

**FAUSTINO LICHAUCO ET AL., PLAINTIFFS AND APPELLANTS, VS.  
JOSE BERENGUER ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 11907. February 27, 1919*

Ponente: AVANCEÑA, J.

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On July 26, 1882, by a public instrument (Exhibit A-I), Macario Berenguer sold to Cristino Singian with right of repurchase for an indefinite time the land in question which is described as parcel one in the complaint.

On October 7, 1889, by means of another public instrument, Macario Berenger sold the same land to Cornelia Lauchangco with right of repurchase for the term of two years. It was stipulated that Macario Berenguer would take the land under a lease, paying an anual rent therefor, either in cash or in sugar at the option of Cornelia Lauchangco. It was also stipulated that all the fruits of the land would be stored in Cornelia Lauchangco's enfarderia (sugar packing house) in this city and the proceeds thereof would be applied to the payment of the price of the repurchase (Exhibit A). This sale was registered in 1907.

It appears that on September 2, 1890, Macario Berenguer, by virtue of a public instrument, sold again the land in question with pacto de retro to Cristino Singian at a higher price but the amount paid on account of the sale of 1882 was considered as a part of the price. In the document wherein appears this contract, it is said that Cristino Singian accepts the purchase in the name and representation of Anselmo Singian of whom he was the tutor. The contract does not express the period for the redemption (Exhibit A-I.)

On February 20, 1904, Anselmo Singian sold in an absolute sale, also by a public instrument, the same land to Macario Berenguer. Anselmo Singian states in this contract that the land was acquired by him from Macario Berenguer himself by virtue of the above-mentioned contract of 1890 through his (Anselmo's) tutor, Cristino Singian. It was stipulated that the price of this sale should be paid within the period of eight years and that, if it be not completely paid on the expiration of the term, the ownership of the land should revert to Anselmo Singian (Exhibit X).

The parties to this action are: Faustino Lichauco and others, in their capacity as heirs of Cornelia Lauchangco, as plaintiffs; Jose Berenguer, administrator of the estate of Macario Berenguer, and Anselmo Singian in his own behalf, as defendants.

The plaintiffs pray that the sale of the land executed by Macario Berenguer in favor of Cornelia Lauchangco be declared absolute or that the defendant Jose Berenguer be obliged to pay to the plaintiffs the sum of P3,000, the price of the repurchase, with legal interest thereon from October 7, 1891, and the amount of P9,236.86, as rents due, as well as the amounts which would be due until the execution of the sentence with the corresponding interests. The defendant Jose Berenguer prays that he be absolved from the complaint and that the plaintiffs be obliged to execute in his favor the document of repurchase of the land. The defendant Anselmo Singian prays that the sale of the land executed by Macario Berenguer in favor of Cornelia Lauchangco be declared null and void and that he be declared absolute owner of the said land.

The trial court absolved the defendants without any finding as to costs and from this judgment the plaintiffs appealed.

From what has been said, it appears that the land in question had been twice sold by Macario Berenguer. The first sale was made in 1882 in favor of Cristino Singian and the second, in 1889, in favor of Cornelia Lauchangco, predecessor in interest of the plaintiffs. The question to be decided is, which of these two sales is to be preferred. Both were executed by means of public instruments. Considering the facts in connection with the time prior to 1907, it follows that, since neither of these instruments was inscribed, the preference should be in favor of the purchaser who first took possession of the land, inasmuch as this possession, according to the law in force prior to the promulgation of the Civil Code, constituted the consummation of the contract, and also inasmuch as the Civil Code (article 1473) expressly provides that possession in such cases transfers the ownership of the thing sold, the trial court accepted the fact that the defendant Anselmo Singian, by himself and through a representative, took possession of the land since its sale in 1882 and has been continuing in this possession up to the present time. There is evidence in the records which establishes this conclusion, and there is no proof to the contrary.

It appears that after the sale in 1882 to Cristino Singian, the land was held, under a lease through payment of an annual rent, by Macario Berenguer until his death, and even after his death the administrator of his property continued the lease under the same conditions until two years before this action was filed. It does not appear whether, after the sale, Cristino Singian first took possession of the land and then leased it to Macario Berenguer or the land was immediately leased after the sale without the lease having been preceded by direct possession on the part of the purchaser, Cristino Singian. But, as regards the basis upon which this decision rests, we accept the second alternative as true. It appears also that when the same land was sold in 1889 by same Macario Berenguer to Cornelia Lauchangco, the latter did not also take a direct possession of it but, agreed to lease it to Macario Berenguer under certain conditions. It thus appears that both Cristino Singian and Cornelia Lauchangco in like manner took possession of the land through the same Vendor, when the latter on ceasing to be the owner became the lessee of each of the former respectively. This court has held that when a person buys a piece of land and, instead of taking possession of it, gives it under a lease to the vendor, possession thereof by the latter after the sale is possession by the vendee, and such possession, in case of a double sale, determines the preference in favor of the one who first took possession of it, in the absence of inscription, in accordance with the provision of article 1473 of the Civil Code and notwithstanding the material and personal possession by the second vendee. (*Bautista vs. Sioson*, p. 615, ante.) This doctrine is with greater reason applicable to this case in that the possession by the second vendee, granting that he had it, was under the same conditions as that of the first vendee. Therefore, in determining the preference between both sales by reason of the priority of possession, supposing that both vendees had such possession in the same manner as we have indicated, the decision must necessarily be in favor of the sale to Cristino Singian who first enjoyed such possession.

But we can still say that Cornelia Lauchangco never had in the manner indicated the possession of the land. She had to derive this possession from Macario Berenguer. It is true that it was stipulated in the sale to her that Berenguer would cease to be the owner and would be her lessee, but there is a lack of juridical reality to suppose that this was equivalent to a delivery of possession, because on that date Berenguer had no possession with which he could transfer, inasmuch as he was then a mere lessee of the former vendee, Cristino Singian, and therefore his possession was not for himself but in representation of the latter.

At all events, if it be interpreted that, in case of a double sale and in the absence of inscription, the preference between both can not be determined, according to article 1473 of the Civil Code, by the possession which the stipulation implies that vendor ceases to become owner and becomes the lessee of the vendee, it follows that, for the purposes of this article, neither Cristino Singian nor Cornelia Lauchangco took possession of the land. Under

this supposition the preference between both sales shall also have to be decided in favor of that made to Cristino Singian, because it is of a prior date. (Art. 1473, Civil Code.)

As has been stated, Macario Berenguer sold the land to Cristino Singian in 1882 and in 1890 he again sold it to Cristino Singian in his capacity as tutor of Anselmo Singian. The plaintiffs contend that according to this sale to defendant Anselmo Singian was effected only in 1890 and therefore was not anterior to that made to Cornelia Lauchangco in 1889. We believe that this conclusion is erroneous. After the sale of 1882, Macario Berenguer took from Cristino Singian some more money which amounted to P6,000 and this fact impelled him to make the sale in 1890 in which it was stipulated that the amount paid in the sale of 1882 plus the P6,000 subsequently given by Cristino Singian to Macario Berenguer be considered as part of the price received. It is true that in the sale to Cristino Singian in 1882 it was not stated that he acted in his capacity as tutor of Anselmo Singian, but it appears that with the latter's money the former paid the price in both sales. What really appears is that the second sale was made with the object of aggregating, as part of the price, the amount of P6,000 received subsequently by Macario Berenguer for the purposes of the purchase and not for the transmission of the ownership which was already affected. We accept as a fact that both the sale of 1882 and that of 1890 were made in favor of Anselmo Singian.

The registry in 1907 of the sale to Lauchangco does not alter the aspect of the question involved. From the time Singian took possession of the land up to that date twenty-five years had elapsed. Thus, on the date in which the registry was made, Singian had acquired the ownership of the land by prescription. The registry could have destroyed the efficacy of the sale to Singian but not the legal effects of his possession. The effect which the law gives to the registry of a sale, in case of a double sale, against the efficacy of the sale that was not registered does not extend to the other titles which the other vendee may have gained independently, as the title of prescription in this case. And thus, even supposing that the sale to Singian, for lack of registry, had lost all its efficacy, in itself, as a title transferring ownership as against the sale to Lauchangco which was registered, still there remains for Singian the title of prescription which has not been destroyed by another to the contrary.

The fact that in 1904 Anselmo Singian in turn sold the land in question to Macario Berenguer does not affect the merits of the case. In the said sale it was agreed that Berenguer would pay the stipulated price within the period of eight years and if, at the expiration of the eight years, the amount should not have been completely paid, the ownership of the land would revert to the vendor. It does not appear that no payment on account of this price has been made and inasmuch as this payment should be proved by him who is obliged to do so, we accept as a fact that it was not so made. Under such circumstances, whatever effect may be attributed to that sale during the said period of eight years, which was fixed for the payment of the price, cannot be given such effect after the expiration of the said period, without the price having been paid. At all events, the ownership of the land sold reverted to the vendor.

We have reached the conclusion that the sale to Anselmo Singian represented by his tutor Cristino Singian was valid and produced the effect of transferring in his favor the ownership of the land in question. And, even disregarding the proper effect of this sale, the defendant Anselmo Singian has also acquired the ownership of the land by prescription.

Having reached the conclusion and as the action of the plaintiffs against the defendant Berenguer is entirely based upon the efficacy of the sale of the same land made in favor of Cornelia Lauchangco, we have to hold also that the complaint against the latter is improper.

Therefore, we hereby affirm the judgment appealed from in so far as it absolves the defendants from the complaint with the costs against the appellants. So ordered.

Arellano, C.J., Torres, Johnson, Street, and Malcolm, JJ., concur.

Judgment affirmed.

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