

THOS. D. AITKEN, PLAINTIFF AND APPELLANT, VS. JULIAN LA O, AS ADMINISTRATOR OF THE ESTATE OF APOLONIA REMIGIO, DECEASED, DEFENDANT AND APPELLEE.

G.R. No. 11198. March 20, 1917

Ponente: CARSON, J.

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CARSON, J.:

It appears from the record in this case that a Chinaman named To Jan Co erected a store building on a parcel of land belonging to Apolonia Remigio, under an agreement whereby one-half of the rents were to go to her and one-half to To Jan Co; that the owner of the land, not having received the rents agreed upon, instituted an action on September 21, 1908, against To Jan Co and one of the occupants of the building to recover these rents; that judgment having been rendered in her favor in the sum of p3,425, execution issued and thereafter the house was purchased by the judgment creditor, Apolonia Remigio, at the sheriff's sale on February 11, 1910, had under authority of the execution; that she took possession forthwith; that the defendant in this action is the administrator of the estate of Apolonia Remigio deceased, and as such is now in possession of the house and the land upon which it stands; that on October 6, 1908, not long after the filing of the complaint in the above-mentioned action, which was dated September 21, 1908, To Jan Co executed an unregistered deed of sale of the house in question to another Chinaman named To Cun, reserving therein the right to repurchase within ninety days; that this right was never exercised; that To Cun (the second Chinaman) never took possession under this deed; that thereafter, on October 22, 1912, To Cun (the second Chinaman) executed an unregistered deed of sale of the house to the plaintiff in this action, who, on June 9, 1915, instituted these proceedings wherein he prays a judgment for possession of the house, and for an accounting of the rentals collected thereon since the first day of September, 1908, alleging that his one-half share of these rentals amounts to P2,485.

The opinion of the trial judge filed together with his judgment is as follows:

"The plaintiff herein seeks to recover the possession of a certain house that was erected on land belonging to a third person. The said land belonged to Apolonia Remigio during her lifetime but since her demise it forms part of her estate.

The estate is administered by Julian La O. Plaintiff further claims the sum of P2,485, as being one half of the rentals obtained from the building since September 1, 1908.

"Plaintiff alleges that he is the owner of the said building designated as numbers 15, 17, 19 and 21 Calle Salazar, district of Binondo, and that he is entitled to collect rentals therefrom.

"The defendant not only denies the plaintiff's claim to the building and its rentals, but maintains that the building belongs to said party defendant.

"From the evidence introduced by the plaintiff, it appears that the building in question is not properly a house, but a camarin of four doors or apartments; that it was erected by the Chinaman To Jan Co on the lot that now belongs

to the estate of Apolonia Remigio (Exhibit C); that on October 6, 1908 (Exhibit A), To Jan Co sold it under pacto de retro for the term of three months, which might be extended to nine, to a Chinaman named To Cun, for P1,800, a sum in which, by reason of three due and unpaid notes, the vendor To Jan Co was indebted to the vendee To Cun.

"The latter, in turn, by a deed certified on October 22, 1912 (Exhibit B), sold the building or camarin to the plaintiff, Aitken, for the same amount of P1,800.

"But it has been proven by the evidence introduced by the defendant that when the Chinaman To Jan Co conveyed the building to To Cun on October 6, 1908 (Exhibit A), he had already (on September 24, 1908) been personally notified of the proceedings filed against him and the Chinaman To Ky in the justice of the peace court of Manila by the representative of Apolonia Remigio to eject them from the lot on which the building stands and to recover the sum of P3,425 as rent due for the said house. After the trial was had (the other defendant, To Ky, who was absent, first having been summoned by public notice), judgment was rendered against both of them. On August 26, 1909, a writ of execution was issued by virtue of which the lot was restored to the plaintiff and on February 11, 1910, after publication of notice, the building or camarin erected thereon was sold at public auction for one peso and adjudicated to the plaintiff, as attested by the certificate issued on the said date by the clerk of this court. To Jan Co failed to exercise his right of redemption within the year granted him and that right expired on the 10th of the same month of the following year, 1911. To Cun, notwithstanding that he had purchased the building in question under pacto de retro on October 6, 1908, did not redeem it either.

"Nowhere in the record does it appear that the ownership, which To Cun pretends to have acquired in the building by the expiration of the period granted for the exercise of the right of redemption that was not utilized by To Jan Co, was consolidated, nor that either the latter, or To Cun, paid any taxes, unless it was for the years 1914 and 1915, long after the sale referred to in Exhibit B, the deed of October 22, 1912, executed by To Cun in behalf of the herein plaintiff. But here it is to be noted that the two tax receipts (Exhibits F and G), dated June 26, 1914, and June 30, 1915, appear to have been made out to To Cun, notwithstanding that he had disposed of the building as far back as October 22, 1912. Neither does the evidence show that To Jan Co (notwithstanding that on October 6, 1908, he sold the building under pacto de retro to To Cun) made any record in the ejectment proceedings with regard to the lot occupied by the building, of the fact that he was not the owner of the building or that he had conveyed his ownership therein to To Cun; much less does it show that the latter filed any third-party claim.

"If the camarin was levied upon in execution of the judgment rendered in the proceedings for ejectment and recovery of rentals, prosecuted against To Jan Co; if the latter did nothing to pay the said rentals; if the alleged purchaser To Cun made no effort to recover possession of the building; if the sale at public auction, after proper advertisement and legal steps, was accomplished, the property awarded to the highest bidder and no third-party claim was filed by the person who considered himself to be the owner notwithstanding that he had knowledge of the course of those proceedings; if the building was sold at auction for the express purpose of applying the proceeds of the sale to the payment of the rent owing for the lot on which it was erected; and if neither To Jan Co, nor the alleged purchaser To Cun, exercised the right of redemption within the year granted by law and specified in the certificate issued by the sheriff of this city, the conveyance of the ownership of the building by this official, in the name of the plaintiff and debtor To Jan Co, to the highest bidder, who was the defendant herself, Apolonia Remigio, is perfectly legal and valid.

"To Cun must so have understood the matter, as must also the plaintiff himself, Aitken, who, notwithstanding his being a practicing attorney of this city, has done nothing since October 22, 1912, in regard to the building which, according to the deed Exhibit B, he acquired, either with regard to paying the taxes or to collecting the rentals to which he claimed he was entitled and which he is now trying to collect in the sum of P2,485, embracing the

period which has elapsed since September 1, 1908. If Aitken had had the least idea that he had acquired a right in the building, it is not probable that he would have allowed nearly three years to elapse from October 21, 1912, without having exerted every possible effort to collect from the vendor and alleged owner To Cun, not only the rentals unpaid from September 1, 1908, but also those due from October 22, 1912, to April 7 of the present year, the date on which the idea occurred to him to seek redress in the courts.

"The sale of the building to To Cun and the later sale of same by To Cun to the plaintiff cannot be upheld because To Jan Co, the original vendor, had no right to sell it to To Cun after having lost the right to do so, and the latter had no right to make the sale to Aitken. To Cun acquired no right in the building; consequently he could convey nothing to the purchaser.

"As the plaintiff acquired no right whatever in the building, still less in the rentals produced by it, this action will not lie.

"Julian La O, in his capacity of administrator of the estate of Apolonia Remigio, is absolved from the complaint, with the costs against the plaintiff/"

While we are inclined to agree with the trial judge that the evidence of record tends strongly to disclose that the transaction evidenced by the deed of sale with reserved right of repurchase from To Jan Co to To Cun was not a bona fide conveyance of the house; and that whatever rights in or to the house which To Cun may have acquired by virtue of that transaction were abandoned and surrendered by him long prior to the date of the execution of the deed of conveyance to the plaintiff in this action; we prefer to rest our judgment affirming the dismissal of the complaint upon the express provisions of article 1473 of the Civil Code. That article is 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 person acquiring it who first recorded it in the registry.

"Should there be no entry, the property shall belong to the person who first took possession of it in good faith, and, in the absence thereof, to the person who presents the oldest title, provided there is good faith."

Granting, for the sake of argument, that the sale from To Jan Co to To Cun was a valid and binding transaction, it is evident that the house has been sold as his property to two different vendees, and the sale to To Cun not having been recorded in the registry, the property belongs to the estate of Apolonia Remigio, the purchaser who first took possession in good faith.

It has been suggested that since To Jan Co, the judgment debtor, had conveyed all his right, title and interest in the house to To Cun prior to the date of the sheriff's sale to Apolonia Remigio, she took nothing thereunder, because, as it is said, she could acquire merely such interest in the property as remained in the judgment debtor at the date of the sale. It will readily be seen, however, that analogous reasoning would defeat a claim of title by the second purchaser of real estate in each and all of the cases wherein such right is secured to him under the provisions of the above cited article of the Code.

Were it not for that article, it cannot be doubted, on general principles, that should an owner of real estate execute an unregistered deed of sale of all right, title and interest therein to two different persons, the second purchaser would take nothing under the deed, because the vendor, at the date of the second sale, has no right, title or interest in the property which he can lawfully convey to such purchaser. But the provisions of this article except from the general doctrine the cases therein mentioned, to this extent at least, that an unregistered deed to the first purchaser, cannot be held to have had the effect of conveying title, good as against a second purchaser, when it appears that

the second purchaser was the first to secure possession.

The rule thus announced is in substantial conformity with the doctrine quite uniformly upheld by the courts in the United States, which is set forth as follows in Freeman on Executions (3d Ed. Sec. 336), supported by numerous citations of authority:

"We have elsewhere had occasion to treat of the rights of purchasers at execution sales, when brought in conflict with claims derived from unrecorded instruments made by the defendant, or based upon some other secret transaction not known to the purchaser. We then said: Wherever, under the law, a deed or mortgage is valid without being recorded, a subsequently attaching judgment lien against the grantor or mortgagor will not be of any benefit to the lienholder as against the deed or mortgage. But a purchaser at a sale under a judgment is, to the same extent as if he were purchaser at a private or voluntary sale, protected from claims previously acquired by third persons from the judgment debtor, of which he has no actual nor constructive notice. But if, at the time of the sale, the purchaser has actual notice of any legal or equitable right in a third person, or if, in the absence of such notice, the instrument evidencing such right is properly of record, or if possession is held under it, then the title acquired by the purchaser cannot prejudice the interest of such third person."

In a footnote (No. 45) to the paragraph from which the foregoing extract is taken, we find the following concise statement of the precise proposition upon which our ruling is based:

"Purchasers at execution sales are, to the same extent as other purchasers, entitled to the benefit of the statutes requiring instruments affecting the title to real estate to be recorded. (Stewart vs. Freeman, 22 Pa. St., 120; Heister vs. Fortner, 2 Binn., 40; 4 Am. Dec, 417; Mann's Appeal, 1 Pa. St., 24; Scribner vs. Lockwood, 9 Ohio, 184; Waldo vs. Russell, 5 Mo., 387; Goepp vs. Gartiser, 35 Pa. St., 130; Duke vs. Clark, 58 Miss., 465; Lee vs. Birmingham, 30 Kan., 312; Draper vs. Bryson, 26 Mo., 108; 69 Am. Dec, 483; Grace vs. Wade, 45 Tex., 529; Milner vs. Hyland, 77 Ind., 458; Miles vs. King, 5 S. C, 146.)"

We conclude that the judgment entered in the court below should be affirmed, with the costs of this instance against the appellant. So ordered.

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

Moreland, J., did not sign.

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