

ROQUE SAMSON, PLAINTIFF AND APPELLANT, VS. BRAULIO GARCIA AND ALIPIO YCALINA, DEFENDANTS. AUPIO YCALINA, APPELLEE.*G.R. No. 10988. August 19, 1916*

Ponente: JOHNSON, J.

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The purpose of the present action was to recover the possession of two parcels of land particularly described in the second paragraph of the complaint, together with damages for the illegal occupation of the same and costs. The action was commenced on the 23d of March, 1914, in the Court of First Instance of the Province of Negros Occidental. The plaintiff alleged that he was the owner and entitled to the possession thereof; that the defendants were illegally depriving him of the possession of said parcels of land. The defendant, Braulio Garcia, neither appeared nor answered the petition and judgment was taken against him by default.

The defendant, Alipio Ycalina, appeared and answered, denying generally and specifically each and all of the facts alleged in the complaint. He further alleged that the two parcels of land in question belonged to him and were included within the boundaries of a larger parcel of land, with a superficial area of approximately 39 ½ cavanes of palay.

Upon the issue thus presented by the petition and answer, the cause was brought on for trial.

After hearing the evidence adduced by the respective parties, the Honorable Fermin Mariano, judge, reached the conclusion that the defendant, Alipio Ycalina, is the owner of the two parcels of land in question, and absolved him from all liability under the complaint with costs against the plaintiff. From that judgment the plaintiff appealed to this court.

From an examination of the record brought to this court the following facts seem to be proved by a large preponderance of the evidence:

First. That the defendant, Alipio Ycalina, purchased the parcels of land in question on or about the 20th of May, 1910, from the defendant Braulio Garcia, and had been in the possession of the same from that date.

Second. That the plaintiff had purchased the first parcel of land described in the complaint from the defendant Braulio Garcia under a pacto de retracto, on the 19th of November, 1911; that the said pacto de retracto permitted the vendor to repurchase said parcel within a period of four months from the date of the sale.

Third. That the plaintiff purchased the second parcel of land described in the complaint from the defendant Braulio Garcia on the 21st of June, 1910; that under the terms of the said pacto de retracto the vendor reserved the right to repurchase said parcel of land within a period of one year.

Fourth. That the plaintiff had never been in possession of the parcels of land in question.

From the foregoing facts then it appears that the parcels of land in question had been sold to both the plaintiff and the defendant Alipio Ycalina by the said Braulio Garcia. It is also proved that the defendant Alipio Ycalina has

been in possession since the date of his purchase, and that the plaintiff has never been in possession of the land.

Article 1473 of the Civil Code provides:

"When the same thing has been sold to different vendees, the ownership shall be transferred to the person who first took possession of it, in good faith, if the thing is personal.

"When the thing is a piece of real property, it shall belong to the person acquiring it who first inscribed it in the registry.

"When there is no inscription, the property shall belong to the person who first took possession of it in good faith, and in default of said possession, to the person who presents the oldest title, provided there is good faith."

No question is raised in the record with reference to the good faith of each of the purchasers of the parcels of land in question, nor of the good faith of the possession of the defendant. It is also proved that neither obtained the registration of his title while it does appear that each of them, on different dates, had obtained a preventative, precautionary notice. In accordance with paragraph 2 of article 17 of the Mortgage Law, a preventative, precautionary notice only protects the rights of the person securing it for a period of thirty days. A preventative, precautionary notice only protects the interests and rights of the person who secures it against those who acquire an interest in the property subsequently thereto, and then only for a period of thirty days. It can not affect the rights or interests of persons who acquired an interest in the same land theretofore.

In view, therefore, of the fact that neither had obtained the registration of his title, and in accordance with paragraph 3 of article 1473, the land in question belongs to the defendant Alipio Ycalina for the reason that he first obtained possession of said parcels of land in good faith. (*Veguillas vs. Jaucian*, 25 Phil. Rep., 315; *Davis vs. Neyra*, 24 Phil. Rep., 417; *Gutierrez Hermanos vs. Ramirez*, 27 Phil. Rep., 281.)

For the foregoing reasons, we are of the opinion and so hold that the judgment of the lower court must be and is hereby affirmed, with costs. So ordered.

Torres, Trent, and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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