

SEVERO GOROSPE AND GUILLERMO GOROSPE, PLAINTIFFS AND APPELLANTS, VS. ANTONIO ILAYAT, ALEJANDRO ILAYAT, AND BASILIDES ILAYAT, DEFENDANTS AND APPELLEES*G.R. No. 7747. December 24, 1914*

Ponente: ARAULLO, J.

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An action filed in the Court of First Instance of Ilocos Norte for recovery of possession wherein plaintiffs alleged that while they were owners pro indiviso of the land described in the complaint by reason of their having purchased it from the defendants on November 27, 1910, for the sum of P195, the possession and material delivery of which land had been given to them by the said vendors themselves about the middle of the month of January, 1911, the first two defendants unlawfully appropriated to themselves one-half of the said property, thereby causing the plaintiffs damages in the amount of P20, and, by reason of expenses incurred by the present litigation further damages to the amount of P150. The plaintiffs therefore prayed that the defendants be ordered to make immediate delivery to them of the one-half of the said land and to pay the amount of the aforementioned damages and the costs of the suit.

The first two defendants, as well as the third, in their respective answers denied the plaintiffs' allegation of ownership and possession of the land in question and their having acquired it by purchase, as set forth in the complaint, and alleged on the contrary that while the first two defendants were still owners of the said land they sold it, on January 28, 1910, by a public instrument, to the other defendant, Basilides Ilayat, who since that time had had quiet, peaceable and uninterrupted possession; and that, as the land was part of a larger tract which the father of the first two defendants owned jointly with one Felipe Bartido, this latter had kept the possessory information or title deed of the land in dispute and had afterwards connived with the plaintiffs to prejudice the defendants by making it appear that he had sold it to the plaintiffs. The defendants therefore prayed that they be absolved from the complaint, with the costs against the plaintiffs, and that in addition, the latter be sentenced to indemnify defendants respectively in the sum of P200 for the damages occasioned them by the filing of the complaint.

After the introduction of evidence by both parties, the lower court absolved the defendants from the complaint, with the costs against the plaintiffs. The grounds of the judgment were that the contract of sale of the said land, on which the plaintiffs had based their action, was ineffective, null and void, because it had not been made in writing, and that, even though such sale in favor of the plaintiffs were actually made, that effected by the two defendants to the other defendant, Basilides Ilayat, should prevail, for the reason that it was made previously and was set forth in a written instrument. From this judgment the plaintiffs excepted and at the same time moved for a new trial. Their motion was denied, an exception was taken to the ruling and, through a bill of exceptions, the case was brought before this court on appeal.

The question raised before us by the appellants in their assignments of error turns upon the weight given the

evidence submitted by them, which the lower court held to be insufficient and incompetent to prove the complaint.

The complaint was based on the plaintiffs' allegation that they were the owners of the land in question because they had purchased it from the defendants Alejandro and Antonio Ilayat and Felipe Bartido, and to prove the purchase they presented three witnesses, among them Bartido himself and one of the plaintiffs who, over the objection and exception of the defendants, testified affirmatively on this point. The plaintiffs also presented a copy of the summary passes spry information relative to the said land; that had been instituted at the instance of and approved in favor of Felipe Bartido and Santiago Ilayat, the latter being the father of two of the defendants. The plaintiffs and Latina Bartido, another witness, testified that, instead of the sale being recorded in another written instrument as the plaintiffs themselves desired, this instrument was delivered to the plaintiffs upon the execution of the sale.

Since the enactment of Act No. 190, the Code of Civil Procedure, a contract of sale of realty cannot be proven by means of witnesses, but must necessarily be evidenced by a written instrument, duly subscribed by the party charged, or by his agent, or by secondary evidence of the contents of such document. No other evidence, therefore, can be received except the documentary evidence referred to, in so far as regards such contracts, and these are valueless as evidence unless they are drawn up in writing in the manner aforesaid. (Sec. 335, Code of Civil Procedure.)

The facts upon which the complaint is based cannot be considered as proven, because the plaintiffs only presented the testimony of witnesses to prove that the land sought to be recovered by them in this suit was sold to them by the defendants, Antonio and Alejandro Ilayat, and by Felipe Bartido. To prove the sale, the documentary evidence before mentioned cannot be substituted by the copy of the possessory information which, according to the plaintiffs, was delivered to them by the defendants. Furthermore, the plaintiffs did not prove that the possession of the said land was delivered to them by those two defendants and Felipe Bartido, as alleged in the complaint in corroboration of the alleged sale.

The defendants presented at the trial the document found on pages 10, 11, 12, and 13 of that part of the record entitled "Documents of the Parties." This document, marked "Exhibit A" of the defendants, appears to have been executed on January 28, 1910, in Batac, Province of Ilocos Norte, and witnesses that two of the defendants, Antonio and Alejandro Ilayat, sold the land in question to the other defendant, Basilides Ilayat, for the sum of F600, Philippine currency, paid by this latter to the two former. The document is signed by the three parties first above-named and by the witnesses Agustin Andres and Eulalio Bareng and was certified before Santiago Espiritu, notary public of Batac, on December 9, 1910. The defendants tried to prove by means of this instrument that the owner of the disputed land was one of them, Basilides Ilayat, and that the sale made to him appeared in writing.

In view of this evidence the court held as aforesaid that even granting that the land was actually sold to the plaintiffs as alleged in the complaint, the sale to Basilides Ilayat must prevail, because it was made previously and was recorded in a written instrument. This is, undoubtedly, but another reason for the dismissal of the complaint. However, a close examination of the document mentioned discloses that in referring therein to the personal certificate of registration of the supposed purchaser, Basilides Ilayat, exhibited in the course of the proceeding which, according to the date of the document, was had on January 28, 1910, the statement is made that the said certificate, No. 1409413, was issued by the municipal treasurer of the municipality of Batac on February 21, 1910. This clearly shows that the document in question could not have been executed on January 28, 1910, but on some date subsequent to that of February 21 of the same year, for the simple Reason that on January 28, 1910, Basilides Ilayat could nor have had in his possession the certificate which, as stated in the said document, he exhibited in that proceeding and on that particular date, as this certificate was issued twenty-three days afterwards, to wit, on

the 21st of the following month of February. Nor can any error be attributed to the reference made in the document of the date of the issuance of the certificate of registration, for, as may also be seen on page 13 of the record of documentary evidence, in the ratification of the deed of sale which appears to have been made by the three defendants before the notary of Batac, on December 9, 1910, that is, eleven months afterwards,—a circumstance in itself which leads us to suspect that it was not executed on the date shown on its face,—in the mention of the personal certificates of registration exhibited by the affiants, it is stated that Basilides Ilayat's cedula is numbered 1409413 and was issued on February 21, 1910, that is, it bears the same date and number as that mentioned in the deed of sale.

By reason of the foregoing, and because the evidence presented by the plaintiffs is insufficient, the defendants are absolved from the complaint, the judgment appealed from being thus affirmed, without special finding as to costs.

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

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