

LEOPOLDO CAÑIZARES TIANA, PLAINTIFF AND APPELLEE, VS. JOSE M. S. TORREJON, DEFENDANT AND APPELLANT.

G.R. No. 6638. December 28, 1911

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an action upon "the warranty of the title to a parcel of land." After hearing the cause in the lower court, the Honorable Judge H. D. Gale rendered the following decision, which we adopt as a true statement of the facts found in the record with a conclusion in accordance with the law and the facts.

"The court is convinced that the plaintiff, Don Leopoldo Canizares Tiana, purchased from the defendant, Don Jose Maria Torrejon, for the sum of P2,500, a lot with buildings and improvements, situate in the municipality of Jolo, same district, Moro Province, Philippine Islands, description and boundaries whereof are as follows:

" 'On the north by Calle P. Mir for a distance of twenty-two meters and ten centimeters; on the south by the property of Rojas Reyes & Co., or Sr. Tiana, for a distance of twenty-two meters and ten centimeters; on the west by Calle Garcia Loranca, for a distance of eighteen meters and ninety centimeters; and on the east by a commissary building, for a distance of eighteen meters and ninety centimeters.'

"At the sale of the said lot and improvements, the vendor, Jose Maria Torrejon, warranted the title thereto as appears from the wording of the contract of sale and purchase, dated June 17, 1905 (Exhibit B of the plaintiff), which states:

"I further covenant and agree to be responsible to the aforesaid Leopoldo Canizares Tiana, his heirs and successors in interest, for the property, and bind myself to defend the title thereto now and forever against any just claims, by whomsoever presented.'

"Before executing the deed of sale to the estate in question, that is, on April 12, 1905, the defendant, Jose Maria Torrejon, filed an application in the Court of Land Registration (case No. 1440), requesting registration of the land and improvements (Exhibit A of the plaintiff; p. 53 of the record), the same as described in Exhibit B of the plaintiff.

"Although the said Torrejon had executed the deed of sale to the land and improvements in favor of Tiana, he continued to prosecute the case, No. 1440, and it was heard on February 28, 1906 (Exhibit A of the plaintiff; page 76 of the record). The participation and intervention, either direct or indirect, of the vendee Tiana, did not appear until March 1, 1906, when Torrejon presented a written statement to the effect that he had transferred all his rights in the property in question to Tiana. Tiana continued the prosecution of the case in the usual manner until decision therein was rendered on November 15, 1906, (p.105 of the record). The defendant, Jose Maria Torrejon, was informed of this decision, the result whereof appears in Exhibit C of the plaintiff, page 117 of the record. Tiana asked the court for a continuation in order to present more evidence in support of the requested registration of the property which is the subject of the present litigation, doing this in compliance with instructions from Torrejon, as appears from the letter written by the latter, presented in this case as Exhibit C of the plaintiff. The court granted this request and continued the case until July 14, 1907 (pp. 111 and 112 of the record), and notification of this action by the court was transmitted to Torrejon (Exhibit G of the

plaintiff, p.122 of the record) During the period granted by the court, the plaintiff Tiana requested the defendant Torrejon, on various occasions, to bring forward the evidence required (Exhibits G, I, J, and K), but the latter failed to do so. On August 8, 1908, the court issued a decree dismissing the application in case No. 1440 and declaring the estate in question to be public property (p. 112 of the record, Exhibit A), and notification thereof was sent to Torrejon (Exhibit D of the plaintiff, p. 119 of the record). It further appears that the lot with its buildings and improvements, the subject of this litigation, passed into the possession of the military authorities in the month of May, 1908; that the plaintiff Tiana received no payment whatsoever for it; and that, at that time, the value of it was P2,500, the amount for which Torrejon sold it to Tiana. Since the said month of May, 1908, or about the middle thereof, when the plaintiff in the present suit was deprived of possession, the estate has produced rent at the rate of P36 a month, of which the plaintiff has also been deprived. On December 14, 1909, the plaintiff Tiana demanded that the defendant Torrejon return or repay to him the sum of P2,500 (Exhibit F of the plaintiff, p. 121 of the record). It further appears that Torrejon knew of the Government's objection to the application in case No. 1440 (p. 76 of the record, Exhibit A), and that the land, buildings and improvements, described in case No. 1440, were wholly included within the boundaries of the military reservation of Jolo, Sulu, Moro Province, P. I.

"Finally, it appears that the land, buildings and improvements described and specified in case No. 1440 of the Court of Land Registration, are the same land, buildings and improvements involved in the present suit, described and specified in Exhibit B of the plaintiff, page 115 of the record, and paragraph 3 of the complaint.

"This is an action upon the warranty of the title to the property in case of eviction, under article 1475 of the Civil Code. In such case there are three indispensable requisites: (1) Final judgment; (2) that the vendee be deprived of the whole or a part of the thing sold; and, (3) a right prior to the sale (Manresa on the Civil Code, volume 10, pages 161 to 170); and, finally, another indispensable requisite is that prescribed in article 1481 of the Civil Code: that the vendor be given notice of the suit at the instance of the vendee. On the merits of the present case, and the preponderance of the plaintiff's evidence, and from the facts established, all the foregoing requisites appear herein. In his brief the defendant alleges that the decree issued in case No. 1440 was not final and that the plaintiff could and should have appealed from it. Such a case is expressly decided by the illustrious and learned author, Manresa, in his commentaries on the Civil Code, volume 10, page 163, in the following manner:

" 'Can the vendor escape his obligation of warranty by alleging that although there may be a final judgment against the vendee, such judgment became final with the latter's consent? We understand not, and that the vendee's right does not suffer the least impairment because he did not appeal.'

"With reference to the allegation of the defendant, Torrejon, that he was not notified of the suit, that is, of the objection presented by the government in case No. 1440, he can not set up such a defense, for he was himself the applicant in that case, without the intervention of Tiana, and such objection on the part of the government to his claims already subsisted.

"By virtue of the foregoing considerations, and of the facts established in this cause, the court holds that the plaintiff, Don Leopoldo Canizares Tiana, is entitled to recover from the defendant, Don Jose Maria Torrejon, the sum of P2,500, the price of the real estate involved in the present suit, and that he is also entitled to receive the sum of P36 a month from May, 1908, up to the day on which this judgment is executed. With reference to the counterclaim of the defendant, the court is of the opinion that he has no right to recover anything from the plaintiff.

"The court sentences the defendant, Jose Maria Torrejon, to restore to Don Leopoldo Canizares Tiana, the sum of P2,500, the value of the lot, buildings and improvements involved in the present suit, described and specified in this decision, and to pay to said Tiana P36 a month from May, 1908, up to the day on which this judgment is executed; and further sentences the defendant to pay the costs of this judgment."

The defendant appealed from the foregoing judgment to this court and filed a bill of exceptions.

Without discussing the errors assigned or reviewing the case more extensively, and without prejudice to the writing of a more elaborate decision, the judgment of the lower court is affirmed, with costs.

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

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