

MARGARITA SANTOS ET AL., PLAINTIFFS AND APPELLANTS, VS. AGUSTIN ACOSTA ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 10141. January 20, 1916

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from a judgment against the plaintiffs in an action brought by them to recover possession of a parcel of land which was bought at execution sale by the defendant Braulio Viangson, and to recover damages from the defendant, Agustin Acosta, the sheriff who executed the sale.

The plaintiffs claim the land as the heirs of Mauricio Tiongson, who died in December, 1887, alleging that the land in question is a part of his estate.

The defendants insist that the land belonged to Fruto de los Santos at the time when it was levied upon and sold in the year 1910 to Braulio Viangson, the principal defendant, in satisfaction of a judgment against Santos in the Court of First Instance of Bataan.

The evidence of record discloses that the land in question had been in possession of Fruto de los Santos for more than twenty years prior to the date of the execution sale, except for a period of less than three years, during which it was in the possession of one Simeon Roberto and his heirs. This short interruption of the possession of Santos resulted from the fact that some time in the latter part of the year 1905 or early in the year 1906 Santos sold the land to Roberto from whose heirs he repurchased it in May, 1909.

The plaintiffs, while they do not deny that Santos had possession of the property for this long period of years, insist that he held it merely as a sort of executor or trustee, under the will of their father Mauricio Tiongson, deceased, who died in the year 1887, leaving, as they allege, a will under the terms of which Santos came into possession of the land and held it in trust to apply the annual income to the celebration of masses for the soul of the testator.

In support of their contentions they offered in evidence a private document purporting to be the original last will and testament of Mauricio Tiongson, in which Santos is named as executor, and a certain parcel of land set apart for the purpose of providing a perpetual fund for the celebration of the annual masses for the soul of the testator. This document does not appear to have been executed before a notary, nor recorded in any protocol (protocolizado); and, as the trial judge correctly indicated, it could not have had the effect of a valid will, under the law in existence at the date of its execution.

Santos could not therefor have acquired any right to take possession of any of the property as executor, trustee, or by any other right or title whatsoever arising under and by virtue of this invalid instrument. Furthermore some doubt is cast upon the genuineness of this alleged last will and testament by the attempt of the plaintiffs to avoid, the legal consequences flowing from the fact that no record of this alleged will appears to have been made in any protocol, by the bold assertion that it was in fact entered in the proper protocol (protocolizado) but that proof of

that fact could not be made because of the destruction of the notarial archives during the Revolution. We need not dwell on the manifest incongruity, under the former notarial system, of a claim of the destruction of the notarial records of a document alleged to have been duly entered in those records (protocolizado), and the production of the alleged original document with nothing thereon to show that it ever had been given notarial registry (protocolizado).

An attempt was also made by the oral testimony of several witnesses to prove that the possession of the land by Santos had been that of an executor or trustee, and not that of a claimant of ownership in himself. Santos was the chief witness called for that purpose, but he admitted not only that he had sold the land in 1905 or 1906, to raise money for his own use, to Simeon Roberto, from whose heirs he repurchased it in 1909; but that on another occasion he mortgaged it to secure a loan of money, which he borrowed to meet a personal obligation which was pressing him at that time. It appears furthermore that the plaintiffs knew that Santos was dealing with the land in this way and that they made no objection at that time, or as Santos claims, that they expressly assented thereto.

This testimony, from the mouth of their own witness, not only fail to sustain the contention of plaintiffs that Santos held the land as a mere administrator or trustee, but goes far to establish the contention of the defendants, that during the more than twenty years of his occupation of the land prior to the execution sale (counting in this term the occupation for some three years of Simeon Roberto, and his heirs, from whom Santos repurchased it) he held possession under a claim of absolute ownership with a right to sell or mortgage it as he saw fit.

It does not satisfactorily appear how Santos originally came into possession of this land. It appears that his wife had some hereditary interest in the estate of the former owner, and it may have been acquired in the course of some settlement or partition of this estate. It may have been acquired by purchase from the heirs. We are of opinion how ever, that in the absence of satisfactory proof to the contrary, a fair presumption arises that he did in fact acquire title, and was in possession under such title for a long period of years with the knowledge and consent of the plaintiffs.

Certain it is that those plaintiffs could not have successfully attacked the title of this land when it was in the possession of Roberto and his heirs; and Santos, when he repurchased the land from Roberto's heirs, bought all their right, title and interest therein. There is nothing in the record, except the unsupported oral testimony of Santos, which tends to sustain a finding that thereafter Santos parted with the title and held the land, not as owner but as trustee. The trial judge gave no credence to this testimony, and we are inclined to agree with him.

The burden of proof rested on the plaintiffs to establish title in themselves. This they attempted to do by proof that Santos had taken and occupied the premises as executor or trustee. But on the whole record, we think that they have failed to establish their allegations in this regard by a preponderance of the evidence.

We do not deny the possibility that notwithstanding the invalidity of the alleged will, Santos may have gone into possession originally under some agreement with the heirs, for the purpose of carrying out what they believed to be the wishes of their ancestor, but we do not think that the evidence in support of that theory is of sufficient weight to justify us in reversing the court below and depriving the defendant of his title and possession acquired at an execution sale of the land as the property of Santos.

Having arrived at this conclusion, it is not necessary for us to consider or decide any questions which might be raised as to the effect, by way of estoppel of the conduct of the plaintiffs in clothing Santos with the symbols of ownership of the land.

The judgment entered in the court below should be affirmed, with the costs of this instance against the appellants. So ordered.

Arellano, C. J., Torres, Johnson, Moreland, and Trent, JJ., concur.

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