

**ATKINS, KROLL & COMPANY, INC., PLAINTIFF AND APPELLANT,
VS. SANTIAGO DOMINGO, DEFENDANT AND APPELLEE.***G.R. No. 21921. October 04, 1924*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Zamboanga by Atkins, Kroll & Company, Inc., against Santiago Domingo, for the purpose of enforcing recognition of its alleged right of ownership over lot No. thirty-eight (38) of the cadastral plan of the Zamboanga townsite, expediente No. 7880, and to recover possession of the same from the defendant, and at the same time to secure a partition of lots Nos. 36 and 55 in the same plan, according to the proportional interests pertaining to the plaintiff and defendant as joint owners thereof. Upon hearing the cause the trial court entered a judgment recognizing the rights of the plaintiff as tenant in common with the defendant in respect to the land in all of said lots to the full extent claimed by the plaintiff and made an appropriate order for a division thereof, but the court at the same time held that the buildings on lots Nos. 36 and 38 are of the exclusive ownership of the defendant, Santiago Domingo, and that before the plaintiff can obtain possession of said buildings the defendant is entitled to be reimbursed for their value, which the court fixed at ₱18,000, in accordance with article 361 of the Civil Code. At the same time the court denied the right of the plaintiff to recover any part of the rents received by the defendant for said houses, though it recognized the obligation of the defendant to reimburse the plaintiff for the defendant's share of the taxes paid by the plaintiff on all of the properties. From this judgment the plaintiff appealed, and under its assignments of error so much of the decision is called in question as relates to the title to the buildings on lots Nos. 36 and 38 and to the right of the plaintiff to an accounting for rents which have been collected exclusively by the defendant on all of the lots.

The appeal is concerned principally with the question of the title to the improvements on lots Nos. 36 and 38, as distinguished from the title to the land, and the manner in which this question arises can be most readily exhibited in brief history of the registered title.

On June 24, 1912, the Court of Land Registration, sitting in the Province of Zamboanga, adjudicated the three lots already mentioned, Nos. 36, 38, and 55, to Buenaventura Domingo. No mention was made in the decision of the improvements on said lots, but when the corresponding decrees of registration were issued on October 4, thereafter, the words "with all the improvements existing thereon" were inserted, as is the common practice in cases where the improvements have not been expressly declared by the court to belong to some other person than the owner of the land. The same phrase appeared in the respective certificates of title covering the lots, with the result that according to the Torrens certificates Buenaventura Domingo was the owner not only of each of said lots but also of the improvements existing thereon.

Buenaventura Domingo died intestate on October 21, 1912, leaving a widow and a number of children and grandchildren as heirs. One of his sons, namely, Santiago Domingo, the defendant in this case, qualified on October 29, 1914, as administrator of his estate. Another son, named Leon Domingo, died on August 21, 1913, and Santiago Domingo likewise qualified as administrator of Leon's estate. In the course of the administration of

the estate of Buenaventura Domingo, the defendant, as his administrator, submitted a project of partition to the court, in which lots Nos. 36, 38, and 55 are mentioned as properties pertaining to the decedent. In this project no mention was made of improvements on any of said lots with the exception of a small house of strong materials on lot No. 38, the title to which is not in question and may be dismissed from consideration. On August 8, 1918, the court duly approved the project of partition. No objection to this action appears to have been made by any person interested in the estate.

The share of Santiago Domingo in his father's estate, so far as affects lots Nos. 36 and 55, has remained undisturbed and said interest is still vested in him. It is different with lot No. 38, for on February 17, 1922, the said Santiago Domingo sold his entire interest in lot No. 38, "with all the improvements existing thereon," by contract of sale with pacto de retro to one Ong Kong. The interest thus sold was subject to repurchase within the period of one year, but redemption was never effected; and on February 17, 1923, the property was duly consolidated in Ong Kong. On February 19, 1923, Ong Kong sold his entire interest in the lot and improvements' thereon to the present plaintiff, Atkins, Kroll & Co.

The shares pertaining to the other heirs in lots Nos. 36, 38, and 55 suffered a number of mutations as to ownership; but in the end, through various transactions, the authenticity, legality, and good faith of which are not questioned either in the pleadings or in the proof, all of said interests came to rest in the plaintiff, Atkins, Kroll & Co. Each step in all of these mutations of title was accompanied by the corresponding proper changes in the Torrens certificates of title until the changes culminated in certificates of title Nos. 3433, 3843, 3435, showing the present ownership of the lots and improvements. From these certificates it appears that the plaintiff, Atkins, Kroll & Co. is the owner of three-fourths of lot No. 36, with the improvements thereon; of the whole of lot No. 38, with the improvements thereon; and of three-fourths of lot No. 55, excluding the improvements.

It appears that the defendant, Santiago Domingo, is now in possession of said property and has at all times been in possession since the plaintiff acquired its interest therein, and he has during the same period exclusively enjoyed the use of all the lots, with the income derived from the buildings thereon. This circumstance, coupled with his refusal to admit the plaintiff's claim as coowner, resulted, as already stated, in the institution of the present action by the plaintiff, for the purpose of recovering possession of lot No. 38 and to secure a partition of lots Nos. 36 and 55, with an accounting for the plaintiff's proper proportion of the profits. This brings us to consider the origin and nature of the defendant's claim to the exclusive ownership of the buildings on lots Nos. 36 and 38.

In this connection it appears that the buildings referred to were erected in the latter months of the year 1912 and first half of 1913, and the defendant asserts that they were built by him with his own money and with the consent of his father. Upon this circumstance in connection with article 361 and related provisions' of the Civil Code, the defendant bases his claim to the exclusive ownership of said buildings.

We note that this claim was first put forth by the defendant in what he called an explanatory report submitted to the court in the administration of the estate of Buenaventura Domingo on February 1, 1919. In that writing the defendant asked that the buildings on lots Nos. 36 and 38 be segregated from the mass of the property left by his father and that he himself be declared to be the exclusive owner of the buildings. This move was opposed by Zoila Domingo, a daughter and sole heir of Leon Domingo. In the end the court, upon July 19, 1922, entered a resolution ignoring the defendant's claim and ordering that the project of partition be carried into effect. If it be true, as the defendant claims, that the houses referred to were built with his money, it must strike one as remarkably strange that he should have waited for nearly seven years, or until February 1, 1919, before formulating his claim or taking any step whatever to protect his title to said buildings.

But assuming, as we may, that the buildings in question were in fact constructed by the defendant with his own

money, and with the consent of his father as owner of the land, it is clear that the defendant's right to the buildings in controversy has been lost, except in so far as he is owner of an undivided one-fourth interest by inheritance; and the interests of the two parties to this litigation in the properties in question must be taken to be exactly as they are stated in the existing certificates of title. This results from the fact that the plaintiff is a purchaser for value who has acquired the interests shown on the existing Torrens certificates upon the faith of the registered title, and the defendant is in no position to arrest the effect of these documents.

But it is insisted that the plaintiff has been affected with the notice of the defendant's right by the filing of a *lis pendens*. This requires a few words of explanation. Going back to August 18, 1920, we find that on said date the defendant filed with the register of deeds a notice of its *pendens*, setting forth his claim of ownership as to the improvements in question, and referring to the controversy planted in his explanatory report in the administration proceedings. Notice of said *Its pendens* was noted on the back of the corresponding certificates of title. Upon the date stated the plaintiff had already acquired a mortgage upon the interest of Zoila Domingo in the estate of her grandfather, Buenaventura Domingo; and by the foreclosure of that mortgage all of her interest in lots Nos. 36 and 38 became vested in the plaintiff as purchaser. The remaining interests acquired by the plaintiff in the same properties appear to have been acquired by it after the notice of *Us pendens* was filed.

As will be seen, the filing of the *Its pendens* was intended to affect third persons with notice of the claim which the defendant had asserted in his explanatory report in the proceedings over the estate of Buenaventura Domingo. But it will be remembered that the efforts of the defendant to get his claim recognized in those proceedings completely failed of effect. For this reason the *Us pendens* must be considered to have lost its efficacy. The effect of notice by *lis pendens* is, of course, to charge the stranger with notice of the particular litigation referred to in the notice, and, if the notice is effective, the stranger who acquires the property affected by the *lis pendens* takes subject to the eventuality of the litigation. But when the adverse right fails in such litigation, the *lis pendens* becomes innocuous.

It should be noted that the defendant, supposing his claim to have been made in good faith, might have protected it, at any time before the property had passed into the hands of a third person, by a proceeding under section 112 of Act No. 496. Said section declares that any person may at any time apply by petition to the court, where "new interests have arisen or been created which do not appear upon the certificate," and procure such interests to be noted. Such a petition must be filed and entitled in the original case in which the decree of registration was entered. (Sec. 112, par. 2, Act No. 496.)

In *Bias vs. De la Cruz and Melendres* (37 Phil., 1), this court held that the registration of land in the name of a particular person vests in him not only the title to the land but also the title to the improvements thereon, unless special reservation is noted with respect to the improvements. In that case the improvements which became the subject of controversy had been placed on the land before it was registered and the decree of registration was *res judicata* as to the improvements. In the case before us the buildings which are the subject of controversy were placed on the land after the decree of registration. This circumstance made a proceeding under section 112 of Act No. 496 all the more necessary in order to protect the new interest thus created. So far as registered land is concerned, the right recognized in article 361 and related provisions of the Civil Code is subject to the contingency that it shall be noted in the registered title before the property passes into the hand of a purchaser for value.

The considerations so far adduced apply alike to the improvements on lots Nos. 36 and 38, but there is another circumstance which is fatal to the defendant's claim to any of the improvements on lot No. 38. This is found in the fact that he sold his interest in said lot, including the improvements, to Ong Kong, the plaintiff's predecessor in interest. It is evident that the defendant is estopped by his own deed from claiming any interest in the buildings an

this lot, whatever might have been the law governing his claim to the buildings on the other lot.

From what has been said it is evident that the trial court was in error in declaring the defendant to be the owner of the buildings on lots Nos. 36 and 38 and in failing to require the defendant to account; and in order to clarify the situation we declare: (1) That the ownership of the lots Nos. 36, 38, and 55, is as stated in the Torrens certificates of title Nos. 3433, 3843, and 3435 (Exhibits A, B, and C of the plaintiff); (2) that the plaintiff is entitled to possession of lot No. 38 and that partition must be made of lots Nos. 36 and 55 in the manner provided by law; (3) the plaintiff is further entitled to recover of the defendant such portion of the taxes on said properties as corresponds to the interest of the defendant and which shall have been paid by the plaintiff; (4) the plaintiff shall also recover of the defendant such portion of the rents of said properties as correspond to the interests of the plaintiff since its acquisition of the same.

The judgment will be reversed and the cause remanded for further proceedings in conformity with this opinion, without express pronouncement as to costs. So ordered.

Johnson, Malcolm, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.

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