

EPITACIO AGUSTIN, PLAINTIFF AND APPELLANT, VS. PEDRO MONTANO, DEFENDANT AND APPELLEE.*G.R. No. 8320. December 24, 1913*

Ponente: CARSON, J.

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This action was brought to recover possession of a small plot of ground situated in barrio No. 20 of the municipality of Laoag, Ilocos Norte. In support of his claim of title plaintiff relied in the court below upon a deed of sale from the former owner, Juan Pascual, executed June 15, 1906; while the defendant undertook to show by his witnesses that he had inherited the plot of ground in question from his mother and had held it in quiet and undisputed possession for more than ten years.

The lower court held that the plaintiff had failed to establish his title, and dismissed the complaint with costs against him. The record conclusively establishes that Juan Pascual, from whom plaintiff claims to have purchased the ground, died on August 16, 1906. Exhibit A of the plaintiff purports to be a deed of sale executed by Juan Pascual on June 15, 1906, for a consideration of P50. This deed is a private document and is signed by Pascual and five witnesses. The boundary owners of the land in question in this action as set forth by some of the witnesses are not wholly identical with those set forth in this deed, but there appears to be no dispute as to the actual location of the land, and the differences in the names of the boundary owners may be sufficiently accounted for by the fact that some of the adjacent landowners appear to have changed since the execution of the deed.

Two of the witnesses who signed the deed bore the name of Agustin. One of these witnesses was the husband of Bonifacia Cabacungan, and was not living at the time of the trial. The other witnesses, Agustin Agustin, Rufino Agustin, Bonifacia Cabacungan, and Epitacio Agustin, the plaintiff, all testified as to the execution of the deed, and from their testimony it appears that the plaintiff from the date of its execution was in undisputed possession of the land in question until about a year prior to the institution of this action, when the defendant entered on the land and destroyed the plaintiff's corral.

The trial judge in his opinion observes that some of these witnesses involved themselves in contradictions, and that for that reason he was inclined to doubt the authenticity of the deed. We have examined the testimony of these witnesses carefully, and while they are not in absolute accord on all points, we have failed to discover such inconsistencies or contradictions in their testimony as would justify the inference that the whole story of the execution of the deed as related by them is false, and that in truth the deed had been executed and witnessed several years after the death of the vendor as is claimed by the defendant.

In support of the contention of the defendant in this regard but one witness was called. This man, Timoteo Dumlao, testifying for the defendant, asserted that he had drafted the document in question, but that he had done so in the month of June of the year 1911. He asserted that he had written the document in the house of one Luciano Segundo at the instance of the plaintiff, but that he had not taken part in its final execution because he left the house after the witnesses had assembled there, having no further interest in the transaction. If we accept the

testimony of this witness we must believe that the alleged deed was a forged instrument, and that all the witnesses whose signatures are attached thereto had deliberately conspired together with the plaintiff for its fraudulent execution. The story of his connection with the transaction as told by this witness is highly unsatisfactory, and if it can be believed it conclusively establishes that he himself was a party to the conspiracy to execute a fictitious document of sale of a piece of land worth about P50 in which no less than seven persons took part. Two of the witnesses to the deed appear to be heirs of Pascual, and in testifying as to the execution of the deed they were testifying against their own interest. Examining the testimony of these witnesses, as found in the record of this case, we do not believe there is room for any real doubt that the witness called for the defense deliberately and maliciously attempted to make it appear that he prepared the draft of the deed long after the death of the vendor, for no other purpose than to defeat the claim of the plaintiff.

The defendant undertook to show that he had inherited the land in question from his mother, and had been in possession of it for more than ten years; but there is no evidence in the record sufficient to sustain a finding that defendant had exercised any act of dominion or ownership over the land for any length of time, and indeed the defendant failed utterly to establish the title of his mother or the fact that he had occupied the land at any time prior to the date when he entered it unlawfully as alleged in the complaint. The evidence to our minds clearly establishes the fact that, prior to his death in 1906, Juan Pascual was the owner of this plot of land and lived upon it, and by the defendant's own witnesses it appears that plaintiff had a corral for his animals located on the land for a period of nearly two years before the date when it is alleged the defendant entered on the land and destroyed the corral.

Defendant claimed that he had paid the taxes upon the land and that it had been assessed in his name, and in support of this contention introduced a tax declaration and some tax receipts. It appears that defendant is the owner of a parcel of land immediately adjoining the lot in question, and while the proof is not conclusive upon this point, we are well satisfied that the tax declaration and tax receipts introduced by the defendant have reference to this adjacent lot owned by him, and do not include the lot in question.

Upon the whole record we are of opinion that the judgment of the court below should be reversed and that judgment for possession should be entered in favor of the plaintiff as prayed for in his complaint, but without damages, the evidence of record not being sufficient to establish the amount thereof.

We think, furthermore, that the evidence sufficiently discloses the lack of good faith on the part of the defendant in taking possession of this parcel of land and in destroying the corral of the plaintiff, and that he is not, therefore, entitled to any compensation or allowance on account of the little nipa shack which it appears he has constructed on the land.

So ordered.

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

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