

EMIGDIO SORIANO AND BEATRIZ DE VERA, PLAINTIFFS AND APPELLANTS, VS. THE HEIRS OF DOMINGO MAGALI, NAMELY: LUISA MAGALI, LUTGARDA MAGALI, DEMETRIA MAGALI, MODESTA CALIMLIM, LAMBER...

G.R. No. 15133. July 31, 1963

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This case was originally appealed to the Court of Appeals, but certified to this Court as one involving purely legal issues. The complaint is for recovery of a piece of land. The Court of First Instance of Pangasinan, Judge Jesus P. Morfe presiding, gave judgment for the defendants, appellees, herein, on the following findings:

"The parties to the instant case submitted no testimonial evidence but merely documentary proofs of some of their respective allegations.

"It appears from the evidence of the plaintiffs that the disputed Northeastern portion, consisting of 25,000 square meters, forms part of a bigger parcel of land consisting all in all of 317,600 square meters which, as early as July 18, 1933, was owned by and registered in the names of the spouses Domingo Magali and Modesta Calimlim (Original Certificate of Title No. 51878, Exhibit "I"). On July 28, 1939, said spouses sold the aforesaid Northeastern portion of said parcel of land to the spouses Tomas Cerezo and Segunda Soriano for P500.00, but said deed of sale (Exh. A) was never registered and annotated on said O.C.T. No. 51878. Said spouses Tomas Cerezo and Segunda Soriano in turn sold the same Northeastern portion to Maximino Mamormo for P950.00 on January 7, 1941 (Exh. B). This deed of sale was also not registered and annotated on said 6.C.T, No. 51878. On April 5, 1946 Francisca Reyes, as surviving spouse of said Maximino Mamorno sold her one-half pro-indiviso share in said Northeastern portion to the spouses Emigdio Soriano and Beatriz de Vera for P1,000.00, and on the same day she, as guardian of her minor children, sold the remaining one-half pro-indiviso of said Northeastern portion to the same spouses Emigdio Soriano and Beatriz de Vera (Exhibit C and D). These two deeds of sale were on April 9, 1946 registered under the provisions of Act No. 3344 and were, consequently, also not registered and annotated on O.C.T. No. 51878. Under these circumstances, plaintiffs Emigdio Soriano and Beatriz de Vera filed the present action for reivindicacion of said Northeastern portion, the defendants Modesta Calimlim and Lamberto Magali being now in possession of said Northeastern portion and claim ownership thereof.

"Defendants' evidence (Exh. 3) on the other hand shows that in January, 1944 Maximino Mamorno in turn sold said Northeastern portion back to Modesta Calimlim for P5,000.00, but, instead of executing a formal deed of sale, merely delivered to said Modesta Calimlim the muniments of title over said land, among which were the original of the deed of sale of July 28, 1939 by the spouses Domingo Magali and Modesta Calimlim in favor of the spouses Tomas Cerezo and Segunda Soriano (Exh. 1), and the original of the deed of sale of January 7, 1951 by the spouses Tomas Cerezo and Segunda Soriano in favor of said Maximino Mamormo (Exh. 2). By virtue of said verbal sale Modesta Calimlim has been, as found by this Court in its decision of June 26, 1956 in Civil Case No. 9618 between the same Emigdio Soriano and Modesta Calimlim (Exh. 6), in possession of said Northeastern portion continuously since January, 1944 to the present time, paying the real estate tax thereon

under Tax Declaration No. 47040 (Exhs. 4 and 4A to 4—O, inclusive). Consequently, defendant Modesta Calimlim, one of the registered owners of said parcel of land covered by O.C.T. No. 51878, and her co-defendants Manuel, Consorcia, Luis, and Tomas, all surnamed Magali, surviving children of the other registered owner, Domingo Magali, are now the lawful owners of said parcel of land, including the aforesaid Northeastern part thereof.

"The defendants Luisa, Demetria and Lutgarda, all surnamed Magali, on their part, presented no evidence in their behalf."

Three errors are assigned in this appeal, namely: (1) The lower court erred in not holding that the deeds of sale (Exhibits A & B, plaintiffs) are valid and binding, even though not registered and annotated at the back of original certificate of title No. 57878; (2) The lower court erred in not holding that there was in fact no verbal sale of the property in question (northeastern portion) made by Maximino Mamorno in favor of defendant Modesta Calimlim; (3) The lower court erred in not holding that the deeds of sale (Exhibits C & D, plaintiffs) executed by Francisca Reyes in favor of the plaintiffs-appellants were valid and binding and conveyed the ownership of the property in question (northeastern portion) to said appellants.

The first assignment of error misses the point made by the court a quo in its decision. It did not say that the deeds of sale marked Exhibits A and B were not valid and binding, but rather that they became *functus officio* and divested the vendees of their rights thereunder upon surrender of the documents to Modesta Calimlim when the land was "resold" to her verbally in 1944. Indeed those two sales are the basis of the respective claims of the parties, both of whom derive their conflicting titles from the second vendee—appellees by virtue of the verbal sale aforesaid, made by Maximino Mamorno in 1944, and appellants by virtue of the two deeds executed by Francisca Reyes, Mamorno's surviving spouse, on April 5, 1946.

The decisive questions, as raised in the second and third assignments of error, are, first, whether or not there was in fact a sale in favor of appellees, and second, if there was, whether or not it is superior to the sales in favor of appellants.

The first question seems at first blush to be one of fact, which would place this appeal within the jurisdiction of the Court of Appeals. But in reality the question refers to the correctness of the ruling of the court a quo in admitting and giving probative value to the documentary evidence presented by appellees. The pivotal document is their Exhibit 3, which is a sworn written statement of Ildefonso Mamorno, dated June 10, 1946, affirming his personal knowledge that his son Maximino had sold the disputed land to Modesta Calimlim for P5,000.00 in January 1944; that no written instrument of sale was executed but that all the papers (muniments of title) concerning the land were delivered by his son to the said vendee; that his son actually received the purchase price; and that possession of the land was thereupon delivered to the vendee. Exhibit 3 is one of the documents submitted before the Deputy Clerk of Court, who had been commissioned to receive them upon motion of both parties, and no objection to the admission of any one of them appears in the record.

True, Exhibit 3 could have been objected to because the affiant did not testify and hence could not be cross-examined by the adverse party as to its contents. But no such objection having been interposed, the right of cross-examination was waived; and having thus been admitted in evidence, the document is entitled to some probative value as to the fact of the verbal sale. Since this fact is categorically stated in Exhibit 3, it is not a mere inference from, but rather antecedent to and herefore justified the consideration of, the corroborative circumstantial evidence presented by appellee, to wit: (1) actual possession of the land by appellee since 1944; (2) possession by them of the originals, of the first two deeds of sale (Exhibits 1 and 2); (3) tax declaration in the name of appellees; (4) receipts of tax payments made by them; and by contrast, (5) possession by appellants of only a carbon copy and a true copy of Exhibits 1 and 2 (Exhs. A and B), respectively, as well as their failure either

to declare the land in their names or to pay the taxes thereon.

As basis of the declaration by the court a quo that since 1944 appellees had been in actual possession of the land, reliance is placed on its finding to that effect in the decision in the previous case of forcible entry between the same parties (Case No. 9618, Exh. 6), which was decided in favor of appellees, who were the defendants in that case, appellants invoke section 7 of Rule 72, which states as follows:

"SEC. 7. Judgment conclusive only on possession, not conclusive in certain actions.—The judgment rendered in an action for forcible entry or detainer shall be effective with respect to the possession only and in no wise bind the title or effect the ownership of the land or building. Such judgment shall not bar an action between the same parties respecting title to the land or building, nor shall be held conclusive of the facts therein found in a case between the same parties upon different cause of action."

While it is true that the judgment in an action for forcible entry is not conclusive of the facts therein found in a case between the same parties upon a different cause of action, the rule does not say that such facts shall have no probative value whatsoever. In the absence of any evidence to the contrary—as in the case at bar there is none—the previous judgment on the question of material possession carries a persuasive effect. The logic of the situation is that if Modesta Calimlim purchased the land, albeit verbally, in 1944, the corroborative circumstances pointed out above would not have existed. The originals of the two deeds of sale (Exhibits I and 2), would not have been in the hands of the appellees, nor would they have declared the land in their names nor paid the taxes thereon.

This case, therefore, should be resolved in the light of the law governing double sale of the same property Article 1473 of the Old Civil Code, now Article 1544, provides that if immovable property is sold to different vendees the ownership shall belong to the person acquiring it who in good faith first recorded it in the registry of property; and should there be no inscription the ownership shall pertain to the person who in good faith was first in the possession. Appellees obtained possession of the land in good faith in 1944; appellants never did so. The registration by appellants of the sale in their favor was made under Act 3344, which refers to properties not registered under the Land Registration Act, and hence was not effective for purposes of Article 1544 of the Civil Code. Registration of Instruments, in order to affect and bind the land, must be done in the proper registry (Secs. 50 and 51, Act 496).

The Statute of Frauds, invoked by appellants with reference to the verbal sale to Modesta Calimlim, has no application in this case, because the statute applies only in an executory sale of real property, not in one which has been consummated by the delivery of the property to the vendee.

There being no error in the judgment appealed from, the same is affirmed, with costs against appellants.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon and Regala, JJ., concur.

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