

LAURENTE BALDOVINO, PLAINTIFF AND APPELLANT, VS. PEDRO AMENOS ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 3772. January 10, 1908*

Ponente: WILLARD, J.

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The plaintiff, as administrator of the estate of Agustin Lukban de San Miguel, deceased, brought this action in the Court of First instance of Ambos Camarines against Vicente Lukban and Pedro Amenos to recover the possession of a tract of land in that province of 80 hectares in extent, known as the estate of Pangpang. The claim of the plaintiff was that the property belonged to the heirs of the deceased, who died in 1881. Among these heirs is Vicente Lukban. Judgment was rendered in favor of the defendant Amenos, and the plaintiff has appealed.

The following facts were established by the evidence: In 1894 Vicente Lukban took proceedings before a justice of the peace for the purpose of obtaining a possessory information upon the tract of land in question and 34 other parcels of land in the same province. The decision of the judge approving the possessory information was made on the 21st day of August, 1894, and the documents were recorded in the office of the registry of property on the 7th of September, 1894. In these proceedings Vicente Lukban, claiming to be the owner of the property, stated that he had been in possession thereof since 1881, and that he had acquired the same by inheritance from his father, Agustin Lukban de San Miguel. In 1885 Vicente Lukban was in the possession of the estate of Pangpang here in question. In proceedings against him and others in the Court of First Instance of the province, this-estate had been attached as his property, and final judgment having been entered in that proceeding against him, it was, on the 22d of April, 1896, duly sold to Ildefonso Moreno for the amount, at which it had been appraised in the proceedings aforesaid. The judge of the Court of First Instance, in the name of Vicente Lukban, executed and delivered to Ildefonso Moreno a deed of the property on the 24th of December, 1896, and this deed was recorded in the office of the registry of property on the 2d day of January, 1897. On the 4th day of January, 1897, Ildefonso Moreno sold the estate of Pangpang thus acquired by him to the defendant Pedro Amenos. This deed was recorded in the registry of property on the 21st day of January, 1897.

If no other facts appeared in the case, we do not doubt that those thus stated are sufficient to show that the defendant Amenos is the owner of the property. He acquired title thereto through Vicente Lukban. The latter, at the time of the judicial sale of the property, was in possession thereof, and had been in possession for some time. Such possession made him prima facie the owner thereof. This presumption of ownership was strengthened by the possessory information and the record thereof above referred to. (*Rivera vs. De Guzman*, 1 Phil. Rep., 289.)

We quite agree with the appellant in his argument relating to the effect of a possessory information and that, as a general rule, a purchaser who buys from one whose only recorded title is such a possessory information is not entitled to the benefits of article 34 of the Mortgage Law. Such has been the ruling of this court in the case of *Trinidad vs. Ricafort* (7 Phil. Rep., 449). It is to be noted, however, that in this particular case the possessory information was obtained in August, 1894, after the publication in the *Gaceta de Manila* on the 17th day of April, 1894, of the royal decree of the 13th of February, 1894, relating to public lands. Whether the doctrine of *Trinidad*

vs. Ricafort should apply to a possessory information obtained strictly in accordance with the terms of such royal decree and which fully complied with the provisions thereof, we do not think it necessary to determine here, for, even considering this information as if it had been obtained outside of the time given by that decree, we still think that the plaintiff can not recover.

As we have said, the facts hereinbefore related showed prima facie ownership, on the part of Vicente Lukban, of Pangpang, at the time of the judicial sale. In a contract made between him and the defendant Amenos on the 7th day of April, 1896, he stated that he was the sole owner thereof. He then delivered the possession thereof to the defendant Amenos.

It is necessary now to consider what evidence the plaintiff offered to overcome the prima facie case thus made against him.

He presented a copy of the will of Agustin Lukban de San Miguel. The property here in question is not described in terms in that will. This will was duly presented in 1881, after the death of the testator, to the judge of the Court of First Instance of the province, who made an order declaring that it was executed in accordance with the law and ordering it to be entered in the protocol of the proper notary public. What steps were taken by the executors appointed by this will to settle the estate and to divide the property does not appear, nor does it appear why, the deceased apparently having died testate, twenty years thereafter an administrator was appointed as if he had died intestate. By the will, only four-fifths of the property was given to the children of the deceased. The other fifth was given to persons apparently strangers to the family.

No evidence was offered to show that there had been no partition of this estate between the children on one side and these devisees on the other, nor was any evidence offered except as hereinafter stated to show that the children had not divided the property among themselves and that the property described in the possessory information did not fall to the share of Vicente Lukban.

According to the brief of the appellant, there are now living five of these children. No evidence as to this point, however, was presented. No one of these five children testified at the trial except Vicente Lukban. It was certainly within their knowledge whether any partition had been made of the property and if no partition had been made, and if Vicente Lukban was not the owner of the property which he then claimed to be the owner of, we can not understand why these heirs, or some of them, were not presented as witnesses. In fact the only testimony received or offered to overcome the prima facie evidence above referred to was the testimony of Esteban Calleja, Juan Pimentel, and Vicente Lukban. The first of these witnesses, Esteban Calleja, a brother-in-law of Vicente Lukban, testified as follows:

"Q. Do you know from whom Vicente Lukban acquired this property?—A. It is his property, because when his father, Agustin Lukban, was alive I was always in his company."

There is nothing in this testimony to show that in 1896 Vicente Lukban was not the owner of Pangpang.

The same may be said of the testimony of Juan Pimentel. He repeatedly stated that the defendant Amenos was manager of the property of the Lukbans, but there is nothing in his testimony which in any way indicates that Vicente Lukban was not, in 1896, the sole owner. His declaration, that the Lukbans asked him to look after their interests in the property, is not competent evidence to show that the persons who made these requests were the owners thereof.

The testimony to overcome the prima facie case in favor of the defendant Amenos is therefore reduced to the testimony of Vicente Lukban. As stated in the decision of the court below, he was really a party plaintiff in the suit and was interested in securing a judgment against the defendant Amenos, and any statements made by him to

the effect that in 1896 he was not the owner of the property are in direct conflict with his repeated declarations in writing to the effect that he was the sole owner thereof. All of the statements made by him at the trial with reference to this matter are the following:

In answering a question concerning his relations with Amenos, he said that all of the properties belonged to his brothers and to all the children of Agustin Lukban de San Miguel; that "they are the property of my father;" and in answer to the question as to why they stood in his name upon the record, he said:

"A. This is so as the result of an agreement made between ourselves; I advanced them money for their support and education, and we agreed to have all these properties registered in my name. As I have acted in good faith to this day, no one has made any complaint about me.

"Q. So, according to your statement, you were the owner of the hacienda?—A. Yes, apparently." He was also asked this very leading question by his counsel:

"Q. Then all the haciendas, including that of Pangpang, are undivided among the heirs of your deceased father?
A. Yes, sir."

This is the entire evidence in the case which in any way shows that the heirs of Agustin Lukban de San Miguel are now the owners of the estate of Pangpang. What has become of the other 34 "parcels of land included in the possessory information nowhere appears. In view of the statements made by Vicente Lukban in the judicial proceedings relating to the possessory information, his statements made in documents presented to the court in the action brought against him, in which action there was a judicial sale of this property as his own, and of the written statements made in the contract of administration with Amenos, all to the effect that he was the sole owner of the property, we can not now hold that his testimony at this trial, as set forth, is sufficient to overcome the prima facie evidence in favor of the defendant Amenos.

It is further claimed by the appellant that the defendant Amenos having become the administrator of the estate in question by virtue of the contract of April 7, 1896, between Vicente Lukban and himself, he was prohibited by the provisions of article 1459 of the Civil Code from purchasing the property of his principal. That article is in part as follows:

"The following persons can not acquire by purchase, even at public or judicial auction, neither in person nor by an agent:

* * * * *

"2. Agents, the property the administration or sale of which may have been intrusted to them."

We do not stop to inquire upon what theory the plaintiff, who does not claim under Vicente Lukban but adversely to him, has a right to raise and have decided this question, for we think that, even assuming that he has such right, his claim in relation thereto can not be sustained. The defendant Amenos did not buy the property directly from his principal. The purchaser at the judicial sale was, as has been seen, Ildefonso Moreno. If the contract can be set aside, it must be because Moreno was the persona intermedia spoken of in the article in question. In order to bring the case within this part of the section, it is absolutely essential that the proof establish some agreement between Amenos and Moreno to the effect that Moreno should buy the property for the benefit of Amenos.

If there was no such agreement, either express or implied, then the sale can not be set aside.

After the case had been brought to this court the appellant made an application here for a new trial on the ground of newly discovered evidence. That motion was denied by this court. He claims that if the new evidence had been admitted there would have been proof of this essential fact, but in his brief he says:

"It might perhaps be said that all that has been stated by us in regard to the fictitious execution of the contracts above referred to is entirely without foundation, inasmuch as there is nothing in the record to support it.

"Hard as it is for us to admit this fact, there is no other course for us but to do so."

This admission is fully sustained by the record.

Among other things it appears therefrom that at the first judicial sale Vicente Lukban himself was present; that it was then sold to Manuel de la Portilla for 160 pesos; that Vicente Lukban was notified of this sale and given an opportunity to better it, and that within a few days thereafter his attorney in fact, Valentin Lipana, presented as a bidder Ildefonso Moreno, to whom the property was sold.

It was stipulated by the parties that Vicente Lukban gave to the defendant Amenos no instructions in regard to the estate of Pangpang other than those which appear in the contract of April 7 which relate to its administration, and absolutely none with respect to the attachment which then existed on the same. What the agreement was between Ildefonso Moreno and the defendant Lukban does not appear, but there is absolutely no evidence in the case to show that there was any agreement of any kind between the former and the defendant Amenos. The judgment of the court below is affirmed, with the costs of this instance against the appellant. So ordered.

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

Johnson, J., dissents.

Carson, J., did not sit in this case.

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