

JULIAN DE LARA AND ROSARIO LIMSON, PLAINTIFFS AND APPELLEES, VS. MACNO GUILAS, DEFENDANT AND APPELLANT.*G.R. No. 48291. December 28, 1942*

Ponente: PARAS, J.

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Felix Limson was the owner of a parcel of land situated in the barrio of San Matias, municipality of Guagua, Pampanga, and covered by tax declaration No. 15937. On October 17, 1928, Limson mortgaged the land to the defendant Maximo Guilas. The mortgage was registered in the office of the register of deeds of Pampanga on March 23, 1933, and foreclosed in favor of the defendant by virtue of a decision dated February 2, 1934, in civil case No. 5134 of the Court of First Instance of Pampanga, entitled "Maximo Guilas vs. Felix Limson." The mortgaged property was not sold at public auction, but Limson voluntarily sold it to the defendant in satisfaction of the latter's mortgage credit on April 29, 1935, when the defendant began to hold possession of the property as owner. On May 11, 1935, the defendant declared the land in his name for tax purposes.

The same land was sold by Felix Limson with pacto de retro to the plaintiffs on July 5, 1931, or after the execution of the mortgage in favor of the defendant. Said pacto de retro sale was, however, registered in the office of the register of deeds of Pampanga on July 8, 1931, that is, before the registration of the mortgage. Limson failed to repurchase the land although he was given the right to do so until November 1, 1937. The plaintiffs, in view of the refusal of the defendant to vacate the land, filed the present action in the Court of First Instance of Pampanga to recover possession.

During the trial the attorney for the defendant offered to prove that the latter has held possession of the land since October 17, 1928, as mortgagee, under an agreement with Felix Limson, for the purpose of showing that the plaintiffs acted in bad faith in buying the same property from Limson on July 5, 1931. The trial court, upon objection of the attorney for the plaintiffs, refused to admit said evidence on the grounds that it would contradict Exhibit F, which recited that the defendant took possession only from April 29, 1935, as owner, and that, under article 1473 of the Civil Code, possession in good faith is secondary to inscription. The trial court held that the plaintiff's title, on account of its prior registration, was superior to that of the defendant, and ordered the latter to deliver possession of the land to the plaintiffs, together with fifteen cavanes of palay annually beginning 1937 until the filing of the complaint, and to pay the costs. The defendant appealed.

The appellant contends that the pacto de retro sale in favor of the appellees cannot prevail over his mortgage, because his possession dated as far back as 1928 and the appellees must be deemed to have acted in bad faith in purchasing the land in 1931 without being able to get possession thereof at any time. Apart from the circumstance that the appellant has not assigned, as error, the refusal of the trial court to allow him to present evidence proving his possession as mortgagee, said possession was merely in representation of the mortgagor, Limson, and cannot adversely affect the rights acquired by the appellees under the pacto de retro sale. Moreover, such possession does not go to show that the appellees had notice of appellant's mortgage at the time of the sale. Commenting on a similar legal situation, this Court has held in the case of *Mamuyac vs. Abena* (38 Off. Gaz., 84), that:

"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.

"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."

The appellant further relies on the judgment foreclosing his mortgage and on the sale executed by Limson in his favor on April 29, 1935. It is sufficient to state that the foreclosure judgment and the sale of April 29, 1935, were mere incidents of the mortgage and, therefore, lost their legal force and effect after said mortgage has been declared here to be ineffective as against the registered sale of the appellees.

Even on equitable considerations, there is greater fairness in upholding appellees' title, in view of the fact that the appellant has already held possession of the land and enjoyed the fruits thereof, according to his own claim, since 1928.

There being no error in the appealed judgment, the same is hereby affirmed, with costs against the appellant.

Yulo, C. J., Moran, Ozaeta, and Bocobo, JJ., concur.

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