

AGUEDA MAGSACAY ET AL., PLAINTIFFS AND APPELLANTS, VS. PETRONA S. FERNANDO, DEFENDANT AND APPELLEE.

G.R. No. 5411. September 27, 1910

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Juana Gatmaitan and Agueda Magsacay applied to the Court of Land Registration for the registration of a tract of land situated in Bagang, barrio of Santa Monica of the municipality of Hagonoy, Province of Bulacan, having an area of 49 hectares, 86 ares, and 99 centares.

This application was contested by Petrona S. Fernando, with respect to a portion of the said land, comprising 8 hectares, 18 ares and 8 centares, which she alleged was hers and which was included within the area of the land that was the subject of the application.

The applicants derive their right and title of ownership from Luis Saenz de Vizmanos, who sold them the whole of the said land on September 7, 1904. De Vizmanos acquired the land through title by composition from the state on April 17, 1893. This title, as well as that of purchase and sale, was recorded in the property registry of the Province of Bulacan, the former on June 2, 1893, and the latter on September 7, 1904.

Petrona Fernando also invokes a similar title by composition from the state, obtained on March 17, 1895, and recorded in the property registry of the province mentioned on September 19, 1896.

Prior to the time when the vendor, Saenz de Vizmanos, obtained his title by composition from the state, he was already in possession of the whole of the land therein specified, through its award to him, as it appears, in a suit against Timoteo de Pano, decided in his favor. This previous possession was confirmed by the witnesses on both sides in that litigation. Saenz de Vizmanos testified that Vicente Enriquez, the former husband of Petrona Fernando, begged the witness, after the termination of the suit against Timoteo de Pano, to give him the parcel of land which is now in contention, and that, as they were friends, he gave it to him. When questioned as to whether he had transferred the ownership or only the usufruct, he replied "the ownership of the land." On cross-examination he was asked whether he had told Juana Gatmaitan, one of the applicants, that the portion transferred was only in usufruct, and he denied having made such a statement. He affirmed that the sale mentioned in the public instrument presented in evidence by the applicants was executed by him in their favor; but he said that on the contract of purchase and sale being presented to him, he made the remark that the portion belonging to Petrona (the opponent) should be excluded from the sale, to which Juana Gatmaitan replied that there was no need to set forth the fact in the instrument, because she, Gatmaitan, had a lease on that portion and, moreover, Petrona was her aunt. De Vizmanos further testified that he made the same statement to the notary, but that the latter told him that there was no need of such an exclusion, as there was already a contract with the said Petrona. On being questioned by the judge, he stated that he had signed the application for the composition title twenty years before and had transferred the land to Vicente Enriquez thirty years before, and that thirty years had elapsed since the termination of the suit with Timoteo de Pano; so that, as admitted by this witness, the transfer

had already been made at the time that he applied for his composition title for the whole of the land.

One of the applicants, Juana Gatmaitan, testified that in June, 1904, she leased from Petrona S. Fernando the portion of land concerned in this litigation, that is, four months before purchasing it from Saenz de Vizmanos.

The statements made by the seller, Saenz de Vizmanos, in his testimony, contrary to those contained in the public instrument of sale executed by him in favor of the applicants, and the lapse of more than thirty years of possession by the opponent, not less than the title of ownership obtained by the latter from the state eighteen years before, induced the trial judge to declare the title by composition of Saenz de Vizmanos null, in so far as it concerned the portion of land in dispute, which portion in fact he no longer possessed on the date he applied for the said title, and to decide this suit in favor of the opponent. The court below decreed that "the registration solicited is denied with respect to the disputed portion of the land, described in opponent's petition (L. D. 3145) and plan, Exhibit B, which is declared to belong to the opponent, Petrona Sepulveda Fernando."

The applicants appealed from this judgment and forwarded to this court a bill of exceptions, with right to a review of the evidence, containing the following allegations of error:

First. The court erred in finding, on the sole testimony of Saenz de Vizmanos, that the latter had thirty years before transferred to Vicente Enriquez, the opponent's husband, the portion of land in question.

Second. The court erred in finding that the land which is the subject of the opposition was not included in the sale made by Saenz de Vizmanos.

Third. The court erred in giving weight to the testimony of a witness in so far as it was not rebutted.

Fourth. The court erred in declaring the nullity of the title issued by the state in favor of Saenz de Vizmanos.

Fifth. The court erred in declaring the validity of the title issued by the state in favor of the opponent.

Sixth. The court erred by not declaring valid the sale executed by Saenz de Vizmanos in favor of the applicants.

The first error alleged was not committed. The important fact is the transfer made by Vizmanos to the husband of the opponent, Vicente Enriquez, and this fact is admitted by the applicants in their brief, under No. 2 of the enumeration of the facts that they admit as proved. The period of thirty years, as found in the judgment appealed from, in accordance with the testimony of the witness Vizmanos, is of no importance in this suit, inasmuch as no defense of prescription, neither ordinary nor extraordinary, was argued or alleged therein.

The second error alleged is not without foundation, but it does not invalidate the judgment. Certainly, it was improper to consider in the judgment appealed from, as a ground for the decision, the testimony of Saenz de Vizmanos to the effect that he did not wish to include in the sale made to the applicants the portion of land which is now the subject of opposition. According to the context of the instrument, it is included therein, and no one has denied nor may deny the fact; and because now the vendor desires by his testimony to invalidate and annul the sale which he is shown in that instrument solemnly to have made, no greater weight can be given to his subsequent testimony, as against the previous execution of the deed of sale, on the hypothesis that the contents of a contract are not at the mercy of one of the contracting parties, as regards its effects, unless it be to one's own detriment, but not to that of the other party, nor in favor of or against a third person. Moreover, it has in no manner been proven - for the sole testimony of the vendor is not proof that can prejudice the purchasers - that either the latter, or the notary who authorized the instrument, was cautioned with respect to the exclusion of any portion whatever of the land the whole of which appears in the said instrument as sold.

It is a fact fully substantiated that Saenz de Vizmanos sold to the petitioners all of the land which is at present the subject of their application. But it has been conclusively proved, beyond all peradventure of doubt, that he could

not have and ought not to have sold all the land specified in the instrument of sale; and for this reason, that finding, although it may appear erroneous, does not vitiate the judgment appealed from. On the part of the vendor it has been fully proved, by his own testimony given at the trial, that thirty years before he transferred to Vicente Enriquez the ownership, not the usufruct, of the portion of land in question, and that this transfer was made before Vizmanos had applied for and received the title by composition from the state, in 1893. Consequently, the said portion could not have been included in that application, nor in that title, being as it was then a thing belonging to another, neither could it be transferred by the vendor, in 1904, in favor of the applicants. The result is that he knowingly sold a thing which was not his, by including the said portion of land as a part of the whole tract sold. He knowingly sold a thing belonging to another, for it is improper for him to allege that he was not aware that it had already been registered in the registry of land by the opponent herein. With respect to the purchasers, there is the fact that one of them, before the purchase of the said portion from Vizmanos, had leased it from the opponent; and the lessee not having proved at the trial that she had accepted it from the opponent in the latter's capacity as a mere usufructuary, it is to be supposed, by the ordinary rules for the interpretation of contracts, that in taking the lease from the opponent she recognized her as the owner of the land; so that, knowing that the opponent was then the owner of the land, instead of buying it from her, she bought it from Vizmanos who, thirty years ago, ceased to be the owner of that portion by reason of his having transferred the ownership thereof to the husband of the opponent. And whether there was or was not knowledge of this right of ownership which, as a general rule, the contract of lease implies, it is a proven fact that it is the opponent who possessed the said portion of land as owner, and against this right of ownership the sale, the basis of the application, was effected.

When, on the 7th of September, 1904, the applicants purchased the whole of the land from Vizmanos, they could and ought to have seen by the property registry that the said portion of land was shown therein to belong to Petrona Fernando, through title by composition obtained in March, 1895, and recorded on September 19, 1896. Hence,, the title of ownership, which the applicants believe they have acquired by the alleged contract of purchase and sale, can not be affirmed, for it clearly appears that the vendor could not have transmitted to them an ownership which for many years he no longer had, at least not since the opponent, without opposition on his part, had acquired from the state a solid title by composition.

It appears from the property registry that the land registered as belonging absolutely to the opponent is bounded on the north and south by land belonging to Saenz de Vizmanos, and, as shown by the plan presented by the opponent and according to its unquestionable location admitted at the trial, it is surrounded on all sides, across several esteros, by the rest of the land previously registered as the property of Saenz de Vizmanos.

During the course of the proceedings in the matter of the application of Petrona Fernando for the composition title, necessarily Saenz de Vizmanos should have been summoned, and then and only then, as this court has decided in several cases, arose Saenz de Vizmanos's opportunity to object to the registration, as property belonging to Petrona Fernando, of the land which he considered to be his own, for any of the reasons now alleged, not by Saenz de Vizmanos but by those who are merely his successors in interest. For a successor in interest to invoke a right as one derived from his predecessor which the latter did not and could not have and does not and can not invoke, is indeed invoking a great deal. Unhesitatingly, Saenz de Vizmanos testified that thirty years ago he transferred to Vicente Enriquez, in turn predecessor in interest of Petrona Fernando, the land now in litigation, and conveyed not merely the usufruct, but also the ownership. And not because he so testified must the land he considered as belonging to Petrona Fernando, but because her ownership is plainly shown by the property registry as against Saenz de Vizmanos and whomsoever may claim to derive his right from Saenz de Vizmanos. If the latter can in no manner invalidate the title of ownership registered in favor of Petrona Fernando, still less are the petitioners able to do so, who simply invoke a right which they suppose to lie with Saenz de Vizmanos and which the latter does not claim to have possessed in 1904 when he executed the instrument of sale of the whole of the

land which he continued to possess at the place aforementioned, in the center of which land is situated the property in litigation.

It is consequently needless to consider the other assignments of error alleged, the grounds of the judgment appealed from having been herein sufficiently established.

Therefore, the said judgment is affirmed, with the costs of this instance against the appellants.

Torres, Johnson, Carson, and Moreland, JJ., concur.

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