

LOPE TORRECAMPO, PLAINTIFF AND APPELLANT, VS. BALBINO VITERO, DEFENDANT AND APPELLEE.

G.R. No. 6205. September 14, 1911

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 12th of November, 1909, the plaintiff commenced an action to recover the possession of the parcel of land described in paragraph one of the complaint, together with the sum of P?240 as damages for the illegal possession of said parcel of land and costs. The defendant filed a general and special answer.

After hearing the evidence adduced during the trial of the cause, the Hon. V. Nepomuceno, judge of the Eighth Judicial District, rendered a judgment declaring that the plaintiff was without right to the possession of the land in question and absolving the defendant from any liability under the said complaint, with costs against the plaintiff.

From that judgment of the lower court the plaintiff appealed and made the following assignment of error:

"The lower court erred in holding that the possession of the land in question was in Pedro Triunfo and not in Lope Torrecampo, on the date of the public sale by the sheriff."

After a careful examination of the evidence adduced during the trial of the cause, we find that a preponderance of the evidence shows the following facts:

First. That on the 29th of May, 1903, one Estefanio Vargas Rojas, mortgaged the land in question (see Exhibit A) to the plaintiff herein for the sum of 200 pesos Mexican currency.

Second. That some time after the said mortgage had been executed and delivered, Pedro Triunfo went into possession of the said land. The plaintiff claims that Pedro Triunfo was in possession of the land as his tenant.

Third. That on the 15th of August, 1907, the defendant herein (Balbino Vitero) commenced an action (No. 783) against the said Pedro Triunfo, for the purpose of recovering the sum of P2,711, with interest at the rate of 6 per cent from the 1st of February, 1904. At the close of the trial of that cause (No. 783), the Hon. Grant Trent, then judge of the Eighth Judicial District, rendered a judgment on the 13th of November, 1907, in favor of the plaintiff (Vitero) and against the defendant (Triunfo) for the sum of P2,711 Mexican currency with interest, etc., and costs. No appeal was taken from that judgment.

On the 14th of November, 1907, an execution was issued on said judgment and the parcel of land herein in question was attached and later, on or about the 1st of August, 1908, was sold at public auction to the defendant herein. The defendant herein has been in the possession of said parcel of land since that date.

Fourth. That in the month of April, 1908, the plaintiff herein (Torrecampo) commenced an action in the court of the justice of the peace of the pueblo of Bato, against the defendant herein (Vitero) to recover the possession of the land in question, which action was decided against the plaintiff and he did not appeal from said judgment of the justice of the peace.

The contention of the plaintiff herein is that, under his said mortgage of the 29th of May, 1903, he, through his tenant, Pedro Triunfo, was entitled to the possession of the land; that Pedro Triunfo was his tenant only. Pedro Triunfo was not called as a witness during the trial of the cause. The record discloses no reason why he was not. His testimony might have cleared up some of the difficulties which the case presents.

The only witness sworn in behalf of the plaintiff was the plaintiff himself. He swore that Estefanio Vargas Rojas mortgaged the land in question to him on the 29th of May, 1903, and that Pedro Triunfo took possession of the land in question as his tenant.

Exiquio Vargas, son of the said Estefanio Vargas Rojas and Leon Mendoza appeared as witnesses for the defendant. The said Exiquio Vargas testified that his father mortgaged the land in question to Pedro Triunfo and Lope Torrecampo; that Pedro Triunfo was in possession of the said land at the time of the attachment in 1908; that he was the owner of the attached tract of land; that Pedro Triunfo had cultivated the land from 1903 to 1908 and had reaped the crops therefrom; that Pedro Triunfo had not delivered any portion of the said crops to the plaintiff Lope Torrecampo; that he had never seen the said Torrecampo on the said parcel of land.

Leon Mendoza testified that he knew the parties to the present action; that he owned the land adjoining the land in question and had owned said land since 1904; that Pedro Triunfo had farmed the said land and had reaped the crops therefrom.

The record does not clearly disclose upon what theory the land in question was attached and sold as the land of Pedro Triunfo. The plaintiff admits that his right to said land was only the right of a mortgagee. There is no attempt to show that he had ever foreclosed his mortgage and had obtained title to the land. The fact that the land was sold as the property of Pedro Triunfo will in no way affect the rights of Lope Torrecampo under his mortgage. If his mortgage is a valid lien upon the property, then, notwithstanding the fact that the land has been sold under the writ of execution subsequent to the creation of his mortgage lien, this will in no way affect his lien upon the property. Of course he must establish the fact that his mortgage was a valid mortgage, constituting a valid lien upon the property in question.

As was said above the record does not clearly disclose what right or interest Pedro Triunfo had in the land in question at the time of the attachment and sale. He presents no objection here to said attachment and sale; neither does the mortgagor, Estefanio Vargas Rojas, present any objection to the land having been sold under the said execution.

Accepting the allegations of the plaintiff with reference to his alleged mortgage upon the land in question as a fact, yet, nevertheless, this fact is not sufficient to justify his recovery of the land in question in the present case. If his mortgage is a valid mortgage upon the land, constituting a prior lien to the attachment and sale, the said attachment and sale in no way affected his lien. He still has his right to enforce his lien against the property in question, in a proper action therefor, but the facts disclosed in the record are not sufficient to justify his physical recovery of the land in question.

Therefore the judgment of the lower court is hereby affirmed, with costs.

Torres, Mapa, and Carson, JJ., concur.

Moreland, J., concurs with the dispositive part.

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