

MATEO MERCADO, PLAINTIFF AND APPELLEE, VS. DIONISIO JAKOSALEM, PROVINCIAL SHERIFF OF CEBU, AND JOSE A. CLARIN, DEFENDANTS AND APPELLANTS.*G.R. No. 9224. January 07, 1915*

Ponente: TORRES, J.

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This appeal was raised, through a bill of exceptions, by counsel for the defendants from the judgment rendered on April 22, 1913, whereby the Honorable Adolph Wislizenus, judge, held that the plaintiff is the owner in fee simple of the parcels of land described in paragraph 4 of the complaint, and that the sale of the said parcels made by the sheriff to his codefendant Jose A. Clarin is null and void. At the same time the court issued a permanent injunction against the defendants, enjoining them thenceforth from performing any act tending to disturb the ownership and possession of the plaintiff in the said parcels. He absolved the latter from the complaint in intervention as well as from the counterclaim and ordered the cancellation of the entry made in the property registry of the certificate of sale issued by the sheriff to Jose A. Clarin, with the costs against the defendants.

On July 6, 1911, counsel for the plaintiff filed a written complaint, amended on July 25, 1912, and February 27, 1913, wherein he set forth that on November 28, 1906, the defendant sheriff, by virtue of a writ of execution issued in an action brought by Llorente against Gomez for the collection of a mortgage debt, proceeded with the sale and adjudication to the plaintiff, Mateo Mercado, of 23 parcels of land, the area and boundaries of which appear in the complaint, for the sum of P1,135 Philippine currency; that the said sale having been approved by the court, the plaintiff became the absolute owner of the said land; that nine of the said parcels, to wit, those numbered 4, 5, 7, 8, 9, 13, 16, 17, and 23, were grouped by the plaintiff into two large parcels or tracts for convenience in tilling them; that, in compliance with another supplemental writ of execution issued in the action to foreclose the mortgage which gave rise to the sale of these lands to the plaintiff, and under the pretext that the two tracts described in paragraph 4 of the complaint did not then bear the same description as the aforementioned parcels 4, 5, 7, 8, 9, 13, 16, 17, and 23 which really form the said two large tracts, and notwithstanding the protest and the petition for intervention dated June 6, 1911, presented by the plaintiff to the sheriff, this latter officer did unlawfully levy upon the said nine parcels of land and, on July 19, 1911, did sell and adjudicate them to the defendant Jose A. Clarin for the sum of P750; that, as the judgment debtor had not exercised the right of redemption within the period fixed by law, the defendant sheriff was about to deliver to the defendant Clarin the possession of the said parcels of land, and that, against this unlawful act of the sheriff the plaintiff had no other easy, expeditious and proper remedy to prevent his being caused losses and damages; and that, by such unlawful acts, the sheriff caused the plaintiff losses and damages in the amount of P1,000. He therefore prayed the court to render judgment in his client's behalf, by holding the plaintiff to be the owner and to be entitled to the possession of the parcels of land described in paragraph 4 of the complaint, to wit, parcels 4, 5, 7, 8, 9, 13, 16, 17, and 23, and by declaring that the sale of the said parcels of land, made by the sheriff to Jose A. Clarin, was illegal, null, and void. He also asked that there be included in the judgment a permanent injunction against the defendants,

restraining them from performing any act tending to disturb the plaintiff's possession of the said land; that the defendant sheriff be ordered to pay the sum of P1,000 as losses and damages; and that both defendants pay the costs of the suit. Furthermore the plaintiff prayed that, during the pendency of this action, a writ of preliminary injunction issue against (a) the said sheriff, enjoining him from putting Jose A. Clarin in possession of the said parcels of land, and (b) against Jose A. Clarin, enjoining him from executing any act tending to disturb the plaintiff's possession thereof.

By a writ of August 1, 1912, amended on February 27, 1913, in answer to the aforementioned complaint the defendants denied each and all of the facts therein set forth, and as a special defense alleged that the land described in paragraph 4 of the amended complaint was purchased by the defendant Jose A. Clarin at public auction and was registered in the property registry on February 27, 1913. By way of counterclaim, Jose A. Clarin set forth that, since July 19, 1911, the date on which he purchased the said parcels of land described in paragraph 4 of the complaint, the plaintiff had been enjoying and continued to enjoy the products of the said land, in spite of the opposition of the defendant Clarin; and without any right whatever continued in the possession of this land to the latter's detriment, on which account the defendant Clarin failed to collect the products of the said parcels of land, valued at P5,000. He therefore prayed the court to absolve him from the complaint, to order the plaintiff to deliver to him, the defendant Clarin, the possession of the parcels of land described in paragraph 4 of the complaint and to pay for the losses and damages and the costs of the suit.

In answer to the counterclaim of the defendant Jose A. Clarin, the plaintiff admitted paragraphs 1 and 2 thereof, denied all the other allegations not specifically admitted in the preceding paragraph, and prayed that he be absolved from the cross complaint, and that all the findings be made in his favor.

On March 3, 1913, the plaintiff filed a supplemental complaint wherein he set forth that, on February 27, 1913, the same day of the hearing of this case, the defendant Jose A. Clarin applied for and obtained the registration in the property registry of the deed of sale in his favor of the lands in question, executed by the defendant sheriff (Exhibit 2); that the said entry was illegal, null, and void, inasmuch as the property described in the instrument referred to was not recorded in the property registry with the boundaries and descriptions as described in the said deed, and for the further reason that the said entry was made at the time of the hearing. He therefore, prayed the court to include in its judgment a finding that the registration in question was illegal, null and void, and an order directing its cancelation.

With the permission of the court, on October 11, 1911, Lorenza Martin Gomez and others intervened in the suit, claiming to be the owners of the land in litigation and asking for an indemnity of P1,500 for the use and occupation of the same by the plaintiff.

Upon a hearing of the case and the introduction of evidence by both parties, the court rendered the judgment aforementioned, from which counsel for the defendants excepted and moved, in writing, for a reopening of the case and a new trial. This motion was denied, and exception to the ruling was taken by the petitioners and, upon presentation of the proper bill of exceptions, the same was approved and transmitted to the clerk of this court.

The claim, out of which the present action arises, was presented for the purpose of recovering nine parcels of land situated in the municipality of Toledo, Cebu. These parcels were purchased at public auction by the plaintiff on November 28, 1906, and were afterwards levied upon for the second time and sold, together with two others, by the defendant sheriff to the other defendant, Jose A. Clarin, on July 19, 1911, for the sum of P750.

The record shows it to have been clearly proven that a Spaniard named Bernardo Gomez possessed, in the pueblo of Toledo, Province of Cebu, 23 parcels of land, the ownership of which was recorded in the property registry of the said province on February 22, 1893; and that he also acquired six other parcels of land through adjustment

proceedings [composicion] with the State (pp. 112-120 of the record). Nine of the 23 parcels mentioned adjoin one another and for this reason, as well as for greater convenience in tilling them, the said Gomez divided them into two large plantations, which were known in the locality by the name of the "Gomez Hacienda."

On October 20, 1879, Bernardo Gomez mortgaged these 23 parcels of land to Doña Martina Aballe (see instrument on page 60 of the record) and, owing to the nonpayment of the mortgage debt, Martin Llorente, an heir of Martina Aballe and the administrator of her estate, brought suit in the Court of First Instance of Cebu for the collection of the mortgage credit (civil case No. 445). As a result of these proceedings, the said 23 parcels of land were sold at public auction to the plaintiff, Mateo Mercado, on November 28, 1906, for the sum of P1,135 (p. 57 of the record) and the sale was approved by an order of November 30, 1906.

By another writ of execution, issued in the same action that gave rise to the first sale (pp. 39-41 of the record in case No. 445, aforementioned), the provincial governor, Dionisio Jakosalem, as sheriff ex officio of Cebu, proceeded anew to attach the parcels previously sold to Mateo Mercado, to wit, those numbered 4, 5, 7, 8, 9, 13, 16, 17, and 23, in spite of the written protest of this latter to the said sheriff on June 6, 1911 (pp. 89-90 of the first part of the record) and afterwards sold them to the highest bidder, Jose A. Clarin, on July 19, 1911, for the sum of ₱750, as evidenced by the certificate of sale, Exhibit 2 (pp. 122-123 of the record). The purchaser, Clarin, had this certificate recorded in the property registry of Cebu on February 27, 1913, the date of the hearing of this suit, and on the back thereof a memorandum was made of the registration by Governor Jakosalem himself as the ex-officio acting registrar of deeds.

On July 23, 1912, the defendant sheriff ordered the municipal president of Toledo to give Clarin possession of the land in question, owing to the failure to redeem this land, sold for the second time (p. 32 of the record). Therefore the purchaser, Clarin, took possession of the same on July 24 of the same year (p. 30 of the record).

The plaintiff's petition for a writ of preliminary injunction against the defendants having been submitted to the court, the latter allowed it upon condition that the plaintiff deposit a bond for P5,000, and on August 1, 1912, the proper writ was issued against the sheriff enjoining him from delivering to Jose A. Clarin or putting this latter in possession of the four parcels of land described in the complaint, and against the said Jose A. Clarin enjoining him from performing any act whatever tending to possess himself of the aforementioned parcels of land and to disturb the possession of the plaintiff therein. The situation, area and boundaries of the four parcels of land referred to in the preceding injunction and which, according to the certificate of sale issued by the sheriff (pp. 121-123 of the record), were sold to the defendant Clarin at public auction on July 19, 1911, are as follows:

First parcel.—Situated in the barrio of Luray or Espeleta of the municipality of Toledo, Province of Cebu, Philippine Islands; is bounded on the north by the lands of Leoncio Alburo and the Chinaman Cuana, a river between, and measures on this side 953 brazas; on the south, by the lands of Eusebio Loniza, Cayetano Labadlabad, and Francisco Blanco; on the east, by the lands of Cornelio Pickford, the Ginolawan River between, and measures on this side 138 brazas; and on the west, by the lands of Francisco Blanco and Octavio Quijano, and the Balamban highway. This parcel is crossed by a road leading to the mountains and has an area sufficient for the sowing of about nine cavans of corn.

Second parcel.—Situated in the barrio of Daan-Lungsod, of the same municipality; is bounded on the north by the Ginolawan River and measures on this side 164 brazas; on the south, by the land of Florencio Trocio and measures on this side 164 brazas; on the east, by the Balamban highway and measures on this side 118 brazas; and on the west, by the land of Ramon Velez and measures on this side 118 brazas.

Third parcel.—Situated in the same barrio of Daan-Lungsod ; is bounded on the north by the land of Antonio Nicasia; on the south, by that of Cayetano Labadlabad and on each of these sides has a measurement of 60 brazas;

on the east, by the land of Candido Macapaso; and on the west, by that of Florencio Trocio and on each of these sides has a measurement of 60 brazas.

Fourth parcel.—Situated in the barrio of Daan-Lungsod; is bounded on the north, south and west by the lands of Antonio Nicasia, and on the east by that of Roman Velez, and has an area sufficient for sowing about 5 gantas of corn.

In the motion filed on February 27, 1912 (p. 13 of the bill of exceptions) permission was asked to amend paragraph 4 of the amended complaint so as to leave out the last two parcels, Nos. 3 and 4, erroneously included, for the plaintiff only sought to recover possession of the first and second parcels, above described, which are composed of the said parcels Nos. 4, 5, 7, 8, 9, 13, 16, 17, and 23. These last nine parcels were the only ones of which the plaintiff could possess himself from among the 23 that he had purchased at public auction in November, 1906 (p. 68 of record in case 445), for, according to the return made by the sheriff, the rest of the parcels could not be located (pp. 69 and back of 83 of record in case 445, attached to the record of the present case). All the evidence presented at the trial bears on these nine parcels only and therefore no question whatever has been raised with regard to parcels 3 and 4, which were also sold to the defendant Clarin (p. 122 of the record), for they were eliminated at the request of the plaintiff himself (p. 13 of the bill of exceptions).

There can be no doubt that the first parcel of land sold to Clarin, that is, the first hacienda that belonged to Gomez, is composed of the parcels 4, 5, 7, 9, 17, and 23, situated in the barrio of Luray, and that the second parcel likewise sold to Clarin, situated in the barrio of Daan-Lungsod, is formed of the parcels Nos. 8, 13, and 16. These two tracts of land or haciendas are separated by the highway leading to Balamban and are described in the plan (Exhibit B, p. 59 of the record) that was admitted in evidence and which served the witnesses to identify the parcels of land sold by their respective owners to Bernardo Gomez.

It was satisfactorily proved that the fourth of the six parcels of land which form the first tract situated in the barrio of Luray, belonged to Patricio Milan, who sold it to Bernardo Gomez more than thirty years ago, and in proof of this the plaintiff presented the instrument recording its acquisition (p. 69 of the record) which evidences the sale which, on May 20, 1879, Patricio Milan made of a tract of land of his situated in the barrio of Ginolawan. The fifth of the said parcels, situated in the sitio of Calumanpao, near Mt. Ilijan, belonged to Francisco Tura, who sold it to Francisco Estrella, and the latter in turn subsequently conveyed it to Bernardo Gomez, as evidenced by the document found on page 72 of the record and which is a deed of sale executed on May 18, 1879. The seventh parcel was the property of Salvador Falcon and, according to the testimony of his son, was acquired through purchase by the said Gomez more than 30 years ago. The ninth parcel was sold by Brigido Artuyo, as his son testified, to Bernardo Gomez a long time ago. The seventeenth parcel belonged to Benedicta Laspiñas and, according to the testimony of a son of hers, was sold by his mother to Bernardo Gomez more than 35 years ago. Estanislao Cigarra's land—that is, parcel 23—was sold by its owner to the said Gomez. Moreover, all these sales are proved by the document, Exhibit C, found on pages 75 to 80 of the record.

In like manner it was fully proved that the parcels 8, 13, and 16, which form the second tract of land sold to Clarin, or that which constituted the second Gomez hacienda, are situated in the barrio of Daan-Lungsod and were acquired through purchase by Bernardo Gomez, for parcel 8 was sold by Octavio Quijano to the said Gomez, as the former himself testified; parcel 13, which belonged to Calixto Obediencia, was also sold by this latter to Bernardo Gomez; and, finally, parcel 16 which belonged to Ciriaco Rico as this same witness testified, was sold by him to the same man, Gomez. These last three sales were duly attested in the record of the proceedings had before the gobernadorcillo of Toledo, Province of Cebu, on May 18, 1879, as shown by the deed of sale, Exhibit C, found on pages 75 to 80 of the record in the present case.

It is, then, unquestionable that Bernardo Gomez legally acquired the said nine parcels of land from their respective owners more than 34 years ago, and subsequently grouped them into two large tracts the more easily to till them, since these parcels adjoined one another. Although the said Gomez secured the registration of the titles of the said parcels of land in the property registry of Cebu on February 22, 1893 (pp. 112-120 of the record), he failed to record the consolidation and division of the nine parcels into two large haciendas or plantations nor did he record the change of boundaries which, of course, resulted from those operations. Hence, the 23 parcels of land of which he was the owner appear as registered separately, each with its own boundaries. These 23 parcels, just as they were recorded in the property registry, were mortgaged to Doña Martina Aballe and the mortgage was also entered in the property registry. This explains how, in making the sale of these parcels of land to the plaintiff Mercado, by virtue of the judgment rendered in the suit brought for the collection of the mortgage credit, civil case No. 445, it was effected just as such parcels appeared recorded in the registry, that is to say, independently, by themselves and with different boundaries; but the record shows that it was clearly proven that the said nine parcels of land, to wit, Nos. 4, 5, 7, 8, 9, 13, 16, 17, and 23, which form a part of the 23 acquired from Gomez and which were recorded in the property registry, as aforesaid, and which were purchased at public auction by the plaintiff Mateo Mercado in November, 1906, are united and form two large tracts, with the same boundaries, and were again sold, on July 19, 1911, by the defendant sheriff to his codefendant Jose A. Clarin.

The witnesses who testified to the fact of the sales of these nine parcels of land to the said Bernardo Gomez are some of the vendors themselves, or their children or other relatives, who had a full knowledge of the facts and of the boundaries of the land sold. These witnesses stated that the parcels of land mentioned were the only ones that they or their ascendants had sold to the said Gomez and, at the hearing, they identified the land in litigation.

The defendants contend that none of these nine parcels of land which, in two tracts, form the parcels 1 and 2 that were sold to the defendant Clarin in the second public sale, are comprised within the 23 parcels previously sold to the plaintiff, for the reason that, according to the deeds of sale, the lands sold to the latter are situated in barrios other than the one in which the lands in question are located.

The certificate of sale issued by the sheriff to the defendant Clarin, Exhibit 2 (pp. 122-123 of the record), shows that the first parcel is situated in the barrio of "Espeleta, formerly Ginolawan," and the second in the barrio of Daan-Lungsod. In accordance with the registration made by Bernardo Gomez in 1893, Exhibit 1 (pp. 112- 120 of the record), the first parcel sold to Clarin is composed of the following parcels, which are mentioned with their respective situations: parcel 4, in the sitio of Ginolawan; parcel 5 in Lumampao; parcel 7, in Locay; parcel 9, in Maray; parcel 17, Luray; and parcel 23, also in Luray. The second parcel sold to Clarin is composed of parcel 8, situated in the sitio of Locay; parcel 13, in Luray; and parcel 16, also in Luray.

Francisco Rodriguez, a witness for the defense, 32 years of age and an ex-municipal secretary, testified that the barrio of Ginolawan was also known by the names of Daan- lungsod and Sangi; that this place was never called Luray; and that Espeleta barrio and that known as Daan-Lungsod are one and the same. He admitted that the said lands situated in these barrios are known in the locality as the Gomez Hacienda, that he was in these places only in 1906, when levying an attachment, that he never returned there, and that the barrio of Daan-Lungsod was called Ginolawan before he was born.

The plaintiffs, on their part, presented as witnesses persons who had occupied municipal offices during the past sovereignty and these testified that the barrio of Luray was also known by the name of Espeleta, and Daan-Lungsod by those of Ginolawan and Sangi. However, as the witness Rodriguez for the defense himself testified, undoubtedly there have been changes in the names of the barrios of the municipality of Toledo, on which account it would be difficult to guide oneself by the names of the barrios in identifying the lands in litigation.

Notwithstanding, there are two indisputable facts. The first is that these two tracts or parcels of land that were sold to the defendant Clarin are formed of 9 of the 23 parcels that belonged to Bernardo Gomez and which were purchased at auction by the plaintiff Mateo Mercado. The second is that, according to the testimony given by the very witness for the defense, Francisco Rodriguez, the lands in question were known by the name of the Gomez Hacienda.

It has been fully proven in this case that these same parcels of land were acquired by Bernardo Gomez from his respective relatives, who, or their children or descendants, attested the sales and duly identified the lands sold. The plaintiff's claim that these nine parcels that were sold to Clarin form a part of the 23 previously awarded at public auction to the plaintiff and which are situated within the barrios of Luray and Daan-Lungsod, respectively, of the municipality of Toledo, appears to be corroborated by the undeniable fact that on April 16, 1907, four months after the auction sale, the plaintiff Mercado entered into a contract of lease with Josefa Laurel by virtue of which the lessee took charge of six parcels of land, the second of which is situated in the barrio of Luray and has the same boundaries and area as the first parcel of land sold by the sheriff to the said Clarin, and the third of them, situated in the barrio of Daan-Lungsod, also has the same boundaries and area as the second parcel of land likewise sold to Clarin (p. 54 of record in civil case No. 1289).

In the case just above cited, prosecuted by Mateo Mercado against Josefa Laurel for wrongful detention, the Court of First Instance of Cebu in its judgment of December 27, 1911, ordered Josefa Laurel to return to the plaintiff the five parcels of land described in the aforesaid Exhibit G, except the first of them, two of these being the same parcels which, under Nos. 1 and 2, were sold to the defendant Clarin at public auction on July 19, 1911. This proves that, since April 16, 1907, the date of the contract of lease, the plaintiff Mateo Mercado was in possession of the said parcels in the barrio of Luray and Daan-Lungsod and which are, respectively the parcels 1 and 2 sold to the said Clarin. If Mercado was in possession of these two parcels of land since the beginning of the year 1907, it was by virtue of the purchase made by him at public auction of the 23 parcels which belonged to Bernardo Gomez, inasmuch as on December 15, 1906, the said plaintiff had taken possession of the nine parcels of land, Nos. 4, 5, 7, 8, 9, 13, 16, 17, and 23, of which the two tracts of land now in dispute are composed. This is shown by the return made by the municipal president of Toledo to the governor of Cebu on the date last above mentioned (p. 69 of the record in civil case No. 445).

The defendants also contend that the lands in question are a part of the six parcels of land which the said Bernardo Gomez acquired in 1897 by adjustment with the state, and in this connection presented pages 225 and 226, especially pages 8 and 9 of Exhibit 1, and pages 119 and 120 of the record, relative to two parcels of land situated in Ginolawan, which, in their respective areas and boundaries, do not agree with any of the four parcels sold to the aforementioned Clarin.

We arrive at the conclusion therefore: first, that the parcels 1 and 2, sold to the defendant Jose A. Clarin on July 19, 1911, and composed of the parcels 4, 5, 7, 8, 9, 13, 16, 17, and 23, were previously sold to the plaintiff Mateo Mercado at public auction on November 28, 1906, and were delivered to him on December 15th of the same year and therefore that the said nine parcels should be returned which were consolidated into parcels 1 and 2 and afterwards sold to Clarin and which are claimed in paragraph 4 of the amended complaint, rectified in the motion of February 27, 1913, by the exclusion of two other parcels expressly eliminated from the complaint (p. 82 of the record).

The interveners in this case claim to be the owners of the lands in dispute. They allege that they are the heirs of Bernardo Gomez and that, according to the testimony of their witness Josefa Laurel, the parcels in question were delivered to her by virtue of an agreement made by her husband with the said Bernardo Gomez in order that the said haciendas might remain under the care and in the possession of the spouses Laurel. In rebuttal of this

evidence, the plaintiff presented Exhibit A of civil case No. 1289. This is Exhibit G of the present case, a contract of lease whereby the said Josefa Laurel leased six parcels of land from the plaintiff, the second and third of which parcels, situated respectively in the barrios of Luray and Daan-Lungsod, are the same two parcels of the Gomez Hacienda which were purchased at auction by the plaintiff. The interveners are heirs of Bernardo Gomez and as such were sued by Martin Llorente in civil case No. 445 for the recovery of a mortgage debt which his predecessor in interest had failed to pay, and judgment was awarded against them, on the execution of which the lands in question were levied upon and sold to the plaintiff Mercado. Therefore the heirs of the debtor have no right to prevent the creditor from collecting his credit, for there is no estate to divide among the heirs of the debtor while his debts are unpaid.

No consideration need be given to the counterclaim in which indemnity is claimed as losses and damages for the uncollected products of the lands in litigation, inasmuch as the plaintiff is in lawful possession of the property which was sold to him at public auction, and it has not been proved that the second sale of the same lands that were previously disposed of at auction in fulfillment of the said judgment and for the payment of the same debt, a sale which unwarrantedly deprived the purchaser of his rights in the land, was proper.

It is evident that, after the two parcels of land in litigation had been sold at public auction and awarded to the plaintiff Mercado and the period for the exercise of the right of redemption had expired, these lands ceased to belong to the debtor or to his heirs, and nothing could be more just and proper than that a writ of final injunction should issue, that the second sale be annulled as illegal and the registration cancelled of the two parcels of land which are the only ones referred to in the plaintiff's written motion (p. 82 of the record), from which the parcels 3 and 4, awarded to Clarin, according to the certificate of sale issued by the sheriff, were expressly excluded.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, and excluding parcels 3 and 4 from the lands sold to the defendant, Jose A. Clarin, on July 19, 1911, we affirm the said judgment, it being understood that this decision is restricted to the cancellation of the registration of the first and second parcels mentioned in the aforesaid motion (p. 82 of the record). No special finding is made as to the costs of either instance.

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

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