

**RAMON MEDINA ONG-QUINGCO, PLAINTIFF AND APPELLANT, VS.
CECILIO IMAZ, ADMINISTRATOR OF THE ESTATE OF THE
DECEASED SALUSTIANO ZUBELDIA, AND WARNER, BARNES & CO., LIMITED, DEFENDAN...**

G.R. No. 8461. March 25, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Albay in favor of the defendants and against the plaintiff in an action of ejectment.

The facts in the case are substantially undisputed. It appears that in January, 1906, Warner, Barnes & Co., Limited, the owner 'in fee simple of a tract of land in the town of Albay, part of which is in dispute in this action, began proceedings in the Court of Land Registration for the registration of its title thereto under the provisions of Act No. 496. In June, 1906, said company sold a portion of the land thus undergoing registration to Salustiano Zubeldia, whose estate is represented by the defendant Cecilio Imaz as administrator. By an oversight, however, said company failed to amend the proceedings before the Court of Land Registration so as to exclude from the land described therein that portion thereof which it had sold to Zubeldia.

Immediately after the sale Zubeldia entered into possession of the land in question, made improvements thereon, and erected a stone wall along the dividing line between the lot sold to him and the rest of the property retained by Warner, Barnes & Co., Limited, undergoing registration as aforesaid. The fact that Zubeldia had been in actual possession of the property in question from the time of its sale to him down to the time of his death, which occurred during the pendency of this action, was known to the plaintiff.

About three years after the sale to Zubeldia the Court of Land Registration, in the proceeding hereinbefore referred to, entered a decree in favor of Warner, Barnes & Co., Limited, registering its title to the tract of land described in the application, including therein the land sold to Zubeldia, the fact of the sale to him, as we have already said, having been overlooked by the parties to said proceeding.

In July, 1911, G. M. Laing, the agent of Warner, Barnes & Co., Limited, in Albay, acting in behalf of the company, agreed, by a proper instrument in writing, to sell to the plaintiff in this case, for the sum of P3,000, the remainder of the tract of land from which Zubeldia's lot had been sold. That this was the land actually sold and no other is certain. Laing testified that before executing the contract of sale to the plaintiff he took him personally to inspect the land which he was buying and pointed out the boundaries thereof; that at that time the land sold to Zubeldia some four years before was entirely cut off from the rest of the land by a stone wall. Laing pointed out the wall as being the limit of the land under consideration, saying, "I took him there and showed him the walls, advising him that the part we desired to sell him was all that contained within the walls on the land."

A short time after the execution by Laing of the contract with the plaintiff, Juan T. Figueras, manager of Warner,

Barnes & Co., Limited, and in representation of said company, executed a conveyance of the land in question to the plaintiff, taking the description of the land set out in the conveyance from the description of the property as registered in the Court of Land Registration. On account of the fact, however, that the sale to Zubeldia had been overlooked in the proceedings for the registration of title, the description in the conveyance executed by Figueras on behalf of the company included not only the land sold to plaintiff but also the land sold four years before to Zubeldia. Plaintiff's conveyance was duly delivered to him and, upon its presentation to the registrar of deeds of Albay, a certificate of title was issued to him under the provisions of Act No. 496.

In November 1911 plaintiff made a demand upon Zubeldia for the possession of the property then occupied by him, the same being, as we have said, included in the description in the conveyance received by him from Warner, Barnes & Co., Limited. The demand for possession having been refused, plaintiff commenced this action in December, 1911, against Zubeldia. The latter obtained an order of the Court of First Instance for the inclusion of Warner, Barnes & Co., Limited, as a party defendant, and said company is the real defendant in the case.

The complaint alleges that the plaintiff is the owner of the land occupied by Zubeldia. The answer denies this and alleges that the inclusion of the Zubeldia lot in plaintiff's conveyance was due to a mutual mistake, and asks that the court make a correction of the record by the exclusion of the Zubeldia property from plaintiff's conveyance and the records thereof. The judgment of the court granted the relief prayed in the answer.

We have no doubt from the evidence in this case that the plaintiff knew, at the time the contract of the sale was executed, as well as when the conveyance was made, that Warner, Barnes & Co., Limited, did not intend to sell him the land which it had already sold to Zubeldia about four years before; and that his purchase was restricted to the land adjoining that sold to Zubeldia and separated therefrom by a stone wall which, in large part, inclosed the lands sold to and then occupied by Zubeldia.

The plaintiff relies for a reversal of the judgment upon the proposition that a Torrens title is absolutely indefeasible and that as he has a certificate of title showing from the description therein that he is the owner of the lands occupied by Zubeldia, such title cannot be successfully resisted by the defendants herein.

There might be some force in this declaration if the litigation were between the plaintiff and Zubeldia alone, and the plaintiff were an innocent purchaser for value. Undoubtedly, so far as an innocent purchaser for value is concerned, the decree of registration of the Court of Land Registration cut off the title of Zubeldia to the land in question and left him with naked possession alone. But, as between plaintiff and Warner, Barnes & Co., Limited, he is not an innocent purchaser for value; indeed, he is not a purchaser at all. As we have said, it is substantially undisputed that Warner, Barnes & Co., Limited, and the plaintiff agreed, the one to sell and the other to buy, a certain parcel of land, with definite boundaries, perfectly visible on inspection, which lands and the boundaries thereof were shown to the purchaser by the seller and were recognized and accepted by him as the boundaries of the land which he proposed to buy. In other words, the minds of the parties met upon the purchase and sale of a given, definite parcel of land. By a mistake, an oversight, there crept into the instrument by which it was sought to make the proposed sale effective a description which included not only the land which the parties had agreed upon as the subject matter of their contract but also an additional piece of land which was not within the contemplation of either party at the time the contract of sale was made. As between Warner, Barnes & Co., Limited, and the plaintiff, therefore, the latter got nothing by reason of the mistake which the company made in the description of the land sold. Immediately on discovering the error Warner, Barnes & Co., Limited, could have brought an action to correct the conveyance and make it represent the real intention of the parties. As between them no question as to the indefensibility of a Torrens title could arise. Such an action could have been maintained at any time while the property remained in the hands of the purchaser. The peculiar force of a Torrens title would have been brought into play only when the purchaser had sold to an innocent third person for value the lands described in his

conveyance.

Warner, Barnes & Co., Limited, being a party to this action, and the land still remaining in the hands of the purchaser, the plaintiff herein, Warner, Barnes & Co., Limited, may, on behalf of Zubeldia, or his successors in interest, exercise the same rights and pursue the same remedies which it could have exercised and pursued if it had been the plaintiff in an action to correct the description in the conveyance by which the property was transferred to the plaintiff. There having been a mutual mistake between Warner, Barnes & Co., Limited, and the plaintiff in this case in the execution of the conveyance in question, that mistake can be corrected in the action before us, the defendant, Warner, Barnes & Co., Limited, having presented in its answer facts sufficient for such affirmative relief and such relief having been prayed affirmatively therein. That is precisely what the learned trial court did, and we are of the opinion that it acted correctly.

The judgment appealed from is affirmed, with costs against the appellant.

Arellano, C J., Carson and Araullo, JJ., concur.

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