

AMOS A. DAVIS, PLAINTIFF AND APPELLANT, VS. FRANCISCA NEYRA, DEFENDANT AND APPELLEE.*G.R. No. 6939. March 07, 1913*

Ponente: TRENT, J.

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The admitted facts in this case are these: Julian Palma sold the house in question on the 18th day of February, 1909, to the plaintiff, Amos A. Davis, for the sum of P1,000. According to the terms of the contract it was agreed by both parties that the vendor should remain in actual possession of the house on and after the 18th day of February, 1909, as the tenant of the vendee, by paying P15 per month rent. The vendor paid the rent as agreed upon for twelve months only. Julian Palma sold said house on June 28, 1909, with the right to repurchase the same on or before the 24th of the following month, to Emilio Esteban, for the sum of P595. Under the terms of this contract Palma was to occupy the house free of rent. On the 23d day of September, 1909, for the consideration of P600, Palma made an absolute sale of the house to Esteban, and transferred the same on that date. On the 21st of December of the same year Esteban sold and transferred the house to one Jose Colomeda. Colomeda on the 19th day of December sold the house to the present defendant for the sum of P1,300. The defendant went into the actual possession of the house on this date, and has actually occupied the same up to the present time.

All of the above contracts of sales and transfers are evidenced by unregistered notarial public documents. The house has never been registered in the name of any person.

This action was instituted on the 19th day of October, 1910, for the purpose of recovering the possession of the house, together with rents at the rate of P15 per month. The defendant, in her answer, claimed to be the absolute owner of the house in question by virtue of the deed of purchase and sale executed in her favor by Jose Colomeda, and asked that judgment be entered dismissing the complaint with costs. The contention of the defendant was sustained by the lower court, and judgment entered accordingly. The plaintiff appealed.

Counsel for the appellant insists that the trial court erred in holding that the defendant's title and right to possession could not be defeated by that of the plaintiff, even though the defendant were a purchaser in good faith, without notice, and for a valuable consideration. On the other hand, counsel for the appellee contends (1) that the sale made by Palma to the plaintiff was one of antichresis, and consequently the plaintiff could not have acquired the ownership of the house, even though Palma failed to return the P1,000; (2) that the plaintiff's unregistered title cannot operate to defeat defendant's right of ownership and possession, because she is a "third party;" and (3) that plaintiff never did enter into the possession of the house in question. In support of these propositions, counsel for appellee cites articles 1881, 1882, 1883, and 1473 of the Civil Code.

It is true that the defendant is a purchaser in good faith without knowledge of defect in her title and for a valuable consideration. It is also true that she entered into the actual or physical possession of the house in question on the 19th of December, 1909, and continues in such possession. Hers was an absolute purchase and sale, and she

acquired all of the right, title, and interest of her vendor.

The inquiry now is, What kind of a sale was that made by Palma to the plaintiff? Was it a sale with the right to repurchase, or one of *antichresis*? A mere reading of the contract entered into between the plaintiff and Julian Palma is sufficient to show that the sale was one with the right to repurchase within the period of two years. This is specifically stated in the contract. The parties agreed that if Palma did not repurchase this property within two years, the plaintiff would become the absolute owner. The document itself says that the sale was one of *venta con pacto de retro*. It was so treated by all of the parties, and the trial court found that the sale was one of this class. There is not the slightest room for doubt as to the intention of the parties. Neither is there room for any other construction or interpretation of the contract. The contract speaks for itself in plain, unequivocal words. This contract is defined and governed by article 1507 et seq. of the Civil Code. It is here recognized as a contract of *pacto de retro*. The rights and obligations of the parties to this contract are stated in those articles. The contract being a sale with the right to repurchase, it cannot be one of *antichresis*. The two sales are entirely different. In the former, the vendor cannot exercise the right of redemption without returning to the vendee the price of the sale, and if the vendor should not do this within the time agreed upon, the vendee irrevocably acquires the ownership of the thing sold; whereas, in the latter, the creditor only acquires a right to receive the fruits of the real property of his debtor with the obligation to apply them to the payment, first of the interest, and second of the principal of his credit. The creditor does not acquire the ownership of the real property when the sale is one of *antichresis* by nonpayment of the debt within the term agreed upon.

After this suit was instituted, the defendant filed with the register of deeds a transfer made by Palma to Esteban for annotation only. She did nothing more. It is not even contended that this constituted a registration of the property. The defendant had no registered title to the house, nor any registered interest therein; consequently, she was not a "third party."

On the consummation of the sale of real property (and the house in question was real property) with the right to repurchase the same, the ownership then passes to the vendee. Nothing is left in the vendor except the right to repurchase. Whether this is a real or personal right cannot affect this case. The transaction between Palma and the plaintiff constituted a sale. The house was sold to the plaintiff.

Article 1473 of the Civil Code provides:

"Art. 1473. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be personal property.

"Should it be real property, it shall belong to the person acquiring it who first recorded it in the registry.

"Should there be no entry, the property shall belong to the person who first took possession of it in good faith, and, in the absence thereof, to the person who presents the oldest title, provided there is good faith."

The house in dispute, as we have said, is real property. Neither party recorded his title. On the very day that the plaintiff bought the house he entered into possession. Palma then became the tenant of the plaintiff. The possession of the tenant, in so far as the questions in this case are concerned, is the possession of the landlord. After the sale between Palma and the plaintiff, the former had nothing left to sell except his right to repurchase. He could not legally transfer the actual possession of the house to anyone. Such a transfer, if made, could not prejudice the title acquired by the plaintiff. The plaintiff having purchased the property and having received from the vendee the possession of the same, his title cannot be defeated by that of the defendant. The defendant, being a possessor in good faith, is relieved from the payment of rents.

For the foregoing reasons, the judgment appealed from is reversed and judgment entered in favor of the plaintiff

as prayed for in his complaint, without costs.

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

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