

TEODORICO SANTOS ET AL., PETITIONERS AND APPELLEES, VS. THE HEIRS OF PEDRO CRISOSTOMO AND FABIAN TIONGSON, OBJECTORS AND APPELLANTS.

G. R. No. 14234. January 04, 1921

Ponente: STREET, J.

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STREET, J.:

The appealed judgment in this case was affirmed by the first division of this court on October 31, 1919, in a brief opinion[1] in which the Conclusions of the trial court were approved in general terms without entering into details. The appellants entered a motion for a rehearing, and the appellees, opposing said motion, replied in a memorandum dated November 21, 1919. Since that date the matter has been before us for consideration; and the fact that the Justice who acted as proponent of our opinion is now in the United States on leave makes it necessary for the author of this opinion to become the organ of the court for the expression of its resolution on the motion to rehear.

The case in its essentials is simple enough; and in what is now to be said we present only the decisive features of the case, ignoring certain aspects of the appellants' discussion with which we either cannot agree or which we consider to be undecisive.

It appears then that the petitioners—who are Teodorico de los Santos and the heirs of his deceased wife—are endeavoring in this proceeding to procure the registration of a parcel of land in the barrio of Santa Helena, municipality of Hagonoy, in the Province of Bulacan, containing an area of 529,154 square meters, and bounded, according to the description contained in the petition, as follows:

"Bounded on the northeast by the Manilad River; on the southeast by the properties of Ambrosio Marasigan, Pedro Sumera Cruz, Pachita Creek, and the properties of the heirs of Pedro Crisostomo that are claimed by Pedro Santos and Prudencio Tanjutco; on the southwest by the properties of the heirs of Pedro Crisostomo, that are claimed by Julio Ramos, and on the northwest by the Rivers Binambang, Maingsingilog, and Manilad."

From the surveyor's plan, Exhibit A, accompanying the petition, it will be seen that the entire northern and northwestern boundaries of the land claimed by the petitioners consist of a well-defined watercourse to wit: The Binambang River, the Maicsing Hog River, and the Manilad (or Manilao) River, which may be said to represent merely three stages of a single continuous stream. At the southern and southeastern border, the boundary in part consists of Estero Pachita. The Estero Kay Suca (Sapang Kay Pare), mentioned in the document Exhibit B, is a little further to the west and does not come into contact with the boundary of the parcel in question. At other points the boundaries are devoid of natural landmarks, being determined merely by contact with the land of various owners, the exact position of whose properties is undetermined by any of the documents used as evidence in the cause. Upon this point the official plan is of no value except to show where the petitioners claim the boundaries are located. The opponents to the registration are the heirs of Pedro Crisostomo and Fabian Tiongson; and the controversy simply is whether the title to the parcel of land, as described in the petition and plotted in the

official plan, is shown to be in the petitioners. The opponents assert that the parcel of land in question forms an integral part of a much larger tract of land which is owned in common by the heirs and successors of Pedro Crisostomo and Fabian Tiongson, lying in the municipality of Hagonoy, in the Province of Bulacan; and in support of this claim they have introduced in evidence Exhibit 2, which is a certified copy of a composition title, dating from far back in Spanish times, in favor of the heirs of Fabian Tiongson, covering an area of more than 450 hectares of land.

We see no reason to doubt that the land in question was in fact included in the composition title above-mentioned, and that, as a consequence, it was formerly the property of the heirs of Fabian Tiongson. This fact is interesting rather as a matter of history than otherwise, and we do not mean herein to adjudicate upon this point; for, as will be presently seen, the petitioners derive their title from Jose Tiongson, a descendant of Fabian Tiongson, and it matters not to the petitioners whether Jose Tiongson acquired the property in question by descent from Fabian Tiongson or from some other source.

In order to show title in themselves, the petitioners rely upon two species of proof, namely, Exhibit B, which is a contract of sale with pacto de retro, executed in 1904, and oral evidence tending to show possession by them of the property in question under said contract since that date.

The document Exhibit B of the petitioners is of capital importance in the case. It is a private document bearing the signatures of "Jose Tiongson and three witnesses, and dated March 4, 1904. It purports to be a sale with pacto de retro, transferring the property therein described from the said Jose Tiongson to Teodorico T. Santos, the active petitioner herein, and his wife Venancia Bautista. This document is written in Tagalog, and though two versions in Spanish are submitted by the respective parties, we are content to accept the version supplied by the petitioners and adopted by the appellants in their brief. It is as follows:

"In this barrio of Marulao, municipality of Hagonoy, Province of Bulacan, March 4, 1904: I, Jose Tiongson, single, 59 years old, a native and resident of Malolos, Province of Bulacan, declare that I have a parcel of nipa land situated between Binambang and Manilad Rivers and extending to Pacheta which is in this same barrio; that I have sold it with the right to repurchase to the spouses, D. Teodorico T. Santos and Venancia Bautista, for two hundred eleven pesos which I have this day received. But I bind myself not to repurchase this land until after ten years of its enjoyment. This land has an area of two and one-half quinones, more or less, and its boundaries are: on the north, Mading Hog, on the south, land possessed by D. Brigido Reyes and Valentin Pancheta which adjoins land possessed by D. Miguel Ronquillo and Aniceto Gatmaitan as well as lands possessed by D. Jose de los Santos towards Cay Pare Creek, and on the west, by Binambang River. With respect to this sale with the right to repurchase, executed in the presence of the two eye-witnesses, D. Julio Bautista and Teodoro Panganiban, I bind myself that in case of any interference with the possession of the land, I, Jose Tiongson, shall appear before the courts, and should possession be lost I will substitute other land subject to the same conditions.

"In witness whereof I execute this document and sign at the foot hereof together with my nephew D. Severo Tiongson.

(Sgd.)

"JOSE TIONGSON.

"SEVERINO TIONGSON

"JULIO TIONSON.

"TEODORO PANGANIBAN."

The petitioners rely upon this conveyance as the origin and source of their title and make no pretension to any part of the questioned property otherwise than in relation with this document. In support of this title they have shown, by oral evidence, an actual possession thereunder for more than ten years, inferentially from the date of the instrument itself.

At this juncture we will say that, in our opinion, a preponderance of the rather meager testimony submitted on the point of possession sustains the claim of the petitioners as to the fact of possession, since 1904, of the land which they claim as covered by the contract of sale, Exhibit B; and the finding of the trial court in favor of the petitioners upon this point of actual possession must be taken to be correct.

Accepting then, as a postulate, the execution of Exhibit B by Jose Tiongson, the actual possessor of the questioned land in 1904, and the subsequent possession of the property therein described by the purchasers, Teodorico Santos and his wife, and the successors of the latter, we proceed to consider the consequences of these facts.

In the first place, we observe that in our opinion the document Exhibit B is a contract of sale with pacto de retro, notwithstanding the fact that by the terms of the agreement the exercise of the right to repurchase is postponed for ten years from the date of the contract. The attorney for petitioners, in his application for a rehearing, suggest that the contract is really an antichresis; and in support of this view a translation of Exhibit B is submitted somewhat different from that already supplied in this opinion.

We think, however, that the document is what it purports to be; and its character is not changed by the fact that, as will presently be seen, the stipulation as to the time when repurchase may be effected contravenes the provisions of article 1508 of the Civil Code. When the stipulation in question is examined, it will be discovered that the intention of the parties was to suppress the exercise of the right of repurchase for the full period of ten years from the date of the contract and, inferentially, to allow the exercise of that right after the expiration of ten years. In the second paragraph of article 1503 of the Civil Code it is in effect provided that if there should be an agreement with respect to the time of repurchase, the period shall not exceed ten years. The stipulation under consideration offends against this provision in two particulars, namely, (1) in providing that the right to repurchase may be exercised after ten years shall have elapsed, and (2) in prohibiting the exercise of the same right during the whole period when, according to the statute, it might be lawfully exercised.

The stipulation is, therefore, illicit; and the result is that the right of repurchase could in fact, under the second paragraph of article 1508 of the Civil Code, have been exercised in this case at any time after the making of the contract and prior to the expiration of ten years. The law must here control over the revealed intention of the parties.

In what has been said we do not mean to declare that the parties to a contract of sale with pacto de retro can not under any conditions lawfully suspend the exercise of the right of repurchase. Doubtless they may do so, provided there remains an appreciable space of time for the exercise of the right within the limitation allowed by law. For instance, if it were provided that repurchase should not be effected before five nor after ten years from the date of the contract, we see no reason for supposing the stipulation to be unlawful. It is different where the parties attempt totally to suppress the right during the whole period when it might lawfully be exercised.

It follows from what has been said that under the contract before us the right of repurchase expired and the

property consolidated in the purchasers, Teodorico T. Santos and his wife, Venancia Bautista, or the successors of the latter, on March 4, 1914.

We now come to consider the point of the identity and extension of the land included in the document Exhibit B. It will be seen that in this contract the area of the land conveyed to Teodorico T. Santos (Teodorico de los Santos) and his wife is 2 1/2 quinones, more or less, or approximately in modern measurement 7hectares. Under said document—and this too, be it remembered, a contract of sale with pacto de retro—the petitioners are seeking to register a parcel of land covering approximately 53 hectares,. This is a phase of the case which obviously deserves scrutiny.

It is said in behalf of the petitioners that the parcel in question is defined by natural boundaries; and that, therefore, the area stated in the contract is of little moment. To this the reply is that the description in the contract B is not made clear by reference to natural landmarks. In the plan of survey the petitioners have, it must be admitted, made their claim clear enough by reference to natural landmarks, but this may merely be the result of an unjustifiable extension of the limits of the parcel described in Exhibit B to those natural landmarks; and such we believe to be the case. A perusal of the evidence, in relation with the plans submitted, leads us to the conclusion that when Exhibit B was made, the nipa grove about which the parties intended to contract consisted of only a few hectares lying near the Rivers Binambang and Mading Hog, mentioned in the contract and that by the subsequent extension of the grove by planting and development its limits have spread to the area now claimed. In short we think that this contract of sale does not cover by much the entire parcel now sought to be registered.

It results in our opinion that while the petitioners may have acquired a good title to a few hectares of land under contract Exhibit B, they are, as to the remainder of the land embraced in their petition, mere usurpers.

At first blush it might appear that the conclusion just stated, namely, that the contract of sale did not really include the entire extent of land claimed for it by the petitioners, is incompatible with the conclusion previously announced that the petitioners had maintained adverse possession over the whole parcel for more than ten years. Upon reading the testimony with a special view to this apparent inconsistency in our interpretation of the evidence, we find that the two conclusions are compatible and legitimate. It is admitted even by witnesses for the appellants that there have been at all times some nipa plants scattered over the entire tract, though sparse around portions of the border and perhaps with barren patches in the center.

We think that the petitioners, by collecting the juice from these scattered plants, as proved, have maintained adverse possession of the whole for more than ten years, although the main efforts of the petitioners to bring the property to a state of productivity by the planting of nipa may have occurred only a few years prior to the institution of this proceeding.

We have now arrived at a point where the affirmance by this court of the appealed judgment will be intelligible, said action being based on the simple theory that, as to the land actually covered by the contract of sale, the right of repurchase had irrevocably passed; and, as to the land which has been the subject of usurpation, the petitioners had acquired a good prescriptive title by adverse possession.

The position thus indicated would be unassailable ii the petitioners claimed the usurped land by the title of usurpation. The fact is, however, as already indicated, the petitioners claim the whole parcel of which registration is sought exclusively under and by virtue of the .contract Exhibit B. A question is thus raised which may be stated thus: Can the vendee in a contract of sale with pacto de retro, prior to the date of consolidation of the property in himself, claim the benefit of adverse possession under section 41 of the Code of Civil Procedure with respect to land which he claims to be, but which in fact is not, included in the contract? This question of prescription could hardly arise directly between the parties to a contract of sale with pacto de retro with respect to land admittedly

covered by the contract, because as to such land the rights of the parties must be determined by the contract. But when the vendee, under the color of such a contract, goes beyond the limits of the land described therein and becomes a mere usurper, the question may legitimately arise; and it is presented in this case.

Our opinion upon this point is that adverse possession must be taken to have begun with occupancy; and supposing that occupancy of the usurped property began, as the trial court evidently believed, with the execution of the contract of sale Exhibit B, or soon thereafter, it results that the petitioners had acquired title by ten years' adverse possession, under section 41 of the Code of Civil Procedure, prior to the beginning of these proceedings. The situation must, we think, be governed by the rule generally applied in case of deliberate encroachment beyond legitimate boundaries, which is, that "the intruder gets a good title, if his occupation is hostile to the true owner and is continued for the period required by the law of prescription. Good authority may be cited to the effect that where an owner, holding a particular piece of property under color of title, mistakes his boundaries and encroaches upon land of his neighbor, intending only to occupy what really belongs to him, his occupation of the usurped land is not adverse to the true owner. (2 C. J., 139.) But all the courts are agreed that deliberate usurpation of land beyond one's true boundaries, with the intention to assert ownership over the excess, constitutes adverse possession, other elements concurring. (1 R. C. L., p. 733.)

It might be argued that, inasmuch as the entire parcel of land was originally occupied and held under color of the title, indicated in the contract of sale Exhibit B, and inasmuch as said contract contains a stipulation under which the vendor could have repurchased the land, the occupancy of the land by the petitioners, prior to the expiration of the time for repurchase, cannot be considered adverse to the heirs of the vendor, Jose Tiongson. We agree that the character of the occupancy must in a sense be interpreted in subjection to the contract just mentioned, for the petitioners claim the whole parcel under that deed and by no other title. They are, therefore, effectually estopped order for possession to be adverse, in the sense intended in section 41 of the Civil Code Procedure, it must be "under right." It is our opinion, however, that the insertion of a stipulation for repurchase by the vendor in a contract of sale does not necessarily create any right inconsistent with the right of ownership in the purchaser. Such a stipulation is in the nature of an option, and the possible exercise of it rests upon contingency. It creates no subsisting right whatever in the property, and so far from being inconsistent with the idea of full ownership in the purchaser, it really rests upon the assumption of ownership in him. We may add that the consideration of repose, which is the basis of the law of prescription, supports the occupant fully as much in the situation now under consideration as in other cases admittedly within the policy and intention of the statute.

The appellants assert that the property conveyed by Jose Tiongson to the petitioners originally pertained to Fabian Tiongson, and at the time the contract of sale was executed belonged pro indiviso to his heirs and not exclusively to Jose Tiongson. It is accordingly argued that prescription could not become effective, the land being held in common. We understand the rule to be, however, that "where one cotenant assumes to convey the entire estate, or any part of it, his deed or other instrument, though legally insufficient, constitutes color of title in the grantee, and an adverse possession thereunder for the statutory period will ripen into title as against all the cotenants." (1 R. C. L., p. 743; *Joyce vs. Dyer*, 189 Mass., 64; 109, A. S. R., 603, and note at page 609; *Lloyd vs. Mills*, 32 L. R. A. [N. S.], 702.)

One of the bases of the petition to rehear is newly discovered evidence. We have considered the nature of the matter thus presented and are disinclined to accede to the request for a new trial on this ground, not only because no sufficient excuse is made for the failure to produce this proof sooner, but because the purported newly discovered matter is irrelevant or unconvincing. In particular, it is quite clear that the affidavit of Severo Tiongson, which is supposed to throw light on Exhibit B, refers to a totally different document.

Petition to rehear denied. So ordered.

Mapa, C. J., Araullo, Malcolm, and Villamor, JJ., concur.

[1] Unpublished.

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