

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. JOSE M.A MEMIJE, DEFENDANT AND APPELLEE.

G.R. No. 11680. February 15, 1917

Ponente: CARSON, J.

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CARSON, J.:

The Government of the Philippine Islands appeals from a judgment dismissing its complaint in an action brought to recover possession of two lots or parcels of land located upon a larger tract known as the San Lazaro Estate.

The case was submitted upon the following agreed statement of facts:

"1. That the defendant Jose M.a Memije is in possession of the land described in the plan marked with the letter A, and included within the perimeter indicated by the letters ABCD.

"2. His possession dates back to the 22d day of July, 1902, on which date, according to the public document acknowledged before the notary Calixto Reyes y Cruz, and to the two private documents subscribed by the contracting parties on September 24, 1902, and February 1, 1904, he acquired for the sum of P6,300, from Sra. Consolacion Marasigan y Cesarea, assisted by her husband, D. Silvino Dancel, through sale with the right to repurchase within a period already elapsed of two years, a house of strong materials situated in the rented land above referred to, of the Hacienda de San Lazaro, which land has a superficial area of 527.67 square meters. In said sale was included the right of lease that the vendor had on the land of the area mentioned, which previously belonged to the Hacienda de San Lazaro and now to the Government of the Philippine Islands. The contract of lease by virtue of which the former owner was in possession was a verbal one.

"3. That the house acquired, the picture of which is hereby presented and marked with the letter B, is constructed within the perimeter ABCD and occupies approximately the extent, marked with the letters MNOP, of 160 square meters.

"4. That when, for the more expeditious administration of the Hacienda de San Lazaro, the Bureau of Lands proceeded in 1907 with the work of subdividing it into lots (they completed said work in 1911) said Bureau divided the extent of land occupied by the defendant Memije into three lots, one being that marked with the letters AEFD, known as lot 8-A and ceded to the said defendant under a contract of purchase and sale, and the other two those marked in said plan A with the numbers 5 and 6, in which are included two portions previously forming an integral part of the whole, of which portions one is indicated in said plan with the letters EBGH and the other with the letters GHFC.

"5. That until the year 1909 the Bureau of Lands has been collecting from the defendant an annual rental of P160 for the whole extent of land marked in plan A with the letters ABCD; from the year 1910 to 1913, there was collected from him P140; in the year 1914, P148 for the extent already reduced and included only within lot 8-A and limited by the perimeter AEFD, Mr. Memije protesting when said sum was collected. When he came to know that the extent for which said sum was collected from him had been reduced to approximately 350 square meters

and the remaining part had been taken away from him, he made known his opposition to such reduction of his lot and his desire to preserve the whole extent which he had been occupying up to that date.

"6. That at the time such purchase was made by Mr. Memije Act No. 2360, under which the contract was made, was already approved, and that when the Legislature approved Act No. 2478 on February 28, 1915, the plan of the Hacienda de San Lazaro as prepared by the Bureau of Lands is the one which has been exhibited and in which it appears, first, that the lot assigned to Mr. Memije is only that indicated by the letters AEFD of Exhibit A, and, second, that parts of the land which he formerly occupied, within the perimeter marked in the plan A with the letters ABCD now already form a part of lots Nos. 5 and 6 which appear in the official subdivision made by the said Bureau.

"7. That in the contract of purchase and sale executed in favor of Mr. Memije and presented under the letter C, only lot 8-A, block 2, with an area of 350 square meters, is sold to him.

"8. That on November 28, 1914, Mr. Memije signed a contract of sale of said lot, executed by the Director of Lands in his favor, which contract, because it was drafted in English, according to Mr. Memije, he did not understand but always believed that there was sold to him the same land he occupied since he acquired the house constructed on it, with the right of lease enjoyed by the former owner.

"9. That at the time of signing the contract, Exhibit C, the Bureau of Land's official plan of the subdivision of the Hacienda de San Lazaro, is the one which has been presented and in which appears lot 8-A, Block 2, to which the said contract refers."

The plan filed with the agreed statement of facts clearly discloses that the surveyors of the Bureau of Lands ran one of the lines subdividing the parcel of land occupied by the defendant, through his house, from front to rear, so that a substantial part of the house stands on lot 8-A and a substantial part on lot number 6. The house, as shown by the photograph, appears to be a two-story building, of strong materials, which might well be worth as much or more than the defendant paid for it in 1902, that is to say, P6,300.

Plaintiff seeks to recover possession of the two lots which, together with lot 8-A, formed the entire tract occupied by the defendant when the estate was surveyed and subdivided by the surveyors of the Bureau of Lands in 1911.

The most cursory examination of the circumstances under which the defendant has been in possession of the entire tract, as disclosed by the agreed statement of facts, leaves no room for doubt that under the provisions of Act No. 2360, as amended by Act No. 2478, he was one of the occupants of the San Lazaro Estate to whom that Act secured the right to continue in possession of the lands occupied by them and to acquire title thereto upon the terms and conditions prescribed by the Act.

Section 2 of Act No. 2360, as amended by Act No. 2478, which provides for the administration of the lands of the San Lazaro Estate, is as follows:

"Prior to July first, nineteen hundred and fifteen, all bona fide occupants of the said estate shall be entitled to purchase all the lands occupied by them or by their legal representatives as shown by the records of the Bureau of Lands, not to exceed fifteen hundred square meters for residential and twelve thousand square meters for charitable, religious, or any other purposes, at a price to be fixed by the Director of Lands with the approval of the Secretary of the Interior not to exceed the value at which said lands are now assessed by the city assessor and collector of Manila, and the purchase price may be paid cash down or in semiannual installments within a period of not more than fifteen years, and the purchasers shall be compelled to pay the cost of the surveys necessary to carry out the purposes of this Act, which shall be added to the sale value of the lands surveyed. Land or lands purchased in accordance with the provisions of this Act shall be subject to the payment of the land tax, like any

other property, from the date of the execution of the contract covering it or them.

"For the purposes of this Act, lands purchased by the city of Manila shall be considered as residential lots, without limitation as to area, and the actual cost of the improvements made on said lots by the city of Manila shall be deducted from the price thereof."

Under the express terms of this Act no person who, prior to its enactment, was an occupant of lands included within the San Lazaro Estate in the sense in which the word occupant is used in the Act, can be ejected from the lands thus occupied by him at the instance of the Government until and unless he has failed to comply with the terms and conditions prescribed by the Act; and an action of ejectment instituted by or on behalf of the Government cannot be successfully maintained unless it affirmatively appears that there has been such a failure to comply with the terms and conditions prescribed in the Act, or with some lawful rule or regulation prescribed in pursuance of its provisions.

The complaint in this action does not allege any failure to comply with the terms and conditions prescribed by the statute under which the defendant had the right to continue in possession and to acquire title thereto, nor any failure or refusal to comply with any lawful rule or regulation prescribed by the Bureau of Lands under authority of the statute, and no such failure is disclosed by the agreed statement of facts.

Of course the mere fact that the surveyors of the Bureau of Lands divided the tract occupied by him into three separate lots or parcels on the maps prepared by them, in no wise restricted or limited his rights under the statute; and the refusal or failure of the Director of Lands to continue to rent to him the entire tract in the year 1914 should not be held to have that effect unless it appears that such action on the part of the Director of Lands was predicated on some refusal or failure on the part of the defendant to comply with the lawful terms and conditions upon which he had the right to continue in possession and acquire title to the land. The agreed statement of facts does not clearly set forth the circumstances under which the Director of Lands declined to continue to rent these lands to the defendant, but it does affirmatively appear that the defendant protested against the action of the Director and that he continued in possession, notwithstanding the dispute which seems to have arisen at that time; and it further appears that he has continued in possession to this day.

The agreed statement of facts discloses that the defendant has purchased one of the lots into which the entire tract was divided, and further that he thought that the deed of sale executed at that time included the entire tract. The deed of sale is so clear and explicit that it is difficult to understand how he could have fallen into such an error, and certain it is that the deed did not include the two lots in question in these proceedings, -and that his mere claim of his belief to the contrary does not sustain his allegation of ownership in his answer, nor put in doubt the true nature of the transaction, evidenced by the deed of sale, in the absence of competent evidence in the record disclosing the existence of fraud, mutual error, mistake or the like.

The nature of the contentions of the defendant suggests the possibility that he may have failed to secure a renewal of his rental contract for the entire tract in 1914, and thereafter to secure a deed to the entire tract, because of his insistence upon a right to these privileges for the consideration which the Director of the Bureau, in the exercise of his lawful discretion, saw fit to exact with reference to the lot 8-A which was in fact conveyed to the defendant in the deed of sale. If this be the fact, and if he declined to accept the terms and conditions lawfully prescribed by the Director for the purchase of the rest of the tract, such conduct might well have entailed the loss of his rights in and to the lots in question. But there is nothing in the record which would sustain a solemn finding that he has ever been given an opportunity to exercise the rights and privileges which were secured to him under the express terms of the statute. Indeed the blunder of the surveyors of the Bureau of Lands in running a subdivision line through his house, and the confusion and uncertainty as to his rights in the premises which that blunder seems to

have entailed, suggest the possibility that no such opportunity has ever been extended to him so as to work a forfeiture of his rights in the premises as a result of his failure to take advantage of it.

However this may be, we are of opinion that the record does not disclose that the defendant has lost his right to retain possession and acquire title to the lots in question under the terms and conditions prescribed in the statute, and that the plaintiff is not, therefore, entitled to judgment for possession; and, we are of opinion also, and so hold, that the lots in question were not included in the deed of sale herein before mentioned; that the defendant has failed to establish his contention that these lots should have been included in the terms of that deed; and that he is not entitled to a judgment declaring him to be the owner of these lots upon the same terms and conditions as those upon which he holds lot 8-A—his only rights in the premises, as disclosed by the record, being the right to continue in possession until he is given an opportunity to purchase either or both of these lots upon the terms and conditions prescribed by the statute.

The trial court correctly held that the plaintiff is not entitled to recover possession of the lots in question; but, without making an express ruling upon the defendant's allegations of ownership, ordered the Director of the Bureau of Lands to sell these lots to the defendant. Neither of the parties prayed for such an order, and the defendant has not obligated himself to purchase either or both of the lots, and is not and cannot be compelled to purchase them if the terms and conditions fixed by the Director of the Bureau of Lands should not prove acceptable. He has the option to comply with such lawful terms and conditions as may be prescribed or surrender possession. The order to the Director of the Bureau of Lands to sell the lots to the defendant cannot, therefore, be sustained; and, basing our judgment on the findings herein before set out as to the respective contentions of the parties, it is ordered that the judgment entered in the court below be modified by striking out therefrom so much thereof as expressly directs the Director of Public Lands to sell the lots in question to the defendant, and thus modified let the judgment be affirmed, with the costs of this instance against the appellant. So ordered.

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

MORELAND, J., dissenting:

I do not agree to the judgment of the court as written.

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