

TIBURCIO MAMUYAC, PETITIONER AND APPELLANT, VS. PEDRO ABENA (ALIAS INDONG), RESPONDENT AND APPELLEE.*G.R. No. 45742. April 12, 1939*

Ponente: LAUREL, J.

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This is a petition for writ of certiorari to review the decision of the Court of Appeals promulgated on July 30, 1937 in CA-G. R. "No. 43446.

Gregoria Pimentel was the owner of two parcels of land which she sold and conveyed on June 1, 1926, to Pedro Abena, the respondent-appellee herein. On January 27, 1927, Gregoria Pimentel again sold and conveyed the same parcels to Tiburcio Mamuyac, the petitioner-appellant herein. The document of sale, Exhibit 1, in favor of Abena was duly inscribed in the registry of property of the province on January 31, 1927, and from April, 1927, said parcels of land were declared for taxation in the name of said Abena. The document executed in favor of the petitioner on January 27, 1927, was neither inscribed in the registry of property nor were the parcels of land declared for taxation in the name of the latter.

To determine the conflict, petitioner-appellant instituted an action in the Court of First Instance of La Union against the respondent-appellee for the recovery of the two controverted parcels of land. After hearing, the trial court rendered judgment in favor of the defendant, respondent-appellee here. From this judgment, the petitioner-appellant appealed to the Court of Appeals. This latter court, with one member dissenting, affirmed the decision of the Court of First Instance of La Union. The dispositive part of the majority decision of the appellate court is:

"De cualquier modo que se considere la cuestion, ya bajo la teoria de la parte demandante sobre la posesiOn, ya bajo el articulo 1473 del Codigo Civil que tiene exacta aplicacion al caso de autos, el Juzgado no incurrio en ningun error al dictar sentencia a favor del demandado, la cual confirmamos en todas sus partes, con las costas en esta instaacia al apelante."

Plaintiff, petitioner-appellant here, elevated the case to this court by writ of certiorari as adverted to in the beginning of this opinion.

The first assignment of error of the petitioner-appellant challenges the findings of fact of the Court of Appeals. This cannot be done.

"The appellate jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals is limited to reviewing and revising the errors of law incurred by the latter, the findings of fact of said Court of Appeals being final as to the former." (Guico vs. Mayuga and Heirs of Mayuga [1936], 35 Off. Gaz., 861.)

"Review of judgments and decrees of the Court of Appeals is limited to 'cases in which only errors or questions of law are involved.' (Sec. 2, Commonwealth Act No. 3, amending section 138 of the Administrative Code, in relation to sec. 2, Art. VIII, Constitution of the Philippines.)" (Mateo vs. Collector of Customs and Court of

Appeals [1936], 35 Off. Gaz., 915.)

The petitioner-appellant under his second and third assignments of error contends that he has a better right over the two parcels of land involved because of possession claimed by him in virtue of an alleged private contract of mortgage executed in his favor on January 4, 1935 (Exhibit B.) It is sufficient answer to this contention that "in order that a mortgage may be deemed to be legally constituted, it is indispensable that the instrument in which it appears be a public document and be recorded in the property register. Therefore, a mortgage in legal form was not constituted by the said private document." (Tuason vs. Goduco, 23 Phil., 342, 347.) Even were we to accord validity to the mortgage, Exhibit B, article 1473 of the Civil Code, invoked by him, applies only to the determination of preference between sale and sale:

"El precepto que acaba de consignarse viene a determinar los casos de preferencia cuando una misma cosa hubiere sido vendida a dos o mas personas, casos de los que ya se ocupó la ley 15, tit. 32, lib. 3.º del Código Romano, y la ley 50, tit. 5.º, part. 5." (4 Bonel, Código Civil, p. 483) and the same cannot be availed of in case of conflict between a sale and a mortgage.

"Es aplicable el precepto del artículo 1473 del Código Civil para resolver el pleito pendiente entre el comprador de un inmueble y el acreedor del vendedor, con hipoteca sobre el mismo inmueble vendido?"

"El Tribunal Supremo declaró no haber lugar al recurso.

"Considerando que es inaplicable al caso el artículo 1473 del Código Civil, que se supone infringido en el primer motivo del recurso, porque no se ha tratado en este pleito del caso a que se refiere dicho artículo, ni el recurrente tenía inscrita la propiedad de la finca de que se trata cuando se instruyó el expediente posesorio, ni poseía con la buena fe que exige el último párrafo del artículo citado, siendo, como era, conocedor de que la Godínez tenía título inscrito de dominio sobre la finca en cuestión y de los gravámenes que sobre esta pesaban, lo cual le coloca en condiciones que no son las del tercero a que hace referencia el artículo 606 del citado Código, cuya infracción se invoca en el segundo motivo, por no haberlo aplicado, cuando realmente no lo es este caso." (Sentencia de 7 de Julio 1896, 15 Código Civil, Martínez Ruiz 2.ª ed., 330, 332.)

Upon the other hand, even if we were to accept the contention of the petitioner-appellant that he had been in possession of said properties by reason of the alleged contract of mortgage executed in his favor, on January 4, 1925, and were to accord legal effect to the document of sale of January 27, 1927, which was not recorded in the registry of property, still his right cannot prevail over that of Abena who had duly registered his deed of sale. (Exhibit 1.)

The contention of the appellant that respondent's ownership and preference over the property in question is not complete because of lack of material delivery of the possession to him by the vendor is not well taken, for the reason that the execution of the public document of sale in favor of the respondent-appellee is equivalent to the delivery of the realty sold. (Sanchez vs. Ramos, 40 Phil., 614, 616.)

The petition is hereby dismissed with costs against the petitioner. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Concepcion, and Moran, JJ., concur.

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