

PAULA MARTINEZ, PLAINTIFF AND APPELLEE, VS. VICTORINO BAGANUS, DEFENDANT AND APPELLANT.*G.R. No. 9438. November 25, 1914*

Ponente: ARELLANO, C.J.

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Paula Martinez was, from December 1, 1890, the owner of a town lot situate in a barrio of the municipality of Balayan, Province of Batangas, description whereof is not necessary, as the property has been well identified. She was the owner through purchase from the spouses Martin Magahis and Severina Dignasan for the price of P70, as is recorded in the instrument executed therefor, which is in every way valid. Jose Mojica, son of Paula Martinez, sold said lot to Victorino Baganus for the same price, P70, on March 15, 1909, as is likewise recorded in the instrument executed therefor, also in every way valid.

On May 22, 1913, Paula Martinez sought recovery of ownership and possession of the lot, previously requesting that the sale thereof made by Jose Mojica to Victorino Baganus be declared null and void.

The defendant Baganus alleged that he bought the lot from Jose Mojica with the consent of the latter's mother, Paula Martinez, in the belief that it belonged to Jose Mojica and that the money with which the latter had bought it had been earned by Jose when he was the patron of a sailboat; that he had paid to Paula Martinez a deposit of P30 in advance and agreed to pay the P40 balance when the instrument of sale had been executed, as was later done; that confiding in good faith in the validity and efficacy of his acquisition, he had made necessary and useful improvements on the lot, having built a house and a carriage shop thereon, graded it, and planted fruit trees, all which had cost him over P1,000.

Jose Mojica, 40 years of age, confirmed the sale he had made to Baganus for the price of P70, having received P30 in advance and P40 later when the sale was put on record; but he says that he made the condition that if his mother did not agree to the sale he might take back the land and would return the money received; and that in fact his mother did not agree to it. Upon being asked why his mother had not for four years exercised the right of action she was now exercising in the face of Baganus' refusal to, return the land, he replied that he did not know why his mother had not done so immediately; that he had always been a farmer, and never the patron of any sailboat; that Baganus resided near the lot under consideration.

Concepcion Mojica, 36 years of age, another child of Paula Martinez, confirms the sale of the lot made by her brother Jose. She says that her mother ceased to possess the lot four years ago, and two years ago she, the witness, talked with a lawyer in order to find some way to arrange the matter or to repurchase the land, in view of the fact that her mother was not in accord with the sale made by her brother.

Filomena Tolentino was presented as a witness to testify that Jose Mojica made the condition that the sale should not be carried out if his mother did not agree to it; but this witness, who says she was a pupil of Jose Mojica's in 1911, likewise says that before 1911 she had been in Mojica's house and heard a conversation between Mojica and Baganus before and after the signing of the instrument of purchase (which was in 1909). To each of them she

ascribed words that suit the case.

Maria Alicante was also presented as a witness to prove that Paula Martinez had paid a certain married couple as if to say that this was not the money of any patron of a sailboat.

Victorino Baganus affirms that he arranged the sale with Paula Martinez and paid her in advance P30. He said that the value of the improvements were: For construction of the house, P1,000; for the warehouse, P80; and for the fruit trees planted, P300, although they had not yet borne fruit. The only thing impugned is the planting of the trees; counsel for the plaintiff only acknowledged the grading of the land or lot in question.

This case was tried by the justice of the peace of the capital of Batangas, by delegation from the Court of First Instance of the province. He decided it by declaring null and void and of no force or effect the sale made by Jose Mojica to Victorino Baganus and sentenced the latter to return the lot claimed to Paula Martinez, to remove at his own expense the buildings and plants he had placed thereon, and to pay the costs; without prejudice to the right of action he had against Jose Mojica, which was reserved, on the ground of ejectment.

The defendant assigned as errors to the judgment:

(1) Trial of this case by the justice of the peace who decided it when he lacked jurisdiction and competency therefor; (2) declaration that the lot in litigation belongs to Paula Martinez; (3) declaration that the defendant acquired the land in bad faith; and (4) the order for the defendant to return the lot claimed and to remove the buildings and plants he had placed thereon.

There is no ground for sustaining the first, second, and third assignments of error. The justice of the peace delegated was completely vested with the necessary competency and jurisdiction. The subject matter of the litigation, since the price of the sale did not exceed W0, and the value of the improvements claimed only amounts altogether to P1,380, the total of these sums is within the provisions of section 1 of Act No. 2131. It is evident, and this was not impugned at the trial, that the lot in litigation is the property of the plaintiff; and the defendant acquired it in bad faith, for he himself says that he dealt with the plaintiff, but consented that one who was not the owner of the thing sold should appear as the vendor.

The fourth assignment of error is sustained. Even though the defendant built and planted in bad faith, the plaintiff also acted in bad faith:

"Bad faith On the part of the owner is understood whenever the act (of building or planting) has been executed in his presence with his knowledge and tolerance and without objection." (Civil Code, art. 364 par. 2.)

Concepcion Mojica, plaintiff's daughter, two years after the sale made the proposition, in talking with a lawyer for the purpose, that the land be repurchased. All were present and were living in the barrio, the mother and her two children.

"When there has been bad faith, not only on the part of the person who built, sowed, or planted on another's land, but also on the part of the owner thereof, the rights of each shall be the same as if both had acted in good faith." (Civil Code, art. 364, par. 1.)

"The owner of the land on which building, sowing, or planting is done in good faith shall have the right to appropriate as his own the work, sowing, Or planting after the indemnity mentioned in articles 453 and 454, or, to oblige the person who has built or planted, to pay to him the value of the land. * * *." (Civil Code, art. 361.)

Articles 453 and 454 mentioned concede the right of retention to the possessor in good faith (as the defendant now is) who may have made necessary and useful improvements on another's property.

The judgment appealed from is affirmed in so far as the sale of the lot claimed is thereby declared null and void

and of no force and effect, with the costs in first instance; and there is reserved to the defendant his right of action against Jose Mojica to warrant the sale; but it is reversed in so far as it orders the defendant to deliver to the plaintiff the lot claimed in the complaint and to remove therefrom at his own expense the buildings and sowings (plantings, not sowings) he placed thereon.

In lieu thereof, we hold that the plaintiff should recover the lot under consideration, first indemnifying the defendant for the value of the buildings and plantings he has placed thereon, with the right on his part to retain it until she has reimbursed him for said necessary and useful improvements; or in the contrary case, for the defendant to pay to the plaintiff the price of the land, making himself the legitimate owner thereof; without special finding as to the costs in this instance. So ordered.

Torres, Johnson, Carson, Moreland, Trent, and Araullo, JJ., concur.

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