

EDWARD B. MERCHANT, PETITIONER AND APPELLANT, VS. THE CITY OF MANILA ET AL., RESPONDENTS AND APPELLEES.*G.R. No. 3818. August 19, 1908*

Ponente: WILLARD, J.

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On the 13th of April, 1904, the appellant, Edward B. Merchant, presented a petition to the Court of Land Registration, asking that he be inscribed as the owner of three tracts of land, without the buildings erected thereon, situated in Tanduay in the city of Manila. The petition was denied as to the first and third tracts of land, and as to that part of the second tract occupied by Natalia Eloriaga. From this judgment, so far as it was adverse to the petitioner, Merchant, he has appealed.

(1) The prayer of the petition, so far as it related to the first tract of land, was opposed by Luis Elzingre Dumas, who alleged that he was the owner of the land, by purchase from Amanda de Marcaida. The court below held that the title papers presented by Dumas proved his ownership to the tract of land described as parcel No.1 in the petition.

The petitioner alleges that the court erred in this resolution in two respects; first, in saying that the land described in the title deeds of Dumas was the same land as that described in the petition, and second, in that the documents presented were not sufficient to prove ownership of any land.

The tract of land described in the petition is said therein to front upon Calle Castillejos, while the tract of land described in the deeds of Dumas is said to front upon Calle Naguit. A witness for the appellee testified that Calle Naguit was the same as Calle Castillejos, while the appellant claims that the evidence in the case shows that they were two distinct streets, running at right angles to each other. We do not think it necessary to determine this question as to the sufficiency of the description, because we think that the appellant has in this case admitted that the land described in the documents of Dumas is the same land as that described as parcel No. 1 of his petition.

Upon the 11th of June, 1904, he presented in this case a petition, asking that certain inscriptions made in the registry of property be canceled on the ground that they, related to the land described in his petition, and prejudiced his rights. Among these was the inscription relating to estate No. 1077. It was proven at the trial that this estate No. 1077 is the same property which is described in the deeds of Dumas. This motion of the 11th of June, 1904, amounted to an admission that the two tracts of land were identical.

It appears, moreover, from the petition that parcel No. 1 is bounded on the west by the land of the Philippine Lumber Development Company. This land of the Philippine Lumber Development Company was bought by its grantor, Hilbert, from Veloso, the grantor of the appellant. Veloso, in his deed conveying the land to Hilbert, described it as bounded on the east in part by the property of Amanda de Marcaida, the grantor of the appellee, Dumas.

We hold from all the evidence in the case that the land described in the title deeds of Dumas is the same land as

that described as parcel No. 1.

Nor can the claim of the appellant be sustained as to the insufficiency of the title deeds of Dumas. On the 12th of September, 1889, Santiago Naguit sold the property in question to Antonio de Marcaida, reserving the right to repurchase the same within one year from that date. He never made such repurchase, and on the 6th of July, 1895, Antonio de Marcaida presented this deed to the registrar of property with proof that no repurchase had been made. Thereupon, that officer registered the ownership of the property in the name of the said Antonio de Marcaida. On the 29th day of December, 1902, the heirs of Antonio Marcaida, and his wife, Amanda de Marcaida, sold the property to the appellee, Dumas. His deed was recorded in the registry of property on the 23d day of September, 1903.

This evidence brings this case clearly within the rule laid down in the case of *Merchant vs. Lafuente* (5 Phil. Rep., 638), a case which related to land in this same district of Tanduay. Marcaida, having acquired title to the property by a deed executed prior to the time the Mortgage Law went into force in these Islands, was entitled, under the provisions of article 20 of that law, to have himself inscribed as the owner of the property. That inscription having been made, the present appellee, Dumas, having bought the property in reliance upon that inscription, is entitled to the protection of article 34 of the Mortgage Law.

The appellants theory that the person who appeared before the registrar and sought the inscription was Santiago Naguit and not Antonio de Marcaida, finds no support in the evidence. At the time the inscription was made, Naguit had lost all interest in the property. The person before whom he appeared was not the registrar, but a notary public of Quiapo, and the sale which the registrar in his certificate says was not proven, was not the sale made by Naguit to Antonio de Marcaida, but was a sale which Naguit, before the notary, stated had been made to him by some third persons.

The judgment of the court below denying the petition, so far as this parcel is concerned, must be affirmed.

The city of Manila also opposed the granting of the petition in so far as this parcel was concerned, claiming that the petitioner had included therein a part of an estero which bounded it upon one side. It is not necessary to consider this opposition because the petition, so far as it relates to this entire tract, must be dismissed.

(2) To the registry of the third parcel in the name of the petitioner, the Pacific Oriental Trading Company, hereafter called the defendant, objected, on the ground that it had acquired title to the property by prescription.

The court below, without deciding this question of prescription, held that the documents presented by the petitioner and appellant, did not show that he was the owner of the property. These documents were before the supreme court of Spain, and in the judgment of the 4th of July, 1891, that court decided that they were sufficient to show that the Veloso family was the owner of the Island of Tanduay. The same documents were before this court in the case of *Veloso vs. Naguit* (3 Phil. Rep., 604), and it was again held that they proved the ownership of the island in the then plaintiff. The same documents were again before this court in the case of *Merchant vs. Lafuente* (5 Phil. Rep., 638), and the same ruling was again announced.

The court below said in its decision that the evidence presented in the present case differs from the evidence presented in those cases. It is true, additional proof relating to judicial proceedings was presented in this case which did not appear in either one of the three other cases, but so far from weakening the title of Veloso, we think it strengthens it. That court said that the grantors of the petitioner never acquired possession of any of this property. In the case of *Veloso vs. Naguit*, it is said, at page 610:

"From the decision in question it appears very evident that Jose Perez Garcia was given judicial possession by the inferior court of the lands of the Island of Tanduay solicited by him, which possession was affirmed on

appeal by the final judgment of January 30, 1868, except as to certain lands which had been the object of opposition by Victoriano et al.; that as to the defendants it must be considered as conclusively established that from the month of January, 1868, Don Jose Perez Garcia, in addition to the right of possession accompanying his ownership of the lands in question, had the actual possession judicially conferred by means of an interdict, * * * that these lands which he [Naguit] entered upon and filled in during 1876 and 1885 were possessed judicially, notoriously, and publicly by Don Jose Perez Garcia, at least since 1808, unless the defendants can show that Naguit succeeded to the interest of Victoriano et al, as to whom the judgment of 1868 had reserved their possession against the claims of Perez Garcia."

The defendant can escape the effect of this decision only by showing that he derives title either from Victoriano Neyra, the person referred to in that judgment, or from some one of his associates mentioned therein. The defendant claims title through one Ambrosio Salvador, who alleged, in a possessory information obtained by him, that he had bought the land from five persons, to wit: Perfecta Cabrera, Juana Sabal, Simon Gimenez, Evarista San Agustin and Flaviano Abreu.

No one of these persons figured among the companions of Victoriano Neyra. Among these companions are, however, persons named Francisco Cabrera and Josefa Gimenez. It is not necessary to inquire what relation existed between Francisco Cabrera and Perfecta Cabrera, since the parol evidence offered by the defendant itself in this case satisfies us that Perfecta Cabrera did not live upon the land in question, but upon the tract of land on the other side of the street.

Nor is it important to inquire what relation, if any, existed between Josefa Gimenez, mentioned in the judgment of the 30th of January, 1868, and Simon Gimenez, since we are satisfied from the judgments of the 12th of February, 1878, and 8th of July, 1878, presented in evidence by the petitioner, that Simon Gimenez was ejected from the land occupied by him in Tanduy and his house destroyed at about that date. Other evidence hereinafter referred to also indicates that Veloso acquired the actual possession of the land prior to 1884.

The case is governed by the decision in the case of Veloso vs. Naguit, and we hold that the evidence offered by the petitioner was sufficient to prove prima facie his ownership of the land in controversy.

To overcome the prima facie case of the appellant, the appellee presented the defense of the extraordinary prescription of thirty years.

The petition in this case was filed on the 13th day of April, 1904. It was necessary, therefore, for the defendant to prove a possession dating from 1874. All the interest which the defendant has in the land, it acquired from Ambrosio Salvador, who, on the 14th day of September, 1893, presented to one of the Courts of First Instance of Manila a petition in proceedings relating to a possessory information. He alleged in this petition that he acquired the third parcel of land described therein, which is the parcel here in question, by purchase of the five separate parcels of which it was composed from Flaviano Abreu, Simon Gimenez, Perfecta Cabrera, Juana Sabal and Evarista San Agustin in the year 1884, and that he commenced the construction of warehouses thereon in 1885. The order admitting this possessory information was made on the 20th day of September, 1893, and recorded in the registry of property on the 22d of November, 1893.

The defendant introduced parol evidence to show the possession of a part of this land since 1865. Of the five persons from whom Salvador claims he bought, two of them, Flaviano Abreu and Evarista San Agustin, are not mentioned by any of the witnesses as having been in possession of any land prior to 1884. As has been before said, we are satisfied that the land occupied by Perfecta Cabrera was no part of the land in controversy. To meet the evidence offered by the defendant, the petitioner introduced parol evidence and copies of the records of various proceedings in the courts of Manila brought by the Veloso family against the occupants of the Island of Tanduy during the years from 18C5 to 1882. The defendant, itself, also introduced copies of several judgments

entered in such proceedings.

After an examination of all the evidence relating to this question, we are satisfied that the defendant has not proven that the so-called grantors of Salvador were in possession of this land from 1874 to 1884. The defendant relies upon a judgment of the Court of First Instance of Tondo, entered on the 31st of March, 1880, and confirmed by the audiencia on the 9th of August, 1880, in an action brought by Gabino Veloso against Antonio Enriquez. It seems to be agreed by the parties that the land involved in that case is the land in controversy in this case. The action was for the recovery of rent by virtue of a lease of the land made by Veloso to Enriquez. The defense was that Enriquez never had obtained possession of the property. This defense was sustained and the defendant here claims that this judgment proves that the land was then adversely occupied by other persons. To our minds this judgment is not so important as is the other judgment referred to therein entered in an action brought by Veloso against Antonio Enriquez and Mariano Flores to recover the possession of the land.

It sufficiently appears from all the evidence in the case that Veloso did commence such an action; that he recovered judgment therein for the possession of the property and for the destruction of a house of strong materials standing thereon, owned by Mariano Flores; that the judgment was executed and that this house of Flores was actually destroyed and removed from the property; that eight houses of light materials, including one belonging to Simon Gimenez, were also at that time destroyed, and that as a Result of the execution of that judgment Veloso obtained actual possession of the property here in question some time between 1878 and 1882. Veloso having obtained actual possession by virtue of a final judgment in the controversy in question, any prescription that had commenced to run in favor of the alleged grantors of Salvador was effectually interrupted. The claim of the defendant, therefore, based upon the statute of limitations, can not be maintained.

The appellant in his original petition asked for the inscription of the land only, without the buildings erected on the same. Afterwards, and on the 16th of May, he amended his petition so as to ask for the inscription of the houses and of the improvements situated on tract No. 3. The defendant in its answer alleged that it had entered upon the land in good faith; had filled and graded the same; had erected buildings thereon; had paid taxes on the buildings and land, and that the value of the improvements was upwards of P90,000.

Articles 361, 362, 363, and 364 of the Civil Code are as follows:

"ART. 361. The owner of the land on which building, sowing, or planting is done in good faith shall have a right to appropriate as his own the work, sowing, or planting after the indemnity mentioned in articles 453 and 454, or, to oblige the person who has built or planted, to pay to him the value of the land and to force the person who sowed to pay the proper rent

"ART. 362. He who builds, plants, or sows in bad faith on another's land loses what he has built, planted, or sown, without right to indemnity.

"ART. 363. The owner of the land on which anyone has built, planted, or sown in bad faith may demand the demolition of the work or the removal of the planting or sowing and the restoring of everything to its original condition at the expense of the person who built, planted, or sowed.

"ART. 364. When there has been bad faith, not only on the part of the person who built, sowed, or planted on another's land, but also on the part of the owner of the latter, the rights of both shall be the same as if they had acted in good faith,

"Bad faith on the part of the owner is understood whenever the act has been executed in his presence with his knowledge and tolerance and without objection."

Considerable space in the brief of each party is devoted to the question of the good faith both of the petitioner and

of the defendant. We will assume, for the purposes of this decision only, that the defendant did not make the improvements in good faith. We think, however, that the evidence shows that the improvements, or some of them, were made with the knowledge of the grantor of the petitioner, and without protest on his part, and that he comes within the last paragraph of article 304, above quoted. It is true that Veloso testified that, being upon the ground with Hilbert, the grantor of the defendant, on one occasion he told him that he, Hilbert, would have some question about the land. This, however, is denied by Hilbert, and we can not say that the fact is established. That Veloso knew of the construction of the buildings is well proven. He did not object. The case is, therefore, to be decided as if both parties had acted in good faith. (Municipality of Oas vs. Roa, 7 Phil. Rep., 20.)

In accordance with article 301, the petitioner has the option of buying the improvements or of selling the land, and the question arises, whether land situated as this can be inscribed in the new registry. That act contemplates the inscription of the absolute ownership. It is true that land which is encumbered may be registered, but we do not think that it was ever intended that land encumbered in precisely the way this land is could be brought within the provisions of that law. Whether the petitioner will buy the improvements, or will sell the land, is not known. What the value of the improvements is, is not determined. A part of the improvements consist in grading and filling the land. If the land alone should be registered, in the name of the petitioner, a purchaser of the land from him would not be able to ascertain from the registry what he was buying. He would not know what amount of money he would have to pay to the defendant to become the owner of the improvements. For these reasons, and others that might be adduced, we hold that while the land remains in this condition it is not subject to registration.

Another question that arises is the following: Whether in a case like this the parties, if they can not agree upon the course to be pursued, should commence an action in a Court of First Instance to have their rights to the property settled, or whether that can be done in this proceeding:

Section 2 of Act No. 496 provides that the Court of Land Registration shall have "power to hear and determine all questions arising from such applications, and also have jurisdiction over such other questions as may come before it under this Act." We think this section gives authority to the Court of Land Registration to determine as between the petitioner and the defendant what the value of the improvements for which the petitioner must pay is, or what the value of the land is, if the petitioner desires to sell it. The questions thus to be decided should be raised by the presentation of proper petitions, in this same proceeding. If the petitioner does not, within such reasonable time as may be fixed by the court below, take steps to have determined the value of the improvements and to buy them, his petition for the registration of the land should be dismissed.

One other question remains to be considered in connection with this defendant. It claimed both in its answer and at the trial that the petitioner was not at the time he presented his petition the real party in interest in the matter, but that his grantor, Veloso, was. With the petition there was presented a deed executed on the 28th day of January, 1904, by which Veloso conveyed to the petitioner the tract of land in question. This deed was absolute and there were no conditions attached to the conveyance. The defendant, however, presented another contract made between Veloso and the petitioner on the same day, which contains certain agreements as to when Veloso should put the petitioner in possession of the land, and it was stated therein that in case Veloso could not put the petitioner in possession of the property within the time therein mentioned, Veloso should be under the obligation of returning immediately to the petitioner any money which he had received for the property. Veloso did not put the petitioner in possession of the property here in question within the time mentioned. We do not think that this contract by itself alone and without affirmative action on the part of Merchant was sufficient to destroy the absolute title conveyed by Veloso to Merchant by the deed above-mentioned. So far from attempting to enforce the obligations imposed on Veloso by this contract, Merchant affirmed the validity of the deed and the absolute character of the transmission of the property by presenting the petition in this case.

(3) The petition alleged that tract No. 2 therein described was occupied by certain persons, among others by Natalia Eloriaga. She did not appear in the proceedings, nor did she oppose the petition. The court below, however, having held that the documents presented by the petitioner did not show that he was the owner of any part of the Island of Tanduay, held as a consequence that he had not proved his ownership of that part of tract No. 2 occupied by Natalia Eloriaga, and therefore denied the petition so far as that part of the land was concerned.

As has been before said, the documents thus presented did prove prima facie that the petitioner was the owner of this tract of land. The judgment, therefore, so far as that tract of land is concerned must be reversed.

The judgment of the court below so far as it relates to the property described in tract No. 1 of the petition, and so far as it relates to the property of the appellee, Dumas, is confirmed, with costs. So far as it relates to the property occupied by Natalia Eloriaga, that judgment is reversed, without costs. So far as it relates to the property described as parcel No, 3 of the petition, and occupied by the defendant, the Pacific Oriental Trading Company, the judgment is reversed, without costs to either party, and the case is remanded for further proceedings in that court for the purposes hereinbefore indicated. In the trial of any questions of fact or law raised in such further proceedings, it will not be necessary to retake any of the evidence already taken. So ordered.

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

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