

PEDRO CASIMIRO, PLAINTIFF AND APPELLANT, VS, JOSE FERNANDEZ ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 4046. January 13, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

This action was brought to enjoin the sheriff and the defendant from selling under an attachment dated June 29, 1906, a kiosk at the southwest corner of the Bridge of Spain, in the city of Manila, claimed by the plaintiff as owner. The defendant justified his seizure of the property as that of Arias Quintos, his debtor, by showing that Quintos owned the kiosk on the 13th of September, 1901, when he filed his sworn declaration to that effect in the municipal assessment office, where it still continued in his name and also by introducing a contract with a third person in which Arias Quintos was named as the owner of the kiosk in October, 1905.

On his part the plaintiff proved that Quintos, on January 1, 1906, for 1,500 sold him the kiosk, by an agreement in writing with a pacto de retro expiring April 21, 1906.

The judge of the Court of First Instance decided the case in favor of the defendant upon the theory apparently that the payment of taxes by the defendant constituted evidence of his title and that the contract of sale of the kiosk was not operative as against third persons, because not registered. In both respects the judgment is in error. The payment of taxes on property is not alone sufficient evidence of ownership or possession.

"The payment of taxes on the land by plaintiff, cutting timber thereon, and keeping off trespassers, does not constitute possession, but were merely acts of ownership, tending to show that he claimed to own it." (Pharis vs. Jones, 122 Mo., 125.)

The plaintiff would not lose his property either because he failed to pay his taxes or because the party from whom he bought it continued by mistake to pay them. Beyond this, in the present case it is very clear that the entries in the books can have no effect as admissions by him in conflict with his title, inasmuch as they were all made before his purchase; so that the two are not inconsistent. Nor can it be doubted that between that time and the bringing of this action on July 2, 1906, he was under no obligation whatever to apply for any change in the tax books.

On the other point, a contract of sale is good as between the parties to it without registration and is effective as against third persons not holding a registered title, including creditors with attachments and judgments. (Fabian vs. Smith, Bell & Co., 8 Phil. Rep., 496.)

The judgment of the Court of First Instance in favor of the defendant is reversed without costs, and an injunction is directed to issue in accordance with the prayer of the complaint. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Willard, JJ., concur.

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