a notary public or of a clerk of the Court of First Instance, but refers to the substitution of witnesses of assistance for notaries public and clerks of Courts of First Instance during the absence of the latter and before the appointment of other notaries public and clerks of the courts.

Courts of justices of the peace are courts of special and limited jurisdiction and have no authority except that expressly imposed by law. Upon this question the jurisprudence of Spain and of the United States is the same. Justices of the peace were not expressly authorized by law to take the acknowledgment of documents of this class. The mere fact that the said justice did take the acknowledgment of the document in question did not have the effect of making it a public document. Therefore article 1216 of the Civil Code does not apply to it. The fact remains, however, that the said document was actually made and signed by the parties to it, and it was recorded in the records of the justice of the peace and is, therefore, a private document, and as such is binding upon the parties. It should have been admitted in evidence for the purpose of showing the rights and relations of the parties under and by virtue of its terms.

Section 299 of the Code of Procedure in Civil Actions provides that public records kept in the Philippine Islands of private writing are public writings, and that a copy of the same, duly certified to be true, should be admissible

in evidence the same as the original writing. In the present case the copy offered in evidence by the plaintiff was certified to be a true copy of the record of the justice of the peace.

The defendant admitted during the trial that the plaintiff had a document executed and delivered by the said Timoteo Carreon, representing the sale of the land in question, but alleged that the document was a deed of sale executed and delivered by Timoteo Carreon to his father. The defendant claims that his father Carlos Elumbaring, had purchased the land in question from Timoteo Carreon, but admitted that he had no written evidence of that fact. This contention of the defendant is not only discredited by the document which the plaintiff offered in evidence, but also by the fact that Carlos Elumbaring permitted the plaintiff to occupy the land in question and to pay the taxes upon the same, from September, 1896, until the time of his death in 1903, without objection, so far as the record shows.

The plaintiff contends that the lower court committed an error in not admitting the tax receipts which he offered in evidence. Tax receipts are no evidence of the right of ownership nor of the right of possession of land.

The payment of taxes on property does not alone constitute sufficient evidence of title. (Casimiro vs. Fernandez, 9 Phil. Rep., 562.)

Tax receipts are no evidence of title to land unsupported by other proper proof. (Evangelista vs. Tabayuyong, 7 Phil. Rep., 607.)

The plaintiff during the trial offered in evidence the declaration of ownership made for the purpose of taxation and presented it to the assessing authorities of the pueblo of Dapitan. This declaration was also rejected by the lower court and was not admitted in evidence. It appears that by virtue of this declaration the land in question was entered upon the municipal tax books as the land of the plaintiff. Said declaration, however, can in no way serve for the purpose of proving that the plaintiff was the owner of the land; nevertheless, in view of the fact that the plaintiff had a deed of purchase of said land executed and delivered to him by the former owner, Timoteo Carreon, the tax receipts and said declaration constitute some proof, showing the good faith of the plaintiff in occupying and retaining the possession of the land in question.

The said contract between Timoteo Carreon and the plaintiff, even as a private document, is effective between them and is good as to a third person not having better evidence of title to said land. (Fabian vs. Smith, Bell & Co., 8 Phil. Rep., 496; Boncan vs. Smith, Bell & Co., 9 Phil. Rep., 109.)

The plaintiff, in an action of ejectment to recover the possession of land, claiming to be the owner thereof, can not recover such possession on the theory that the one in possession has no title to the land. His right to recovery depends upon his own title rather than the weakness of the title of the plaintiff. (Compañia General de Tabacos vs. Topiño, 4 Phil. Rep., 33.)

Without passing upon the question of the ownership of the plaintiff and confining our decision to the mere question of his right of possession of said land as against the defendant, we are of the opinion and so hold:

First. That the plaintiff had been in the quiet, peaceable and uninterrupted enjoyment of the possession of the land in question, under and by virtue of the contract of sale between himself and Timoteo Carreon from the 3d of September, 1896, up to the time when he was dispossessed by the defendant, probably in the month of August, 1904.

Second. That the defendant showed no evidence of his right to possess the land further than his actual, manual possession of the same. Under these facts had the action been brought within the period of one year in the court of the justice of the peace, the plaintiff would clearly be entitled to the recovery of the possession of the land in

question. The period of prescription fixed by law not having yet expired, certainly the plaintiff could not lose his right to recover the possession of the land for the simple reason that he did not bring his action in the court of the justice of the peace within a year after he had actually been forcible ejected by intimidation or fraud from the land.

The plaintiff in his complaint in the court below laid a proper foundation for the claim of damages against the defendant, but failed during the trial to present evidence sufficient upon which a judgment for damages could be based. Therefore we make no finding as to the claim for damages made by the plaintiff.

For the reasons above stated we are of the opinion and so hold that the judgment of the lower court should be reversed and that judgment should be entered declaring that the plaintiff is entitled to the immediate possession of the land in question, and that a writ of possession should be issued for the purpose of putting the plaintiff into possession of said property. So ordered.

Arellano, C. J., Torres Mapa, Carson, and Tracey, JJ., concur.

Willard, J., concurs in the result.

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