2 Phil. 500

[G.R. No. 1164. September 17, 1903]

MANUEL ALDEGUER ET AL., PLAINTIFFS AND APPELLEES, VS. HENRY HOSKYN, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The only exception in this case was to the judgment, and the only question before us on the bill of exceptions is whether that judgment is supported by the findings of fact stated in the decision.

It appears from the decision that Doiia Petrona Inarda bought the land in question in 1855 from Don *Pablo* Garcia. Dona Petrona lived on the land until her death, in 1876, when Don Manuel Aldeguer, their grandfather, was appointed guardian of Dofia Petrona's four childern, the present plaintiffs. In 1884 Don Manuel sold the land to one Martinez, who sold it to the defendant, Henry Hoskyn, in 1887. In the deed to Martinez, Don Manuel stated that he acquired the property by purchase from Don Pablo Garcia twenty-four years before. The court finds that this declaration was the only evidence in the case that Don Manuel had any title to the land.

1. The appellant defendant below assigns as error that the court found from parol evidence alone the existence of the contract of sale between Don Pablo and Doiia Petrona. It is true the court says that no documentary evidence was received on this point, but it is also stated that the existence of a Avritten contract was proved, as also its record in the registry of property, its attachment to a complaint filed in court by the plaintiffs in 1892, its subsequent destruction with other papers in the case, and the contents thereof. After such preliminary proof had been made, parol evidence of the contents of the document was properly received (Code of Civil Procedure, sec. 284). Such a ruling does not infringe section 795, par. 6, of said Code, which provides "that nothing in this act contained shall be so construed an to divest or injuriously affect any

property right that lias already become vested under existing law," even if under article 1221 or other provisions of the Civil Code, after the destruction of the instrument, such parol evidence of its contents could not have been given. The general rule is that there is no vested right of property in rules of evidence.

2. The recital in the document of sale by Don Manuel to Martinez proves nothing against the plaintiffs, either according to the. former law (Civil Code, art. 1218) or according to the new Code (sees. 277 et seq.), and the claim of the appellant to the contrary can not be sustained.
3. It is claimed by the appellant that he has acquired title by prescription, but 4he defense of the statute of limitations, to have been available to the defendant in this case, should have been set up in his answer. This was not done. The court, therefore, made no finding thereon.
4. The appellant has moved for a new trial in this court under section 497, par. 2, of the Code of Civil Procedure, on the ground of newly discovered evidence. This evidence is to the effect that one *Bonifacio* Garcia was never the owner of the land in question and never sold it to the mother of the plaintiffs.

Waiving all questions as to the sufficiency of the showing of due diligence by the defendant, and as to the failure to procure the affidavits of the proffered witnesses, the motion must be denied on the ground that such evidence is not "of such a character as to probably change the result." The court finds that the mother of the plaintiffs bought the land from Don Pablo Garcia. Evidence that Bonifacio did not own it would be immaterial. Such evidence would merely.strengthen the decision of the court. It would not overthrow it.

But the appellant says that the plaintiffs in their complaint alleged that the mother bought the property of Don Bonifacio. What took place during the trial we do not know, but it is certain that evidence was introduced showing that the purchase was made from Don Pablo, because the court has so found. We must presume that this was done without objection on the part of the defendant, for no exceptions relating to the matter appear in the record. If such objections had been made, the court had power to allow the plaintiffs to amend their complaint by striking out the name of Bonifacio and inserting that of Pablo.

The motion for a new trial is denied and the judgment of the court below affirmed, with costs of this instance against the appellant, and after the expiration of twenty days, reckoned from the date of this decision, judgment shall be rendered accordingly, and the case is returned to the court below for compliance therewith.

Arellano, C. J., Torres, Cooper, Mapa, and *McDonough,JJ.,* concur.

Date created: April 15, 2014