

SY TIANGCO, PLAINTIFF AND APPELLANT, VS. HIPOLITO PABLO AND FEDERICO APAO, DEFENDANTS AND APPELLEES.

G.R. No. 38709. December 14, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal by the plaintiff from a decision of Judge Pedro J. Rich in the Court of First Instance of Occidental Misamis, dismissing the complaint, without a special finding as to costs, and declaring that the defendants have a better right than any other person to the possession of the parcels of land described in the amended complaint, except the eighth and ninth parcels.

The attorneys for the appellant make the following assignments of error:

"I. El Juzgado inferior erro al dar validez y eficacia a los exhibits 1, 1-A, 1-B y 1-C de los demandados, que son falsos y nulos.

"II. Erro tambien el Juzgado inferior al declarar que las pruebas aportadas por el demandante no son suficientes para sostener la accion presentada contra los demandados.

"III. Erro igualmente el Juzgado inferior al declarar que la posesion de los demandados, en especial del demandado Hipolito Pablo, de las parcelas de terreno en cuestion, con excepcion de las 8.^a y 9.^a, no habiendo sido interrumpida por un periodo de veinticinco años, debe ser respetada.

"IV. Erro, por ultimo, el Juzgado inferior al sobreseer la demanda interpuesta por el demandante contra los demandados y al declarar que estos tienen mejor derecho que cualquiera otra persona, a la posesion de las parcelas en cuestion, con excepcion de las parcelas 8 y 9."

Of the nine parcels of land described in the amended complaint, plaintiff at the trial withdrew his claim as to parcels 8 and 9.

The defendant Hipolito Pablo alleged that parcels 1, 2, 3, and 6 were purchased by him from the plaintiff in 1901; that parcel 4 is a fusion of certain parts of parcels 1, 2, and 3; that parcel 5 is the same as parcel 7, and was purchased by him from persons other than the plaintiff. The evidence for the plaintiff as presented does not show that parcel 7 ever belonged to the plaintiff, or that parcels 4 and 5 are separate and distinct from the other parcels described in the amended complaint. The controversy then is restricted to parcels 1, 2, 3, and 6.

One of the principal contentions of the plaintiff is that he never sold these parcels to Hipolito Pablo, and that the document on which the latter relies purporting to evidence the sale of this land by the plaintiff to Hipolito Pablo in 1901 for P1,000 is a forgery. In support of this contention appellant's attorneys maintain that the alleged signature of the plaintiff appearing on the deed is different from plaintiff's signature on his certificate of residence. The signature on the deed reads "Sy Tiangco", while that on the certificate of residence is "Sy Tian", but the plaintiff admitted that he used both names, and sometimes signed Sy Tian and sometimes Sy Tiangco. In this connection it may be pointed out that this suit was filed in the name of "Sy Tiangco", the name of the vendor appearing on the

deed, and that at the trial the plaintiff stated under oath that his name is Sy Tiangco. There is a marked similarity between the two signatures. Certainly there is no such difference as would justify us in saying that they were not both written by the same person. Plaintiff's attorneys vigorously contend that when the plaintiff denied having signed the deed, it was incumbent upon, the defendants to call the witnesses thereto. We cannot agree with that contention. The execution of a document that has been ratified before a notary public cannot be disproved by the mere denial of the alleged signer. No inference unfavorable to the defendants arises from their failure to call the subscribing witnesses, Abuton and Naranjo. Plaintiff does not contend that these signatures are not genuine. Why then should it be presumed that the testimony of these witnesses would be unfavorable to the defendants? If the contention of the plaintiff is that Abuton and Naranjo never witnessed the execution of the deed, he should have called them to testify.

Another contention of the plaintiff is that Hipolito Pablo was formerly an employee in plaintiff's store. Hipolito Pablo denies that he was ever employed by the plaintiff. This testimony of Hipolito Pablo is fully corroborated by that of Genaro Ozamis, an intelligent, disinterested, and trustworthy witness. Our conclusion is that it is not proved by any preponderance of the evidence that Hipolito Pablo was employed by the plaintiff. The same is true as to the contention of the plaintiff that he entrusted the management of the lands in question to Hipolito Pablo, and that the latter gave him the agreed share of the products up to 1916, and a small portion of the products from that date up to 1922.

If Hipolito Pablo did not purchase the lands from the plaintiff, as he claims to have done, he has acquired title to them by adverse possession for twenty-three years. Hipolito Pablo occupied and improved these lands under a claim of ownership. He caused them to be assessed for taxation in his name, and paid the taxes thereon. He settled boundary disputes by exchanging one piece of land for another. He maintained a suit in his own name against a person who had usurped a portion of the land in question, and generally he dealt with the lands in question as the owner thereof for more than twenty years. Against this the plaintiff has presented nothing except his own improbable story and the testimony of his witnesses as to the alleged admission of Hipolito Pablo that he was only the overseer of Sy Tiangco. Their testimony is so inherently improbable as to be without weight. Plaintiff's testimony as to the delivery to him by Hipolito Pablo of one-half of the products of the land is exceedingly vague, so vague as to convince us that it has no foundation in fact, but was conceived merely for the purpose of defeating Hipolito Pablo's defense of adverse possession.

When a person has occupied a parcel of land for more than twenty years under a claim of ownership, made improvements on the land, and paid the taxes in his own name, and generally held himself out as owner of the land, it is only upon the most convincing testimony, in the absence of any competent documentary evidence, that the courts would be justified in declaring him to be a mere tenant on shares, an agent of an undisclosed principal. The evidence for the plaintiff in this case falls far short of meeting that requirement.

The defendants are absolved from the complaint, with the costs of this instance against the appellant.

Avanceña, C. J., Street, Butte, and Diaz, JJ., concur.

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