

RUFINA YATCO, PLAINTIFF AND APPELLANT, VS. JESUALDO GANA, DEFENDANT AND APPELLEE.*G.R. No. 3876. March 27, 1909*

Ponente: ARELLANO, C.J.

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On the 3d of February, 1906, Rufina Yatco brought these proceedings against Jesualdo Gana for the recovery of two parcels of arable land and one building lot situated in the municipality of Cabuyao, Province of La Laguna, a description of which is contained in the complaint. She prayed therein that the said lands be returned to her, that the defendant be sentenced to pay her P850 for losses and damages, that said defendant lose the crops existing thereon at the present time as well as the fruits of said lands, and that he pay the costs. Besides a general denial of all the facts alleged in the complaint, the defendant, on his part set up the following as special defense:

First. That he is the sole and exclusive owner of the building lot and the two parcels of land referred to in the complaint, he having acquired them from Eugenio Andal by a contract of purchase and sale on the 16th of October, 1894.

Second. That he has been in the quiet and peaceful possession of the said property as owner for more than 11 years, to wit, since the aforesaid 16th day of October, 1894; and he asked to be absolved of the complaint.

At the hearing it was stipulated between the parties that the two parcels of unirrigated lands situated on the east and west side of the road from Calamba to Cabuyao, as well as the building lot concerning which the defendant had offered evidence, are the same as those claimed by the plaintiff. Documentary and oral evidence were presented by both parties to the suit, and the Court of First Instance of La Laguna in deciding the case absolved the defendant, Jesualdo Gana, of the complaint with the costs against the plaintiff Rufina Yatco. After moving for a new trial the plaintiff has appealed to this court from the said judgment by means of the corresponding bill of exceptions.

On appeal, and from the brief of the appellant and the evidence adduced by the parties, it appears that the court below drew the following conclusions of fact:

- That the plaintiff, as heir to her father, Isidro Yatco, among other properties, received the lands in controversy.
- That in consequence of proceedings in execution brought in July, 1894, by the late Yatco against the spouses Eugenio Andal and Gregoria Faciolco, the said lands were attached on the 23d of March, 1895, and as no bidders appeared at the public auction, they were adjudicated in payment to the execution creditor by an order of the lower court dated April 15, 1898. The corresponding instrument of sale was not executed nor was the execution creditor put in possession of the property until the 26th and 27th of August, 1902, in compliance with an order dated February 21 of the same year, issued upon request of the said creditor.
- That the credit of the execution creditor, Yatco, is not recorded in the registry of property, nor were the attached properties charged with the payment of any debts, or entered in the register; that the defendant debtor, Andal, had

informed the officer who was sent to enforce the order of attachment, that the property now in question had already been sold by him to the defendant, Jesualdo Gana, prior to the date of the attachment.

- That on the 16th of October, 1894, the defendant, Gana, acquired the said lands from Eugenio Andal by means of a public instrument of purchase and sale executed in the presence of Higinio Benitez, the late notary public of La Laguna; the said instrument was lost during the late insurrection, but appears on the index of the notarial acts executed in La Laguna, on file at the office of the clerk of the Supreme Court.

- That since the said 16th day of October, 1894, the defendant has been in possession of the said properties and has held them as owner until the present day, with the exception of the years 1900 to 1904 when the tillage was suspended on account of public calamities, although the laborers continued to live there except during the reconcentration period in 1902, when they were compelled by force to leave the said lands.

- That the defendant was not required by the sheriff to deliver the possession of the lands to the representative of the late Yatco, and notwithstanding the proceedings in compliance with the order of February 21, 1902, already cited, the said defendant has continued up to the present day in the possession and enjoyment of the said lands.

The court below found for the defendant, considering that it had been fully proven that the lands in controversy were sold to the principal of the plaintiff and to the defendant, and deciding the question as to which of the purchasers had acquired the ownership and dominion over the purchased thing in accordance with article 1473 of the Civil Code, the court also considered the fact that there was no entry in the register, and that besides being the first in possession the defendant had an older title, which circumstances the law assumes were accompanied by good faith, as the contrary has not been shown by the plaintiff. In addition thereto the court below considered that the action for recovery brought in this case lacked foundation because, although the deceased father of the plaintiff obtained the adjudication of the lands in question, there was no delivery, either real or symbolical, at the public sale in which the adjudication took place, and he could not have acquired any real right, from which an action for recovery, such as that brought in this case, might arise; that the debt which gave rise to the proceedings in execution was purely personal, it was not entered in the registry of property, nor had the lands in question any specific incumbrance; for these reasons the said property could be and was validly sold by its owner, Eugenio Andal, to the defendant Gana, notwithstanding the fact that Andal was a debtor of the late Yatco, father of the plaintiff; and finally, the fact that the defendant Gana did not intervene in the said proceedings in execution could not prejudice him as he could at any time avail himself of his title of ownership to the thing sold; nor could the adjudication of the property made in said proceedings operate against him because the property was not delivered to the execution creditor and he could not have acquired a title in re thereto. As the defendant had not lost his right of possession over the property under execution, he had no need to bring any action whatever, even though the sheriff of La Laguna had placed the representative of the plaintiff in possession in August, 1902, without notice to the defendant. The latter did not then lose his possession, nor was such present possession compatible, as a matter of fact, with that which the court, without the knowledge of the defendant, granted the plaintiff by a simple order, one which always implies the clause "without prejudice to a third person having a better title."

Against the foregoing conclusions of fact and of law the appellant has submitted to this court the following statement of errors:

First. In that the court below considered it proven that the defendant, Gana, had acquired the lands in question from Eugenio Andal on the 16th of October, 1894, by means of a public instrument of purchase and sale executed in the presence of Higinio Benitez, late notary public of La Laguna.

Second. In that the court below found that from that date the defendant has been in possession of the said lands, and has held them uninterruptedly until the present day, with the sole exception of the years specified in the

judgment.

Third. In not holding that the purchase and sale above alluded to, if it was executed, was a purchase and sale in bad faith, and that the possession that the defendant invoked is uncertain.

Fourth. In conceding greater value and efficacy to a private contract than to the proceedings instituted and perfected by a court of competent jurisdiction, and in allowing the testimony of interested witnesses to prevail as against certified copies of proceedings conducted by authorized judicial officers with regard to acts that have been the subject of their mission.

Fifth. In finding that the silence of the defendant in the face of the proceedings for the attachment, adjudication and possession of the claimed property does not prejudice him in any way.

Sixth. In considering that the action exercised by the plaintiff is purely an action for recovery and one which she had no right to institute.

Seventh. In denying to the plaintiff the relief prayed for by her in the complaint.

As to the first, second, and fourth errors assigned, it must be taken into account that the lower court found that the defendant had acquired the lands in controversy by purchase, as shown by the testimony of Eugenio Andal, Jesualdo Gana, Saturnina Andal, and Ruperto Monterrey, and the written evidence brought from the register of the old Audiencia Territorial of these Islands where an index of the public instruments executed in the presence of the notaries throughout the Philippine Islands was kept. According to the foregoing it was considered that on the 23d of March, 1895, the time of levying upon the property of the spouses Eugenio Andal and Gregoria Faciolco, the former, in answer to questions put to him, stated that at that time he was a very poor man; that he had already sold to Jesualdo Gana the lands subject to the credit sued for by Isidro Yatco; that the instrument of sale had been drawn up and executed at the tribunal of Cabuyao in the presence of the municipal president who was then authorized by law to act as notary ex officio, and that the said proceedings were submitted to the notary of the province who incorporated the same in his protocol and reported it in the form of an index to the said Audiencia Territorial. The said provincial notary issued the original copy which the defendant said he possessed as title of his acquisition and which was burnt on August 28, 1904, at the fire that occurred in Biñan, the town wherein he resided. These facts having been found by the court below and since no law is cited as having been violated, and while on the other hand the finding is not contrary to the facts considered as proven, there is no reason for this Supreme Court to consider that any error was committed in the judgment appealed from.

The same is true with regard to the length of time that the trial court found that the defendant has been in possession of the lands in question. This finding was based on the uniform testimony presented on the subject, and acts which evidence such possession on the part of the defendant; no other facts were alleged to overcome the same, or to show that any law was violated.

There is no error whatever in attributing greater value to a private contract than to the proceedings brought and completed before a court of competent jurisdiction, when such private contract sets out a consummated sale which transfers the ownership of the thing sold from the former owner, the vendor, to the present owner who purchased it, and where the judicial proceedings express nothing further than the adjudication made by the court of the said thing sold at public auction to another person, such court not having required the owner to produce his title of ownership and to execute the instrument of sale in favor of the adjudicataire (the purchaser) for the actual transmission of the ownership to said person as the law provides. No preference was given by the court below in its judgment to the statements of the witnesses who testified as to the private contract over those of the judicial officers who in judicial proceedings certified to the fact of the public auction and the adjudication of the property

to a particular person; it has given equal consideration to both and that which prevails is the value and efficiency of a consummated contract of sale in favor of one person, over a mere contract of sale in favor of another who did not take possession of the thing adjudicated to him at public auction, nor receive the deed of conveyance, or have it recorded in the registry of property as adjudicated to him.

As to the third assignment of error, it is impossible to admit the asseveration in the brief of the appellant, that the possession invoked by the defendant, adverse to the vendor himself, to the adjudicataire, and to all persons is a precarious possession when it is really, and in the most effective manner a possession under a title based upon a consideration, acquired, maintained, and held as a personal right arising out of a consummated contract. Neither could the judge find that there was bad faith on the part of the purchaser even though it be supposed such existed on the part of the vendor, because it has not been shown in any manner that the purchaser was aware of any impediment to the vendor's lawfully effecting the sale of a thing that belonged to him, and that had not ceased to be his, notwithstanding the fact that it was under judicial attachment, so long as said attachment was not recorded in the registry of property.

As to the fifth assignment of error, it must be held that the silence of the defendant in the face of the attachment proceedings, the adjudication and possession of the property claimed certainly does not prejudice him in any way, as was held by the trial judge; firstly, because it has not been shown that all of these proceedings were notoriously of public knowledge or that they should have been known to the defendant; and secondly, because even if they were so and if he positively knew of them he could not be prejudiced by failing to appear as a third party in the said proceedings in execution. With good reason did the court below apply in this case the provisions of article 1515 of the Law of Enjuiciamiento Civil which was in force at the time the proceedings in execution were instituted, according to which "actions to enforce the claims of third persons could be instituted at any stage of the proceedings in execution, but they could not be admitted after the execution of the instrument or consummation of the sale of the property to which the same referred, or after the adjudication of the property in payment and the delivery thereof to the judgment creditor; the right of the third person was reserved to bring such action as was proper against the proper parties."

As the commentator rightly says—

"None of these words are idle or superfluous. According to the Civil Code, and before its enactment, it was already common doctrine, that a contract of purchase and sale is perfected by the consent of the parties thereto as to the thing and the price, and is consummated upon the payment of the price and the delivery of the thing. There might be a question as to which of these acts would authorize intervention in accordance with the principles of law, and the law has preferred to fix the act of consummation, considering, no doubt, that until this is realized the property is at the disposition of the court having jurisdiction of the question of dominion, and which may deliver the property to the proper party, thus avoiding new complications and expenses. But even outside of the said term, or after the limit fixed by law, when the state of the proceedings in execution no longer permitted an intervention, and it was therefore the duty of the judge to reject the same by an order of dismissal, if the action was one for dominion, the right of the third party was reserved to institute an action against the proper person and as it might be proper, as provided in paragraph 2 of the said article, in order that there may be no doubt as to his being entitled to bring an action against the person who acquired the property." (Manresa, Ley de Enjuiciamiento Civil, 641, 642 and 647.)

Thus the right of action of the third party who was prejudiced by the judicial sale as to his intervention, could only be exercised while the proceedings in execution were pending and before the consummation of the judicial sale by any of the acts fixed in article 1515 of that law which was in force at the time, that is to say, before the execution of the public instrument of sale, or before the delivery of the thing sold adjudicated in payment; but' with respect to an action for recovery, the same may be exercised at any time so long as the right has not expired by limitation.

Hence, the silence of the defendant in the face of the proceedings in connection with the attachment, adjudication, and possession of the property claimed, did not prejudice him in any way.

The stage reached by the proceedings in execution brought by the appellant's predecessor in the years 1894 to 1898, did not go beyond that of adjudication in payment, that is, a mere perfecting of the purchase and sale which was not followed by the delivery of the thing, to-wit, by the actual delivery nor by the execution of the public instrument which would have been the symbolical transfer; and in view of the fact that the *jus in re* or right of dominion, the real meaning; of which is an action for recovery, is not transmitted except by the delivery or consummation of the purchase and sale, not by the mere perfecting thereof in accordance with the provisions of paragraph 2 of article 609, and articles 1450 and 1462 of the Civil Code, it follows that the position taken by the trial court in denying the appellant's right to exercise said action when neither she nor her predecessor had yet acquired the right of dominion over the adjudicated lands which are now claimed, is in accordance with the law. The right of dominion could not be obtained by the judicial possession given to her predecessor on the 26th and 27th of August, 1902, as it referred to lands that were then in the possession of a third person, the defendant who was not a party in said proceedings in execution and not in that of the person who had been levied upon in the proceedings in execution in connection with which the decree of February 21 of said year was issued; neither did the extra-judicial demand made by the same appellant in 1905 upon the appellee herein, have any effect, because she was under the obligation to demand possession by means of this action against the present appellee. It was held in the decisions, in cassation of January 19, 1898 June 1, 1900, and March 8, 1901, that in proceedings in execution, the sale of the property, the adjudication thereof, and, in a word, a judicial auction sale, are nothing more than a perfect contract which is not consummated, however, until the due delivery of the thing has been made, notwithstanding the principle of the irrevocability of the sale after the same was held under the provisions of article 1480 of the *Ley de Enjuiciamiento Civil*; an irrevocability which evidently refers only to the contracting parties, with the exclusion, therefore, of third persons. Hence, the court below has not erred, as assigned in paragraphs, 6 and 7 of the bill of exceptions.

Inasmuch as the main point is the legitimacy of the sale made by Eugenio Andal to Jesualdo Gana, and in view of the fact that this contract was executed even before the lands that were sold had been judicially attached, the trial court has not committed any error by declaring that Eugenio Andal could validly sell them to Jesualdo Gana; and the circumstance that they were subject to the credit of Isidro Yatco against the spouses Andal and Faciolco was not an obstacle to the validity of the sale because they were not subject to the security of the credit as by a real right formally attached to the said lands, but by the mere delivery of the title deeds that the debtors made to the creditors.

For all of the above reasons the judgment appealed from is hereby affirmed with the costs of this instance against the appellant. So ordered.

Torres, Mapa, Johnson, Carson, and Willard, JJ., concur.

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