

VICENTE GOLINGKO, PLAINTIFF AND APPELLANT, VS. BRUNO MONJARDIN, DEFENDANT AND APPELLEE.

G. R. No. 9615. October 14, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

The purpose of the present action was to obtain possession of a small tract or parcel of land which is particularly described in paragraph 2 of the complaint. The plaintiff prays for the possession of the land, as owner, together with the sum of P200, as damages for the illegal detention thereof. The plaintiff claims that he is the owner of the land in question by virtue of the fact that he purchased the same at sheriff's sale, under an execution against the original owners, on the 16th of June, 1911. The defendant claims that he is the owner of the land in question by virtue of a deed of sale executed and delivered to him by the original owners, on the 18th of May, 1911.

After hearing the evidence adduced during the trial of the cause, the Honorable Percy M. Moir, judge, found that the defendant was the owner of the land in question and rendered a judgment relieving him from all liability under the complaint.

From that judgment the plaintiff appealed to this court. From an examination of the record, we think the following facts are proved by a large preponderance of the evidence:

First. That some time prior to the 18th of May, 1911, an action was commenced in the court of the justice of the peace of the municipality of Malinao, by Chino Co Singo against Quirino Austero and his wife, Januaria Ciencia, for a sum of money.

Second. That on the 18th of May, 1911, the said justice of the peace rendered a judgment in favor of the plaintiff in said cause and against the defendants, for said sum of money.

Third. That an execution was issued upon said judgment and was placed in the hands of the sheriff who, at public auction on the 16th of June, 1911, sold to the plaintiff herein the land in question, for the sum of P244.18.

Fourth. That the original owners (Quirino Austero and his wife, Januaria Ciencia) not having redeemed the land in question within a period of twelve months, said sheriff, on the 7th of August, 1912, issued to the plaintiff herein a certificate of sale.

Fifth. That on the 18th of May, 1911, Januaria Ciencia, together with her husband, Quirino Austero, sold to the defendant herein the land in question for the purpose of paying a debt which the defendant herein held against them. The deed of sale was executed and delivered on the 18th of May, 1911. The same was acknowledged before a notary public on the 12th of October, 1911.

Sixth. That at the time of the sale of the land in question at public auction, on the 16th of June, 1911, the sheriff was notified that the land did not belong to the said Quirino Austero and Januaria Ciencia, and that the same had been sold to the defendant herein, Bruno Monjardin.

Seventh. That at the time of the sale to the defendant herein (May 18, 1911) the said Quirino Austero and his wife, Januaria Ciencia, were the owners of other property.

Eighth. That on the 18th of May, 1911, at the time the land in question was sold by Quirino Austero and his wife, Januaria Ciencia, to the defendant herein, the former were legally indebted to the latter in the sum of P800, and that the sale of the land was made for the purpose of paying said indebtedness.

The plaintiff-appellant alleges that the lower court committed an error in deciding that the sale from Quirino Austero and Januaria Ciencia to the defendant herein was not a fraudulent sale. In reply to that contention, it may be said, in addition to the argument presented by the appellee in his brief, that the plaintiff neither alleged nor attempted to prove fraud, in relation to the transfer of the land in question. Of course, in the absence of an allegation of fraud in the complaint, the plaintiff could not prove it if proper objection were made. While perhaps there may be a presumption of fraud (art. 1297, Civil Code) arising from the nature and character of the transfer or sale, yet, nevertheless, it is a rebuttable presumption and it may be shown that the same was made for a valuable consideration and in good faith. Granting that the appellant properly alleged fraud, we are of the opinion that even in that case, the proof adduced by the defendant shows, beyond question, that the sale was a bona fide sale and that Quirino Austero and Januaria Ciencia had other property, free from encumbrance, subject to execution.

In view of all of the facts of the record and considering that the defendant was a purchaser in good faith, for a valuable consideration, of the land in question, and considering that he was a purchaser prior to the purchase of the plaintiff and considering that he entered into the possession of the land under and by virtue of said purchase, we are of the opinion and so hold that the judgment of the lower court should be and is hereby affirmed, with costs. So ordered.

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

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