

LAO-SIMBIENG, PLAINTIFF AND APPELLANT, VS. MARIA PALENCIA, JUDICIAL ADMINISTRATRIX OF THE ESTATE OF EUGENIO OTIVAR, DECEASED, DEFENDANT AND APPELLANT.*G.R. No. 4916. January 28, 1911*

Ponente: MAPA, J.

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In the judgment rendered in this case, which concerns the recovery of possession of a house and lot, the Court of First Instance found that "if the plaintiff has not proved that he is the owner and proprietor of the property in question, he has, however, proved that he is entitled to the possession of the said property, and it is its possession that he asks for in his complaint;" and in consonance with this conclusion, he sentenced the defendant to deliver the aforesaid property to the plaintiff and to pay the costs of the case. An appeal was taken from this judgment by both the plaintiff and the defendant.

The following facts were proved at the trial: The possession of the property here in question was recorded by an anotacion preventiva in the corresponding property registry, on July 7, 1891, in the name of the Chinaman Lao-Ciengcay, and this annotation was converted into a final inscription on March 29, 1895. By a public instrument of August 20, 1896, also inscribed in the said registry on the 27th of the same month, the Chinaman Lao-Ciengcay mortgaged the property aforementioned to Cipriano Andueza as security for the sum of 1,500 pesos which he had borrowed from the latter. Subsequently, in 1897, at the instance of the creditor, Andueza, and by the order of the proper Court of First Instance, the property referred to was attached and sold at public auction, it being adjudicated to Andueza himself in satisfaction of his credit; and, finally, after the said adjudication and during the same year, 1897, Andueza conveyed all his rights in the property to Eugenio Otivar for the consideration of 1,800 pesos which the vendee paid him as the price thereof, whereupon Otivar immediately took possession of the property in which he was succeeded by his heirs, represented by the defendant as the judicial administratrix of his estate, after his death.

Without directly impugning the preceeding facts, the plaintiff maintains that the property in question was never owned by Lao-Ciengcay, but by the Chinaman Valentin Garcia Lao-Juico, the father of them both; that, the said Lao- Juico having died in 1890, his three sole heirs, who were the plaintiff, the aforementioned Lao-Ciengcay and the latter's brother, Lao-Joco, by common accord and extra- judicially, made a partition of the estate left by the said deceased, whereby the plaintiff received as his share, among other property, the house and lot in question, the possession of which he assumed in June, 1892, and continued therein until the year 1897, when he was obliged to give it up because the Court of First Instance of Albay ordered, on the petition of Cipriano Andueza, the attachment of the properties of Lao-Ciengcay, and the said house and lot were attached by mistake, instead of the property adjoining thereto belonging to Lao-Ciengcay.

The plaintiff, in proof of his allegations, presented a private instrument containing a record of the partition made between himself and his brothers, Lao-Ciengcay and Lao-Joco, of the estate left by their father, Valentin Garcia,

which instrument appears to have been signed by the said three brothers and several witnesses and bears the date of June 15, 1892. No notary, or other public official vested with the authority to administer oaths judicially or extra-judicially, intervened in the execution of the said instrument. That document contains a clause as follows:

"For the purpose of avoiding dissensions among the three brothers, to the eldest of them, Lao-Ciengcay, are awarded the house where his father's business is established and which is in front of the church; the store in the building constructed of stone masonry and situated on the main street in front of the house of the Chinaman Gabriel Gallegos; two pieces of hemp land and the credits in favor of the said deceased which amount to 7,036 pesos, 1 real and 18 cuartos; and it shall be his duty to assume all liability for the debts which may be found to have been contracted by the said deceased, Valentin Garcia, and are yet unpaid, which debts, it appears, amount to 2,000 more or less."

On the supposition that the house adjudicated to the plaintiff in the aforesaid partition, and which is certainly not described therein in a manner sufficient for its identification, is the same one concerned in this suit, there would arise the question, one of law, relative to the probative force of the aforementioned instrument of partition with respect to third persons.

Article 1227 of the Civil Code provides as follows :

"The date of a private instrument shall be considered, with regard to third persons, only from the date on which it may have been filed or entered in a public registry, from the death of any of those who signed it, or from the date on which it may have been delivered to a public official by virtue of his office."

The partition referred to was made; as aforesaid, by means of a private instrument, and there is no proof of any kind, nor was even so much as an attempt made for its production, that such an instrument was filed or entered in any public registry or delivered to any public official by virtue of his office; neither is it shown, if any of those who signed it have died, when their death took place, with the result, therefore, that the date of the said instrument was not established by any of the means prescribed in the legal provision above transcribed, until that instrument was presented in the present suit. Consequently the age of the instrument in question can not be considered, according to the said article 1227, with respect to Eugenio Otivar and his heirs, as third persons, on account of their not having intervened in its execution, in any capacity, except from the date of its presentation in these proceedings, which was effected in 1907, almost ten years after the sale of the house in question at public auction, and its acquisition by the said Otivar at the end of the year 1897. Whatever, then, be the intrinsic force which it may be desired to attribute to the act recorded in the instrument in question, it is evident that it can not affect Otivar's acquisition aforementioned, because such instrument, as regards its legal effects and with relation to that act, must be considered as having been executed only in 1907, on which date more than nine years had already elapsed since the said Otivar had acquired the property and entered into its possession by virtue of the purchase effected by him from Cipriano Andueza. The date of a private instrument does not operate to the prejudice of third persons, until after its certification made in some of the ways expressed in the article of the Civil Code hereinbefore mentioned.

The plaintiff alleges that the fact recorded in the possessory information title, by reason of which title the disputed property was entered in the property registry in the name of Lao-Ciengcay, to the effect that the latter acquired the house and lot in question by purchase from Andres Garcia in 1864, is false, inasmuch as in that year the said Lao-Ciengcay was not yet born, as shown by the possessory information wherein it is stated that he was only thirty years old in 1896. With regard to this point, the defendant stated that some clerical error must have been committed in recording Lao-Ciengcay's age. Be this as it may, it does not alter the legal phase of the question. Leaving aside the said possessory information, it has been established that the property in question was attached and sold at public auction in 1897, by order of a competent public official, as the property of Lao-Ciengcay; that

as such it was judicially awarded to Cipriano Andueza, and that the latter sold it in turn in the same year, 1897, to Eugenio Otivar, who held possession thereof from that date as owner, and, after his death, his heirs, represented by the defendant in this suit. Supported by such titles, Otivar and his heirs must be legally considered as the legitimate owners and possessors of the property so long as no other person proves a better right to the ownership and possession of the same. The plaintiff has not proved that he has a better right to such ownership and possession, for the reason that the private instrument on which he endeavors to found his claim as the legitimate owner of the said property at the time it was attached and judicially sold can not be considered as having been executed, in so far as it tends to oppose the rights of Otivar and his heirs, until after the date thereof was duly certified, which was effected only in 1907, that is to say, nine years after the completion of the attachment and sale before mentioned. Having reached this conclusion, we do not deem it necessary to decide the other questions set up in the respective briefs of the plaintiff and the defendant.

It is stated in the judgment appealed from that "it has been clearly proved that the plaintiff was in possession of the house and lot in question in good faith from the year 1892 until the year 1897, when he was dispossessed against his will and without being given an opportunity to defend his right." Considering the question from the point of view of the right of possession, it has already been shown that the plaintiff has not proved that he has a better right than the defendant; and, with respect to actual possession, it is evident that the plaintiff lost it after one year's adverse possession by Otivar, pursuant to the provisions of article 460 of the Civil Code, which provides as follows:

"The possessor may lose his possession—

* * * * *

"4. By the possession of another, even against the will of the former possessor, if the new possession has lasted more than one year."

With a reversal of the judgment appealed from, the defendant is absolved from the complaint, without express finding as to the costs of both instances. So ordered.

Arellano, C.J., Torres, Carson, and Moreland, JJ., concur.

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