

PEDRO MAGUYON, PLAINTIFF AND APPELLEE, VS, MARCELINO AGRA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 2897. November 23, 1906

Ponente: MAPA, J.

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MAPA, J.:

This is an action for the recovery of a certain tract of land. The court below entered judgment in favor of the plaintiff, to which judgment the defendant, Mariano Aguilan, only, excepted. A motion for a new trial was made on the ground that the finding of facts contained in the judgment of the court below was plainly and manifestly against the weight of the evidence. The court below made the following findings:

"(1) That some time ago there were mortgaged to Agustin Villanueva a certain tract of land belonging to Pedro Maguyon (the plaintiff) and another tract belonging to the mother-in-law of Marcelino Agra. Agustin Villanueva in turn mortgaged the land to one Ocampo. This mortgage was later transferred to one of Ocampo's heirs, named Alad.

"(2) That some time afterwards Marcelino Agra went to Agustin Villanueva and told him that he wished to redeem his mother-in-law's land. Agustin Villanueva and Marcelino Agra then went to Alad and there redeemed the mortgage. As the mortgage of the land of Pedro Maguyon and that of the mother-in-law of Marcelino Agra, executed by Agustin Villanueva to Ocampo, was in one single instrument, when the mortgage in favor of Alad was redeemed, Agustin Villanueva told Marcelino Agra to separate the land of Pedro Maguyon from that of his mother. Marcelino Agra to include it in the contract of sale executed by them.

"(3) That Marcelino Agra subsequently sold this land of his mother-in-law's to Mariano Aguilan (the appellant.) IJoth went to Agustin Villanueva to get the latter to draw up the document. Agustin Villanueva drew up the instrument and advised the contracting parties to exclude from the contract the land of Pedro Maguyon. Aguilan and Marcelino Agra answered that the land was not included.

"(4) That when Pedro Maguyon attempted to redeem the mortgage of Agustin Villanueva it was discovered that the said land was included in the sale to Mariano Aguilan, whereupon Marcelino Agra and Pedro Maguyon went to the justice court to settle their differences and then agreed to exclude from the sale made by Agra to Aguilan the land of Pedro Maguyon, and as a consequence of this agreement Mariano Aguilan fenced the land, excluding the portion thereof belonging to Pedro Maguyon."

Upon the foregoing facts the court below held that the land in question belonged to the plaintiff, Pedro Maguyon, and Marcelino Agra to include it in the contract of sale executed by them.

The foregoing facts were fully established at the trial by the testimony of three witnesses who testified of their own knowledge that the same were true. It should be noticed that these witnesses had more or less to do with the land in question. One of them, Agustin Villanueva, is the person to whom the plaintiff had mortgaged the land, the other witness was the defendant, Marcelino Agra, through whom the appellant claimed, and the third witness was the justice of the peace before whom the agreement between The plaintiff, the appellant, and Agra was made, excluding from the land purchased by the appellant from the latter the land involved in this action, doubtless

because it was then admitted to be the property of the plaintiff. To rebut this testimony the appellant presented three witnesses, two of whom testified as to certain details which, even though they were true, would not necessarily prove that the defendant was the real owner of the land. For instance, the fact that when the appellant took possession of the land purchased from Marcelino Agra, the plaintiff was at a short distance from the litter, and this is one of the most important facts to which those two witnesses testified, proves nothing against plaintiff's contention; first, because the witness who so testified did not know whether the plaintiff saw what the appellant was doing, and second, because the plaintiff had not as yet recovered the physical possession of the land which he had turned over to Agustin Villanueva when he mortgaged the same to the latter and therefore had no right to interfere directly with such possession. The third witness testified, in short, that the land in question had never belonged to the plaintiff.

The court below in weighing the evidence found that the witnesses of the plaintiff were more credible than those of the appellant. This finding of the court not only is not erroneous but, on the contrary, is supported by the evidence in the case. This conclusion of the court below is justified by the preponderance of evidence.

The appellant further introduced in evidence the judgment rendered in his favor in the action formerly brought by him against the plaintiff in this case to recover the possession of the land in question. It may be said, however, that a final judgment rendered in an action to recover possession does not in any way affect the question of title and such judgment is not and can not be admitted as conclusive proof in an action for title such as the present one. Section 51 of the Code of Civil Procedure contains an express provision to this effect. The facts found by the court below in regard to the possession of the land only can not be successfully invoked to overcome the evidence introduced in this case by the plaintiff, not as to the right of possession but as to the ownership of the land. The appellant himself contends that the conclusion of the court below to the effect that it was never the intention of Mariano Aguilan and Marcelino Agra to include the said land in the contract of sale made by them, is contrary to the stipulation of facts entered into by the parties to this action. One of the facts agreed to by the parties is, that the land in question is included in the contract of sale made between Agra and Aguilan. There seems to be no dispute upon this point. The stipulation refers to the material fact resulting from the sale, whereas the court below referred to the real intention of the parties when they made the contract. By reason of some mistake as to the boundaries of the land the property in question was as a matter of fact included in the land sold by Agra to Aguilan, but it clearly appears from the testimony of Agra and Agustin Villanueva that it was not the intention of the contracting parties to include the same in the said sale.

We accordingly affirm the judgment appealed from, with the costs of this instance against the appellant. After the expiration of twenty days let judgment be entered in accordance herewith and let the record be remanded in due time to the Court of First Instance for execution. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Willard, and Tracey, JJ., concur.

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