

MANUEL CEA, PLAINTIFF AND APPELLANT, VS. MARIANO P. VILLANUEVA, GUILLERMO GONZALEZ AND THE PROVINCIAL SHERIFF, LEON REYES, DEFENDANTS AND APPELLEES.

G.R. No. 5446. March 10, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal by the plaintiff from a judgment of the Court of First Instance of the Province of Ambos Camarines, Hon. Grant Trent presiding, absolving the defendants from the obligation charged in the complaint, with costs.

This action has proceeded upon two theories: (1) Upon the theory that the defendants, having entered into the possession of a house and lot, the property of the plaintiff, by gross negligence and carelessness, caused it to be burned to the damage of the plaintiff; and (2) upon the theory that the defendants entered into possession of a house and lot belonging to the plaintiff, knowing that they were not entitled to the possession thereof, and acting, therefore, in bad faith, they were responsible to the plaintiff for the destruction of the house by fire.

Upon the whole case we are clearly satisfied that neither of these theories has been sustained by the evidence and that the case was correctly decided by the learned trial court.

It appears that in the year 1906 the defendant Villanueva began an action against the plaintiff to foreclose a mortgage which he held upon various parcels of real estate belonging to the plaintiff, and prosecuted the same to final judgment. After waiting the proper time for the plaintiff to pay the indebtedness upon which the mortgage was based, and he not having made such payment, said parcels of land, under the terms of said judgment, were offered for public sale and were sold to said Villanueva at public auction on the 3d day of September, 1906, he being the highest bidder at said sale. Thereafter and on the 12th day of September of the same year, the said defendant, through the activities of the sheriff, entered into possession of the property, including one of the pieces of land called parcel No. 2. Upon delivering possession of said parcel No. 2 to the defendant Villanueva, the sheriff found that there was a house built upon said lot, which house was not specifically mentioned in the description of parcel No. 2, although the land upon which it stood was clearly within the description of said parcel as presented by the documents. Fearing that by reason of the failure of such description specifically to mention the house in question his power did not extend to the delivery of the possession of said house, the sheriff informed the defendants that, in the event that the court should determine that said house was not property embraced within the mortgage and legally conveyed under the mortgage sale, they, the defendants, must not only deliver possession but also pay to the plaintiff a proper sum for its occupancy. The employee of the plaintiff who had been in charge of the house up to the time of the delivery of its possession was then notified by the sheriff that he must quit the premises and that the defendant was to occupy them in his stead. The employee, however, loath to leave uncared for certain articles that were there on the premises, asked permission of the sheriff to be permitted to remain there for the purpose of caring therefor. The sheriff informed him that he had no power to give such permission and

referred him to the defendants. The latter immediately gave permission to the employee to remain upon the premises and look after the property referred to in his petition. The defendant placed an employee of his own in possession of the property to care for and protect it from injury or destruction. On the 12th day of November of the same year-the court before which the judgment of foreclosure and sale had been obtained, and which ordered the sale of said property under said judgment for reasons which are immaterial here, annulled the sale and ordered a resale of the same. During the month of December the property described in the mortgage, including parcel No. 2 in question was again sold at public sale and again purchased by the defendant Villanueva. Prior to this time, however, and on the night of the 3d of October, 1906, the house located on parcel No. 2 was destroyed by fire. The evidence does not disclose in what manner the fire originated or through whose fault or negligence, if of anyone, it occurred. Upon that question the record is wholly silent.

The first contention presented by the appellant to this court is that the learned trial court erred in holding that the house in question was included in the sale made by the sheriff under the judgment of foreclosure and sale.

We have carefully examined the record in connection with this allegation of error and are thoroughly satisfied that the evidence fully supports the conclusion of the learned trial court in this respect. It appears that the description of the land upon which the house was located is included within the description of parcel No. 2 in the mortgage referred to. The appellant in his complaint and in his argument presents a description of the house and lot referred to somewhat different in words from the description of parcel No. 2. This, however, causes no confusion, inasmuch as it is quite clear that the description of parcel No. 2 fully includes the house and lot described by the appellant.

The second contention of the appellant is that the learned trial court erred in finding that the possession of defendants of parcel No. 2, which includes the house and lot in question, was in good faith.

As to this contention, the record does not leave us in doubt. It having been found that the description contained in the mortgage includes the house and lot in question, the resolution of the present question is easy. In the case of *Bischoff vs. Pomar* (12 Phil. Eep., 690), this court held, Mr. Justice Torres writing the opinion, that -

"It is a rule, established by the Civil Code and also by the Mortgage Law, with which the decisions of the courts of the United States are in accord, that in a mortgage of real estate, the improvements on the same are included; therefore, all objects permanently attached to a mortgaged building or land, although they may have been placed there after the mortgage was constituted, are also included."

The Civil Code, article 1877, provides that -

"A mortgage includes the natural accessions, improvements, growing fruits, and rents not collected when the obligation is due. * * *" (Manresa, vol. 12, pp. 499, 500.)

From this it is evident that the house in question passed under the mortgage sale. When, therefore, the defendant entered into possession thereof after he had purchased it at the foreclosure sale, he presumably entered into possession honestly and in good faith. That he did so is nowhere put in question by the evidence in this case. No direct evidence is given anywhere attacking his motives or his intentions. When the defendant took possession he did so as owner of the property and, even if the mortgage sale had been absolutely void, he would still have been a holder in good faith, being a mortgagee in possession under direction of the court.

"Good faith is always presumed, and any person alleging bad faith on the part of the possessor is obliged to prove it. Possession acquired in good faith does not lose this character, except in the case and from the moment some act exists proving that the possessor is aware that he possesses the thing illegally. It is presumed that the possession is still enjoyed in the manner in which it was acquired until the contrary is proved." (Arts. 434, 435, 436, Civil Code.) "Where a purchaser at a defective foreclosure sale, or his assigns, goes into possession of the

mortgaged premises, with assent of the mortgagor, under the right supposed to have been acquired under the foreclosure sale, he will be deemed a mortgagee in possession." (Russell vs. Akeley Lum. Co., 45 Minn., 376; Rogers vs. Benton, 39 Minn., 39.)

"A purchaser at a mortgage foreclosure sale which is invalid as against the owner of the equity of redemption becomes assignee of the mortgage, and if he lawfully enters into possession of the premises, he becomes a mortgagee in possession, and ejectment will not lie against him by the owner of the equity of redemption." (Townshend vs. Thomson, 139 N. Y., 152.)

"An alienee of a mortgage, who claimed title under a foreclosure sale, acquires all the rights of a mortgagee, even though the foreclosure sale is void for irregularity, so as not to bar the equity of redemption. Being in the position of a mortgagee in possession after breach of condition with the debt unpaid, he has a good defense to an ejectment brought on the bare legal title." (Bryan vs. Brasius, 162 U. S., 415.)

The defendant having entered into possession of the property lawfully, he was obligated to exercise only reasonable diligence and care in the management of the property. (Art. 1903, Civil Codej. Wann vs. Coe, 31 Fed., 369; Murdock vs. Clark, 90 Cal., 427.) Article 457 of the Civil Code reads as follows:

"A possessor in good faith is not liable for the deterioration or loss of the thing possessed, with the exception of the cases in which it is proved that he has acted with fraudulent intent. A possessor in bad faith is liable for the deterioration or loss in any case, even in those caused by force majeure, when he has maliciously delayed the delivery of the thing to its legitimate possessor."

It appearing from the nature of the relation of the defendant to the property that he was not a holder in bad faith nor a usurper, he is responsible only for those losses which are shown to have been caused by his negligence. No negligence having been shown in this case, the complaint was properly dismissed upon the merits.

The judgment is affirmed, without special finding as to costs.

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

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