

NARCISA SANCHEZ, PLAINTIFF AND APPELLANT, VS. ROQUE RAMOS, DEFENDANT AND APPELLEE.*G.R. No. 13442. December 20, 1919*

Ponente: AVANCEÑA, J.

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This is an action for the recovery of a piece of land described in the second paragraph of the complaint. This land is in the defendant's possession and formerly belonged to Ciriaco Fernandez. On July 1, 1910, Ciriaco Fernandez sold it to the spouses Marcelino Gomez and Narcisa Sanchez under pacto de retro for the period of one year. This sale was executed in a public instrument. Marcelino Gomez and Narcisa Sanchez never took material possession of the land. The period for repurchase elapsed without the vendor making use of it. On July 3, 1912, Ciriaco Fernandez again sold the same land, by means of a private document, to Roque Ramos who immediately took material possession thereof. By applying article 1473 of the Civil Code, the trial court declared preferable the sale executed to the defendant and absolved him from the complaint.

By the same article applied by the lower court, we are of the opinion that the sale executed to the plaintiff must be declared preferable. This article provides:

"ART. 1473. 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 purchaser who first recorded it in the registry of deeds.

"Should it not be recorded, the property shall belong to the person who first took possession of it in good faith, or, in default of possession, to the person who presents the oldest title, provided there is good faith."

Not one of the documents of sale in this case having been recorded, preference must be decided in favor of the vendee who first, took possession.

To what kind of possession does this article refer? Possession is acquired by the material occupancy of the thing or right possessed, or by the fact that the latter is subjected to the action of our will, or by the appropriate acts and legal formalities established for acquiring possession (art. 438, Civil Code.). By a simple reasoning, it appears that, because the law does not mention to which of these kinds of possession the article refers, it must be understood that it refers to all of these kinds. The proposition that this article, according to its letter, refers to the material possession and excludes the symbolic does not seem to be founded upon a solid ground. It is said that the law, in the gradation of the causes of preference between several sales, fixes, first, possession and then the date of the title and, as a public instrument is a title, it is claimed that the inference is that the law has deliberately intended to place the symbolic possession, which the execution of the public document implies, after the material possession. This argument, however, would only be forceful if the title, mentioned by this article, includes public instruments, and this would only be true if public instruments are not included in the idea of possession spoken of in said article. In other words, the strength of the argument rests in that this possession is precisely the material and does not include the symbolic. Consequently, the argument is deficient for it is begging the same question,

because if this possession includes the symbolic, which is acquired by the execution of a public instrument, it should be understood that the title, mentioned by the law as the next cause of preference, does not include public instruments.

Furthermore, our interpretation of this article 1473 is more in consonance with the principles of justice. The execution of a public instrument is equivalent to the delivery of the realty sold (art. 1462, Civil Code) and its possession by the vendee (art. 438). Under these conditions the sale is considered consummated and completely transfers to the vendee all of the vendor's rights of ownership including his real right over the thing. The vendee by virtue of this sale has acquired everything and nothing, absolutely nothing, is left to the vendor. From this moment the vendor is a stranger to the thing sold like any other who has never been its owner. As the thing is considered delivered, the vendor has no longer the obligation of even delivering it. If he continues taking material possession of it, it is simply on account of vendee's tolerance and, in this sense, his possession is vendor's possession. And if the latter should have to ask him for the delivery of this material possession, it would not be by virtue of the sale, because this has been already consummated and has produced all its effects, but by virtue of the vendee's ownership, in the same way as said vendee could require of another person although same were not the vendor. This means that after the sale of a realty by means of a public instrument, the vendor, who resells it to another, does not transmit anything to the second vendee and if the latter, by virtue of this second sale, takes material possession of the thing, he does it as mere detainer, and it would be unjust to protect this detention against the rights to the thing lawfully acquired by the first vendee.

We are of the opinion that the possession mentioned in article 1473 (for determining who has better right when the same piece of land has been sold several times by the same vendor) includes not only the material but also the symbolic possession, which is acquired by the execution of a public instrument.

From the foregoing it follows that the plaintiff was the first to take possession of the land, and consequently the sale executed to him is preferable.

Wherefore, the judgment appealed from is hereby reversed; the plaintiff is declared owner of the land in question; and the defendant is ordered to deliver the possession of the land to the plaintiff. No special findings as to costs. So ordered.

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

DISSENTING
STREET, J.,

In my judgment the possession referred to in article 1473 of the Civil Code is the actual, material and physical possession of the thing sold; and in applying that provision no account should ever be taken of the symbolic possession which is supposed to be acquired by the purchaser, under article 1462 of the Civil Code, when the sale is proved by a public document.

The authors of the Civil Code have stated three distinct criteria for determining who has the better right when the same piece of real property is sold by the same vendor, to two different persons, which are: First, priority of registration; secondly, in default of registration, the taking of possession in good faith by the purchaser, and thirdly, in default of both the preceding factors, mere priority of title.

The only possible purpose which the codifiers could have had in mind in inserting this article in the Code was to prevent what in many cases amounts to a fraud upon the innocent second purchaser. The first purchaser needs no protection, for in the absence of special provision, he would always have the superior right by virtue of the

priority of his title. Now, as will be discerned, the danger to the second purchaser consists precisely in his ignorance of the fact that a prior sale was made, due to the possible secrecy of the transaction and to the occultation by the parties thereto of the circumstances which would ordinarily reveal the existence of such sale.

In order, then, to protect the second purchaser, the authors of the Civil Code saw fit to state two conditions either of which, when fulfilled, gives the second purchaser the better right, namely, priority of registration and priority in the acquisition of possession. These tests must both be understood to relate to acts extrinsic to the contracts, or documents of sale, under which the rival purchasers pretend to have acquired title. Otherwise the whole purpose of the article is defeated.

When a question is made between two persons claiming the same land under documents executed by the same vendor, and the right has to be determined by the fact of registration, we here have recourse to a test which is extrinsic to the original act of executing the document and incapable of occultation. Likewise, when the right is to be determined by the other test, namely, the taking of possession by one or the other of the vendees, reference must be had to the taking of material possession as an act extrinsic to the execution of the contract, or document of sale, under which possession was taken.

The question as to who has the material possession of a parcel of real property can usually be ascertained by inspection or inquiry among persons living in the neighborhood, and although the information thus obtained is less certain and absolute than that which would be revealed by the registration of title; nevertheless there is a presumption of ownership from the fact of possession, and a purchaser who, relying on the evidence supplied by his eyes, pays his money to one who is believed to be the true owner and takes the material possession from him, should be protected as against any prior purchaser except the one who may have registered his title. This was without doubt the intention of the codifiers. Otherwise the third paragraph of article 1473 would have been so drawn as to read as follows :

"Should it not be recorded, the property shall belong to the person whose purchase is proved by a public instrument, and if neither sale be thus proved, to the person who first took possession of it in good faith, or, in default of possession, to the person who presents the oldest title, provided there is good faith."

In other words, if the codifiers had intended to create a preferential right based upon the fact that a contract of sale is executed in the form of a public instrument, this would have been enumerated among the criteria expressed in article 1473, as giving the better right.

The omission of the authors of the Code to take this course in framing that article is significant; and it was doubtless due to a perception of the fact that the form in which a contract happens to be executed affords no proper test when the question is between one who claims under that contract and one who claims under another contract of later date executed by the same vendor. The court, by the decision made in this case has, we submit, amended article 1473 by inserting therein a provision antagonistic to the spirit of that article and destructive of its purpose.

If there were any real publicity incident to the execution of a public instrument, the result would not be so baleful. But under our existing notarial system, the acknowledgment of a document before a notary involves no general publicity; and the notarial register is apparently not even open to general inspection so long as it remains in the hands of the notary. Besides, where there are dozens of notaries accessible to the public, as in the city of Manila, it would be impracticable for a person, desirous of purchasing a particular piece of unregistered property, to ascertain whether or not such property has been the subject of a prior sale acknowledged before a notary. The impossibility of protecting a purchaser in good faith from such occult prior transactions is obvious.

Judgment reversed.

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