

DOMICIANO GONZAGA, PLAINTIFF AND APPELLEE, VS. ANGEL JAVELLANA, DEFENDANT AND APPELLANT.

G.R. No. 6843. September 03, 1912

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Angel Javellana having won in a civil suit against Jose Lim et al., a writ of execution was issued for P5,714.44, the interest thereon at 12 per cent per annum, and the costs, and, among other property attached for the satisfaction of the judgment, was a lot belonging to Jose Lim, situated on Concepcion street of the municipality of Iloilo, containing an area of 2,534.24 square meters and bounded on the north, west, and south by a lot owned by Doña Valeria Ledesma, and on the east by a lot belonging to Don Vicente Gay.

A portion of this lot of Jose Lim, to wit, 449.30 square meters toward the west, or in the part bordering on the lot of Doña Valeria Ledesma, is at present the subject matter of litigation.

Jose Lim's entire lot, having the aforesaid area of 2,534.24 square meters, levied upon as stated pursuant to the writ of execution issued, was by Jose Lim himself sold to Angel Javellana, on October 26, 1908, at a price equal to the total amount of the judgment. The sale was effected through an instrument executed for the purpose, attested by a notary and recorded in the property registry of Iloilo on May 5, 1910.

It appears, as shown by an instrument also attested by a notary, that Jose Lim had, on June 23, 1905, sold the portion of land aforementioned, the 449 square meters and 30 square centimeters, to Domiciano Gonzaga for the price of P650, in currency, and that this instrument was likewise recorded in the property registry of Iloilo, on December 15, 1909.

Through another instrument of the same date, it was agreed by the vendor and the vendee that Gonzaga would not require a house of light material which stood on the land and belonged to Lim to be removed therefrom for a period of twenty years or until it should fall down through some accident, and that, in compensation, Lim would pay the land tax levied against the said lot.

On May 21, 1910, Gonzaga brought suit against Angel Javellana for the ownership of the said parcel of land consisting of the 449 square meters and 30 square centimeters, the identification of which is a fact agreed upon at the trial, requested that he be declared the owner thereof and that the defendant be compelled to recognize the said parcel to be of the plaintiff's exclusive and legitimate ownership, and that the latter be placed in possession thereof.

The defendant, after denying all the facts set forth in the complaint, impugned the purchase alleged by the plaintiff and claimed that it was fictitious.

The Court of First Instance of Iloilo decided the suit in behalf of the plaintiff. The defendant appealed from that judgment and forwarded his appeal to this court through the means of a bill of exceptions.

An examination of the appeal and the allegations therein made by the appellant discloses that the latter claims that the trial court erred: (1) Because it was not held that the sale made by Jose Lim to Domiciano Gonzaga was a simulated one; (2) because it was decided that the plaintiff's right had preference over the defendant's, with regard to the land in question; and (3) because the suit was decided in the plaintiff's favor.

As concerns the first assignment of error, the appellant insists that the sale made to the plaintiff was a simulated one: (1) Because it was averred to be such by the witness, Eugenio D. Gonzaga, who testified that he was present at the execution of the sale and, notwithstanding, knew, as he was so told by the vendor himself, Lim, that nothing was paid because, according to a statement made by the latter the next day, the sale was fictitious; (2) because, as testified by Donato Lim, a witness for the plaintiff, it was agreed between the vendor and the vendee that the former should apply for a Torrens ownership title for all the land, and it appears that the application signed by Jose Lim bears the date of May 28, 1905, twenty-five days prior to that of the contract of sale, which is dated June 23, 1905; (3) because in April, 1908, Jose Lim had the disposal of all the land and executed a lease of the entire tract; (4) because Jose Lim, three days prior to his death, caused to be delivered to the defendant all the documents pertaining to the land; (5) because the defendant raised no objection at the time the land was attached by virtue of the writ of execution issued; and, finally, because it was not the plaintiff, but Jose Lim himself, who signed the declaration for the purposes of the land tax.

The first assignment of error was duly considered by the trial judge and his finding in the matter must stand, as it is not erroneous.

"There is no doubt - he says - that the deed made in 1905 by Jose Lim to this plaintiff was made for a valuable consideration. This is shown by the deed itself, and the testimony of Donato Lim shows that the consideration was actually paid, and his testimony is much more reliable and better testimony than that of Eugenio Gonzaga, who says there was no consideration to the deed."

In another part of the judgment he says:

"There is no question about the signatures of Lopez Vito and Yamson; all of the witnesses swear to their genuineness - even the witness put upon the stand to testify for the defendant that Jose Lim's signature was not genuine on the contract (the private one)."

We find corroboration of the conclusions of the lower court in the testimony of the notary who legalized the plaintiff's deed of purchase, who attested at the trial his own signature and those of the witnesses to the instrument, the attorneys Manuel Fernandez Yamson and Jose Lopez Vito, and averred that the maker of the deed was the first mentioned of these attorneys, who afterwards read it to Jose Lim who stated that he agreed to its contents. This proceeding was had in the office of the newspaper "El Tiempo."

It is not, however, to be concluded that proof of the genuineness of a document is likewise proof of the truth of its contents, for the instrument might very well be clothed with all the external legal forms and formalities and yet in itself attest a simulated contract. What the trial court virtually concludes is that when the instrument itself states the consideration of the contract, and the witnesses thereto, including the notary who attested the authentication of the contract, affirm the contents of the same, such documentary proof cannot be destroyed simply by the statement of one witness who denies, in support of the charge made in the complaint that such contract is simulated, the existence of a consideration, that is, the truth of the payment of the price of the sale.

The other facts alleged as proof of the simulation do not, either singly or jointly, destroy the truth of the first contract of sale.

If, according to the clerk in charge of the record books of the property registry of Iloilo, the application for a

Torrens title presented by Jose Lim, appears of record only as of November 18, 1905, the circumstance of this application's bearing a date anterior to that of the sale does not destroy the testimony of the witness Donato Lim that it was agreed upon between the vendee and the vendor that the latter should procure a Torrens title for all of the land, for what this witness perhaps meant was not proved, to wit, that it was useless to agree, on June 23, 1905, to do a thing which was already done or was supposed to have been done on the 28th of the preceding month of May.

If it was agreed between Lim and Gonzaga that the former should continue paying the land tax, its payment for the entire lot argues nothing against the sale of a part of the lot.

If, in accordance with the contract, the vendor might continue to have a house on the lot, and a building, belonging to the other purchaser, extending in its main part to and covering the greater portion of the lot, it can not be concluded that the lease made, as late as 1908, of the building and of the entire lot, is an argument against the truth of the purchase of a parcel of the lot, considering the adhesion of a building to the ground it occupies.

The delivery made by the vendor, three days before his death, of all the papers concerning the lot to the second purchaser, does not make the conclusion inevitable that there could not have been a sale of a part of the lot to a previous purchaser.

And the sale of the entire lot having been made to the second purchaser on the 26th of October, 1908, when it was scarcely the 2d of the same month that it had been levied upon, and the record not disclosing whether publicity was given to this judicial proceeding so that the first purchaser, a resident of and usually in Negros at the time, might have cognizance thereof, the passiveness and inaction of that first purchaser against whom no proof was presented to show that he knew of the second sale of the entire lot, are not an argument disproving the sale previously made of a part of the said lot.

As there was not sufficient evidence of the simulation of the contract of sale on which the complaint is based, the court rightly concluded that the sale was a true, valid and effective one.

It appears that the parcel of land concerned in this suit was sold twice to different purchasers: to the plaintiff, on June 23, 1905, and the sale was inscribed in the property registry on December 15, 1909; and to the defendant, on October 26, 1908, and this sale was likewise entered in the said registry on May 5, 1910.

The appellant argues that the judgment rendered is erroneous because the court gave preference to the right claimed by the appellee, the first purchaser, instead of to that still maintained, in this appeal, by the second purchaser. The grounds of this second assignment of error are that delivery of the thing sold had not been made to the first purchaser and the latter had not entered into the possession thereof.

The second paragraph of article 1462 of the Civil Code provides that when the sale is made by means of a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the subject of the contract, if from said instrument the contrary does not appear or may be clearly inferred. Pursuant to this provision, delivery of the thing sold was made to both purchasers, the litigants in this suit, through the means of the execution of the respective public instruments of sale produced in evidence by each party.

As regards possession, the vendor explicitly declared in the first instrument of sale that "he renounced in behalf of Domiciano Gonzaga, his heirs and successors-in-interest the right of property, possession, ownership and easements of the said lot * * *," and in the second instrument, in favor of Angel Javellana, that if, on the 24th of October, 1908, the price of the sale with right of repurchase had not been returned, such sale should be irrevocably consummated and the purchaser should be the absolute owner of the lot sold. It is evident that possession was legally conveyed to the first purchaser on June 23, 1905, and to the second, on October 24, 1908;

but actual possession, as proven at the trial, was taken only by the second purchaser, who holds the lot in question at the present time.

The rules of preference provided by the Civil Code for deciding between the claims of different purchasers of one and the same thing, when it is a real property, are: that it shall belong to the person acquiring it who first recorded it in the registry; second, should there be no entry, it shall belong to the person who first took possession; and third, in the absence thereof, to the person who presents the oldest title, provided there is good faith. (Art. 1473, pars. 2 and 3.)

In the judgment, good faith is supposed on the part of both purchasers, and it is not argued in this appeal that either of them showed bad faith.

The first purchaser, therefore, has in his favor priority of title and priority of entry in the property registry; and it is this priority of registration that is the positive reason for deciding on this appeal that -

"If the thing be real property, ownership thereof shall belong to the person acquiring it who first recorded it in the registry."

Therefore, as the judgment appealed from is in accord with this legal provision and the merits of the proceedings, the same is hereby affirmed, with the costs of this instance against the appellant.

Mapa, Johnson, Carson, and Trent, JJ., concur.

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