

LUIS LLACER, ADMINISTRATOR OF THE ESTATE OF FAUSTINO LLACER AND MARIA PROLLAMANTE, DECEASED, PLAINTIFF AND APPELLEE, VS. FRANCISCO MUÑOZ DE BUSTILLO AND MARTIN ACHAVAL, DEFENDAN...

G.R. No. 3677. December 23, 1908

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 28th day of July, 1904, the plaintiff presented a complaint in the Court of First Instance of the Province of Albay against the defendants, alleging:

First. That the said Faustino Llacer and Maria Prollamante were the owners of a certain parcel of land described in the complaint, together with the house situated upon the same, and had been in the public and peaceable possession of the same during their lives, and after their death their children had continued in the possession of the same, and that such possession had continued for a period of more than thirty years without interruption.

Second. That the defendant, Francisco Muñoz de Bustillo claimed to be the owner of the said parcel of land, as well as the house situated upon the same.

Third. That the defendant Muñoz, by means of a possessory information had solicited and falsely obtained la inscripcion de posesion (the inscription of possession) of the said parcel of land.

Fourth. That the other defendant, Martin Achaval, was illegally occupying a portion of the land belonging to the plaintiff, which portion is found described in the 6th paragraph of the complaint, and had been in the illegal possession of the same since the first day of June, 1903.

Fifth. That the defendant Martin Achaval had obtained permission from one of the sons of Faustino Llacer and Maria Prollamante to occupy the lands described in paragraph 6 and to erect a camarin upon the same, and had later refused to recognize the rights of the plaintiff, and to pay the rent of P100 per month, claiming that the said land belonged to the other defendant, Francisco Munoz de Bustillo.

On the 19th of February, 1906, the defendant, Martin Achaval, answered the complaint of the plaintiff denying:

- (1) Each and all of the allegations contained in the complaint of the plaintiff ;
- (2) Admitting that he occupied a part of the land in question; and
- (3) That he was occupying the land in good faith under a contract of lease with Don Francisco Muñoz de Bustillo

On the 19th day of February, 1906, the defendant, Francisco Muñoz de Bustillo, answered the complaint alleging:

- (1) That he denied each and all of the allegations of said complaint; and
- (2) That he admitted that he pretended to be the owner of the land in question; and

(3) That he admitted that Faustino Llacer had possessed a part of the land in question before the same had been sold to one Antonio Muñoz de Bustillo; and

(4) That he had acquired the land in question by purchase from Faustino Llacer and Pio Balana.

The defendant, Muñoz, presented a counterclaim against the plaintiff in which he alleged:

(1) That on or about the month of November, 1903, the plaintiff entered into and took possession illegally, with bad faith, of a part of the land in question, with the house situated upon the same, and that said plaintiff had occupied and illegally detained, with bad faith, said parcel of land and deprived the defendant and owner, Francisco Muñoz, of the possession of the same; and

(2) That the defendant, Francisco Muñoz de Bustillo, had suffered damages and prejudices, by reason of the said illegal possession and detention, in the sum of P2,000.

On the 20th day of February, 1906, one Maxima Narito, petitioned the court for permission to intervene in said cause as a party defendant, alleging that she had a direct interest in the land in question, which petition for intervention was allowed by the court. On the same day the defendant, Maxima Narito, filed her answer, alleging:

(1) That she denied each one of the allegations contained in the complaint; and

(2) That the house described in the complaint belonged to her.

The cause duly came on for trial on the 24th of February, 1906.

After hearing the evidence, the lower court, on the 26th of March, 1906, rendered his decision in which he made the following findings of fact:

First. That all of the parties to the suit agreed upon the description and situation of the land in question.

Second. That the parties agreed that the land in question formerly belonged to Faustino Llacer and Pio Balana.

Third. That Faustino Llacer was in the quiet and peaceable possession of a part of the land in question as owner for some time before the year 1877 and until his death, and the other part of the said land from the month of August, 1885, until his death.

Fourth. That neither Faustino Llacer nor Pio Balana had sold the land in question to Antonio Muñoz.

Fifth. That the heirs of Faustino Llacer are now the true owners of the land in question.

Sixth. That the house situated upon the said land had been sold to Maxima Narito by Simona del Valle, and that the same now belongs to the said Maxima Narito.

Seventh. That the value of the said house should be considered in the final partition of the estate of Faustino Llacer and Maria Prollamante.

Basing his judgment upon these facts, the lower court rendered a sentence in favor of the plaintiff and against the defendants, declaring that the plaintiff, as administrator of the estate of the said Faustino Llacer and Maria Prollamante, is the true owner of the land in question and that the said plaintiff should administer said estate as such owner, charging the costs against the defendant, Francisco Muñoz de Bustillo.

To this judgment of the lower court Francisco Muñoz duly excepted and gave notice of his intention to appeal to the Supreme Court.

The defendant, Muñoz, made a motion for a new trial, which was denied. To which ruling of the court he duly

excepted.

The defendants, Martin Achaval and Maxima Narito did not appeal.

The defendant, Francisco Muñoz de Bustillo, duly presented his bill of exceptions in this court and made the following assignments of error:

"1. The court erred in declaring in the judgment that the evidence shows that Faustino Llacer was in the quiet and peaceable possession of a part of the land, in question as owner for some time before the year 1877 and until his death, and the other part of the said land from the month of August, 1885, until his death.

"2. In declaring that neither Faustino Llacer nor Pio Balana had sold the land in question to Antonio Muñoz, not acknowledging thereby the validity and efficiency of the two public instruments, Exhibits 7 and 8 of the defendant, executed by the said Llacer and Balana in favor of the aforesaid Antonio Muñoz on April 20, 1877; this erroneous conclusion being equivalent to a declaration of nullity as to the above-mentioned documents, and the court being without jurisdiction to make such a declaration in this suit.

"3. In declaring that the heirs of Faustino Llacer are the true owners of the land in question.

"4. In declaring that the house sold to Maxima Narito by Simona del Valle now belongs to the said Maxima Narito.

"5. The court erred in admitting as evidence the document, Exhibit I of the plaintiff, introduced at the trial, notwithstanding the objection made by the defendant. (Folios 12, 13, and 14 of the record.)

"6. In admitting as evidence the document, Exhibit J of the plaintiff, notwithstanding the objection made by the defendant. (Folios 14 and 15 of the record.)

"7. In admitting as evidence the document, Exhibit K of the plaintiff, notwithstanding the objection made by the defendant. (Folio 16 of the record.)

"8. In admitting as evidence the document, Exhibit M of the plaintiff, notwithstanding the objection made by the defendant. (Folio 17 of the record.)

"9. In admitting as evidence the two instruments introduced by the plaintiff, marked Exhibits E and F, notwithstanding the objection of the defendant. (Folios 8, 9, 19, and 20 of the record.)

"10. In admitting as evidence in this case a footnote put on the last page of Exhibit B of the plaintiff, notwithstanding the objection made by the defendant. (Folio 59 of the record.)

"11. In permitting the witness, Rufino Nieves, to answer to the following incompetent question of the plaintiff: Q, "In your judgment, what does your question mean—Where were Roman Santos and the pharmacist—Explain fully to the court," notwithstanding the objection against such a question made by the defendant. (Folio 74 of the record.)

"12. The court, finally, erred in entering judgment against the defendants and in favor of the plaintiff, holding that the latter, as administrator of the intestate estate of his father, Faustino Llacer, is the true owner of the land in question; and that the said plaintiff, as owner, shall take charge and administer the aforesaid property. And also erred in sentencing the defendant, Francisco Muñoz, to pay all the costs of the suit."

During the trial of the cause in the lower court the plaintiff attempted to show that his father and mother had acquired the parcel of land in question by purchase, and presented documents for the purpose of sustaining his claim. The documents which were introduced to sustain this claim of the plaintiff were Exhibits B, C, D, F, and G. Each of these documents was a deed to different parts of land which make up the total of the land in question. There was some question during the trial with reference to the admissibility of a note found at the foot of Exhibit

6, by which Pio Balana attempted to transfer to the father of the plaintiff a portion of the land in question. We deem it unnecessary to discuss the admissibility of this note in evidence, because by virtue of the view which we take of the case, its admissibility or rejection is a matter of no importance.

The defendant Muñoz during the trial of the case presented Exhibits 7 and 8, which were deeds executed by the said Faustino Llacer and Pio Balana, respectively, to all of the land in question, to Antonio Muñoz, upon the 20th day of April, 1877, and that Francisco Muñoz e hijos were the successors in interest of the said Antonio Muñoz and Francisco Muñoz de Bustillo respectively. The deeds represented by Exhibits 7 and 8 were apparently duly executed before a notary public and were duly registered in the registry of lands. The plaintiff does not attempt to show that they were not so duly executed, delivered, and recorded. He does attempt to show, however, that said deeds were executed and delivered to Antonio Muñoz for the purpose of defrauding the then Government.

The plaintiff attempts to prove, without alleging the fact, that his father, Faustino Llacer, and Pio Balana were cabezas de barangay, and as such cabezas were under obligation to pay to the Government certain taxes or assessments, and that the deeds marked Exhibits 7 and 8, by which they each conveyed to Antonio Muñoz not only the property in question but many other parcels of land, together with certain personal property, were made for the purpose of defeating the collection of such assessments. The statements of the plaintiff upon this point are supported by the testimony of Rufino Nieves. The evident intention of the plaintiff by this testimony was to set at naught or to nullify the said deeds represented by Exhibits 7 and 8. This was an action to recover the possession of land by the plaintiff upon the theory that he was the owner. Had the plaintiff desired to set aside the contracts of conveyance made by his father, he should have instituted a special action for that purpose, (Arts. 1300 to 1314, Civil Code.) He can not have said documents annulled in a subsidiary action. Moreover the very evidence which he introduced for the purpose of nullifying the said documents, would serve to defeat the nullification of said documents in an action brought for that specific purpose. (Arts. 1305, and 1306, Civil Code.) One who desires to recover lands as the owner from another upon the theory that the deeds held by the other are null and void, must first ask that such alleged fraudulent deeds be set aside.

The plaintiff in his brief undertakes to show that the defendant had not obtained title to the land in question, by virtue of Exhibits 7 and 8, by the fact that his father had not obtained title to a portion of the said land until 1881, or some years after the alleged deed to Antonio Muñoz. Exhibit F and the note to Exhibit B seem to support this contention. Granting, however, that he did not obtain a portion of the land until some years after he had sold such land to Antonio Muñoz, his subsequent acquisition of the land would have the effect of making his conveyance of the same to Muñoz valid.

A portion of the land in question which the defendant claims he acquired from Pio Balana in 1877, was by the note to Exhibit B transferred to the father of the plaintiff in 1885. Exhibit 8 is a deed executed and delivered in regular form on the 20th day of April, 1877, by Pio Balana to a portion of the land in question to Antonio Muñoz. This deed apparently conveys all of the interest which Pio Balana had in such tract of land. By the note found at the foot of "Exhibit B," Pio Balana attempts again to transfer the said land to Faustino Llacer. The note does not seem to have been executed before a notary public, neither was it registered, and even though it had been executed in due form, it could by no means transfer to Faustino Llacer any interest in said land for the reason that Pio Balana had transferred all of his interest in said land to Antonio Muñoz, by the deed in 1877 (Exhibit 8), duly executed and delivered.

No question was raised with reference to the claim that the land which Antonio Muñoz originally acquired in the manner above indicated, and which subsequently became the property of Francisco Muñoz de Bustillo, now belongs to Francisco Muñoz e hijos.

From all the evidence adduced during the trial of the cause relating to the ownership of the land, we are convinced that there is a preponderance of evidence showing that the defendant or Francisco Muñoz 6 hijos, are now the owners of the land in question.

With reference to the house claimed by Maxima Narito situated upon said land, the lower court found that said house belonged to the said Maxima Narito. An examination of the evidence adduced during the trial of the cause seems to justify this conclusion of the lower court. The judgment of the lower court therefore with reference to the ownership of the house located upon said land is hereby affirmed.

The judgment of the lower court by which the plaintiff, Luis Llacer, is declared to be the owner of the land in question, is hereby reversed. After the expiration of the time specified by the rules of this court, let judgment be entered in favor of the defendant Francisco Muñoz 6 hijos, declaring them to be the owners of the land in question. So ordered.

Arellano, C, J., Torres and Mapa, JJ., concur.

Willard and Tracey, JJ.,

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