

ORA SNYDER, PLAINTIFF AND APPELLANT, VS. THE PROVINCIAL FISCAL OF CEBU AND JOSE AVILA, DEFENDANTS AND APPELLEES.

G. R. No. 17132. February 08, 1922

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an appeal by the plaintiff from an order of the Court of First Instance of Cebu, sustaining defendants' demurrer to plaintiff's amended complaint.

The facts alleged in the amended complaint and admitted by the demurrer may be stated as follows:

- Doña Corazon Veloso was the owner of a certain piece or parcel of land, situated in the municipality of Cebu, Province of Cebu. On the 22d day of November, 1911, she leased said parcel of land to Messrs. F. C. Arey and J. P. Zeeman for a period of ten years, renewable, upon its expiration, for other periods of five years each, which, in the aggregate, should not exceed twenty years.
- On the 5th day of December, 1916, Michael & Co., Inc. was, with the consent of the lessor Corazon Veloso, subrogated to all the leasehold rights and interests of the said Arey and Zeeman, thus becoming the lessee of the land in question. Thereafter the said lessee, Michael & Co., Inc., erected upon said land a building now known as Cine Ideal.
- Thereafter, by virtue of a decree of date January 24, 1918, issued by the Court of First Instance of Cebu in cadastral case No. 9, the said Corazon Veloso, the owner and lessor of the parcel of land in question, obtained a certificate of title (No. 703) to said parcel of land, under the Torrens system. During the hearing of said cadastral case No. 9, the said Michael & Co., Inc. did not appear nor suggest to the court the existence of the lease in his favor upon the parcel of land in question. The court decreed the issuance of certificate of title No. 703, free of all liens and incumbrances and without any memorandum or annotation thereon of any real right which might exist upon said land previous to the date of said decree. The said building known as Cine Ideal, existing as an improvement upon said land, was, in said decree, adjudicated to its owner, Michael & Co., Inc.
- On the 19th day of February, 1920, Michael & Co., Inc. sold, transferred and delivered to Jose Avila its building known as Cine Ideal as well as all the leasehold rights and interests which it had in said land by virtue of the contract of lease aforesaid.
- Thereafter the said Jose Avila applied to the register of deeds of the Province of Cebu to have the building as well as the lease above-mentioned recorded and annotated on the certificate of title of the land in question and, on the 31st day of March, 1920, the said register of deeds, without the knowledge and consent of Corazon Veloso, and taking advantage of the fact that the latter's duplicate of said certificate of title was then in his hand and under his custody for the purpose of complying with a certain order of a competent court, recorded and annotated on said duplicate as well as in the original of said certificate of title, the contract of lease in question and its transfer to Jose Avila.

- On the 22d day of July, 1920, the registered owner of said land, Corazon Veloso, sold, transferred, and delivered the same to the plaintiff herein for and in consideration of the sum of P44,340, and the plaintiff herein, as such vendee, obtained transfer certificate of title No. 1555 of the registry of property of the Province of Cebu.

- After such acquisition, the plaintiff brought the present action against the provincial fiscal as ex-officio register of deeds, and Jose Avila, to have the registration and annotation of said contract of lease declared null and void, and to compel the defendant register of deeds to cancel such annotation and to issue a new certificate of title to the plaintiff without such annotation. The defendants demurred to the plaintiff's complaint upon the grounds (1) that it did not state facts sufficient to constitute a cause of action, and (2) that it was vague, ambiguous, and unintelligible. From the decision of the lower court sustaining that demurrer, the plaintiff appealed to this court.

The contention of the appellant is that the contract of lease in question was not registerable at the time the defendant register of deeds registered the same, because it had been executed long before, and was subsisting at the time the cadastral proceeding, which resulted in the issuance of the decree of registration of the land in question, was heard; and, the then lessee, Michael & Co., Inc., not having claimed in said proceeding any real right in the land in question, and the certificate of title having been duly issued for said land free of all liens and incumbrances, the said Michael & Co., Inc., or its successor, Jose Avila, had lost the right to have said contract of lease registered and annotated on the certificate of title of the land in question; and that Corazon Veloso, the plaintiff's vendor, had the right to have the illegal act of the register of deeds annulled, which right the plaintiff acquired upon his acquisition of the land in question. The appellees maintain that the contract of lease in question was registerable at the time the defendant register of deeds registered the same.

The question presented in this appeal is whether or not an incumbrance, or an interest in land, which existed at the time of the original registration of said land, can be registered or recorded after such original registration. In other words, does the failure of the interested party to appear during the registration proceeding and claim such interest in the land in question bar him from thereafter having such interest annotated on the certificate of title?

Section 38 of Act No. 496 provides among other things that every decree of registration shall bind the land and quiet title thereto, and shall be conclusive against all persons, including the Insular Government and all branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description "To all whom it may concern;" and that "such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgment or decrees; subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the Court of Land Registration a petition for review within one year after entry of the decree, provided no innocent purchaser for value has acquired an interest."

Section 39 of the same Act provides that "every applicant receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith, shall hold the same free of all incumbrance except those noted on said certificate." etc.

It will be noted from the provisions of section 38, above quoted, that the decree of registration cannot be opened or altered even by reason of the absence, infancy, or other disability of any person affected thereby; and it can only be reviewed or modified upon the petition, filed within one year after the entry of the decree, of any person who has been deprived of land or of any estate or interest therein through fraud.

The lease executed by the owner of the land in question in favor of Arey and Zeeman, which was later transferred to Michael & Co., Inc., was an interest in said land. By the registration of said land free of all liens and incumbrances and without the annotation of said lease, the lessee was virtually deprived of such interest in the land in question as against third parties after one year. Under said section 38 of the Land Registration Act, he

could only petition for a review and modification of the owner's certificate of title within one year after entry of the decree of registration, and that petition must be based upon the allegation that said decree of registration had been obtained by fraud. It is obvious that that petition must be presented to the court, which alone had the authority to alter or modify its decree.

Yet, in the present case the defendant provincial fiscal as ex-officio register of deeds, without any order or authorization from the court, and after more than one year had elapsed since the entry of the decree of registration, and without any allegation of fraud, virtually altered that decree by making a memorandum of the lease in question on the certificate of title, which lease existed long before the registration proceeding was instituted.

If, under the Land Registration Act, an owner of land, as against third parties, and after the lapse of one year, by failing to appear and claim such ownership during the registration proceeding, thereby loses the same, with equal or greater reason does a lessee, mortgagee, or other person having an interest in said land lose such interest or right, so far as the land is concerned, by not claiming" the same during the registration proceeding and by allowing said land to be registered free of all incumbrances. And if the court is absolutely prohibited by law from altering its decree after the lapse of one year, how can it be pretended that the register of deeds can alter that decree at any time and on his own authority? It cannot be denied that, to annotate on a certificate of title an incumbrance which existed long before the issuance of such title, is to alter or modify the decree of registration which was made free of such incumbrance.

The defendant register of deeds having committed an illegal act, an action lies against him for the annulment of such act, and the writ of mandamus will issue to compel him to undo what he had illegally done.

We are of the opinion, therefore, that plaintiff's amended complaint states facts sufficient to constitute a cause of action, and defendants' demurrer thereto should be and is hereby overruled. Ten days after promulgation of this decision let final judgment be entered in accordance herewith, and five days thereafter let the record be remanded to the court below, with instructions to require the defendants to answer the plaintiff's amended complaint in due time. No finding as to costs in this instance. So ordered.

Araullo, C. J., Street, Malcolm, Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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