

ILDEFONSO TAMBUNTING, IN HIS OWN BEHALF AND AS JUDICIAL ADMINISTRATOR OF THE ESTATE OF HIS DECEASED WIFE JULIANA UY CHICO, PLAINTIFF AND APPELLEE, VS. VIRGINIA DE VERA, IN HER O...*G.R. No. 9232. November 20, 1914*

Ponente: TORRES, J.

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This appeal, by bill of exceptions, was raised by counsel for the defendants from the judgment of April 28, 1913, whereby the Honorable A. S. Crossfield, judge, found in favor of the plaintiff and against the defendants by ordering the latter to restore to the former possession of the land, the boundaries of which were therein given, situated on Calle Benavides, Nos. 723 and 725, and containing an area , in accordance with the plan, Exhibit B, of 599 square meters and 61 square centimeters, and likewise the possession of the buildings and other improvements made thereon, and to pay him the value of the rental of the said property, at the rate of P3 per month, since the date of Andres de Guzman's death; without special finding as to costs.

Counsel for the plaintiff, in a written complaint filed in the Court of First Instance of this city on September 6, 1912, prayed that judgment be rendered decreeing the ownership, possession and title of the following described urban property to be in the plaintiff, by himself and in his capacity of judicial administrator of the estate of the deceased Juliana Uy Chico, to wit, a parcel of land situated on Calle Benavides of the district of San Jose, Trozo, and bounded on the right of its entrance by the house No. 31 of Isabel Pantic; on the left, by the lot of Flaviano Abreu; and on the rear, by a lot without number, belonging to the plaintiff himself; which land, in the form of a quadrilateral, has an area of 613 square meters and appears in the provisional register of the municipality, Binondo section, as property No. 571, first inscription. Said counsel further prayed that the defendants be sentenced to restore the possession of the said property to the plaintiff and to pay him P4,325, amount of the rentals therefor owed and unpaid and to pay him such other rentals as might become due. He also alleged that the plaintiff and the estate of the said Uy Chico were the owners of the property in question and that they were entitled to possession and title thereof, to the exclusion of all others; that Andres de Guzman and the defendants occupied it under lease in or about the month of March, 1895, and had paid the plaintiff rental therefor from the said year to January, 1899, though subsequently thereto and up to the date of the complaint they had refused to pay him the said rental, wherefore they owed him the sum mentioned, which, notwithstanding the judicial and extrajudicial demands made upon them, he had not succeeded in collecting; and that the defendants still continued unlawfully to occupy the said property under the claim of ownership and possession, to the damage and prejudice of the plaintiff's rights and interests.

Counsel for the defendants in his written answer admitted the facts contained in paragraphs 1, 2, 3, and 5 of the complaint and made a general and specific denial of those contained in the remaining paragraphs thereof; and, in special defense, denied that the defendants had leased any property from the plaintiff, and further stated that the property described in the complaint exclusively belonged to the estate of the deceased Antonino de Guzman and

Gregoria de la Cruz, and that their heirs now held it quietly, peaceably, and without any interruption whatever, as owners thereof jointly with the heirs of the deceased Andres de Guzman; that the plaintiff perverted the facts when he testified that the defendants had leased the property in 1895 and had paid him rental therefor from 1896 to 1901, but had failed to do so for the succeeding years to date; that on December 13, 1907, the plaintiff brought suit against Andres de Guzman, as the lessee, for the restitution of the possession of the property, but that the complaint was dismissed on account of lack of jurisdiction of the justice of the peace; that about March 29, 1895, Andres de Guzman, a coheir of the defendants, received from the plaintiff, as a loan, the sum of P300, to be repaid within one year with interest at the rate of PS per month, although in the instrument this latter amount was stipulated as rental under the security of the said property, which the debtor Andres possessed pro indiviso and in common with his coheirs, also defendants herein, and which the former so encumbered without the knowledge or consent of the latter, but that the plaintiff knew of the right and interest that Andres de Guzman had in the said property.

As a counterclaim he alleged that the administratrix, Virginia de Vera, offered in the name of the defendants to pay the debt and the interest thereon for the redemption of the share of the property belonging to the deceased Andres de Guzman, inasmuch as the defendants, as the owners of the property held in common, had a perfect right to redeem the said share by paying the price therefor and the interest. He therefore prayed that the defendants be absolved from the complaint; that the court hold that the house and land, the subject matter of the possessory information proceedings instituted by Andres de Guzman, belong exclusively to the surviving heirs of Antonino de Guzman and Gregoria, de la Cruz, with the costs against the plaintiff.

After a hearing in the case and the introduction of evidence by both parties, the court rendered the judgment aforementioned.

This action is for the recovery of a lot or parcel of land with the house situated thereon, the possession of which its owner, Ildefonso Tambunting, lost upon the death of his tenant, Andres de Guzman, which occurred about three years before 1913, that is, in 1910, by reason of the said property having been occupied by some of the latter's relatives who claimed to have a right and share therein.

The plaintiff bases his right of action on the fact that he acquired ownership of the said property through the lapse of the conventional period of one year within which the vendor, Andres de Guzman, should have redeemed the property, which was sold under right of repurchase in accordance with the stipulations made in the public instrument executed before a notary on March 29, 1895.

The vendor Guzman continued to occupy the property even after the vendee's ownership had been consolidated, by virtue of a contract of lease which forms part of that purchase and sale of the said property under right of redemption, and at a rental of ₱3 per month; all of which facts are set forth in this latter instrument, provisionally recorded in the property registry on December 17, 1901, and found on page 28 of record No. 880, exhibited at the trial of this case.

Although the plaintiff acquired absolute ownership of the said property on March 30, 1896, on account of the vendor's failure to repurchase it, yet he permitted the latter to continue to occupy it, as a lessee, until the month of December, 1907, when the plaintiff brought suit in the justice of the peace court for the recovery of possession of the said property and the rents owing thereon for the months of August to November, inclusive. These proceedings, however, were subsequently dismissed because the question as to the title of real property was raised. The complaint that gave rise to the present case was then filed.

In order to show that the vendor, Andres de Guzman, was the owner of the property sold and could freely dispose of it, the plaintiff, Tambunting, exhibited an authentic copy, attested by the registrar of the north district of

Manila, of the possessory information proceedings instituted by Guzman in the Court of First Instance of this city. In this document it is set forth that the said vendor inherited the lot described in the "information," from his deceased father Antonino de Guzman in September 1876, and that he constructed thereon a strong-material house, at his own expense, in September, 1879. This possessory information was approved by the court on condition that it should be without prejudice to any third person having a better right and the court ordered it entered in the property registry.

Against the allegation of the defendants that the said property had belonged to their deceased ascendants, Antonino de Guzman and Gregoria de la Cruz, and was now held by them jointly as its coowners and the successors of these latter, and that they were entitled to redeem it by removing the incumbrance upon it by payment to the plaintiff of the sum received from him by their coheir, Andres de Guzman, now deceased, and of the interest thereon at the rate of TS per month, considered as rent, we have the findings of the judgment of the lower court to the effect that no evidence was presented as to what property Antonino de Guzman left at his death, except the testimony of Virginia cle Vera, who claimed the aforesaid house and land, though she did not explain why she did not commence to pay the taxes thereon until the year 1911, for those pertaining to the previous years up to 1910 were paid by the plaintiff, and that, furthermore, the defendants presented no evidence of their alleged offer to pay the plaintiff the repurchase price in accordance with the stipulations of the instrument of sale.

The trial judge, therefore, accepted as true the statements made by Andres de Guzman in the proceedings had for obtaining the said possessory information, which was approved and recorded in the property registry in March, 1895, to the effect that, the land concerned in that title had been inherited by him from his deceased father, Antonino de Guzman, and that in the same month, two years thereafter, he constructed on the land the house aforementioned. He accordingly arrived at the conclusion that the plaintiff was the owner and entitled to possession of the land and improvements described in the complaint and in the instrument executed by Andres de Guzman in favor of the plaintiff, Ildefonso Tambunting, said property being situated in Calle Benavides and designated in Exhibit D as Nos. 723 to 725, lots 17 and 18, block 14.

It is impossible to review this finding of the trial judge or the facts from which it is derived in view of the errors assigned by the appellants to the judgment appealed from, inasmuch as the stenographic notes taken of the testimony of the witnesses examined during the trial of the case and transmitted with the record to this court were not transcribed into the official language. These untranscribed notes cannot be read at all and the failure to transcribe them is equivalent to a complete absence of oral evidence, for they were not submitted in proper and available form for the interested parties and all other participants in this suit.

It is a fixed principle, established by this court in accordance with existing legal provisions governing civil procedure and now become a rule of law, that the appellant who desires to obtain in second instance a review of the evidence presented at the trial had in the Court of First Instance, must have such evidence forwarded entire to this court. He cannot be permitted to forward only a part of it and then ask that the judgment appealed from be reversed on the ground that it is not supported by the evidence presented at the trial. In such a case the appellate court is compelled to accept the findings of fact and the conclusions in the decision of the lower court, as occurs in the present case. It is to be observed that, by the mere fact of forwarding only the untranscribed stenographic notes, intelligible only to the stenographer who wrote them, such requirement is not fulfilled and the omission or failure to transcribe the said notes amounts to failure to forward the evidence contained in them for, though the said notes are included in the record, they are not properly transcribed into Spanish or English.

Aside from this, the claim of prescription put forward by the appellee is well founded, on account of the lapse of more than ten years counting from the date when he purchased the property in question, the possession of which, materially enjoyed in his name by the lessee, Andres de Guzman, was held by him in good faith through a proper

conveyance, though suspended during the course of the period fixed for the redemption. However, for the reasons set forth in the preceding paragraphs, this alleged prescription need not be considered and the judgment appealed from must be affirmed.

The said judgment is, therefore, hereby affirmed, with the costs against the appellant.

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

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