

PO SUN TUN, PLAINTIFF AND APPELLANT, VS. W. S. PRICE AND THE PROVINCIAL GOVERNMENT OF LEYTE, DEFENDANTS AND APPELLEES.

G.R. No. 31346. December 28, 1929

Ponente: MALCOLM, J.

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MALCOLM, J.:

The undisputed facts in this case are the following:

On November 29, 1921, Gabino Barreto P. Po Ejap was the owner of a certain parcel of land situated in the municipality of Tacloban, Province of Leyte. On the date mentioned, he sold the land to Po Tecsi for the sum of P8,000. On June 21, 1923, Po mortgaged the land to W. S. Price in the amount of P17,000. The mortgage was duly noted in the office of the register of deeds of Leyte on August 18th of the same year. On December 17, 1924, Po executed a deed of sale of the land to Price in consideration of P17,000. This sale was recorded with the register of deeds on January 22, 1925. Price in turn, with the consent of his wife, sold the land on February 16, 1927, to the Province of Leyte for P20,570.

In connection with the above facts, it should further be stated that when the Tacloban Cadastral Case was before the courts in 1918, this land was claimed by Gabino Barreto P. Po Ejap acting through his agent, Po Tecsi, but subsequently on motion the names of Mr. and Mrs. Price were substituted as claimants. On March 17, 1927, the original certificate of title was issued in the name of the spouses Price. Later, the proper transfer certificate of title was provided for the Province of Leyte.

Returning again to the original date of November 29, 1921, on that date Po Tecsi gave a general power of attorney including the right to sell to Gabino Barreto P. Po Ejap. Acting under this power, Gabino sold the land on November 22, 1923, for P8,000 to Jose H. Katigbak. On this document there appears on the upper right-hand margin the following: "Register of Deeds, Received, Dec. 15, 1923, Province of Leyte." In turn Jose H. Katigbak transferred the property to Po Sun Tun on October 12, 1927, for P8,000.

Further explaining the relationship of the parties, it should be taken into consideration that Gabino Barreto P. Po Ejap and Po Tecsi, between whom was the original transaction and between whom was the provision made for the power of attorney, are brothers. Gabino Barreto P. Po Ejap and Po Sun Tun, the first the original vendor, and the latter the person to whom the property eventually returned pursuant to the power of attorney, are father and son." As to the possession of the property, it has been under the control of Price and the Provincial Government of Leyte and has not been under the material control of Po Sun Tun.

Predicated on these facts, Po Sun Tun began an action in the Court of First Instance of Leyte to gain the possession of the property and to secure damages in the amount of P3,600. Judge Causing sitting in first instance decided the case on the pleadings and the evidence, absolving the defendants W. S. Price and the Province of Leyte from the complaint, with costs against the plaintiff. The principal error assigned on appeal by the plaintiff in connection with this judgment is that the trial judge erred in finding that the deed, Exhibit D, in favor of Jose H.

Katigbak had not been registered in the corresponding registry of property.

The provision of law relied upon by the trial judge as authority for his decision was the second paragraph of article 1473 of the Civil Code, which provides that if the same thing should have been sold to different vendees, "Si fuere inmueble, la propiedad pertenecera al adquirente que antes la haya inscrito en el Registro," or, as translated by Fisher, "Should it be real property, it shall belong to the purchaser who first recorded it in the Registry of Deeds." Recalling that the deed of Po Tecsí to Price was duly registered on January 22, 1925, and that thereafter a Torrens title was obtained in the name of Price, and that the deed of Gabino Barreto P. Po Ejap to Jose H. Katigbak has noted on it "Register of Deeds, Received, Dec. 15, 1923, Province of Leyte," can it be said that within the meaning of the law this latter deed was ever recorded?

We are clearly of the opinion that it was riot. The law and the authorities are overwhelmingly demonstrative of this statement. The mere presentation to the office of the register of deeds of a document on which acknowledgment of receipt is written is not equivalent to recording or registering the real property. Escribano says that registration, in its juridical aspect, must be understood as the entry made in a book or public registry of deeds. (See Altavas, *Land Registration in the Philippine Islands*, 2d ed., p. 151.) Soler and Castello in their *Diccionario de Legislación Hipotecaria y Notarial*, vol. II, p. 185, state:

"Registration in general, as the law uses the word, means any entry made in the books of the Registry, including both registration in its ordinary and strict sense, and cancellation, annotation, and even the marginal notes. In its strict acceptance, it is the entry made in the Registry which records solemnly and permanently the right of ownership and other real rights."

The American authorities conform in this respect to the Spanish authorities for of the term "To register" it has been said that it means to "enter in a register; to record formally and distinctly; to enroll; to enter in a list" (*Reck vs. Phenix Ins. Co.* [1889], 7 N. Y. Supp., 492; 54 Hun., 637; *Harriman vs. Woburn Electric Light Co.* [1895], 163 Mass., 85). If any doubt remained on the subject, it would be dispelled by turning to Act No. 2837 amendatory of section 194 of the Administrative Code, and recalling that it is therein provided that "No instrument or deed establishing, transmitting, acknowledging, modifying or extinguishing rights with respect to real estate not registered under the provisions of Act Numbered Four hundred and ninety-six, entitled 'The Land Registration' and its amendments, shall be valid, except as between the parties thereto, until such instrument or deed has been registered, in the manner hereinafter prescribed, in the office of the register of deeds for the province or city where the real estate lies." (There follows in the law the requirements regarding the books which it is the duty of the register of deeds to keep and use.)

It results as a matter of course since the deed made by Gabino Barreto P. Po Ejap in favor of Jose H. Katigbak was not only not first recorded in the registry of deeds but never legally so recorded, and since the purchaser who did record his deed was Price, who secured a Torrens title and transferred the same to the Province of Leyte, that Po Sun Tun, the holder of a defeasible title, has no legal rights as against Price and the Province of Leyte, the holders of indefeasible titles. Also, if necessary, it could be ruled that within the meaning of section 38 of the Land Registration Law, Price and the Province of Leyte are innocent purchasers for value of the disputed property.

Finding the judgment appealed from to be correct from all points of view, it will be affirmed, with the costs of this instance against the appellant.

Avanceña, C. J., Johnson, Street, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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