

MARIANO CUI, AS ADMINISTRATOR OF THE ESTATE OF ROSARIO CRUZ HERRERA, AND PEDRO JOVEN, AS ADMINISTRATOR OF THE ESTATE OF ARSENIO CRUZ HERRERA, PETITIONERS AND APPELLEES, VS. ANAT...*G.R. No. 28417. February 25, 1928*

Ponente: JOHNSON, J.

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This is an appeal from an order of the Court of First Instance of the Province of Pampanga, dated June 13, 1927, setting aside its decision in a land registration case (expediente No. 716), and the decree issued pursuant thereto. By said order the court directed the reopening of the case under section 38 of the Land Registration Act (No. 496). In said decision and decree a big tract of land situated in the municipality of Arayat, Province of Pampanga, was ordered registered in the name of the respondents Henson. The decision and decree were set aside upon motion of the above-named petitioners.

The record shows that on January 8, 1926, the respondents Henson filed an application in the Court of First Instance of the Province of Pampanga for the registration of a tract of land composed of nine lots, known as lots 1, 2, 3, 4, 5, 6, 7, 7-A and 8, with an aggregate area of 186 hectares, 48 ares and 65 centares, more particularly described in the plan and technical description attached to said application (Exhibits A and B). Various oppositions were presented, all of which were withdrawn except the opposition as to lot 7-A. After hearing the application as to lots 1 to 8, and after a consideration of the evidence adduced by the applicants, the Honorable M. Rosauro, judge, on June 17, 1926, rendered a judgment, ordering the registration of said lots 1, 2, 3, 4, 5, 6, 7 and 8 in the name of the applicants Anatolio Henson and his brothers, as community property "pro indiviso y en partes iguales, sujetos los lotes 1 y 7 a una hipoteca por la suma de P10,000 a favor de Raymunda Soriano pagadera tan pronto se expida el título correspondiente a dichos lotes."

On July 19, 1926, the applicants filed a motion, praying that an order for the issuance of the corresponding decree of registration be made, and that lots 6 and 7-A be excluded from the registration ("entendiendose excluidos los lotes 6 y 7-A"). On July 29, 1926 the decree was issued, ordering the registration of lots 1, 2, 3, 4, 5, 7 and 8, with an aggregate area of 182 hectares, 5 ares and 83 centares, in the name of the applicants, subject to the encumbrances mentioned in section 39 of the Land Registration Act as may be subsisting, and to the condition that "sujetos los lotes 1 y 7 a una hipoteca por la suma de P10,000 a favor de Raymunda Soriano pagadera tan pronto se expida el título correspondiente a dichos lotes." On the same date (July 29, 1926) original certificate of title No. 14507 (Exhibit 1-X Aragon) covering said lots was issued in the name of the applicants, subject to the mortgage lien as above indicated.

On August 18 and 19, 1926, the applicants Anatolio Henson and his brothers sold the land covered by the said certificate of title No. 14507 to Isidoro Aragon for P25,000, with the right to repurchase the same within five years (Exhibit 3-X Aragon). On August 19, 1926, the mortgage lien on the land was cancelled and proper notation

was entered on the back of the certificate of title.

On October 21, 1926, that is, two months and twenty-one days after the issuance of the decree of registration, and two months and one day after the land had been sold to Isidoro Aragon, the above-named petitioners filed a motion for the annulment of the decree and a reopening of the case on the ground of fraud. In their motion, the petitioners alleged that the applicants had willfully and fraudulently misrepresented to the court that there were no other claimants to the land covered by their application. The applicants, as respondents, filed their opposition to the motion, praying that the same be denied.

The motion was heard, and after a consideration of the evidence adduced by petitioners and respondents, the Honorable A. M. Recto, auxiliary judge, arrived at the conclusion that the respondents, as applicants, had secured the registration of the land through fraudulent misrepresentations and that the purchaser Isidoro Aragon had bought the same, knowing that it was under litigation, and set aside the decision and decree theretofore issued, and ordered the reopening of the case in order to give the petitioners an opportunity to file their opposition to the registration of said land. From that order the respondents appealed, as stated in the opening paragraph of this decision.

It is now contended by the appellants that the lower court erred:

- (1) In holding that the respondents made fraudulent misrepresentations in their application for registration;
- (2) In holding that said misrepresentations constituted sufficient ground for the annulment of the decision and decide, and for the reopening of the case; and
- (3) In holding that Isidoro Aragon, who bought the land for P25,000, was a purchaser in bad faith.

With reference to the first assignment of error, the record shows that the application for registration filed by the appellants contained the following:

"2. That the applicants, according to the best of their knowledge and belief, do not know of any mortgage or incumbrance affecting the said lands, nor of any other person who might have interest and participation thereto";

The evidence adduced during the hearing of said motion shows that when the appellants filed their petition for registration there was an action pending between Maria Abriol Santos as defendant, and Mariano Cui, as plaintiff (civil case No. 3183 of the Court of First Instance of Pampanga). In said action Mariano Cui, as administrator of the estate of Rosario Cruz Herrera, was trying to recover a portion of the land sought to be registered. The complaint was filed in said action on May 7, 1925, while the petition for the registration of said land was filed by the appellants on January 8, 1926. The action of Pedro Joven as administrator of the estate of Arsenio Cruz Herrera vs. Maria Abriol Santos (civil case No. 3388 of the Court of First Instance of Pampanga) was not commenced until the 4th day of May, 1926, or about four months after the filing of the application for the registration of the land in question.

The contention of the appellees is, that said allegation in the complaint is false, simply because the petitioners and now appellants must have had knowledge of the existence of said actions. The appellants may or may not have had knowledge of the existence of said actions. The appellees contend that they had, and furnished some proof in support of their contention. The record shows, however, that all of the prerequisites of the law as to notice, etc., had been complied with by the petitioners, that a public hearing was had on said petition and that the appellees did not even appear nor present the slightest objection to the granting of the prayer of the petition. They cannot claim ignorance of the pendency of the action for the registration of the land in question. They made no effort to disprove the said allegations of the petition. No objection of any character whatever was presented by the

appellees to the granting of the prayer of the petition for registration until nearly three months after the decree of registration had become final, and not even then, until nearly two months after the land in question had been sold to Isidoro Aragon, an alleged innocent purchaser. Even granting that said allegation in the complaint was false, the appellees were given a free and full opportunity to appear and demonstrate that fact to the court—an opportunity which they did not take advantage of. He who will not speak when he ought to speak, under the law will not be permitted to speak when he will. The law serves those who are vigilant and diligent and not those who sleep when the law requires them to act. In nearly every action commenced in the courts the defendant denies the allegations of the complaint. His denial, however, is not sufficient to show that they are false or fraudulent. It is a fact which he must establish.

Niblack, in his *Analysis of the Torrens System* (sec. 138, p. 219), speaking of fraud in original registration, said:

"A mere misdescription of the property or a mistake as to facts, contained in an application to bring land under a foreign act is not sufficient to invalidate a certificate of title issued on the application by the registrar, but if it is evident from all the circumstances that the applicant had knowledge of the facts in the case and willfully misstated them, the certificate may be set aside for fraud. If a certificate was obtained by fraud and false representation, it may be set aside * * *." That doctrine, however, presupposes that the application to have the registration set aside was made within a year or before the land has fallen into the hands of an innocent purchaser. In the present case while the application to set aside the registration was made within a year, yet it was not made until after the land had been sold to an alleged innocent purchaser. If the said allegations in the complaint were in fact false and fraudulent, as perhaps they were, it was the legal obligation of the appellees to appear at the time and place fixed for the hearing of the cause and to demonstrate that fact to the court. Their failure to do so was their own fault. That defense should have been brought to the attention of the court at that time. After the land had passed to the hands of an innocent purchaser it was too late.

What has just been said sufficiently answers the second assignment of error.

The appellants contend in their third assignment of error that the lower court erred in finding that Isidoro Aragon was not a purchaser in good faith. This finding is not supported by the proof. There is no evidence in the record, showing that when Isidoro Aragon bought the land on August 18 and 19, 1926, he knew or had the slightest notice that the same was under litigation or that third parties had a claim to said land. He testified positively, without having been contradicted, that he did not know anything about the claims of the estates of Rosario Cruz Herrera and Arsenio Cruz Herrera, until after he had bought the land, and only then, when the register of deeds demanded of him the certificate of title for notation thereon of "lis pendens" or the litigation between his vendors and the estates, on August 21, 1926.

As above stated, the deed of sale of said land was executed on August 18 and 19, 1926 (Exhibit 3-X Aragon). The fact that the balance of the price of said land, amounting to P10,000 was paid on August 21, 1926, after Isidoro Aragon had been advised by counsel for the estates not to pay that amount because of the claim of the estates, does not prove that he bought the land in bad faith. As a matter of fact, the sale was consummated on the dates of the execution of the deed of sale, August 18 and 19, 1926, that is prior to his knowledge of the claims of the estates. He paid P15,000 at the time of the execution of the deed and the balance of P10,000 on August 21st. In other words, he had knowledge of the claim of the estates after he had purchased the land, after he had taken possession of the same, and after the ownership had been conveyed to him. He is therefore a purchaser in good faith.

A purchaser in good faith is one who buys property of another, without notice that some other person has a right to, or interest in, such property and pays a full and fair price for the same, at the time of such purchase, or before

he has notice of the claim or interest of some other person in the property. Good faith consists in an honest intention to abstain from taking any unconscientious advantage of another. Good faith is an opposite of fraud and of bad faith, and its non existence must be established by competent proof.

Article 1462 of the Civil Code provides:

"The thing sold shall be deemed delivered when the vendee is placed in the control and possession thereof.

"If the sale should be made by means of a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the subject matter of the contract unless the contrary appears or may be clearly inferred from such instrument."

In accordance with all of the foregoing, we are of the opinion (1) that perhaps the appellants secured the registration of the land through fraud; (2) that Isidoro Aragon bought the same in good faith and was an innocent purchaser for value; and (3) that, under the provisions of section 38 of the Land Registration Act, the lower court committed an error in setting aside its decision and decree and in ordering the reopening of the case.

Therefore the order appealed from should be and is hereby reversed, and the decision and decree heretofore rendered are hereby revived, reserving to the appellees the right to pursue their remedy by appropriate action against the appellants. (Manotoc vs. Choco, 30 Phil., 628; Roman Catholic Bishop of Nueva Caceres vs. Municipality of Tabaco, 46 Phil., 271; Estrellado and Alcantara vs. Martinez, 48 Phil., 256; Niblack on Torrens System, pp. 235, 236, 312.) And without any finding as to costs, it is so ordered.

Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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