

CANUTO REYES, PETITIONER AND APPELLEE, VS. JACINTO LIMJAP, OPPONENT AND APPELLANT.*G.R. No. 5396. March 12, 1910*

Ponente: TORRES, J.

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By a writing presented on the 3d of January, 1906, the representative of Irineo Felix requested the registration of a parcel of land belonging to the latter, situated in the town of Antipolo, Rizal Province, bounded on the north by Calle Real; on the east by lots owned by Braulia Cuepangco and Engracia Loalhati; on the south by Calle Martinez; and on the west by lots belonging to Gregorio Lim and Braulia Cuepangco; it has an area of 815.98 square meters and its description and boundaries are stated in the plan attached to the petition; the said property, as alleged, was acquired by purchase from the owner of the same, Vicente Francisco Ayco, was assessed at the last assessment at \$110 United States currency, and is free from all incumbrances, no one having any right or interest therein; it is now occupied by the applicant who, after the hearing of this case and before judgment was rendered in the premises, conveyed the said land by means of an absolute sale to Canuto Reyes for the sum of P600, according to the notarial instrument appearing at folio 78.

On the 4th of April, 1907, the representative of Jacinto Limjap made written opposition to the foregoing application, requesting that the same be dismissed and that the registration of the said property in favor of Irineo Felix with costs be denied; he alleged that the opponent is the owner and present possessor of the land and denied that the applicant or his predecessors or principals had ever been in legal or material possession of the same, and also denied all the other allegations not expressly or implicitly denied in the previous paragraphs.

The case came up for trial and evidence was adduced by both parties to the suit, the documents exhibited by them being made of record. On the 3d of March, 1909, the trial court overruled the opposition of Limjap and decreed the adjudication and registration of the aforesaid property in favor of Canuto Reyes, after declaring a general default. The opponent excepted to the foregoing decision and moved for a new trial, on the ground that the judgment was contrary to law and not sustained by the evidence; the motion was overruled; the petitioner excepted and gave notice of his intention to appeal by the corresponding bill of exceptions which was duly presented, approved, and submitted to this court.

From the record of the case forwarded by the Court of Land Registration upon this appeal, it is fully proven by means of documents and by the testimony of competent witnesses: (1) That Crisostomo Marero possessed the land in question under title of ownership and sold it under pacto de retro to Vicente Francisco Ayco on the 25th of May, 1874, for the sum of 60 pesos, on condition that the vendor and the purchaser would both receive as partners the rent that the house erected on said land should produce, according to document marked with the letter "B"; (2) that in view of the fact that the vendor did not redeem the property within the period fixed by article 1508 of the Civil Code, as no term whatever was stipulated in the contract sale with the right of repurchase, Vicente Francisco sold it on the 17th of December, 1906, to Irineo Felix under public instrument, folio 7, and the latter, after having applied for the registration of his title in the registry of property, also sold the said lot to Canuto Reyes, in whose

favor the registration was decreed.

It appears to have been admitted by the opponent, who did not impugn in due course the document marked as Exhibit B of the applicant, that Crisostomo Marero was the original owner and possessor of said land, and, as it does not appear that Marero had transferred his control over the property to Braulia Cuepangco, no possible reason exists under the law for considering the latter to be the lawful owner of the land; therefore, she could neither have disposed of it nor sold it to the opponent Limjap.

As a matter of fact Cuepangco, as stated by her son-in-law and attorney-in-fact or representative, Dalmacio Guidote, in his affidavit, folio 99 of the record, never possessed nor pretended to own the said parcel of land situated between two lots belonging to his mother-in-law, and when he sold them in her behalf he did not include the intermediate lot, which was the property of one Marero, who subsequently sold it to the Chinaman Vicente Francisco, and the latter to Irineo Felix, and this fact was stated to the notary Manikis; and even though at first he refused to subscribe the instrument of sale drawn up by the said notary, because it referred to lands of larger area, he afterwards did so because after consulting with Attorney Sotelo, the notary assured him that as the writing contained no clause providing for the protection of purchaser from interference, nothing serious could happen.

Article 430 of the Civil Code provides that "Natural possession is the holding of a thing or the enjoyment of a right by a person. Civil possession is the same holding or enjoyment, together with the intention of acquiring ownership of the thing or right."

If Braulia Cuepangco was never in material nor civil possession of the land in question, and did not even have the intention to possess it, and if her representative and son-in-law, Dalmacio Guidote, being well aware that the said land situated between the two parcels owned by his mother-in-law belonged to a third person, Irineo Felix, the last purchaser, and for this reason he did not include the same in the sale of the two parcels to Limjap, the latter could never have acquired any right to the land of the applicant, because none was ever transferred to him by the vendor Cuepangco, under the instrument marked with the letter A, folio 66, who was not the owner of the intermediate land or lot owned by Vicente Francisco, and finally sold to Canuto Reyes.

With reference to the rights in the said land acquired by Vicente Francisco by virtue of the contract of sale contained in document marked "B," executed in his favor by the owner Crisostomo Marero, more than thirty years ago, in the presence of the gobernadorcillo accidental of Antipolo, notwithstanding the fact that it is not a transfer by a public instrument recorded in the registry of property, the transfer arose from a valid contract, and is legal and efficient; for this reason Vicente Francisco was the owner and possessor with just title and in good faith, and the right that he transmitted to the applicant must be sustained and protected by the courts while no better title under the law has been presented; nor has it been shown that the property was redeemed in due course. Therefore, the applicant has an unquestionable right to have his title recorded in the registry of property.

With respect to the identity of the land, it has been sufficiently shown by the documents offered in evidence, among which is the plan that was presented and which the witness Guidote had before him when testifying in the presence of the opponent, and also by the testimony of the witnesses examined at the trial. The opponent has not proven that the land, the registration of which has been applied for, is not the land described in the application, in the public instrument, and by the plan above referred to, or that it was larger than it should really be; for which reason, in the absence of proof to the contrary, it must be acknowledged and admitted that said facts so proven are true.

The mere fact that in the instrument of sale of the lands of Cuepangco to Limjap a greater extension was stated than the actual area, including a parcel which belonged to another and not the property of the vendor, can not have conferred any right whatever to the purchaser over the land improperly included, even though he consented to

have the clause of eviction and warranty suppressed in the document, because the inclusion was made without the knowledge or consent of the real owner of the land, and Cuepangco, who did not own the property, could not dispose of it or sell it; and the pretension of the opponent is all the more unsustainable inasmuch as the representative of the vendor, who acted in her behalf in negotiating and closing the sale, frankly and spontaneously acknowledged that an error had been committed by including in the document the land of the applicant which has not been, and could not be included in said sale, that he had endeavored to correct the error, and that, if he subsequently subscribed the instrument it was through the advice of the lawyer,, who assured him that nothing could happen if said clause of eviction and warranty were suppressed.

Article 1281, paragraph 2, of the Civil Code provides that "If the words should appear contrary to the evident intention of the contracting parties, the intention shall prevail."

Article 1283 of said code prescribes that "However general the terms of a contract may be, there should not be understood as included therein things and cases different from those with regard to which the persons interested intended to contract."

Hence, considering that the land of the applicant was not the subject of the contract, and that it could not so be for the reason that it did not belong to the vendor, it can in nowise be understood as included in the instrument of sale which appears at folio 66, no matter what may be the terms of the document.

For the foregoing reasons, by which are refuted the errors assigned to the judgment appealed from, wherein the deposition of witness Vicente Francisco is entirely disregarded, it is our opinion that the said judgment should be and is hereby affirmed, with the costs against the appellant. So ordered.

Arellano, C. J., Johnson, Carson, and Moreland; JJ., concur.

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