

HIGINO MONTAÑEZ, PLAINTIFF AND APPELLANT, VS. THE PROVINCIAL SHERIFF OF OCCIDENTAL NEGROS ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 5530. December 29, 1910

Ponente: JOHNSON, J.

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JOHNSON, J.:

This was an action to recover the possession of three parcels of land, the first situated in "el sitio de Jaimaya," the second in "el sitio de Tabao," and the third in "el sitio de Nabusuang."

After hearing the evidence the lower court found that the plaintiff was the owner and entitled to the possession of the first parcel, or that located in the sitio of Jaimaya, and that the defendant, Pedro Jaboneta, was the owner of the other two parcels of land or those situated in Tabao and Nabusuang.

From that decision the plaintiff appealed to this court. From the proof adduced during the trial, the following facts are proven:

First. That the parcels of land located in the sitios of Tabao and Nabusuang were, on the 15th day of May, 1899, delivered by their former owner, Ciriaco Montanez, to his brother, the plaintiff herein, Higino Montanez, under an alleged mortgage, for the sum of ₱P200. (Exhibit No. 1.)

Second. That the parcel of land situated in the sitio of Jaimaya was delivered by its former owner, Ciriaco Montanez, to Higino Montanez, on the 19th day of May, 1899, under a pacto de retro, for the sum of P400. (Exhibit No. 2.)

Third. That the three parcels of land above mentioned were, on the 3d day of August, 1899, sold by the said Ciriaco Montafies to Pedro Jaboneta, under a pacto de retro, for the sum of P550. (Exhibit A.)

Fourth. That each of the above-mentioned contracts was a private document and none of them were recorded.

Fifth. That on the 3d day of August, 1906, the Court of First Instance of the Province of Occidental Negros, in an action then pending between Pedro Jaboneta, as plaintiff, and Ciriaco Montanez, as defendant, with reference to the three parcels of land in question, rendered a decision, the dispositive part of which was as follows:

"In view of the allegations and the proofs adduced, this court deems it proper, as a matter of strict justice, to accede to the petition of the plaintiff, Pedro Jaboneta, and to declare consummated the sale, with pacto de retro, of the property specified in the contract set forth on folios 7 to 9 of the record, which property should be delivered to the plaintiff, together with the fruits, the rents, and the interest produced since the 16th of September, 1889, following tje month in which the said contract was executed, with the costs of this instance."

Sixth. That under that sentence of the Court of First Instance (see par. 5 above) the defendant herein, Juan Garganera, as deputy sheriff of the Province of Occidental Negros, on the 2d of September, 1907, delivered the possession of the said parcels of land in question to the defendant, Pedro Jaboneta.

Seventh. That on the 5th of September, 1907, the plaintiff commenced the present action.

Eight. That at the time of the alleged mortgage and sale by Ciriaco Montañez to his brother, Higino Montañez, the former delivered to the latter the actual possession of the parcels of land in question.

Ninth. That in the said action in the Court of First Instance of the Province of Occidental Negros, between Pedro Jaboneta and Ciriaco Montañez, the plaintiff herein was not a party. The rights of Higino Montañez could not, therefore, have been affected in any way by that action or judgment. As to him that judgment was null and void. He was not given an opportunity to be heard.

Our conclusions from the foregoing facts are as follows:

First. That Higino Montañez having purchased of Ciriaco Montañez the parcels of land located in the sitios of Tabao and Nabusuang and having obtained possession of the same before the sale to Pedro Jaboneta, he (Higino Montañez) is the owner and entitled to its possession. (Art. 1473, Civil Code.)

Second. That Higino Montañez having legally acquired possession of the two parcels of land in the sitios of Tabao and Nabusuang under his alleged mortgage (Exhibit No. 1) before the sale to Pedro Jaboneta, he is entitled to the possession of said parcels of land until he is paid the full amount of his alleged mortgage.

Third. That Higino Montañez not having been a party to the action between Pedro Jaboneta and Ciriaco Montañez, his right in the parcels of land was not affected thereby, and consequently his dispossession under that judgment was illegal. He is, therefore, entitled to be restored to the possession of the two parcels of land located in the sitios of Tabao and Nabusuang, until his so-called mortgage is paid.

Therefore that part of the judgment of the lower court which allowed Pedro Jaboneta to retain the possession of the parcels of land in the sitios of Tabao and Nabusuang is hereby reversed and it is hereby ordered and decreed that the possession of those parcels of land be returned to Higino Montañez and that he be protected in the possession of the same until the full amount of his alleged mortgage is paid. Without any finding as to damages for the illegal possession or as to costs, it is so ordered.

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

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